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586

OCT. TERM 2018

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UNITED STATES REPORTS

VOLUME 586

CASES ADJUDGED

IN

THE SUPREME COURT

AT

OCTOBER TERM, 2018

BEGINNING OF TERM

OCTOBER 1, 2018, THROUGH MARCH 25, 2019

CHRISTINE LUCHOK FALLON

REPORTER OF DECISIONS

WASHINGTON : 2026

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JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS*

JOHN G. ROBERTS, JR., CHIEF JUSTICE.
CLARENCE THOMAS, ASSOCIATE JUSTICE.
RUTH BADER GINSBURG, ASSOCIATE JUSTICE.
STEPHEN BREYER, ASSOCIATE JUSTICE.
SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE.
SONIA SOTOMAYOR, ASSOCIATE JUSTICE.
ELENA KAGAN, ASSOCIATE JUSTICE.
NEIL M. GORSUCH, ASSOCIATE JUSTICE.
BRETT M. KAVANAUGH, ASSOCIATE JUSTICE.[1]

RETIRED

JOHN PAUL STEVENS, ASSOCIATE JUSTICE.
SANDRA DAY O'CONNOR, ASSOCIATE JUSTICE.
ANTHONY M. KENNEDY, ASSOCIATE JUSTICE.[2]
DAVID H. SOUTER, ASSOCIATE JUSTICE.

OFFICERS OF THE COURT

JEFFERSON B. SESSIONS, III, ATTORNEY GENERAL.[3]
MATTHEW G. WHITAKER, ACTING ATTORNEY GENERAL.[4]
WILLIAM P. BARR, ATTORNEY GENERAL.[5]
NOEL J. FRANCISCO, SOLICITOR GENERAL.
SCOTT S. HARRIS, CLERK.
CHRISTINE LUCHOK FALLON, REPORTER OF DECISIONS.
PAMELA TALKIN, MARSHAL.
LINDA S. MASLOW, LIBRARIAN.

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* For notes, see p. IV.

NOTES

[1] The Honorable Brett M. Kavanaugh, of Maryland, formerly a Judge of the United States Court of Appeals for the District of Columbia Circuit, was nominated by President Trump on July 9, 2018, to be an Associate Justice of this Court; the nomination was confirmed by the Senate on October 6, 2018; he was commissioned and took the oaths and his seat on the same date. He was presented to the Court on November 8, 2018. See post, p. v.

[2] Justice Kennedy retired effective July 31, 2018. See post, p. ix.

[3] Attorney General Sessions resigned effective November 7, 2018.

[4] Mr. Whitaker became Acting Attorney General effective November 7, 2018.

[5] The Honorable William P. Barr, of Virginia, was nominated by President Trump on December 7, 2018, to be Attorney General; the nomination was confirmed by the Senate on February 14, 2019; he was commissioned and took the oath of office on the same date.

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 August 1, 2018, 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, Samuel A. Alito, Jr., Associate Justice.

For the Sixth Circuit, Elena Kagan, Associate Justice.

For the Seventh Circuit, Elena Kagan, Associate Justice.

For the Eighth Circuit, Neil M. Gorsuch, Associate Justice.

For the Ninth Circuit, John G. Roberts, Jr., Chief 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.

August 1, 2018.

(For next previous allotment, see 585 U. S., p. v.)
(For next subsequent allotment, see *post*, p. vi.)

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 October 19, 2018, 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, Samuel A. Alito, Jr., Associate Justice.

For the Sixth Circuit, Sonia Sotomayor, Associate Justice.

For the Seventh Circuit, Brett M. Kavanaugh, Associate Justice.

For the Eighth Circuit, Neil M. Gorsuch, Associate Justice.

For the Ninth Circuit, Elena Kagan, 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.

October 19, 2018.

(For next previous allotment, see *ante*, p. v.)

APPOINTMENT OF JUSTICE KAVANAUGH

Supreme Court of the United States

THURSDAY, NOVEMBER 8, 2018

Present: Chief Justice Roberts, Justice Thomas, Justice Breyer, Justice Alito, Justice Sotomayor, Justice Kagan, Justice Gorsuch, and Justice Kavanaugh.

The Chief Justice said:

This special sitting of the Court is held today to receive the Commission of the newly appointed Associate Justice of the Supreme Court of the United States, Brett M. Kavanaugh.

We are pleased to have with us today the President of the United States. On behalf of the Court, Mr. President, I extend to you and the First Lady a warm welcome. We are also pleased to have with us our retired colleague, Justice Kennedy.

The Court now recognizes the Acting Attorney General of the United States, Matthew Whitaker.

Acting Attorney General Whitaker said:

Mr. Chief Justice, and may it please the Court. I have the Commission which has been issued to the Honorable Brett M. Kavanaugh, as an Associate Justice of the Supreme Court of the United States. The Commission has been duly signed by the President of the United States and attested by the Attorney General of the United States. I move that the Clerk read the Commission and that it be made part of the permanent record of the Court.

THE CHIEF JUSTICE said:

Thank you, Attorney General Whitaker, your motion is granted. Mr. Clerk, will you please read the Commission.

The Clerk read the Commission:

DONALD J. TRUMP,

PRESIDENT OF THE UNITED STATES OF AMERICA,

To all who shall see these Presents, Greeting:

KNOW YE; That reposing special trust and confidence in the Wisdom, Uprightness, and Learning of Brett M. Kavanaugh, of Maryland, I have nominated, and, by and with the advice and consent of the Senate, do appoint him Associate Justice of the Supreme Court of the United States, and do authorize and empower him to execute and fulfill the duties of that Office according to the Constitution and Laws of the said United States, and to Have and to Hold the said Office, with all the powers, privileges and emoluments to the same of right appertaining, unto him, the said Brett M. Kavanaugh, during his good behavior.

In testimony whereof, I have caused these Letters to be made patent and the seal of the Department of Justice to be hereunto affixed.

Done at the City of Washington, this sixth day of October, in the year of our Lord two thousand and eighteen, and of the Independence of the United States of America the two hundred and forty-third.

[SEAL] DONALD J. TRUMP

By the President:

JEFFERSON B. SESSIONS, III,
Attorney General

THE CHIEF JUSTICE said:

I now ask the Deputy Clerk of the Court to escort Justice Kavanaugh to the bench.

THE CHIEF JUSTICE said:

Please repeat after me.

Justice Kavanaugh said:

I, Brett M. Kavanaugh, do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as an Associate Justice of the Supreme Court of the United States under the Constitution and laws of the United States. So help me God.

BRETT M. KAVANAUGH

Subscribed and sworn to before me this eighth day of November, 2018.

JOHN G. ROBERTS, JR.
Chief Justice

THE CHIEF JUSTICE said:

Congratulations. JUSTICE KAVANAUGH, on behalf of all the members of the Court, it is my pleasure to extend to you a very warm welcome as the 102nd Associate Justice of the Supreme Court of the United States. We wish for you a long and happy career in our common calling.

JUSTICE KAVANAUGH said:

Thank you.

RETIREMENT OF JUSTICE KENNEDY

Supreme Court of the United States

MONDAY, DECEMBER 3, 2018

Present: Chief Justice Roberts, Justice Thomas, Justice Ginsburg, Justice Breyer, Justice Alito, Justice Sotomayor, Justice Kagan, Justice Gorsuch, and Justice Kavanaugh.

The Chief Justice said:

Before we commence this morning's business, I would like to acknowledge the presence in the courtroom of Justice Anthony M. Kennedy, and I would like to read into the records of the Court an exchange of correspondence.

The first letter is dated today, December 3, 2018. It is to Justice Kennedy from my colleagues and me, and it reads as follows:

Supreme Court of the United States,
Chambers of The Chief Justice,
Washington, D. C., December 3, 2018.

Dear Tony:

Although our new Term is well underway, we remain keenly aware of your absence on the Bench and in our Conference. From the time each of us came to know you, you have enriched our lives through your kindness, comradery, and generosity. We are heartened that you have maintained an active presence in the building, and we take great comfort that you remain our valued colleague here.

No one leaves Sacramento to become a prospector. But your labors since moving east have yielded a treasure of

thoughtful decisions. This legacy will guide the understanding of judges, lawyers, and citizens for years to come.

Your example of ceaseless civility inspires us as we go forward with the work of the Court that you have so vitally advanced. We wish you and Mary well in your much-deserved retirement, and we look forward to many more years in this new chapter of our shared friendships.

Affectionately,
JOHN G. ROBERTS, JR.
CLARENCE THOMAS
RUTH BADER GINSBURG
STEPHEN BREYER
SAMUEL A. ALITO, JR.
SONIA SOTOMAYOR
ELENA KAGAN
NEIL M. GORSUCH
BRETT M. KAVANAUGH
JOHN PAUL STEVENS
SANDRA DAY O'CONNOR
DAVID H. SOUTER

THE CHIEF JUSTICE said:

The next letter is to myself and the colleagues on the bench and it is from Justice Kennedy. It reads:

SUPREME COURT OF THE UNITED STATES,
CHAMBERS OF ANTHONY M. KENNEDY,
Washington, D. C., December 3, 2018.

Dear Chief Justice and Dear Colleagues,

Please accept this expression of deepest appreciation for the uplifting words and sentiments in your most gracious letter. It will be treasured by our family.

This reply is not to say farewell, for it is my hope to linger here to be with all of you in the days and years to come. It is necessary, of course, to say farewell to being on the bench and in the conference room. There, for the past thirty years, it was a high honor to join with our colleagues in seeking

how best to define and interpret an idea and a reality—the idea and the reality of the law. Even if we disagreed in a particular case, we admired and respected each other as we sought to explain the law as we found it to be and to ensure that, over the course of time, the law and the freedoms it sustains will be ever more secure, ever more revered.

We first came to Washington knowing few who lived here, but the members of the Court at once reached out to Mary and me with gifts of guidance, understanding, and above all, the priceless bond of friendship. It seems proper to quote from the Poet and to say that for all these gifts "I can no other answer make but thanks, and thanks, and ever thanks."

With assurances of my continued highest regards, I remain,

Yours sincerely,

Tony

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CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 2018

MOUNT LEMMON FIRE DISTRICT *v.* GUIDO ET AL.

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

No. 17–587. Argued October 1, 2018—Decided November 6, 2018

John Guido and Dennis Rankin filed suit, alleging that the Mount Lemmon Fire District, a political subdivision in Arizona, terminated their employment as firefighters in violation of the Age Discrimination in Employment Act of 1967 (ADEA). The Fire District responded that it was too small to qualify as an "employer" under the ADEA, which provides: "The term 'employer' means a person engaged in an industry affecting commerce who has twenty or more employees . . . . The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State . . . ." 29 U. S. C. § 630(b).

Initially, both Title VII of the Civil Rights Act of 1964 and the ADEA applied solely to private sector employers. In 1974, Congress amended the ADEA to cover state and local governments. A previous, 1972, amendment to Title VII added States and their subdivisions to the definition of "person[s]," specifying that those entities are engaged in an industry affecting commerce. The Title VII amendment thus subjected States and their subdivisions to liability only if they employ a threshold number of workers, currently 15. By contrast, the 1974 ADEA amendment added state and local governments directly to the definition of "employer." The same 1974 enactment also amended the Fair Labor Standards Act (FLSA), on which many aspects of the ADEA are based, to reach all government employers regardless of their size. 29 U. S. C. § 203(d), (x).

Syllabus

Held: The definitional provision's two-sentence delineation, set out in § 630(b), and the expression "also means" at the start of § 630(b)'s second sentence, combine to establish separate categories: persons engaged in an industry affecting commerce with 20 or more employees; and States or political subdivisions with no attendant numerosity limitation.

The words "also means" in § 630(b) add new categories of employers to the ADEA's reach. First and foremost, the ordinary meaning of "also means" is additive rather than clarifying. See 859 F. 3d 1168, 1171 (case below) (quoting Webster's New Collegiate Dictionary 34). The words "also means" occur dozens of times throughout the U. S. Code, typically carrying an additive meaning. *E. g.*, 12 U. S. C. § 1715z–1(i)(4). Furthermore, the second sentence of the ADEA's definitional provision, § 630(b), pairs States and their political subdivisions with agents, a discrete category that carries no numerical limitation.

Reading the ADEA's definitional provision, § 630(b), as written to apply to States and political subdivisions regardless of size may give the ADEA a broader reach than Title VII, but this disparity is a consequence of the different language Congress chose to employ. The better comparator for the ADEA is the FLSA, which also ranks States and political subdivisions as employers regardless of the number of employees they have. The Equal Employment Opportunity Commission has, for 30 years, interpreted the ADEA to cover political subdivisions regardless of size, and a majority of the States impose age discrimination proscriptions on political subdivisions with no numerical threshold. Pp. 6–8.

859 F. 3d 1168, affirmed.

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

E. Joshua Rosenkranz argued the cause for petitioner. With him on the briefs were *Thomas M. Bondy*, *Christopher J. Cariello*, and *Jeffrey C. Matura*.

Jeffrey L. Fisher argued the cause for respondents. With him on the brief were *Don Awerkamp*, *Shannon Giles*, *David T. Goldberg*, and *Pamela S. Karlan*.

Jonathan C. Bond argued the cause for the United States as *amicus curiae* urging affirmance. On the brief were *Solicitor General Francisco*, *Deputy Solicitor General Wall*,

Morgan L. Goodspeed, *Jennifer S. Goldstein*, and *Anne Noel Occhialino.**

JUSTICE GINSBURG delivered the opinion of the Court.

Faced with a budget shortfall, Mount Lemmon Fire District, a political subdivision in Arizona, laid off its two oldest full-time firefighters, John Guido (then 46) and Dennis Rankin (then 54). Guido and Rankin sued the Fire District, alleging that their termination violated the Age Discrimination in Employment Act of 1967 (ADEA), 81 Stat. 602, as amended, 29 U. S. C. § 621 *et seq.* The Fire District sought dismissal of the suit on the ground that the District was too small to qualify as an "employer" within the ADEA's compass. The Act's controlling definitional provision, 29 U. S. C. § 630(b), reads:

> "The term 'employer' means a person engaged in an industry affecting commerce who has twenty or more employees . . . . The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State . . . ."

The question presented: Does the ADEA's numerosity specification (20 or more employees), applicable to "a person engaged in an industry affecting commerce," apply as well to state entities (including state political subdivisions)? We hold, in accord with the United States Court of Appeals for the Ninth Circuit, that § 630(b)'s two-sentence delineation, and the expression "also means" at the start of the second sentence, combine to establish separate categories: persons engaged in an industry affecting commerce with 20 or more employees; and States or political subdivisions with no at-

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**Collin O'Connor Udell* and *Lisa Soronen* filed a brief for the National Conference of State Legislatures et al. as *amici curiae* urging reversal.

Daniel B. Kohrman, *Laurie A. McCann*, *Dara S. Smith*, and *William Alvarado Rivera* filed a brief for AARP et al. as *amici curiae* urging affirmance.

tendant numerosity limitation. "[T]wenty or more employees" is confining language, but the confinement is tied to § 630(b)'s first sentence, and does not limit the ADEA's governance of the employment practices of States and political subdivisions thereof.

I

Initially, Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U. S. C. § 2000e *et seq.*, which prohibits employment discrimination on the basis of race, color, religion, sex, and national origin, applied solely to private sector employers. The same was true of the ADEA, enacted three years later to protect workers against "arbitrary age discrimination." 29 U. S. C. § 621(b). As originally enacted, both Title VII and the ADEA imposed liability on "employer[s]," defined in both statutes to include "a person engaged in an industry affecting commerce" whose employees met a numerical threshold, but specifically to exclude governmental entities. 78 Stat. 253 (Title VII); 81 Stat. 605 (ADEA).

In 1972, Congress amended Title VII to reach state and local employers. Under the revised provision of Title VII, "[t]he term 'person' includes one or more individuals, governments, governmental agencies, [and] political subdivisions," also certain other specified entities, and "[t]he term 'employer' means a person engaged in an industry affecting commerce who has fifteen or more employees . . . ." 42 U. S. C. § 2000e(a)–(b). For this purpose, amended Title VII defines "industry affecting commerce" to "includ[e] any governmental industry, business, or activity." § 2000e(h). The 1972 amendment to Title VII thereby extended the statute's coverage to state and local government entities by defining them as "person[s]." In turn, as "person[s]," these entities meet Title VII's definition of "employer" and are subject to liability only if they have at least 15 employees.[1]

[1] The Americans with Disabilities Act of 1990 defines "employer" in materially the same way as Title VII and accords "person . . . the same meaning" as in Title VII. 42 U. S. C. § 12111(5), (7).

Two years later, in 1974, Congress amended the ADEA to cover state and local governments. Unlike in Title VII, where Congress added such entities to the definition of "person," in the ADEA, Congress added them directly to the definition of "employer." Thus, since 1974, the ADEA's key definitional provision has read:

> "The term 'employer' means a person engaged in an industry affecting commerce who has twenty or more employees . . . . The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State . . . ." 29 U. S. C. § 630(b).

In the same 1974 enactment, Congress amended the Fair Labor Standards Act (FLSA), on which parts of the ADEA had been modeled, to reach all government employers regardless of their size. See 88 Stat. 58, 29 U. S. C. § 203(d), (x).

The parties dispute the proper reading of the ADEA following the 1974 amendment. Does "also means" add new categories to the definition of "employer," or does it merely clarify that States and their political subdivisions are a type of "person" included in § 630(b)'s first sentence? If the former, state and local governments are covered by the ADEA regardless of whether they have as many as 20 employees. If the latter, they are covered only if they have at least 20 employees. Federal courts have divided on this question. Compare *Kelly* v. *Wauconda Park Dist.*, 801 F. 2d 269 (CA7 1986) (state and local governments are covered by the ADEA only if they have at least 20 employees); *Cink* v. *Grant County*, 635 Fed. Appx. 470 (CA10 2015) (same); *Palmer* v. *Arkansas Council on Economic Educ.*, 154 F. 3d 892 (CA8 1998) (same); *EEOC* v. *Monclova*, 920 F. 2d 360 (CA6 1990) (same), with this case, 859 F. 3d 1168 (CA9 2017) (state and local governments are covered by the ADEA regardless of their number of employees). We granted certiorari to resolve the conflict. 583 U. S. 1155 (2018).

II

For several reasons, we conclude that the words "also means" in § 630(b) add new categories of employers to the ADEA's reach. First and foremost, the ordinary meaning of "also means" is additive rather than clarifying. As the Ninth Circuit explained, "'also' is a term of enhancement; it means 'in addition; besides' and 'likewise; too.'" 859 F. 3d, at 1171 (quoting Webster's New Collegiate Dictionary 34 (1973)). Indeed, reading "also" additively to create a separate category of "employer" seemed to this Court altogether fitting in *EEOC* v. *Wyoming*, 460 U. S. 226 (1983). There, we held that applying the ADEA to state and local governments does not encroach on States' sovereignty or Tenth Amendment immunity. *Id.*, at 240–242. In the course of so holding, we described the 1974 ADEA amendment as "extend[ing] the substantive prohibitions of the Act to employers having at least 20 workers [as opposed to 25 in the original version], *and to* the Federal and State Governments." *Id.*, at 233 (emphasis added). In this regard, we note, it is undisputed that the ADEA covers Federal Government entities, which our opinion in *Wyoming* grouped with state entities, regardless of the number of workers they employ. 29 U. S. C. § 633a.

Instructive as well, the phrase "also means" occurs dozens of times throughout the U. S. Code, typically carrying an additive meaning. See Brief for Respondents 11–13, and n. 2 (collecting citations). For example, 12 U. S. C. § 1715z–1(i)(4), provides:

> "[T]he term 'elderly families' means families which consist of two or more persons the head of which (or his spouse) is sixty-two years of age or over or is handicapped. Such term also means a single person who is sixty-two years of age or over or is handicapped."

"[A] single person" plainly adds to, rather than clarifies, the preceding statutory delineation, "two or more persons."

Just so with States and their political subdivisions in the ADEA's definition of "employer." Notably, in § 1715z–1(i)(4), Congress repeated the "sixty-two years of age or over or is handicapped" qualifier to render it applicable to "a single person." In the ADEA, by contrast, Congress did not repeat the "twenty or more employees" qualifier when referencing state and local government entities. This Court is not at liberty to insert the absent qualifier.

Furthermore, the text of § 630(b) pairs States and their political subdivisions with agents, a discrete category that, beyond doubt, carries no numerical limitation. See Tr. of Oral Arg. 55–56. The Fire District does not gainsay that the 20-employee restriction applies to § 630(b)'s first sentence. Its construction, however, would lift that restriction for the agent portion of the second sentence, and then reimpose it for the portion of that sentence addressing States and their political subdivisions. We resist a reading so strange.[2]

The Fire District presses the argument that the ADEA should be interpreted in line with Title VII, which, as noted *supra*, at 4, applies to state and local governments only if they meet a numerosity specification. True, reading the ADEA as written to apply to States and political subdivisions regardless of size gives the ADEA, in this regard, a broader reach than Title VII. But this disparity is a consequence of the different language Congress chose to employ. See *Gross* v. *FBL Financial Services, Inc.*, 557 U. S. 167, 174 (2009) (differences between Title VII's and the ADEA's language should not be ignored). The better comparator is the FLSA, on which many aspects of the ADEA are based. See 29 U. S. C. § 626(b) (ADEA incorporates the "powers, remedies, and procedures" of the FLSA). Like the FLSA, the ADEA ranks States and political subdivisions as "employer[s]" regardless of the number of employees they have.

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[2] We need not linger over possible applications of the agent clause, for no question of agent liability is before us in this case.

The Fire District warns that applying the ADEA to small public entities risks curtailment of vital public services such as fire protection. Experience suggests otherwise. For 30 years, the Equal Employment Opportunity Commission has consistently interpreted the ADEA as we do today. EEOC Compliance Manual: Threshold Issues §2–III(B)(1)(a)(i), and n. 99. See also *Kelly*, 801 F. 2d, at 270, n. 1. And a majority of States forbid age discrimination by political subdivisions of any size; some 15 of these States subject private sector employers to age discrimination proscriptions only if they employ at least a threshold number of workers. See Brief for Respondents 28–29, and n. 6 (collecting citations). No untoward service shrinkages have been documented.

In short, the text of the ADEA's definitional provision, also its kinship to the FLSA and differences from Title VII, leave scant room for doubt that state and local governments are "employer[s]" covered by the ADEA regardless of their size.

* * *

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

Affirmed.

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

Syllabus

WEYERHAEUSER CO. *v.* UNITED STATES FISH AND WILDLIFE SERVICE ET AL.

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

No. 17–71. Argued October 1, 2018—Decided November 27, 2018

The Fish and Wildlife Service administers the Endangered Species Act of 1973 on behalf of the Secretary of the Interior. In 2001, the Service listed the dusky gopher frog as an endangered species. See 16 U. S. C. § 1533(a)(1). That required the Service to designate "critical habitat" for the frog. The Service proposed designating as part of that critical habitat a site in St. Tammany Parish, Louisiana, which the Service dubbed "Unit 1." The frog had once lived in Unit 1, but the land had long been used as a commercial timber plantation, and no frogs had been spotted there for decades. The Service concluded that Unit 1 met the statutory definition of unoccupied critical habitat because its rare, high-quality breeding ponds and distance from existing frog populations made it essential for the species' conservation. § 1532(5)(A)(ii). The Service then commissioned a report on the probable economic impact of its proposed critical-habitat designation. § 1533(b)(2). With regard to Unit 1, the report found that designation might bar future development of the site, depriving the owners of up to $33.9 million. The Service nonetheless concluded that the potential costs were not disproportionate to the conservation benefits and proceeded to designate Unit 1 as critical habitat for the dusky gopher frog.

Unit 1 is owned by petitioner Weyerhaeuser and a group of family landowners. The owners of Unit 1 sued, contending that the closed-canopy timber plantation on Unit 1 could not be critical habitat for the dusky gopher frog, which lives in open-canopy forests. The District Court upheld the designation. The landowners also challenged the Service's decision not to exclude Unit 1 from the frog's critical habitat, arguing that the Service had failed to adequately weigh the benefits of designating Unit 1 against the economic impact, had used an unreasonable methodology for estimating economic impact, and had failed to consider several categories of costs. The District Court approved the Service's methodology and declined to consider the challenge to the Service's decision not to exclude Unit 1. The Fifth Circuit affirmed, rejecting the suggestion that the "critical habitat" definition contains any habitability requirement and concluding that the Service's decision not to exclude Unit 1 was committed to agency discretion by law and was therefore unreviewable.

Held:

1. An area is eligible for designation as critical habitat under § 1533(a)(3)(A)(i) only if it is habitat for the species. That provision, the sole source of authority for critical-habit designations, states that when the Secretary lists a species as endangered he must also "designate any habitat of such species which is then considered to be critical habitat." It does not authorize the Secretary to designate the area as critical habitat unless it is also habitat for the species. The definition allows the Secretary to identify a subset of habitat that is critical, but leaves the larger category of habitat undefined. The Service does not now dispute that critical habitat must be habitat, but argues that habitat can include areas that, like Unit 1, would require some degree of modification to support a sustainable population of a given species. Weyerhaeuser urges that habitat cannot include areas where the species could not currently survive. The Service, in turn, disputes the premise that the administrative record shows that the frog could not survive in Unit 1. The Court of Appeals, which had no occasion to interpret the term "habitat" in § 1533(a)(3)(A)(i) or to assess the Service's administrative findings regarding Unit 1, should address these questions in the first instance. Pp. 19–21.

2. The Secretary's decision not to exclude an area from critical habitat under § 1533(b)(2) is subject to judicial review. The Administrative Procedure Act creates a "basic presumption of judicial review" of agency action. *Abbott Laboratories* v. *Gardner*, 387 U. S. 136, 140. The Service contends that the presumption is rebutted here because the action is "committed to agency discretion by law," 5 U. S. C. § 701(a)(2), because § 1533(b)(2) is one of those rare provisions "drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion," *Lincoln* v. *Vigil*, 508 U. S. 182, 191.

Section 1533(b)(2) describes a unified process for weighing the impact of designating an area as critical habitat. The provision's first sentence requires the Secretary to "tak[e] into consideration" economic and other impacts before designation, and the second sentence authorizes the Secretary to act on his consideration by providing that he "may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of" designation. The word "may" certainly confers discretion on the Secretary, but it does not segregate his discretionary decision not to exclude from the mandated procedure to consider the economic and other impacts of designation when making his exclusion decisions. The statute is, therefore, not "drawn so that a court would have no meaningful standard against which to judge the [Secretary's] exercise of [his] discretion" not to exclude. *Lincoln*, 508 U. S., at 191. Weyerhaeuser's claim—that the agency did not appropri-

ately consider all the relevant statutory factors meant to guide the agency in the exercise of its discretion—is the sort of claim that federal courts routinely assess when determining whether to set aside an agency decision as an abuse of discretion. The Court of Appeals should consider in the first instance the question whether the Service's assessment of the costs and benefits of designation and resulting decision not to exclude Unit 1 was arbitrary, capricious, or an abuse of discretion. Pp. 21–26.

827 F. 3d 452, vacated and remanded.

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

Timothy S. Bishop argued the cause for petitioner. With him on the briefs were *Chad M. Clamage*, *Richard C. Stanley*, *James R. Johnston*, and *Zachary R. Hiatt*. *Mark Miller*, *Christina M. Martin*, *Edward B. Poitevent II*, *Damien M. Schiff*, *Anthony L. François*, *Oliver J. Dunford*, and *Jonathan Wood* filed a brief for Markle Interests, LLC, et al., respondents under this Court's Rule 12.6 in support of petitioner.

Deputy Solicitor General Kneedler argued the cause for federal respondents. With him on the brief were *Solicitor General Francisco*, *Acting Assistant Attorney General Wood*, *Jeffrey E. Sandberg*, *Andrew C. Mergen*, and *J. David Gunter II*. *David T. Goldberg*, *Pamela S. Karlan*, *John T. Buse*, and *Collette L. Adkins* filed a brief for intervenor-respondents Center for Biological Diversity et al.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Alabama et al. by *Steve Marshall*, Attorney General of Alabama, and *Eric Palmer*, Assistant Solicitor General, and by the Attorneys General for their respective States as follows: *Jahna Lindemuth* of Alaska, *Leslie Rutledge* of Arkansas, *Cynthia Coffman* of Colorado, *Christopher M. Carr* of Georgia, *Lawrence G. Wasden* of Idaho, *Derek Schmidt* of Kansas, *Jeff Landry* of Louisiana, *Bill Schuette* of Michigan, *Tim Fox* of Montana, *Doug Peterson* of Nebraska, *Adam Laxalt* of Nevada, *Michael DeWine* of Ohio, *Mike Hunter* of Oklahoma, *Alan Wilson* of South Carolina, *Ken Paxton* of Texas, *Sean D. Reyes* of Utah, *Patrick Morrisey* of West Vir-

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

The Endangered Species Act directs the Secretary of the Interior, upon listing a species as endangered, to also desig-

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ginia, *Brad Schimel* of Wisconsin, and *Peter K. Michael* of Wyoming; for San Juan County, Utah, by *Shawn T. Welch*; for St. Tammany Parish Government by *Bernard S. Smith*; for the American Exploration & Production Council et al. by *Andrew J. Turner*, *Karma B. Brown*, *Elbert Lin*, *Peter Tolsdorf*, *Kerry L. McGrath*, *Stacy R. Linden*, and *Rae E. Cronmiller*; for the American Farm Bureau Federation et al. by *Tyson C. Kade*, *William R. Murray*, *Ellen Steen*, and *Rachel Lattimore*; for the Building Industry Legal Defense Foundation et al. by *Paul J. Beard II*; for the Cato Institute et al. by *Ilya Shapiro*, *Martin J. Newhouse*, and *John Pagliaro*; for the Cause of Action Institute by *John J. Vecchione*, *Kara E. McKenna*, and *Cynthia F. Crawford*; for the Chamber of Commerce of the United States of America by *Aaron M. Streett* and *Shane Pennington*; for the Coalition for a Sustainable Delta et al. by *Daniel J. O'Hanlon*, *Jon D. Rubin*, *Rebecca R. Akroyd*, *Paul S. Weiland*, and *Robert D. Thornton*; for the Energy and Wildlife Action Coalition by *Svend A. Brandt-Erichsen* and *Steven P. Quarles*; for the National Association of Home Builders et al. by *Thomas J. Ward*, *Jeffrey B. Augello*, and *Lawson E. Fite*; for the National Conference of State Legislatures et al. by *Bryan K. Weir*, *Thomas R. McCarthy*, *J. Michael Connolly*, and *Lisa Soronen*; for the National Federation of Independent Business Small Business Legal Center et al. by *Robert Henneke* and *Theodore Hadzi-Antich*; for the Southeastern Legal Foundation by *Kimberly S. Hermann*; for the Washington Legal Foundation et al. by *Richard A. Samp* and *Cory L. Andrews*; and for the Wyoming Stock Growers Association et al. by *Karen Budd-Falen.*

Briefs of *amici curiae* urging affirmance were filed for Defenders of Wildlife et al. by *Jason C. Rylander*; for Economists and Law Professors by *Amy J. Wildermuth*, *Amy Sinden*, and *Douglas R. Williams*; for Environmental Law Professors by *Patrick Parenteau*, *Daniel Rohlf*, and *Hope M. Babcock*; for Evangelical Environmental Network et al. by *Ian Weinstein* and *Michael W. Martin*; for Former Department of the Interior Officials by *Ann E. Prezyna* and *Jessica N. Walder*; for Gopher Frog Experts by *Lisa W. Jordan*; for Landowners by *Stuart Banner*; for Scientists by *Sean B. Hecht*; and for Small Business Owners by *J. Carl Cecere* and *Kevin J. Lynch.*

Briefs of *amici curiae* were filed for the Center for Constitutional Jurisprudence by *Louis A. Chaiten*, *John C. Eastman*, and *Anthony T. Caso*; and for the Institute for Policy Integrity at New York University School of Law by *Richard L. Revesz* and *Jason A. Schwartz.*

nate the "critical habitat" of the species. A group of landowners whose property was designated as critical habitat for an endangered frog challenged the designation. The landowners urge that their land cannot be *critical* habitat because it is not *habitat*, which they contend refers only to areas where the frog could currently survive. The court below ruled that the Act imposed no such limitation on the scope of critical habitat.

The Act also authorizes the Secretary to exclude an area that would otherwise be included as critical habitat, if the benefits of exclusion outweigh the benefits of designation. The landowners challenged the decision of the Secretary not to exclude their property, but the court below held that the Secretary's action was not subject to judicial review.

We granted certiorari to review both rulings.

I

A

The amphibian *Rana sevosa* is popularly known as the "dusky gopher frog"—"dusky" because of its dark coloring and "gopher" because it lives underground. The dusky gopher frog is about three inches long, with a large head, plump body, and short legs. Warts dot its back, and dark spots cover its entire body. Final Rule To List the Mississippi Gopher Frog Distinct Population Segment of Dusky Gopher Frog as Endangered, 66 Fed. Reg. 62993 (2001) (Final Listing). It is noted for covering its eyes with its front legs when it feels threatened, peeking out periodically until danger passes. *Markle Interests, LLC* v. *United States Fish and Wildlife Serv.*, 827 F. 3d 452, 458, n. 2 (CA5 2016). Less endearingly, it also secretes a bitter, milky substance to deter would-be diners. Brief for Intervenor-Respondents 6, n. 1.

The frog spends most of its time in burrows and stump holes located in upland longleaf pine forests. In such forests, frequent fires help maintain an open canopy, which in turn allows vegetation to grow on the forest floor. The veg-

etation supports the small insects that the frog eats and provides a place for the frog's eggs to attach when it breeds. The frog breeds in "ephemeral" ponds that are dry for part of the year. Such ponds are safe for tadpoles because predatory fish cannot live in them. Designation of Critical Habitat for Dusky Gopher Frog, 77 Fed. Reg. 35129–35131 (2012) (Designation).

The dusky gopher frog once lived throughout coastal Alabama, Louisiana, and Mississippi, in the longleaf pine forests that used to cover the southeast. But more than 98% of those forests have been removed to make way for urban development, agriculture, and timber plantations. The timber plantations consist of fast-growing loblolly pines planted as close together as possible, resulting in a closed-canopy forest inhospitable to the frog. The near eradication of the frog's habitat sent the species into severe decline. By 2001, the known wild population of the dusky gopher frog had dwindled to a group of 100 at a single pond in southern Mississippi. That year, the Fish and Wildlife Service, which administers the Endangered Species Act of 1973 on behalf of the Secretary of the Interior, listed the dusky gopher frog as an endangered species. Final Listing 62993–62995; see 87 Stat. 886, 16 U. S. C. § 1533(a)(1).

B

When the Secretary lists a species as endangered, he must also designate the critical habitat of that species. § 1533(a)(3)(A)(i). The ESA defines "critical habitat" as:

> "(i) the specific areas within the geographical area occupied by the species . . . on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and
>
> "(ii) specific areas outside the geographical area occupied by the species . . . upon a determination by the

> Secretary that such areas are essential for the conservation of the species." § 1532(5)(A).

Before the Secretary may designate an area as critical habitat, the ESA requires him to "tak[e] into consideration the economic impact" and other relevant impacts of the designation. § 1533(b)(2). The statute goes on to authorize him to "exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of [designation]," unless exclusion would result in extinction of the species. *Ibid.*

A critical-habitat designation does not directly limit the rights of private landowners. It instead places conditions on the Federal Government's authority to effect any physical changes to the designated area, whether through activities of its own or by facilitating private development. Section 7 of the ESA requires all federal agencies to consult with the Secretary to "[e]nsure that any action authorized, funded, or carried out by such agency" is not likely to adversely affect a listed species' critical habitat. 16 U. S. C. § 1536(a)(2). If the Secretary determines that an agency action, such as issuing a permit, would harm critical habitat, then the agency must terminate the action, implement an alternative proposed by the Secretary, or seek an exemption from the Cabinet-level Endangered Species Committee. See *National Assn. of Home Builders* v. *Defenders of Wildlife*, 551 U. S. 644, 652 (2007); 50 CFR §402.15 (2017).

Due to resource constraints, the Service did not designate the frog's critical habitat in 2001, when it listed the frog as endangered. Designation, at 35118–35119. In the following years, the Service discovered two additional naturally occurring populations and established another population through translocation. The first population nonetheless remains the only stable one and by far the largest. Dept. of Interior, U. S. Fish and Wildlife Serv., Dusky Gopher Frog (*Rana sevosa*) Recovery Plan iv, 6–7 (2015).

In 2010, in response to litigation by the Center for Biological Diversity, the Service published a proposed critical-habitat designation. Designation, at 35119. The Service proposed to designate as occupied critical habitat all four areas with existing dusky gopher frog populations. The Service found that each of those areas possessed the three features that the Service considered "essential to the conservation" of the frog and that required special protection: ephemeral ponds; upland open-canopy forest containing the holes and burrows in which the frog could live; and open-canopy forest connecting the two. But the Service also determined that designating only those four sites would not adequately ensure the frog's conservation. Because the existing dusky gopher frog populations were all located in two adjacent counties on the Gulf Coast of Mississippi, local events such as extreme weather or an outbreak of an infectious disease could jeopardize the entire species. Designation of Critical Habitat for Mississippi Gopher Frog, 75 Fed. Reg. 31394 (2010) (proposed 50 CFR pt. 17).

To protect against that risk, the Service proposed to designate as *unoccupied* critical habitat a 1,544-acre site in St. Tammany Parish, Louisiana. The site, dubbed "Unit 1" by the Service, had been home to the last known population of dusky gopher frogs outside of Mississippi. The frog had not been seen in Unit 1 since 1965, and a closed-canopy timber plantation occupied much of the site. But the Service found that the site retained five ephemeral ponds "of remarkable quality," and determined that an open-canopy forest could be restored on the surrounding uplands "with reasonable effort." Although the uplands in Unit 1 lacked the open-canopy forests (and, of course, the frogs) necessary for designation as occupied critical habitat, the Service concluded that the site met the statutory definition of unoccupied critical habitat because its rare, high-quality breeding ponds and its distance from existing frog populations made

it essential for the conservation of the species. Designation, at 35118, 35124, 35133, 35135.

After issuing its proposal, the Service commissioned a report on the probable economic impact of designating each area, including Unit 1, as critical habitat for the dusky gopher frog. See 16 U. S. C. § 1533(b)(2); App. 63. Petitioner Weyerhaeuser Company, a timber company, owns part of Unit 1 and leases the remainder from a group of family landowners. Brief for Petitioner 16. While the critical-habitat designation has no direct effect on the timber operations, St. Tammany Parish is a fast-growing part of the New Orleans metropolitan area, and the landowners have already invested in plans to more profitably develop the site. App. 80–83. The report recognized that anyone developing the area may need to obtain Clean Water Act permits from the Army Corps of Engineers before filling any wetlands on Unit 1. 33 U. S. C. § 1344(a). Because Unit 1 is designated as critical habitat, Section 7 of the ESA would require the Corps to consult with the Service before issuing any permits.

According to the report, that consultation process could result in one of three outcomes. First, it could turn out that the wetlands in Unit 1 are not subject to the Clean Water Act permitting requirements, in which case the landowners could proceed with their plans unimpeded. Second, the Service could ask the Corps not to issue permits to the landowners to fill some of the wetlands on the site, in effect prohibiting development on 60% of Unit 1. The report estimated that this would deprive the owners of $20.4 million in development value. Third, by asking the Corps to deny even more of the permit requests, the Service could bar all development of Unit 1, costing the owners $33.9 million. The Service concluded that those potential costs were not "disproportionate" to the conservation benefits of designation. "Consequently," the Service announced, it would not

"exercis[e] [its] discretion to exclude" Unit 1 from the dusky gopher frog's critical habitat. App. 188–190.

C

Weyerhaeuser and the family landowners sought to vacate the designation in Federal District Court. They contended that Unit 1 could not be critical habitat for the dusky gopher frog because the frog could not survive there: Survival would require replacing the closed-canopy timber plantation encircling the ponds with an open-canopy longleaf pine forest. The District Court nonetheless upheld the designation. *Markle Interests, LLC* v. *United States Fish and Wildlife Serv.*, 40 F. Supp. 3d 744 (ED La. 2014). The court determined that Unit 1 satisfied the statutory definition of unoccupied critical habitat, which requires only that the Service deem the land "essential for the conservation [of] the species." *Id.*, at 760.

Weyerhaeuser also challenged the Service's decision not to exclude Unit 1 from the dusky gopher frog's critical habitat, arguing that the Service had failed to adequately weigh the benefits of designating Unit 1 against the economic impact. In addition, Weyerhaeuser argued that the Service had used an unreasonable methodology for estimating economic impact and, regardless of methodology, had failed to consider several categories of costs. *Id.*, at 759. The court approved the Service's methodology and declined to consider Weyerhaeuser's challenge to the decision not to exclude. See *id.*, at 763–767, and n. 29.

The Fifth Circuit affirmed. 827 F. 3d 452. The Court of Appeals rejected the suggestion that the definition of critical habitat contains any "habitability requirement." *Id.*, at 468. The court also concluded that the Service's decision not to exclude Unit 1 was committed to agency discretion by law and was therefore unreviewable. *Id.*, at 473–475. Judge Owen dissented. She wrote that Unit 1 could not be "essential for the conservation of the species" because it lacked the

open-canopy forest that the Service itself had determined was "essential to the conservation" of the frog. *Id.*, at 480, and n. 1.

The Fifth Circuit denied rehearing en banc. *Markle Interests, LLC* v. *United States Fish and Wildlife Serv.*, 848 F. 3d 635 (2017). Judge Jones dissented, joined by Judges Jolly, Smith, Clement, Owen, and Elrod. They reasoned that critical habitat must first be habitat, and Unit 1 in its present state could not be habitat for the dusky gopher frog. *Id.*, at 641. The dissenting judges also concluded that the Service's decision not to exclude Unit 1 was reviewable for abuse of discretion. *Id.*, at 654, and n. 21.

We granted certiorari to consider two questions: (1) whether "critical habitat" under the ESA must also be habitat; and (2) whether a federal court may review an agency decision not to exclude a certain area from critical habitat because of the economic impact of such a designation. 583 U. S. 1101 (2018).[1]

II

A

Our analysis starts with the phrase "critical habitat." According to the ordinary understanding of how adjectives work, "critical habitat" must also be "habitat." Adjectives modify nouns—they pick out a subset of a category that possesses a certain quality. It follows that "critical habitat" is

[1] Intervenor Center for Biological Diversity raises an additional question in its brief, arguing that Weyerhaeuser lacks standing to challenge the critical-habitat designation because it has not suffered an injury in fact. We agree with the lower courts that the decrease in the market value of Weyerhaeuser's land as a result of the designation is a sufficiently concrete injury for Article III purposes. See *Village of Euclid* v. *Ambler Realty Co.*, 272 U. S. 365, 386 (1926) (holding that a zoning ordinance that "greatly . . . reduce[d] the value of appellee's lands and destroy[ed] their marketability for industrial, commercial and residential uses" constituted a "present invasion of appellee's property rights").

the subset of "habitat" that is "critical" to the conservation of an endangered species.

Of course, "[s]tatutory language cannot be construed in a vacuum," *Sturgeon* v. *Frost*, 577 U. S. 424, 438 (2016) (internal quotation marks omitted), and so we must also consider "critical habitat" in its statutory context. Section 4(a)(3)(A)(i), which the lower courts did not analyze, is the sole source of authority for critical-habitat designations. That provision states that when the Secretary lists a species as endangered he must also "designate any *habitat of such species* which is then considered to be critical habitat." 16 U. S. C. § 1533(a)(3)(A)(i) (emphasis added). Only the "habitat" of the endangered species is eligible for designation as critical habitat. Even if an area otherwise meets the statutory definition of unoccupied critical habitat because the Secretary finds the area essential for the conservation of the species, Section 4(a)(3)(A)(i) does not authorize the Secretary to designate the area as *critical* habitat unless it is also *habitat* for the species.

The Center for Biological Diversity contends that the statutory definition of critical habitat is complete in itself and does not require any independent inquiry into the meaning of the term "habitat," which the statute leaves undefined. Brief for Intervenor-Respondents 43–49. But the statutory definition of "critical habitat" tells us what makes habitat "critical," not what makes it "habitat." Under the statutory definition, critical habitat comprises areas occupied by the species "on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection," as well as unoccupied areas that the Secretary determines to be "essential for the conservation of the species." 16 U. S. C. § 1532(5)(A). That is no baseline definition of habitat—it identifies only certain areas that are indispensable to the conservation of the endangered species. The definition allows the Secretary to identify the subset

of habitat that is critical, but leaves the larger category of habitat undefined.

The Service does not now dispute that critical habitat must be habitat, see Brief for Federal Respondents 23, although it made no such concession below. Instead, the Service argues that habitat includes areas that, like Unit 1, would require some degree of modification to support a sustainable population of a given species. *Id.*, at 27. Weyerhaeuser, for its part, urges that habitat cannot include areas where the species could not currently survive. Brief for Petitioner 25. (Habitat can, of course, include areas where the species does not currently *live*, given that the statute defines critical habitat to include unoccupied areas.) The Service in turn disputes Weyerhaeuser's premise that the administrative record shows that the frog could not survive in Unit 1. Brief for Federal Respondents 22, n. 4.

The Court of Appeals concluded that "critical habitat" designations under the statute were not limited to areas that qualified as habitat. See 827 F. 3d, at 468 ("There is no habitability requirement in the text of the ESA or the implementing regulations."). The court therefore had no occasion to interpret the term "habitat" in Section 4(a)(3)(A)(i) or to assess the Service's administrative findings regarding Unit 1. Accordingly, we vacate the judgment below and remand to the Court of Appeals to consider these questions in the first instance.[2]

B

Weyerhaeuser also contends that, even if Unit 1 could be properly classified as critical habitat for the dusky gopher

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[2] Because we hold that an area is eligible for designation as critical habitat under Section 4(a)(3)(A)(i) only if it is habitat for the species, it is not necessary to consider the landowners' argument that land cannot be "essential for the conservation of the species," and thus cannot satisfy the statutory definition of unoccupied critical habitat, if it is not habitat for the species. See Brief for Petitioner 27–28; Brief for Respondent Markle Interests, LLC, et al. in Support of Petitioner 28–31.

frog, the Service should have excluded it from designation under Section 4(b)(2) of the ESA. That provision requires the Secretary to "tak[e] into consideration the economic impact . . . of specifying any particular area as critical habitat" and authorizes him to "exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat." 16 U. S. C. § 1533(b)(2). To satisfy its obligation to consider economic impact, the Service commissioned a report estimating the costs of its proposed critical-habitat designation. The Service concluded that the costs of designating the proposed areas, including Unit 1, were not "disproportionate" to the conservation benefits and, "[c]onsequently," declined to make any exclusions.

Weyerhaeuser claims that the Service's conclusion rested on a faulty assessment of the costs and benefits of designation and that the resulting decision not to exclude should be set aside. Specifically, Weyerhaeuser contends that the Service improperly weighed the costs of designating Unit 1 against the benefits of designating *all* proposed critical habitat, rather than the benefits of designating Unit 1 in particular. Weyerhaeuser also argues that the Service did not fully account for the economic impact of designating Unit 1 because it ignored, among other things, the costs of replacing timber trees with longleaf pines, maintaining an open canopy through controlled burning, and the tax revenue that St. Tammany Parish would lose if Unit 1 were never developed. Brief for Petitioner 53–54. The Court of Appeals did not consider Weyerhaeuser's claim because it concluded that a decision not to exclude a certain area from critical habitat is unreviewable.

The Administrative Procedure Act creates a "basic presumption of judicial review [for] one 'suffering legal wrong because of agency action.'" *Abbott Laboratories* v. *Gardner*, 387 U. S. 136, 140 (1967) (quoting 5 U. S. C. § 702). As we explained recently, "legal lapses and violations occur, and

especially so when they have no consequence. That is why this Court has so long applied a strong presumption favoring judicial review of administrative action." *Mach Mining, LLC* v. *EEOC*, 575 U. S. 480, 489 (2015). The presumption may be rebutted only if the relevant statute precludes review, 5 U. S. C. § 701(a)(1), or if the action is "committed to agency discretion by law," § 701(a)(2). The Service contends, and the lower courts agreed, that Section 4(b)(2) of the ESA commits to the Secretary's discretion decisions not to exclude an area from critical habitat.

This Court has noted the "tension" between the prohibition of judicial review for actions "committed to agency discretion" and the command in § 706(2)(A) that courts set aside any agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Heckler* v. *Chaney*, 470 U. S. 821, 829 (1985). A court could never determine that an agency abused its discretion if all matters committed to agency discretion were unreviewable. To give effect to § 706(2)(A) and to honor the presumption of review, we have read the exception in § 701(a)(2) quite narrowly, restricting it to "those rare circumstances where the relevant statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion." *Lincoln* v. *Vigil*, 508 U. S. 182, 191 (1993). The Service contends that Section 4(b)(2) of the ESA is one of those rare statutory provisions.

There is, at the outset, reason to be skeptical of the Service's position. The few cases in which we have applied the § 701(a)(2) exception involved agency decisions that courts have traditionally regarded as unreviewable, such as the allocation of funds from a lump-sum appropriation, *id.*, at 191, or a decision not to reconsider a final action, *ICC* v. *Locomotive Engineers*, 482 U. S. 270, 282 (1987). By contrast, this case involves the sort of routine dispute that federal courts regularly review: An agency issues an order affecting the rights of a private party, and the private party

objects that the agency did not properly justify its determination under a standard set forth in the statute.

Section 4(b)(2) states that the Secretary

> "shall designate critical habitat . . . after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area . . . unless he determines . . . that the failure to designate such area as critical habitat will result in the extinction of the species concerned." 16 U. S. C. § 1533(b)(2).

Although the text meanders a bit, we recognized in *Bennett* v. *Spear*, 520 U. S. 154 (1997), that the provision describes a unified process for weighing the impact of designating an area as critical habitat. The first sentence of Section 4(b)(2) imposes a "categorical requirement" that the Secretary "tak[e] into consideration" economic and other impacts before such a designation. *Id.*, at 172 (emphasis deleted). The second sentence authorizes the Secretary to act on his consideration by providing that he may exclude an area from critical habitat if he determines that the benefits of exclusion outweigh the benefits of designation. The Service followed that procedure here (albeit in a flawed manner, according to Weyerhaeuser). It commissioned a report to estimate the costs of designating the proposed critical habitat, concluded that those costs were not "disproportionate" to the benefits of designation, and "[c]onsequently" declined to "exercis[e] [its] discretion to exclude any areas from [the] designation of critical habitat." App. 190.

Bennett explained that the Secretary's "ultimate decision" to designate or exclude, which he "arriv[es] at" after considering economic and other impacts, is reviewable "for abuse of discretion." 520 U. S., at 172. The Service dismisses that

language as a "passing reference . . . not necessarily inconsistent with the Service's understanding," which is that the Secretary's decision not to exclude an area is wholly discretionary and therefore unreviewable. Brief for Federal Respondents 50. The Service bases its understanding on the second sentence of Section 4(b)(2), which states that the Secretary "*may* exclude [an] area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of [designation]." (Emphasis added.)

The use of the word "may" certainly confers discretion on the Secretary. That does not, however, segregate his discretionary decision not to exclude from the procedure mandated by Section 4(b)(2), which directs the Secretary to consider the economic and other impacts of designation when making his exclusion decisions. Weyerhaeuser's claim is the familiar one in administrative law that the agency did not appropriately consider all of the relevant factors that the statute sets forth to guide the agency in the exercise of its discretion. Specifically, Weyerhaeuser contends that the Service ignored some costs and conflated the benefits of designating Unit 1 with the benefits of designating all of the proposed critical habitat. This is the sort of claim that federal courts routinely assess when determining whether to set aside an agency decision as an abuse of discretion under 5 U. S. C. § 706(2)(A). See *Judulang* v. *Holder*, 565 U. S. 42, 53 (2011) ("When reviewing an agency action, we must assess . . . whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." (internal quotation marks omitted)).

Section 4(b)(2) requires the Secretary to consider economic impact and relative benefits before deciding whether to exclude an area from critical habitat or to proceed with designation. The statute is, therefore, not "drawn so that a court would have no meaningful standard against which to judge the [Secretary's] exercise of [his] discretion" not to exclude. *Lincoln*, 508 U. S., at 191.

Because it determined that the Service's decisions not to exclude were committed to agency discretion and therefore unreviewable, the Court of Appeals did not consider whether the Service's assessment of the costs and benefits of designation was flawed in a way that rendered the resulting decision not to exclude Unit 1 arbitrary, capricious, or an abuse of discretion. Accordingly, we remand to the Court of Appeals to consider that question, if necessary, in the first instance.

* * *

The judgment of the Court of Appeals for the Fifth Circuit is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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

Syllabus

UNITED STATES *v.* STITT

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

No. 17–765. Argued October 9, 2018—Decided December 10, 2018*

Respondents Victor J. Stitt and Jason Daniel Sims were each convicted in federal court of unlawfully possessing a firearm, in violation of 18 U. S. C. § 922(g)(1). The sentencing judge in each case imposed the mandatory minimum 15-year prison term that the Armed Career Criminal Act requires for § 922(g)(1) offenders who have at least three previous convictions for certain "violent" or drug-related felonies, § 924(e)(1). The Act defines "violent felony" to mean, among other things, "any crime punishable by imprisonment for a term exceeding one year . . . that . . . is burglary." § 924(e)(2)(B). Respondents' prior convictions were for violations of state burglary statutes—a Tennessee statute in Stitt's case and an Arkansas statute in Sims' case—that prohibit burglary of a structure or vehicle that has been adapted or is customarily used for overnight accommodation. In both cases, the District Courts found that the state statutory crimes fell within the scope of the federal Act's term "burglary." The relevant Court of Appeals in each case disagreed, vacated the sentence, and remanded for resentencing.

Held:

1. The term "burglary" in the Armed Career Criminal Act includes burglary of a structure or vehicle that has been adapted or is customarily used for overnight accommodation. Pp. 31–36.

(a) In deciding whether an offense qualifies as a violent felony under the Act, the categorical approach first adopted in *Taylor* v. *United States*, 495 U. S. 575, requires courts to evaluate a prior state conviction by reference to the elements of the state offense, rather than to the defendant's behavior on a particular occasion. A prior state conviction does not qualify as generic burglary under the Act where "the elements of [the relevant state statute] are broader than those of generic burglary." *Mathis* v. *United States*, 579 U. S. 500, 520. *Taylor*, which specifically considered the statutory term "burglary" and defined the elements of generic burglary as "an unlawful or unprivileged entry into, or remaining in, a building or other structure, with intent to commit a

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*Together with No. 17–766, *United States* v. *Sims*, on certiorari to the United States Court of Appeals for the Eighth Circuit.

crime," 495 U. S., at 598, governs and determines the outcome here. Pp. 31–33.

(b) The state statutes at issue here fall within the scope of *Taylor*'s definition of generic burglary. Congress intended that definition to reflect "the generic sense in which the term [was] used in the criminal codes of most States" when the Act was passed. 495 U. S., at 598. And at that time, a majority of state burglary statutes covered vehicles adapted or customarily used for lodging. Congress also viewed burglary as an inherently dangerous crime that "creates the possibility of a violent confrontation" between the offender and an occupant or someone who comes to investigate. *Id.*, at 588. An offender who breaks into a mobile home, an RV, a camping tent, or another structure or vehicle that is adapted or customarily used for lodging creates a similar or greater risk of violent confrontation. Although the risk of violence is diminished if the vehicle is only used for lodging part of the time, the Court finds no reason to believe that Congress intended to make a part-time/full-time distinction. Respondents also argue that the vehicles covered here are analogous to the nontypical structures and vehicles that *Taylor*, *Mathis*, and other cases described as falling outside the scope of generic burglary, but none of those prior cases presented the question whether generic burglary includes structures or vehicles that are adapted or customarily used for overnight use. Pp. 33–36.

2. Sims' case is remanded for further proceedings. His argument that Arkansas' residential burglary statute is too broad to count as generic burglary because it also covers burglary of "a vehicle . . . [w]here any person lives," Ark. Code Ann. § 5–39–101(1)(A), rests in part upon state law, and the lower courts have not considered it. Those courts remain free to determine whether Sims properly presented that argument and, if so, to decide the merits. Pp. 36–37.

No. 17–765, 860 F. 3d 854, reversed; No. 17–766, 854 F. 3d 1037, vacated and remanded.

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

Erica L. Ross argued the cause for the United States. With her on the briefs were *Solicitor General Francisco*, *Acting Assistant Attorney General Cronan*, *Eric J. Feigin*, *David M. Lieberman*, and *Francesco Valentini*.

Jeffrey L. Fisher, by appointment of the Court in No. 17–766, 585 U. S. 1057, argued the cause for respondents in both cases. With him on the brief were *Bradley N. Garcia*, *Chris*

Tarver, and *Pamela S. Karlan*. *Stephen Newman*, *Timothy C. Ivey*, and *Catherine Adinaro* filed a brief for respondent in No. 17–765.†

JUSTICE BREYER delivered the opinion of the Court.

The Armed Career Criminal Act requires a federal sentencing judge to impose upon certain persons convicted of unlawfully possessing a firearm a 15-year minimum prison term. The judge is to impose that special sentence if the offender also has three prior convictions for certain violent or drug-related crimes. 18 U. S. C. § 924(e). Those prior convictions include convictions for "burglary." § 924(e)(2)(B)(ii). And the question here is whether the statutory term "burglary" includes burglary of a structure or vehicle that has been adapted or is customarily used for overnight accommodation. We hold that it does.

I

The consolidated cases before us involve two defendants, each of whom was convicted in a federal court of unlawfully possessing a firearm in violation of § 922(g)(1). The maximum punishment for this offense is typically 10 years in prison. § 924(a)(2). Each offender, however, had prior state burglary convictions sufficient, at least potentially, to require the sentencing judge to impose a mandatory 15-year minimum prison term under the Armed Career Criminal Act. That Act, as we have just said, requires an enhanced sentence for offenders who have at least three previous convictions for certain "violent" or drug-related felonies. § 924(e)(1). Those prior felonies include "any crime" that is

†*David Debold* and *Jeffrey T. Green* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae* urging affirmance.

Michael C. Holley, *Donna F. Coltharp*, and *Daniel L. Kaplan* filed a brief for the National Association of Federal Defenders as *amicus curiae*.

"punishable by imprisonment for a term exceeding one year" and that also

> "(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
> "(ii) is *burglary*, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another." § 924(e)(2)(B) (emphasis added).

The question here concerns the scope of the statutory word "burglary."

The relevant prior convictions of one of the unlawful firearms offenders, Victor J. Stitt, were for violations of a Tennessee statute that defines "[a]ggravated burglary" as "burglary of a habitation." Tenn. Code Ann. § 39–14–403(a) (1997). It further defines "[h]abitation" to include: (1) "any structure, including . . . mobile homes, trailers, and tents, which is *designed or adapted for the overnight accommodation of persons*," and (2) any "self-propelled vehicle that is *designed or adapted for the overnight accommodation of persons* and is actually occupied at the time of initial entry by the defendant." §§ 39–14–401(1)(A), (B) (emphasis added).

The relevant prior convictions of the other unlawful firearms offender, Jason Daniel Sims, were for violations of an Arkansas statute that prohibits burglary of a "residential occupiable structure." Ark. Code Ann. § 5–39–201(a)(1) (1997). The statute defines "[r]esidential occupiable structure" to include:

> "a vehicle, building, or other structure:
> "(A) [w]here any person lives; or
> "(B) [w]hich is *customarily used for overnight accommodation of persons* whether or not a person is actually present." § 5–39–101(1) (emphasis added).

In both cases, the District Courts found that the state statutory crimes fell within the scope of the word "burglary" in the Armed Career Criminal Act and consequently imposed that statute's mandatory sentence enhancement. In both cases, the relevant Federal Court of Appeals held that the statutory crimes did not fall within the scope of the word "burglary," vacated the sentence, and remanded for resentencing. See 860 F. 3d 854 (CA6 2017) (en banc) (reversing panel decision to the contrary); 854 F. 3d 1037 (CA8 2017).

The Government asked us to grant certiorari to consider the question "[w]hether burglary of a nonpermanent or mobile structure that is adapted or used for overnight accommodation can qualify as 'burglary' under the Armed Career Criminal Act." Pet. for Cert. in No. 17–765, p. I; Pet. for Cert. in No. 17–766, p. I. And, in light of uncertainty about the scope of the term "burglary" in the lower courts, we granted the Government's request. Compare 860 F. 3d, at 862–863; 854 F. 3d, at 1040; *United States* v. *White*, 836 F. 3d 437, 446 (CA4 2016); *United States* v. *Grisel*, 488 F. 3d 844 (CA9 2007) (en banc), with *Smith* v. *United States*, 877 F. 3d 720, 724 (CA7 2017), cert. pending, No. 17–7517; *United States* v. *Spring*, 80 F. 3d 1450, 1462 (CA10 1996).

II

A

The word "burglary," like the word "crime" itself, is ambiguous. It might refer to a kind of crime, a generic crime, as set forth in a statute ("a burglary consists of behavior that . . . "), or it might refer to the way in which an individual offender acted on a particular occasion ("on January 25, Jones committed a burglary on Oak Street in South San Francisco"). We have held that the words in the Armed Career Criminal Act do the first. Accordingly, we have held that the Act requires us to evaluate a prior state conviction "in terms of how the law defines the offense and not in terms

of how an individual offender might have committed it on a particular occasion." *Begay* v. *United States*, 553 U. S. 137, 141 (2008). A prior state conviction, we have said, does not qualify as generic burglary under the Act where "the elements of [the relevant state statute] are broader than those of generic burglary." *Mathis* v. *United States*, 579 U. S. 500, 520 (2016). The case in which we first adopted this "categorical approach" is *Taylor* v. *United States*, 495 U. S. 575 (1990). That case, which specifically considered the statutory term "burglary," governs here and determines the outcome.

In *Taylor*, we did more than hold that the word "burglary" refers to a kind of generic crime rather than to the defendant's behavior on a particular occasion. We also explained, after examining the Act's history and purpose, that Congress intended a "uniform definition of burglary [to] be applied to all cases in which the Government seeks" an enhanced sentence under the Act. *Id.*, at 580–592. We held that this uniform definition includes "at least the 'classic' common-law definition," namely, breaking and entering a dwelling at night with intent to commit a felony. *Id.*, at 593. But we added that it must include more. The classic definition, by excluding all places other than dwellings, we said, has "little relevance to modern law enforcement concerns." *Ibid.* Perhaps for that reason, by the time the Act was passed in 1986, most States had expanded the meaning of burglary to include "structures other than dwellings." *Ibid.* (citing W. LaFave & A. Scott, Substantive Criminal Law §§ 8.13(a)–(f) (1986)).

In addition, the statute's purpose, revealed by its language, ruled out limiting the scope of "burglary" to especially serious burglaries, *e. g.*, those having elements that created a particularly serious risk of physical harm. If that had been Congress' intent, adding the word "burglary" would have been unnecessary, since the (now-invalid) resid-

ual clause "already include[d] *any* crime that 'involves conduct that presents a serious potential risk of physical injury to another.'" *Taylor*, 495 U. S., at 597 (quoting 18 U. S. C. § 924(e)(2)(B)(ii)); see *Johnson* v. *United States*, 576 U. S. 591, 597–602 (2015) (holding residual clause unconstitutionally vague). We concluded that the Act's term "burglary" must include "ordinary," "run-of-the-mill" burglaries as well as aggravated ones. *Taylor*, 495 U. S., at 597. And we defined the elements of generic "burglary" as "an unlawful or unprivileged entry into, or remaining in, a building or other structure, with intent to commit a crime." *Id.*, at 598.

B

The relevant language of the Tennessee and Arkansas statutes falls within the scope of generic burglary's definition as set forth in *Taylor*. For one thing, we made clear in *Taylor* that Congress intended the definition of "burglary" to reflect "the generic sense in which the term [was] used in the criminal codes of most States" at the time the Act was passed. *Ibid.* In 1986, a majority of state burglary statutes covered vehicles adapted or customarily used for lodging—either explicitly or by defining "building" or "structure" to include those vehicles. See, *e. g.*, N. H. Rev. Stat. Ann. § 635:1 (1974) (prohibiting burglary of an "[o]ccupied structure," defined to include "any structure, vehicle, boat or place adapted for overnight accommodation of persons"); Ore. Rev. Stat. §§ 164.205, 164.215, 164.225 (1985) (prohibiting burglary of a "building," defined to include "any booth, vehicle, boat, aircraft or other structure adapted for overnight accommodation of persons"); see also ALI, Model Penal Code §§ 220.0(1), 221.1(1) (1980) (defining "'occupied structure'" for purposes of burglary as "any structure, vehicle or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present"); Appendix, *infra* (collecting burglary

statutes from 1986 or earlier that covered either vehicles adapted or customarily used for overnight accommodation or a broader class of vehicles).

For another thing, Congress, as we said in *Taylor*, viewed burglary as an inherently dangerous crime because burglary "creates the possibility of a violent confrontation between the offender and an occupant, caretaker, or some other person who comes to investigate." 495 U. S., at 588; see also *James* v. *United States*, 550 U. S. 192, 203 (2007). An offender who breaks into a mobile home, an RV, a camping tent, a vehicle, or another structure that is adapted for or customarily used for lodging runs a similar or greater risk of violent confrontation. See *Spring*, 80 F. 3d, at 1462 (noting the greater risk of confrontation in a mobile home or camper, where "it is more difficult for the burglar to enter or escape unnoticed").

Although, as respondents point out, the risk of violence is diminished if, for example, a vehicle is only used for lodging part of the time, we have no reason to believe that Congress intended to make a part-time/full-time distinction. After all, a burglary is no less a burglary because it took place at a summer home during the winter, or a commercial building during a holiday. Cf. Model Penal Code § 221.1, Comment 3(b), p. 72 (burglary should cover places with the "apparent potential for regular occupancy").

Respondents make several additional arguments. Respondent Stitt argues that the Tennessee statute is too broad even under the Government's definition of generic burglary. That is so, Stitt contends, because the statute covers the burglary of a "structure appurtenant to or connected with" a covered structure or vehicle, a provision that Stitt reads to include the burglary of even ordinary vehicles that are plugged in or otherwise appurtenant to covered structures. Tenn. Code Ann. § 39–14–401(1)(C). Stitt's interpretation, however, ignores that the "appurtenant to" provision extends only to "structure[s]," not to the separate statutory

term "vehicle[s]." *Ibid.* We therefore disagree with Stitt's argument that the "appurtenant to" provision sweeps more broadly than generic burglary, as defined in *Taylor*, 495 U. S., at 598.

Respondents also point out that in *Taylor*, *Mathis*, and other cases, we said that burglary of certain nontypical structures and vehicles fell outside the scope of the federal Act's statutory word "burglary." See, *e. g.*, *Taylor*, 495 U. S., at 599 (noting that some States "define burglary more broadly" than generic burglary by, for example, "including places, such as automobiles and vending machines, other than buildings"). And they argue that the vehicles covered here are analogous to the nontypical structures and vehicles to which the Court referred in those cases. Our examination of those cases, however, convinces us that we did not decide in either case the question now before us.

In *Taylor*, for example, we referred to a Missouri breaking and entering statute that among other things criminalized breaking and entering "'*any* boat or vessel, or railroad car.'" *Ibid.* (quoting Mo. Rev. Stat. § 560.070 (1969); emphasis added). We did say that that particular provision was beyond the scope of the federal Act. But the statute used the word "any"; it referred to ordinary boats and vessels often at sea (and railroad cars often filled with cargo, not people), nowhere restricting its coverage, as here, to vehicles or structures customarily used or adapted for overnight accommodation. The statutes before us, by using these latter words, more clearly focus upon circumstances where burglary is likely to present a serious risk of violence.

In *Mathis*, we considered an Iowa statute that covered "any building, structure, . . . land, water or air vehicle, or similar place adapted for overnight accommodation of persons [or used] for the storage or safekeeping of anything of value." Iowa Code § 702.12 (2013). Courts have construed that statute to cover ordinary vehicles because they can be used for storage or safekeeping. See *State* v. *Buss*, 325

N. W. 2d 384 (Iowa 1982); *Weaver* v. *Iowa*, 949 F. 2d 1049 (CA8 1991). That is presumably why, as we wrote in our opinion, "all parties agree[d]" that Iowa's burglary statute "covers more conduct than generic burglary does." *Mathis*, 579 U. S., at 507. The question before us was whether federal generic "burglary" includes within its scope a burglary statute that lists multiple, alternative means of satisfying one element, some of which fall within *Taylor*'s generic definition and some of which fall outside it. We held, in light of the parties' agreement that the Iowa statute covered some "outside" behavior (*i. e.*, ordinary vehicles), that the statute did not count as a generic burglary statute. But for present purposes, what matters is that the Court in *Mathis* did not decide the question now before us—that is, whether coverage of vehicles designed or adapted for overnight use takes the statute outside the generic burglary definition. We now decide that latter question, and, for the reasons we have stated, we hold that it does not.

III

Respondent Sims argues that Arkansas' residential burglary statute is too broad to count as generic burglary for a different reason, namely, because it also covers burglary of "a vehicle . . . [in which] any person lives." See *supra*, at 30. Sims adds that these words might cover a car in which a homeless person occasionally sleeps. Sims' argument rests in part upon state law, and the lower courts have not considered it. As "we are a court of review, not of first view," *Cutter* v. *Wilkinson*, 544 U. S. 709, 718, n. 7 (2005), we remand the Arkansas case to the lower courts for further proceedings. Those courts remain free to determine whether Sims properly presented the argument and to decide the merits, if appropriate.

We reverse the judgment of the Court of Appeals for the Sixth Circuit. We vacate the judgment of the

Court of Appeals for the Eighth Circuit and remand the case for further proceedings consistent with this opinion.

It is so ordered.

APPENDIX

Alaska Stat. §§ 11.46.300, 11.46.310, 11.81.900(b)(3) (1989) (effective 1978); Ariz. Rev. Stat. Ann. §§ 13–1501(7)–(8), 13–1507, 13–1508 (1978); Ark. Code Ann. §§ 41–2001(1), 41–2002 (1977); Cal. Penal Code Ann. §§ 459, 460 (West 1970); Colo. Rev. Stat. §§ 18–4–101(1)–(2), 18–4–202, 18–4–203 (1978); Conn. Gen. Stat. Ann. §§ 53a–100(a), 53a–101, 53a–103 (1985 Cum. Supp.); Del. Code Ann., Tit. 11, §§ 222(1), 824, 825 (1979); Fla. Stat. Ann. §§ 810.011(2), 810.02 (1976); Ga. Code Ann. § 16–7–1(a) (1984); Idaho Code Ann. § 18–1401 (1979); Ill. Comp. Stat., ch. 38, § 19–1 (West 1985); Iowa Code §§ 702.12, 713.1 (1985); Kan. Stat. Ann. §§ 21–3715, 21–3716 (1988) (effective 1970); La. Rev. Stat. Ann. § 14:62 (West 1974 Cum. Supp.); Me. Rev. Stat. Ann., Tit. 17–A, §§ 2(10), 2(24), 401 (1983); Mass. Gen. Laws Ann., ch. 266, § 16A (West 1970); Mont. Code Ann. §§ 45–2–101(40), 45–6–204 (1983); Nev. Rev. Stat. Ann. § 205.060 (1986); N. H. Rev. Stat. Ann. § 635:1 (1974); N. J. Stat. Ann. §§ 2C:18–1, 2C:18–2 (West 1982); N. M. Stat. Ann. §§ 30–16–3, 30–16–4 (2018) (effective 1978); Ohio Rev. Code Ann. §§ 2909.01, 2911.11, 2911.12 (Lexis 1982); Okla. Stat., Tit. 21, § 1435 (1983); Ore. Rev. Stat. §§ 164.205, 164.215, 164.225 (1985); Pa. Stat. Ann., Tit. 18, §§ 3501, 3502 (Purdon 1973); S. D. Codified Laws §§ 22–1–2(49), 22–32–1, 22–32–3, 22–32–8 (1988) (effective 1976); Tenn. Code Ann. § 39–3–406 (1982); Tex. Penal Code Ann. §§ 30.01, 30.02 (West 1989) (effective 1974); Utah Code Ann. §§ 76–6–201(1), 76–6–202 (1978); W. Va. Code Ann. § 61–3–11 (Lexis 1984); Wis. Stat. § 943.10(1) (1982).

Syllabus

CITY OF ESCONDIDO, CALIFORNIA, ET AL. *v.* EMMONS

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

No. 17–1660. Decided January 7, 2019

Outside the apartment of a reported domestic violence incident, Officer Robert Craig forcibly apprehended Marty Emmons and arrested him for resisting and delaying a police officer. Emmons later sued Officer Craig and Sergeant Kevin Toth (another officer at the scene) for damages under Rev. Stat. § 1979, 42 U. S. C. § 1983, alleging the officers used excessive force in violation of the Fourth Amendment. The District Court held that the officers had probable cause to arrest Emmons, and the Ninth Circuit upheld that finding. The District Court also granted summary judgment to both officers on Emmons' excessive force claim. The District Court concluded there was no evidence that Sergeant Toth used any force against Emmons at all. And the District Court found Officer Craig entitled to qualified immunity because the law did not clearly establish that he could not take down an arrestee as he did given the circumstances. The Ninth Circuit reversed and remanded for trial on the excessive force claims against both officers, stating that: "The right to be free of excessive force was clearly established at the time of the events in question. *Gravelet-Blondin* v. *Shelton*, 728 F. 3d 1086, 1093 (9th Cir. 2013)." 716 Fed. Appx. 724, 726.

Held: The Ninth Circuit failed to conduct the analysis required by this Court's precedents in determining whether the police officers were entitled to qualified immunity. The Ninth Circuit's unexplained reinstatement of the excessive force claim against Sergeant Toth was erroneous and puzzling given the District Court's conclusion that "only Defendant Craig was involved in the excessive force claim" and that Emmons "fail[ed] to identify contrary evidence." 168 F. Supp. 3d 1265, 1274, n. 4. As to Officer Craig, the Ninth Circuit also erred. "Qualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Kisela* v. *Hughes*, 584 U. S. 100, 104 (*per curiam*) (internal quotation marks omitted). Under the Court's cases, the clearly established right must be defined with specificity, particularly in excessive force cases in which police officers are entitled to qualified immunity absent existing precedent that "squarely governs" the specific facts pre-

sented. *Ibid.* In this case, the Court of Appeals should have asked whether clearly established law prohibited the officers from stopping and taking down a man in these circumstances. Under the Court's precedents, the Court of Appeals' formulation of the clearly established right as the "right to be free of excessive force" was far too general. The Court of Appeals cited *Gravelet-Blondin*, which described only a right to be "free from the application of non-trivial force for engaging in mere passive resistance. . . ." 728 F. 3d, at 1093. Assuming without deciding that a court of appeals decision may constitute clearly established law for purposes of qualified immunity, see *City and County of San Francisco* v. *Sheehan*, 575 U. S. 600, the Ninth Circuit made no effort to explain how *Gravelet-Blondin* prohibited Officer Craig's actions in this case, as this Court's precedents require. See *District of Columbia* v. *Wesby*, 583 U. S. 48, 64.

Certiorari granted; 716 Fed. Appx. 724, 726, reversed in part, vacated in part, and remanded.

PER CURIAM.

The question in this qualified immunity case is whether two police officers violated clearly established law when they forcibly apprehended a man at the scene of a reported domestic violence incident.

The record, viewed in the light most favorable to the plaintiff, shows the following. In April 2013, Escondido police received a 911 call from Maggie Emmons about a domestic violence incident at her apartment. Emmons lived at the apartment with her husband, her two children, and a roommate, Ametria Douglas. Officer Jake Houchin responded to the scene and eventually helped take a domestic violence report from Emmons about injuries caused by her husband. The officers arrested her husband. He was later released.

A few weeks later, on May 27, 2013, at about 2:30 p.m., Escondido police received a 911 call about another possible domestic disturbance at Emmons' apartment. That 911 call came from Ametria Douglas' mother, Trina Douglas. Trina Douglas was not at the apartment, but she was on the phone with her daughter Ametria, who was at the apartment. Trina heard her daughter Ametria and Maggie Emmons yell-

ing at each other and heard her daughter screaming for help. The call then disconnected, and Trina Douglas called 911.

Officer Houchin again responded, along with Officer Robert Craig. The dispatcher informed the officers that two children could be in the residence and that calls to the apartment had gone unanswered.

Police body-camera video of the officers' actions at the apartment is in the record.

The officers knocked on the door of the apartment. No one answered. But a side window was open, and the officers spoke with Emmons through that window, attempting to convince her to open the door to the apartment so that they could conduct a welfare check. A man in the apartment also told Emmons to back away from the window, but the officers said they could not identify the man. At some point during this exchange, Sergeant Kevin Toth, Officer Joseph Leffingwell, and Officer Huy Quach arrived as backup.

A few minutes later, a man opened the apartment door and came outside. At that point, Officer Craig was standing alone just outside the door. Officer Craig told the man not to close the door, but the man closed the door and tried to brush past Officer Craig. Officer Craig stopped the man, took him quickly to the ground, and handcuffed him. Officer Craig did not hit the man or display any weapon. The video shows that the man was not in any visible or audible pain as a result of the takedown or while on the ground. Within a few minutes, officers helped the man up and arrested him for a misdemeanor offense of resisting and delaying a police officer.

The man turned out to be Maggie Emmons' father, Marty Emmons. Marty Emmons later sued Officer Craig and Sergeant Toth, among others, under Rev. Stat. § 1979, 42 U. S. C. § 1983. He raised several claims, including, as relevant here, a claim of excessive force in violation of the Fourth Amendment. The suit sought money damages for which Officer Craig and Sergeant Toth would be personally liable. The

District Court held that the officers had probable cause to arrest Marty Emmons for the misdemeanor offense. The Ninth Circuit did not disturb that finding, and there is no claim presently before us that the officers lacked probable cause to arrest Marty Emmons. The only claim before us is that the officers used excessive force in effectuating the arrest.

The District Court rejected the claim of excessive force. 168 F. Supp. 3d 1265, 1274 (SD Cal. 2016). The District Court stated that the "video shows that the officers acted professionally and respectfully in their encounter" at the apartment. *Id.*, at 1275. Because only Officer Craig used any force at all, the District Court granted summary judgment to Sergeant Toth on the excessive force claim.

Applying this Court's precedents on qualified immunity, the District Court also granted summary judgment to Officer Craig. According to the District Court, the law did not clearly establish that Officer Craig could not take down an arrestee in these circumstances. The court explained that the officers were responding to a domestic dispute, and that the encounter had escalated when the officers could not enter the apartment to conduct a welfare check. The District Court also noted that when Marty Emmons exited the apartment, none of the officers knew whether he was armed or dangerous, or whether he had injured any individuals inside the apartment.

The Court of Appeals reversed and remanded for trial on the excessive force claims against both Officer Craig and Sergeant Toth. 716 Fed. Appx. 724 (CA9 2018). The Ninth Circuit's entire relevant analysis of the qualified immunity question consisted of the following: "The right to be free of excessive force was clearly established at the time of the events in question. *Gravelet-Blondin* v. *Shelton*, 728 F. 3d 1086, 1093 (9th Cir. 2013)." *Id.*, at 726.

We reverse the judgment of the Court of Appeals as to Sergeant Toth, and vacate and remand as to Officer Craig.

With respect to Sergeant Toth, the Ninth Circuit offered no explanation for its decision. The court's unexplained reinstatement of the excessive force claim against Sergeant Toth was erroneous—and quite puzzling in light of the District Court's conclusion that "only Defendant Craig was involved in the excessive force claim" and that Emmons "fail[ed] to identify contrary evidence." 168 F. Supp. 3d, at 1274, n. 4.

As to Officer Craig, the Ninth Circuit also erred. As we have explained many times: "Qualified immunity attaches when an official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Kisela* v. *Hughes*, 584 U. S. 100, 104 (2018) (*per curiam*) (internal quotation marks omitted); see *District of Columbia* v. *Wesby*, 583 U. S. 48, 62–63 (2018); *White* v. *Pauly*, 580 U. S. 73, 78–79 (2017) (*per curiam*); *Mullenix* v. *Luna*, 577 U. S. 7, 21 (2015) (*per curiam*).

Under our cases, the clearly established right must be defined with specificity. "This Court has repeatedly told courts . . . not to define clearly established law at a high level of generality." *Kisela*, 584 U. S., at 104 (internal quotation marks omitted). That is particularly important in excessive force cases, as we have explained:

> "Specificity is especially important in the Fourth Amendment context, where the Court has recognized that it is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts. Use of excessive force is an area of the law in which the result depends very much on the facts of each case, and thus police officers are entitled to qualified immunity unless existing precedent squarely governs the specific facts at issue. . . .
>
> "[I]t does not suffice for a court simply to state that an officer may not use unreasonable and excessive force,

> deny qualified immunity, and then remit the case for a trial on the question of reasonableness. An officer cannot be said to have violated a clearly established right unless the right's contours were sufficiently definite that any reasonable official in the defendant's shoes would have understood that he was violating it." *Id.*, at 104–105 (quotation altered).

In this case, the Court of Appeals contravened those settled principles. The Court of Appeals should have asked whether clearly established law prohibited the officers from stopping and taking down a man in these circumstances. Instead, the Court of Appeals defined the clearly established right at a high level of generality by saying only that the "right to be free of excessive force" was clearly established. With the right defined at that high level of generality, the Court of Appeals then denied qualified immunity to the officers and remanded the case for trial. 716 Fed. Appx., at 726.

Under our precedents, the Court of Appeals' formulation of the clearly established right was far too general. To be sure, the Court of Appeals cited the *Gravelet-Blondin* case from that Circuit, which described a right to be "free from the application of non-trivial force for engaging in mere passive resistance . . . ." 728 F. 3d, at 1093. Assuming without deciding that a court of appeals decision may constitute clearly established law for purposes of qualified immunity, see *City and County of San Francisco* v. *Sheehan*, 575 U. S. 600, 614 (2015), the Ninth Circuit's *Gravelet-Blondin* case law involved police force against individuals engaged in *passive* resistance. The Court of Appeals made no effort to explain how that case law prohibited Officer Craig's actions in this case. That is a problem under our precedents:

> "[W]e have stressed the need to identify a case where an officer acting under similar circumstances . . . was held to have violated the Fourth Amendment. . . . While

> there does not have to be a case directly on point, existing precedent must place the lawfulness of the particular [action] beyond debate. . . . Of course, there can be the rare obvious case, where the unlawfulness of the officer's conduct is sufficiently clear even though existing precedent does not address similar circumstances. . . . But a body of relevant case law is usually necessary to clearly establish the answer . . . ." *Wesby*, 583 U. S., at 64 (internal quotation marks omitted).

The Court of Appeals failed to properly analyze whether clearly established law barred Officer Craig from stopping and taking down Marty Emmons in this manner as Emmons exited the apartment. Therefore, we remand the case for the Court of Appeals to conduct the analysis required by our precedents with respect to whether Officer Craig is entitled to qualified immunity.

The petition for certiorari is granted, the judgment of the Court of Appeals is reversed in part and vacated in part, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

SHOOP, WARDEN *v.* HILL

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

No. 18–56. Decided January 7, 2019

Respondent Danny Hill was sentenced to death in Ohio following his 1986 convictions for torture, rape, and murder. The Ohio courts upheld Hill's conviction and sentence on direct appeal. Hill then sought post-conviction relief in state and federal court, which was denied. Subsequently, this Court decided *Atkins* v. *Virginia*, 536 U. S. 304, which held that the Eighth Amendment prohibits the imposition of a death sentence on a defendant who is "mentally retarded." Hill filed a new state petition contending that his death sentence is illegal under *Atkins*. In 2006, the Ohio trial court denied this claim, and in 2008, the Ohio Court of Appeals affirmed. After the Ohio Supreme Court denied further review in 2009, Hill filed a federal habeas petition seeking review of the denial of his *Atkins* claim under 28 U. S. C. § 2254. The District Court denied the petition. The Sixth Circuit reversed and granted habeas relief under § 2254(d)(1) on the grounds that the Ohio courts' conclusion that Hill is not intellectually disabled was contrary to Supreme Court precedent that was clearly established at the time in question. In reaching this decision, the Sixth Circuit repeatedly cited the Court's 2017 decision in *Moore* v. *Texas*, 581 U. S. 1. The Sixth Circuit acknowledged that Supreme Court decisions that post-date a state court's determination cannot ordinarily qualify as clearly established law for purposes of federal habeas review, but reasoned that in pertinent respects *Moore* merely applied what was clearly established by *Atkins* regarding the assessment of adaptive skills.

Held: Because the Sixth Circuit's reliance on *Moore* was plainly improper under § 2254(d)(1), the Sixth Circuit's grant of habeas relief is vacated and this case remanded for evaluation of Hill's claim regarding intellectual disability under law clearly established at the relevant time. Under § 2254(d)(1), federal habeas relief may be granted only if the state court's adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of," Supreme Court precedent that was "clearly established" at the time of the adjudication. *White* v. *Woodall*, 572 U. S. 415, 419–420. The issue is what was clearly established regarding the execution of the intellectually disabled in 2008, when the Ohio Court of Appeals rejected Hill's *Atkins* claim. *Atkins* gave no comprehensive definition of "mental retardation" for Eighth Amend-

ment purposes. The Sixth Circuit did not explain how the rule it applied can be teased out of the *Atkins* Court's brief comments about the meaning of what it termed "mental retardation." While *Atkins* noted that standard definitions of mental retardation included as "significant limitations in adaptive skills . . . that became manifest before age 18," 536 U. S., at 318, *Atkins* did not definitively resolve how that element was to be evaluated but instead left its application in the first instance to the States. *Id.*, at 317. Because the reasoning of the Sixth Circuit leans so heavily on *Moore*, its decision must be vacated. On remand, the court should determine whether its conclusions can be sustained based strictly on legal rules that were clearly established in the decisions of this Court at the relevant time.

Certiorari granted; 881 F. 3d 483, vacated and remanded.

PER CURIAM.

The United States Court of Appeals for the Sixth Circuit held that respondent Danny Hill, who has been sentenced to death in Ohio, is entitled to habeas relief under 28 U. S. C. § 2254(d)(1) because the decisions of the Ohio courts concluding that he is not intellectually disabled were contrary to Supreme Court precedent that was clearly established at the time in question. In reaching this decision, the Court of Appeals relied repeatedly and extensively on our decision in *Moore* v. *Texas*, 581 U. S. 1 (2017), which was not handed down until long after the state-court decisions.

The Court of Appeals' reliance on *Moore* was plainly improper under § 2254(d)(1), and we therefore vacate that decision and remand so that Hill's claim regarding intellectual disability can be evaluated based solely on holdings of this Court that were clearly established at the relevant time.

I

In September 1985, 12-year-old Raymond Fife set out on his bicycle for a friend's home. When he did not arrive, his parents launched a search, and that evening his father found Raymond—naked, beaten, and burned—in a wooded field. Although alive, he had sustained horrific injuries that we will not describe. He died two days later.

In 1986, respondent Danny Hill was convicted for torturing, raping, and murdering Raymond, and he was sentenced to death. An intermediate appellate court affirmed his conviction and sentence, as did the Ohio Supreme Court. We denied certiorari. *Hill* v. *Ohio*, 507 U. S. 1007 (1993).

After unsuccessful efforts to obtain postconviction relief in state and federal court, Hill filed a new petition in the Ohio courts contending that his death sentence is illegal under *Atkins* v. *Virginia*, 536 U. S. 304 (2002), which held that the Eighth Amendment prohibits the imposition of a death sentence on a defendant who is "mentally retarded." In 2006, the Ohio trial court denied this claim, App. to Pet. for Cert. 381a–493a, and in 2008, the Ohio Court of Appeals affirmed, *State* v. *Hill*, 177 Ohio App. 3d 171, 2008-Ohio-3509, 894 N. E. 2d 108. In 2009, the Ohio Supreme Court denied review. *State* v. *Hill*, 122 Ohio St. 3d 1502, 2009-Ohio-4233, 912 N. E. 2d 107.

In 2010, Hill filed a new federal habeas petition under 28 U. S. C. § 2254, seeking review of the denial of his *Atkins* claim. The District Court denied the petition, App. to Pet. for Cert. 77a–210a, but the Sixth Circuit reversed and granted habeas relief under § 2254(d)(1), which applies when a state-court 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," see *Hill* v. *Anderson*, 881 F. 3d 483 (2018). The Sixth Circuit found two alleged deficiencies in the Ohio courts' decisions: First, they "overemphasized Hill's adaptive strengths"; and second, they "relied too heavily on adaptive strengths that Hill exhibited in the controlled environment of his death-row prison cell." *Id.*, at 492. In reaching these conclusions, the court relied repeatedly on our decision in *Moore* v. *Texas*, 581 U. S. 1. See 881 F. 3d, at 486, 487, 488, n. 4, 489, 491, 492, 493, 495, 496, 498, 500. The court acknowledged that "[o]rdinarily, Supreme Court decisions that post-date a state court's deter-

mination cannot be 'clearly established law' for the purposes of [the federal habeas statute]," but the court argued "that *Moore*'s holding regarding adaptive strengths [was] merely an application of what was clearly established by *Atkins*." *Id.*, at 487.

The State filed a petition for a writ of certiorari, contending that the Sixth Circuit violated §2254(d)(1) because a fundamental underpinning of its decision was *Moore*, a case decided by this Court well after the Ohio courts' decisions. Against this, Hill echoes the Court of Appeals' argument that *Moore* merely spelled out what was clearly established by *Atkins* regarding the assessment of adaptive skills.

II

The federal habeas statute, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), imposes important limitations on the power of federal courts to overturn the judgments of state courts in criminal cases. The statute respects the authority and ability of state courts and their dedication to the protection of constitutional rights. Thus, under the statutory provision at issue here, 28 U. S. C. §2254(d)(1), habeas relief may be granted only if the state court's adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of," Supreme Court precedent that was "clearly established" at the time of the adjudication. *E. g., White* v. *Woodall*, 572 U. S. 415, 419–420 (2014); *Metrish* v. *Lancaster*, 569 U. S. 351, 357–358 (2013). This means that a state court's ruling must be "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). We therefore consider what was clearly established regarding the execution of the intellectually disabled in 2008, when the Ohio Court of Appeals rejected Hill's *Atkins* claim.

Of course, *Atkins* itself was on the books, but *Atkins* gave no comprehensive definition of "mental retardation" for Eighth Amendment purposes.[1] The opinion of the Court noted that the definitions of mental retardation adopted by the American Association on Mental Retardation and the American Psychiatric Association required both "subaverage intellectual functioning" and "significant limitations in adaptive skills such as communication, self-care, and self-direction that became manifest before age 18." 536 U. S., at 318; see also *id.*, at 308, n. 3 (quoting definitions). The Court also noted that state statutory definitions of mental retardation at the time "[were] not identical, but generally conform[ed] to the[se] clinical definitions." *Id.*, at 317, n. 22. The Court then left "'to the State[s] the task of developing appropriate ways to enforce the constitutional restriction'" that the Court adopted. *Id.*, at 317 (quoting *Ford* v. *Wainwright*, 477 U. S. 399, 416 (1986) (plurality opinion)).

More than a decade later, we expounded on the definition of intellectual disability in two cases. In *Hall* v. *Florida*, 572 U. S. 701 (2014), we considered a rule restricting *Atkins* to defendants with "an IQ test score of 70 or less." 572 U. S., at 704. We held that this rule violated the Eighth Amendment because it treated an IQ score higher than 70 as conclusively disqualifying and thus prevented consideration of other evidence of intellectual disability, such as evidence of "deficits in adaptive functioning over [the defendant's] lifetime." *Id.*, at 724.

Three years later in *Moore*, we applied *Hall* and faulted the Texas Court of Criminal Appeals (CCA) for concluding that the petitioner's IQ scores, some of which were at or below 70, established that he was not intellectually disabled. *Moore*, 581 U. S., at 13–15. We also held that the CCA

[1] The Court explained that it was "fair to say that a national consensus" had developed against the execution of "mentally retarded" offenders. *Atkins* v. *Virginia*, 536 U. S. 304, 316 (2002).

improperly evaluated the petitioner's adaptive functioning. It erred, we concluded, in "overemphasiz[ing petitioner's] perceived adaptive strengths," despite the medical community's focus on "adaptive *deficits*." *Id.*, at 15. And we found that the CCA also went astray in "stress[ing petitioner's] improved behavior in prison," even though the medical community "caution[ed] against reliance on adaptive strengths developed in a controlled setting, as a prison surely is." *Id.*, at 16 (internal quotation marks omitted).

III

In this case, no reader of the decision of the Court of Appeals can escape the conclusion that it is heavily based on *Moore*, which came years after the decisions of the Ohio courts. Indeed, the Court of Appeals, in finding an unreasonable application of clearly established law, drew almost word for word from the two statements in *Moore* quoted above. See 881 F. 3d, at 492 ("Contrary to *Atkins*, the Ohio courts overemphasized Hill's adaptive strengths and relied too heavily on adaptive strengths that Hill exhibited in the controlled environment of his death-row prison cell. In so doing, they unreasonably applied clearly established law"). Although the Court of Appeals asserted that the holding in *Moore* was "merely an application of what was clearly established by *Atkins*," 881 F. 3d, at 487, the court did not explain how the rule it applied can be teased out of the *Atkins* Court's brief comments about the meaning of what it termed "mental retardation." While *Atkins* noted that standard definitions of mental retardation included as a necessary element "significant limitations in adaptive skills . . . that became manifest before age 18," 536 U. S., at 318, *Atkins* did not definitively resolve how that element was to be evaluated but instead left its application in the first instance to the States. *Id.*, at 317.

Moreover, the posture in which *Moore* reached this Court (it did not arise under AEDPA) and the *Moore* majority's

primary reliance on medical literature that postdated the Ohio courts' decisions, 581 U. S., at 13–14, 20, provide additional reasons to question the Court of Appeals' analysis. Cf. *Cain* v. *Chappell*, 870 F. 3d 1003, 1024, n. 9 (CA9 2017) (because "*Moore* is not an AEDPA case" and was "decided just this spring," "*Moore* itself cannot serve as 'clearly established' law at the time the state court decided Cain's claim").

IV

The centrality of *Moore* in the Court of Appeals' analysis is reflected in the way in which the intellectual-disability issue was litigated below. The *Atkins* portion of Hill's habeas petition did not focus on § 2254(d)(1), the provision on which the decision below is based.[2] Instead, it began and ended with appeals to a different provision of the habeas statute, § 2254(d)(2), which supports relief based on a state court's "unreasonable determination of the facts." In particular, Hill opened with the claim that the Ohio courts' findings on "adaptive functioning" "were an unreasonable determination of the facts in light of the evidence," Amended Pet. for Habeas Corpus in No. 96–CV–795 (ND Ohio), Doc. 94, p. 15, ¶44 (citing § 2254(d)(2)), and he closed with the claim that the state trial court's assessment that he is "not mentally retarded" was based on "an unreasonable determination of the facts," *id.*, at 36–37, ¶101 (citing § 2254(d)(2)). Indeed, Hill's reply to the State's answer to his petition explicitly "concur[red] . . . that it is proper to review [his *Atkins* claim] under § 2254(d)(2)." Traverse in No. 96–CV–795 (ND Ohio),

[2] While Hill's petition argued at one point that certain unidentified "procedures" used by the state courts in making the relevant decisions "violated clearly established federal law of *Ford/Panetti/Atkins*," Amended Pet. for Habeas Corpus in No. 96–CV–795 (ND Ohio), Doc. 94, p. 15, ¶45, the petition plainly did not encompass his current argument that the Ohio Court of Appeals unreasonably applied clearly established law under *Atkins* by overemphasizing adaptive strengths and improperly considering his prison behavior.

Doc. 102, p. 47. And so, unsurprisingly, the District Court analyzed Hill's *Atkins* claim solely under § 2254(d)(2), noting that "[a]s Hill concedes in his Traverse, his *Atkins* claim is more appropriately addressed as it relates to the Ohio appellate court's factual analysis under § 2254(d)(2)." App. to Pet. for Cert. 121a.

Hill pressed the same § 2254(d)(2) argument in his opening brief in the Sixth Circuit. There, he argued that the state courts' finding on "adaptive functioning . . . was an unreasonable determination of the facts." Brief for Petitioner–Appellant in No. 14–3718 (CA6), p. 34 (citing § 2254(d)(2)); see also *id.*, at 65 ("As such, the state courts' findings of fact that [Hill] is not mentally retarded constitute an unreasonable determination of facts in light of the evidence presented. (§ 2254(d)(2))").

It appears that it was not until the Court of Appeals asked for supplemental briefing on *Moore* that Hill introduced the § 2254(d)(1) argument that the Court of Appeals adopted. Although, as noted, the Court of Appeals ultimately disclaimed reliance on *Moore*, it explicitly asked the parties for supplemental briefing on how *Moore* "should be applied to this case." Because the reasoning of the Court of Appeals leans so heavily on *Moore*, its decision must be vacated. On remand, the court should determine whether its conclusions can be sustained based strictly on legal rules that were clearly established in the decisions of this Court at the relevant time.

* * *

The petition for certiorari and Hill's motion for leave to proceed *in forma pauperis* are granted, the judgment of the United States Court of Appeals for the Sixth Circuit is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

CULBERTSON *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY

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

No. 17–773. Argued November 7, 2018—Decided January 8, 2019

The Social Security Act regulates the fees that attorneys may charge claimants seeking Title II benefits for representation both before the Social Security Administration and in federal court. For representation in administrative proceedings, the Act provides two ways to determine fees. If a fee agreement exists, fees are capped at the lesser of 25% of past-due benefits or a set dollar amount—currently $6,000. 42 U. S. C. § 406(a)(2)(A). Absent an agreement, the agency may set any "reasonable" fee. § 406(a)(1). In either case, the agency is required to withhold up to 25% of past-due benefits for direct payment of any fee. § 406(a)(4). For representation in court proceedings, fees are capped at 25% of past-due benefits, and the agency has authority to withhold such benefits to pay these fees. § 406(b)(1)(A).

Petitioner Culbertson represented Katrina Wood in Social Security disability benefit proceedings before the agency and in District Court. The agency ultimately awarded Wood past-due benefits, withheld 25% of those benefits to pay any attorney's fees, and awarded Culbertson fees under § 406(a) for representation before the agency. Culbertson then moved for a separate fee award under § 406(b) for the court proceedings, requesting a full 25% of past-due benefits. The District Court granted the request, but only in part, because Culbertson did not subtract the amount he had already received under § 406(a) for his agency-level representation. The Eleventh Circuit affirmed, holding that the 25% limit under § 406(b) applies to the total fees awarded under both §§ 406(a) and (b).

Held: Section 406(b)(1)(A)'s 25% cap applies only to fees for court representation and not to the aggregate fees awarded under §§ 406(a) and (b). Pp. 58–62.

(a) Section 406(b) provides that a court rendering a favorable judgment to a claimant "represented before the court by an attorney" may award "a reasonable fee for such representation, not in excess of 25 percent" of past-due benefits. Here, the adjective "such," which means "[o]f the kind or degree already described or implied," refers to the only form of representation "already described" in § 406(b)—*i. e.*, "represent-

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[ation] before the court." Thus, the 25% cap applies only to fees for representation before the court, not the agency.

Subsections (a) and (b) address different stages of the representation and use different methods for calculating fees. Given this statutory structure, applying § 406(b)'s 25% cap on court-stage fees to § 406(a) agency-stage fees, or the aggregate of §§ 406(a) and (b) fees, would make little sense. For example, such a reading would subject § 406(a)(1)'s reasonableness limitation to § 406(b)'s 25% cap—a limitation not included in the relevant provision of the statute. Had Congress wanted agency-stage fees to be capped at 25%, it presumably would have said so directly in subsection (a). Pp. 58–60.

(b) The fact that the agency presently withholds a single pool of 25% of past-due benefits for direct payment of agency and court fees does not support an aggregate reading. The statutory text provides for two pools of money for direct payment of fees. See §§ 406(a)(4), (b)(1)(A). The agency's choice to withhold only one pool of 25% of past-due benefits does not alter this text. More fundamentally, the amount of past-due benefits that the agency can withhold for direct payment does not delimit the amount of fees that can be approved for representation before the agency or the court. Pp. 60–62.

861 F. 3d 1197, reversed and remanded.

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

Daniel R. Ortiz argued the cause for petitioner. With him on the briefs were *Richard A. Culbertson*, *pro se*, *Sarah Fay*, *Mark T. Stancil*, *Matthew M. Madden*, *John P. Elwood*, *Jeremy C. Marwell*, *Joshua S. Johnson*, and *Matthew X. Etchemendy*.

Anthony A. Yang argued the cause for respondent. With him on the briefs were *Solicitor General Francisco*, *Acting Assistant Attorney General Readler*, *Deputy Solicitor General Kneedler*, and *Charles W. Scarborough*.

Amy Levin Weil, by invitation of the Court, 584 U. S. 999, argued the cause and filed a brief as *amicus curiae* in support of the judgment below.*

**Eric Schnaufer* and *Charles L. Martin* filed a brief for the National Organization of Social Security Claimants' Representatives as *amicus curiae*.

JUSTICE THOMAS delivered the opinion of the Court.

Federal law regulates the fees that attorneys may charge Social Security claimants for representation before the Social Security Administration and a reviewing court. See 42 U. S. C. §§ 406(a)–(b). The question in this case is whether the statutory scheme limits the aggregate amount of fees for both stages of representation to 25% of the claimant's past-due benefits. Because § 406(b) by its terms imposes a 25% cap on fees only for representation before a court, and § 406(a) has separate caps on fees for representation before the agency, we hold that the statute does not impose a 25% cap on aggregate fees.

I

A

Title II of the Social Security Act, 49 Stat. 622, as amended, 42 U. S. C. § 401 *et seq.*, "is an insurance program" that "provides old-age, survivor, and disability benefits to insured individuals irrespective of financial need." *Bowen* v. *Galbreath*, 485 U. S. 74, 75 (1988). A claimant's application for Title II benefits can result in payments of past-due benefits—*i. e.*, benefits that accrued before a favorable decision, 20 CFR § 404.1703 (2018)—as well as ongoing monthly benefits, see 42 U. S. C. § 423(a). A claimant who has been denied benefits "in whole or in part" by the Social Security Administration may seek administrative review of the initial agency determination, § 405(b), and may then seek judicial review of the resulting final agency decision, § 405(g).

As presently written, the Social Security Act "discretely" addresses attorney's fees for the administrative and judicial-review stages: "§ 406(a) governs fees for representation in administrative proceedings; § 406(b) controls fees for representation in court." *Gisbrecht* v. *Barnhart*, 535 U. S. 789, 794 (2002). The original Social Security Act made no such provision for attorney's fees in either proceeding. *Id.*, at

793, n. 2. But in 1939, "Congress amended the Act to permit the Social Security Board to prescribe maximum fees attorneys could charge for representation of claimants before the agency." *Ibid.* In 1965, Congress added a new subsection (b) to § 406 that explicitly prescribed fees for representation before a court and "allow[ed] withholding of past-due benefits to pay" these fees directly to the attorney. Social Security Amendments of 1965, § 332, 79 Stat. 403; *Bowen*, 485 U. S., at 76. In 1968, Congress amended subsection (a) to give the agency similar withholding authority to pay attorney's fees incurred in administrative proceedings. *Id.*, at 76.

Section 406(a) is titled "Recognition of representatives; fees for representation before Commissioner" of Social Security. It includes two ways to determine fees for representation before the agency, depending on whether a prior fee agreement exists. If the claimant has a fee agreement, subsection (a)(2) caps fees at the lesser of 25% of past-due benefits or a set dollar amount—currently $6,000. § 406(a)(2)(A); Maximum Dollar Limit in the Fee Agreement Process, 74 Fed. Reg. 6080 (2009). Absent a fee agreement, subsection (a)(1) gives the agency authority to "prescribe the maximum fees which may be charged for services performed in connection with any claim" before the agency. If the claimant obtains a favorable agency determination, the agency may allot "a reasonable fee to compensate such attorney for the services performed by him."

Subsection (a)(4) requires the agency to withhold up to 25% of past-due benefits for direct payment of any fee for representation before the agency:

> "[I]f the claimant is determined to be entitled to past-due benefits under this subchapter and the person representing the claimant is an attorney, the Commissioner of Social Security shall . . . certify for payment out of such past-due benefits . . . to such attorney an amount equal to so much of the maximum fee as does not exceed 25 percent of such past-due benefits . . . ."

Section 406(b) is titled "Fees for representation before court." Subsection (b)(1)(A) both limits these fees to no more than 25% of past-due benefits and allows the agency to withhold past-due benefits to pay these fees:

> "Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment, and the Commissioner of Social Security may . . . certify the amount of such fee for payment to such attorney out of, and not in addition to, the amount of such past-due benefits."

At issue is whether § 406(b)'s 25% cap limits the aggregate fees awarded for representation before both the agency under § 406(a) and the court under § 406(b), or instead limits only the fee awarded for court representation under § 406(b).

B

Petitioner Richard Culbertson represented claimant Katrina Wood in proceedings seeking Social Security disability benefits. After the agency denied Wood benefits, she brought an action in district court. For the court action, Wood signed a contingency-fee agreement "to pay a fee of 25 percent of the total of the past-due benefits to which [she] is entitled" in consideration for Culbertson's "representation of [her] in Federal Court." App. 8–9. The agreement excludes fees for "any representation before" the agency. *Id.*, at 9.

The District Court reversed the agency's denial of benefits and remanded for further proceedings. The court granted Wood attorney's fees under the Equal Access to Justice Act (EAJA), which authorizes an award against the Government for reasonable fees in "civil action[s]." 28 U. S. C. §§ 2412(d)(1)(A) and (2)(A).

On remand, the agency awarded Wood past-due disability benefits and withheld 25% of those benefits to pay any attorney's fees that might ultimately be awarded. The agency also awarded Culbertson § 406(a) fees for representing Wood before the agency.

Culbertson then moved the District Court for a separate fee award under § 406(b) for representing Wood there. After accounting for the EAJA award, see *Gisbrecht*, *supra*, at 796; App. 9, this request amounted to a full 25% of past-due benefits. The court granted Culbertson's request only in part because he did not subtract the amount he had already received under § 406(a) for his agency-level representation. The Eleventh Circuit affirmed, relying on Circuit precedent to hold that "the 25% limit from § 406(b) applies to total fees awarded under both § 406(a) and (b), 'preclud-[ing] the aggregate allowance of attorney's fees greater than twenty-five percent of the past due benefits received by the claimant.'" *Wood* v. *Commissioner of Social Security*, 861 F. 3d 1197, 1205 (2017) (quoting *Dawson* v. *Finch*, 425 F. 2d 1192, 1195 (CA5 1970); emphasis deleted).*

Given a conflict between the Circuits on this question, see 861 F. 3d, at 1205–1206, we granted certiorari. 584 U. S. 992 (2018). Because no party defends the judgment, we appointed Amy Weil to brief and argue this case as *amicus curiae* in support of the judgment below. 584 U. S. 999 (2018). *Amicus* Weil has ably discharged her assigned responsibilities.

II

A

We "begi[n] with the language of the statute itself, and that is also where the inquiry should end, for the statute's language is plain." *Puerto Rico* v. *Franklin Cal. Tax-Free*

*See *Bonner* v. *Prichard*, 661 F. 2d 1206, 1209 (CA11 1981) (en banc) (adopting all decisions of the former Fifth Circuit announced prior to October 1, 1981, as binding precedent in the Eleventh Circuit).

Trust, 579 U. S. 115, 125 (2016) (internal quotation marks omitted). Under § 406(b), when a court "renders a judgment favorable to a claimant . . . who was represented before the court by an attorney," the court may award "a reasonable fee for *such representation*, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment." 42 U. S. C. § 406(b)(1)(A) (emphasis added). Both at the time of enactment and today, the adjective "such" means "[o]f the kind or degree already described or implied." H. Fowler & F. Fowler, Concise Oxford Dictionary of Current English 1289 (5th ed. 1964); Black's Law Dictionary 1661 (10th ed. 2014) ("[t]hat or those; having just been mentioned"). Here, the only form of representation "already described" in § 406(b) is "represent[ation] before the court by an attorney." Accordingly, the 25% cap applies only to fees for representation before the court, not the agency.

This interpretation is supported by "the structure of the statute and its other provisions." *Maracich* v. *Spears*, 570 U. S. 48, 60 (2013). As an initial matter, subsections (a) and (b) address different stages of the representation. Section 406(a) addresses fees for representation "before the Commissioner," whereas § 406(b) addresses fees for representation in court. Because some claimants will prevail before the agency and have no need to bring a court action, it is unsurprising that the statute contemplates separate fees for each stage of representation.

These subsections also calculate fees differently. Section 406(b) applies a flat 25% cap on fees for court representation. By contrast, § 406(a) provides two ways to determine fees for agency proceedings. Subsection (a)(2) caps fees based on a fee agreement at the lesser of 25% of past-due benefits or $6,000. *Supra*, at 56. If there is no fee agreement, the agency may set any fee, including a fee greater than 25% of past-due benefits, so long as the fee is "reasonable." § 406(a)(1).

Given this statutory structure, applying § 406(b)'s 25% cap on court-stage fees to § 406(a) agency-stage fees, or the aggregate of §§ 406(a) and (b) fees, would make little sense. Many claimants will never litigate in court, yet under the aggregate reading, agency fees would be capped at 25% based on a provision related exclusively to representation in court. Absent a fee agreement, § 406(a)(1) subjects agency fees only to a reasonableness limitation, so applying § 406(b)'s cap to such fees would add a limitation that Congress did not include in the relevant provision of the statute. If Congress had wanted these fees to be capped at 25%, it presumably would have said so directly in subsection (a), instead of providing for a "reasonable fee" in that subsection and adding a 25% cap in § 406(b) without even referencing subsection (a). Thus, the structure of the statute confirms that § 406(b) caps only court representation fees.

B

Amicus Amy Weil agrees that "§ 406(a) and § 406(b) provide separate avenues for an award of attorney's fees for representation of a Social Security claimant," but emphasizes that "these fees are certified for payment out of a single source: the 25% of past-due benefits withheld by the Commissioner." Brief for Court-Appointed *Amicus Curiae* 10. According to *amicus*, "[b]ecause the Commissioner withholds only one pool of 25% of past-due benefits from which to pay attorney's fees for both agency and court representation, for an attorney to collect a fee that exceeds the 25% pool of withheld disability benefits," the attorney may "need to file a lawsuit against his disabled client" to collect the difference. *Id.*, at 23–24. Therefore, *amicus* urges, "[w]hen the statute is read as a whole," "it is evident that Congress placed a cumulative 25% cap on attorney's fees payable for successful representation of a Social Security claimant before both the agency and the court." *Id.*, at 10.

Amicus is quite right that presently the agency withholds a single pool of 25% of past-due benefits for direct payment of agency and court fees. See SSA, Program Operations Manual System (POMS), GN 03920.035(A) (June 22, 2009), https://policy.ssa.gov/poms.nsf/lnx/0203920035 (as last visited Jan. 2, 2019); see also 20 CFR §§ 404.1730(a) and (b)(1)(i). And *amicus* sensibly argues that if there is only a single 25% pool for direct payment of fees, Congress might not have intended aggregate fees higher than 25%. This argument is plausible, but the statutory text in fact provides for two pools of money for direct payment of fees. Any shortage of withheld benefits for direct payment of fees is thus due to agency policy.

Under § 406(a)(4), the agency "shall" certify for direct payment of agency representation fees "an amount equal to so much of the maximum fee as does not exceed 25 percent of" past-due benefits. In other words, this subsection requires that the agency withhold the approved fees for work performed in agency proceedings, up to 25% of the amount of the claimant's past-due benefits. But this is not the only subsection that enables the agency to withhold past-due benefits for direct payment of fees. Section 406(b)(1)(A) provides that the agency "may" certify past-due benefits for direct payment of court representation fees. As the Government explains, the agency has nevertheless "exercised its discretion . . . to withhold a total of 25% of past-due benefits for direct payment of the approved agency *and* court fees." Reply Brief for Respondent 8 (emphasis added). The agency's choice to withhold only one pool of 25% of past-due benefits does not alter the statutory text, which differentiates between agency representation in § 406(a) and court representation in § 406(b), contains separate caps on fees for each type of representation, and authorizes two pools of withheld benefits.

More fundamentally, the amount of past-due benefits that the agency can withhold for direct payment does not delimit

the amount of fees that can be approved for representation before the agency or the court. The attorney might receive a direct payment out of past-due benefits, but that payment could be less than the fees to which the attorney is entitled. Indeed, prior to 1968, the statute allowed fees for agency representation but lacked a provision for direct payment of such fees from past-due benefits. See *supra*, at 56. And under the current §§ 406(a)(1) and (4), the agency can award a "reasonable fee" that exceeds the 25% of past-due benefits it can withhold for direct payment.

In short, despite the force of *amicus*' arguments, the statute does not bear her reading. Any concerns about a shortage of withheld benefits for direct payment and the consequences of such a shortage are best addressed to the agency, Congress, or the attorney's good judgment.

* * *

Because the 25% cap in § 406(b)(1)(A) applies only to fees for court representation, and not to the aggregate fees awarded under §§ 406(a) and (b), 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.

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HENRY SCHEIN, INC., ET AL. *v.* ARCHER & WHITE SALES, INC.

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

No. 17–1272. Argued October 29, 2018—Decided January 8, 2019

Respondent Archer & White Sales, Inc., sued petitioner Henry Schein, Inc., alleging violations of federal and state antitrust law and seeking both money damages and injunctive relief. The relevant contract between the parties provided for arbitration of any dispute arising under or related to the agreement, except for, among other things, actions seeking injunctive relief. Invoking the Federal Arbitration Act, Schein asked the District Court to refer the matter to arbitration, but Archer & White argued that the dispute was not subject to arbitration because its complaint sought injunctive relief, at least in part. Schein contended that because the rules governing the contract provide that arbitrators have the power to resolve arbitrability questions, an arbitrator—not the court—should decide whether the arbitration agreement applied. Archer & White countered that Schein's argument for arbitration was wholly groundless, so the District Court could resolve the threshold arbitrability question. The District Court agreed with Archer & White and denied Schein's motion to compel arbitration. The Fifth Circuit affirmed.

Held: The "wholly groundless" exception to arbitrability is inconsistent with the Federal Arbitration Act and this Court's precedent. Under the Act, arbitration is a matter of contract, and courts must enforce arbitration contracts according to their terms. *Rent-A-Center, West, Inc.* v. *Jackson*, 561 U. S. 63, 67. The parties to such a contract may agree to have an arbitrator decide not only the merits of a particular dispute but also "'gateway' questions of 'arbitrability.'" *Id.*, at 68–69. Therefore, when the parties' contract delegates the arbitrability question to an arbitrator, a court may not override the contract, even if the court thinks that the arbitrability claim is wholly groundless. That conclusion follows also from this Court's precedent. See *AT&T Technologies, Inc.* v. *Communications Workers*, 475 U. S. 643, 649–650.

Archer & White's counterarguments are unpersuasive. First, its argument that §§ 3 and 4 of the Act should be interpreted to mean that a court must always resolve questions of arbitrability has already been addressed and rejected by this Court. See, *e. g.*, *First Options of Chicago, Inc.* v. *Kaplan*, 514 U. S. 938, 944. Second, its argument that § 10

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of the Act—which provides for back-end judicial review of an arbitrator's decision if an arbitrator has "exceeded" his or her "powers"—supports the conclusion that the court at the front end should also be able to say that the underlying issue is not arbitrable is inconsistent with the way Congress designed the Act. And it is not this Court's proper role to redesign the Act. Third, its argument that it would be a waste of the parties' time and money to send wholly groundless arbitrability questions to an arbitrator ignores the fact that the Act contains no "wholly groundless" exception. This Court may not engraft its own exceptions onto the statutory text. Nor is it likely that the exception would save time and money systemically even if it might do so in some individual cases. Fourth, its argument that the exception is necessary to deter frivolous motions to compel arbitration overstates the potential problem. Arbitrators are already capable of efficiently disposing of frivolous cases and deterring frivolous motions, and such motions do not appear to have caused a substantial problem in those Circuits that have not recognized a "wholly groundless" exception.

The Fifth Circuit may address the question whether the contract at issue in fact delegated the arbitrability question to an arbitrator, as well as other properly preserved arguments, on remand. Pp. 67–72.

878 F. 3d 488, vacated and remanded.

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

Kannon K. Shanmugam argued the cause for petitioners. With him on the briefs were *Liam J. Montgomery*, *Charles L. McCloud*, *William T. Marks*, *Paul F. Schuster*, *Cynthia Keely Timms*, *Richard C. Godfrey*, and *Barack S. Echols*.

Daniel L. Geyser argued the cause for respondent. With him on the brief was *Lewis T. LeClair*.*

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*Briefs of *amici curiae* urging reversal were filed for the Atlantic Legal Foundation by *Martin S. Kaufman*; for the Chamber of Commerce of the United States of America by *Andrew J. Pincus*, *Evan M. Tager*, *Archis A. Parasharami*, and *Matthew A. Waring*; for the New England Legal Foundation by *Benjamin G. Robbins* and *Martin J. Newhouse*; and for Anthony Michael Sabino by *Mr. Sabino*, *pro se*.

Briefs of *amici curiae* urging affirmance were filed for the American Association for Justice by *Matthew Wessler*, *Deepak Gupta*, and *Jeffrey R. White*; for Public Citizen, Inc., by *Scott L. Nelson* and *Allison M. Zieve*; and for George A. Bermann by *J. Samuel Tenenbaum*.

JUSTICE KAVANAUGH delivered the opinion of the Court.

Under the Federal Arbitration Act, parties to a contract may agree that an arbitrator rather than a court will resolve disputes arising out of the contract. When a dispute arises, the parties sometimes may disagree not only about the merits of the dispute but also about the threshold arbitrability question—that is, whether their arbitration agreement applies to the particular dispute. Who decides that threshold arbitrability question? Under the Act and this Court's cases, the question of who decides arbitrability is itself a question of contract. The Act allows parties to agree by contract that an arbitrator, rather than a court, will resolve threshold arbitrability questions as well as underlying merits disputes. *Rent-A-Center, West, Inc.* v. *Jackson*, 561 U. S. 63, 68–70 (2010); *First Options of Chicago, Inc.* v. *Kaplan*, 514 U. S. 938, 943–944 (1995).

Even when a contract delegates the arbitrability question to an arbitrator, some federal courts nonetheless will short-circuit the process and decide the arbitrability question themselves if the argument that the arbitration agreement applies to the particular dispute is "wholly groundless." The question presented in this case is whether the "wholly groundless" exception is consistent with the Federal Arbitration Act. We conclude that it is not. The Act does not contain a "wholly groundless" exception, and we are not at liberty to rewrite the statute passed by Congress and signed by the President. When the parties' contract delegates the arbitrability question to an arbitrator, the courts must respect the parties' decision as embodied in the contract. We vacate the contrary judgment of the Court of Appeals.

I

Archer and White is a small business that distributes dental equipment. Archer and White entered into a contract with Pelton and Crane, a dental equipment manufacturer, to distribute Pelton and Crane's equipment. The relationship

eventually soured. As relevant here, Archer and White sued Pelton and Crane's successor-in-interest and Henry Schein, Inc. (collectively, Schein), in Federal District Court in Texas. Archer and White's complaint alleged violations of federal and state antitrust law, and sought both money damages and injunctive relief.

The relevant contract between the parties provided:

> "Disputes. This Agreement shall be governed by the laws of the State of North Carolina. Any dispute arising under or related to this Agreement (except for actions seeking injunctive relief and disputes related to trademarks, trade secrets, or other intellectual property of [Schein]), shall be resolved by binding arbitration in accordance with the arbitration rules of the American Arbitration Association [(AAA)]. The place of arbitration shall be in Charlotte, North Carolina." 878 F. 3d 488, 491 (CA5 2017).

After Archer and White sued, Schein invoked the Federal Arbitration Act and asked the District Court to refer the parties' antitrust dispute to arbitration. Archer and White objected, arguing that the dispute was not subject to arbitration because Archer and White's complaint sought injunctive relief, at least in part. According to Archer and White, the parties' contract barred arbitration of disputes when the plaintiff sought injunctive relief, even if only in part.

The question then became: Who decides whether the antitrust dispute is subject to arbitration? The rules of the American Arbitration Association provide that arbitrators have the power to resolve arbitrability questions. Schein contended that the contract's express incorporation of the American Arbitration Association's rules meant that an arbitrator—not the court—had to decide whether the arbitration agreement applied to this particular dispute. Archer and White responded that in cases where the defendant's argument for arbitration is wholly groundless—as Archer and White argued was the case here—the

District Court itself may resolve the threshold question of arbitrability.

Relying on Fifth Circuit precedent, the District Court agreed with Archer and White about the existence of a "wholly groundless" exception, and ruled that Schein's argument for arbitration was wholly groundless. The District Court therefore denied Schein's motion to compel arbitration. The Fifth Circuit affirmed.

In light of disagreement in the Courts of Appeals over whether the "wholly groundless" exception is consistent with the Federal Arbitration Act, we granted certiorari, 585 U. S. 1015 (2018). Compare 878 F. 3d 488 (case below); *Simply Wireless, Inc.* v. *T-Mobile US, Inc.*, 877 F. 3d 522 (CA4 2017); *Douglas* v. *Regions Bank*, 757 F. 3d 460 (CA5 2014); *Turi* v. *Main Street Adoption Servs., LLP*, 633 F. 3d 496 (CA6 2011); *Qualcomm Inc.* v. *Nokia Corp.*, 466 F. 3d 1366 (CA Fed. 2006), with *Belnap* v. *Iasis Healthcare*, 844 F. 3d 1272 (CA10 2017); *Jones* v. *Waffle House, Inc.*, 866 F. 3d 1257 (CA11 2017); *Douglas*, 757 F. 3d, at 464 (Dennis, J., dissenting).

II

In 1925, Congress passed and President Coolidge signed the Federal Arbitration Act. As relevant here, the Act provides:

> "A written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . 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.

Under the Act, arbitration is a matter of contract, and courts must enforce arbitration contracts according to their terms. *Rent-A-Center*, 561 U. S., at 67. Applying the Act, we have held that parties may agree to have an arbitrator decide not only the merits of a particular dispute but also

"'gateway' questions of 'arbitrability,' such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy." *Id.*, at 68–69; see also *First Options*, 514 U. S., at 943. We have explained that an "agreement to arbitrate a gateway issue is simply an additional, antecedent agreement the party seeking arbitration asks the federal court to enforce, and the FAA operates on this additional arbitration agreement just as it does on any other." *Rent-A-Center*, 561 U. S., at 70.

Even when the parties' contract delegates the threshold arbitrability question to an arbitrator, the Fifth Circuit and some other Courts of Appeals have determined that the court rather than an arbitrator should decide the threshold arbitrability question if, under the contract, the argument for arbitration is wholly groundless. Those courts have reasoned that the "wholly groundless" exception enables courts to block frivolous attempts to transfer disputes from the court system to arbitration.

We conclude that the "wholly groundless" exception is inconsistent with the text of the Act and with our precedent.

We must interpret the Act as written, and the Act in turn requires that we interpret the contract as written. When the parties' contract delegates the arbitrability question to an arbitrator, a court may not override the contract. In those circumstances, a court possesses no power to decide the arbitrability issue. That is true even if the court thinks that the argument that the arbitration agreement applies to a particular dispute is wholly groundless.

That conclusion follows not only from the text of the Act but also from precedent. We have held that a court may not "rule on the potential merits of the underlying" claim that is assigned by contract to an arbitrator, "even if it appears to the court to be frivolous." *AT&T Technologies, Inc.* v. *Communications Workers*, 475 U. S. 643, 649–650 (1986). A court has "'no business weighing the merits of the grievance'" because the "'agreement is to submit all grievances

to arbitration, not merely those which the court will deem meritorious.' " *Id.*, at 650 (quoting *Steelworkers* v. *American Mfg. Co.*, 363 U. S. 564, 568 (1960)).

That *AT&T Technologies* principle applies with equal force to the threshold issue of arbitrability. Just as a court may not decide a merits question that the parties have delegated to an arbitrator, a court may not decide an arbitrability question that the parties have delegated to an arbitrator.

In an attempt to overcome the statutory text and this Court's cases, Archer and White advances four main arguments. None is persuasive.

First, Archer and White points to §§ 3 and 4 of the Federal Arbitration Act. Section 3 provides that a court must stay litigation "upon being satisfied that the issue" is "referable to arbitration" under the "agreement." Section 4 says that a court, in response to a motion by an aggrieved party, must compel arbitration "in accordance with the terms of the agreement" when the court is "satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue."

Archer and White interprets those provisions to mean, in essence, that a court must always resolve questions of arbitrability and that an arbitrator never may do so. But that ship has sailed. This Court has consistently held that parties may delegate threshold arbitrability questions to the arbitrator, so long as the parties' agreement does so by "clear and unmistakable" evidence. *First Options*, 514 U. S., at 944 (alterations and internal quotation marks omitted); see also *Rent-A-Center*, 561 U. S., at 69, n. 1. To be sure, before referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists. See 9 U. S. C. § 2. But if a valid agreement exists, and if the agreement delegates the arbitrability issue to an arbitrator, a court may not decide the arbitrability issue.

Second, Archer and White cites § 10 of the Act, which provides for back-end judicial review of an arbitrator's deci-

sion if an arbitrator has "exceeded" his or her "powers." § 10(a)(4). According to Archer and White, if a court at the back end can say that the underlying issue was not arbitrable, the court at the front end should also be able to say that the underlying issue is not arbitrable. The dispositive answer to Archer and White's § 10 argument is that Congress designed the Act in a specific way, and it is not our proper role to redesign the statute. Archer and White's § 10 argument would mean, moreover, that courts presumably also should decide frivolous merits questions that have been delegated to an arbitrator. Yet we have already rejected that argument: When the parties' contract assigns a matter to arbitration, a court may not resolve the merits of the dispute even if the court thinks that a party's claim on the merits is frivolous. *AT&T Technologies*, 475 U. S., at 649–650. So, too, with arbitrability.

Third, Archer and White says that, as a practical and policy matter, it would be a waste of the parties' time and money to send the arbitrability question to an arbitrator if the argument for arbitration is wholly groundless. In cases like this, as Archer and White sees it, the arbitrator will inevitably conclude that the dispute is not arbitrable and then send the case back to the district court. So why waste the time and money? The short answer is that the Act contains no "wholly groundless" exception, and we may not engraft our own exceptions onto the statutory text. See *Exxon Mobil Corp.* v. *Allapattah Services, Inc.*, 545 U. S. 546, 556–557 (2005).

In addition, contrary to Archer and White's claim, it is doubtful that the "wholly groundless" exception would save time and money systemically even if it might do so in some individual cases. Archer and White assumes that it is easy to tell when an argument for arbitration of a particular dispute is wholly groundless. We are dubious. The exception would inevitably spark collateral litigation (with briefing, argument, and opinion writing) over whether a seemingly

unmeritorious argument for arbitration is *wholly* groundless, as opposed to groundless. We see no reason to create such a time-consuming sideshow.

Archer and White further assumes that an arbitrator would inevitably reject arbitration in those cases where a judge would conclude that the argument for arbitration is wholly groundless. Not always. After all, an arbitrator might hold a different view of the arbitrability issue than a court does, even if the court finds the answer obvious. It is not unheard-of for one fair-minded adjudicator to think a decision is obvious in one direction but for another fair-minded adjudicator to decide the matter the other way.

Fourth, Archer and White asserts another policy argument: that the "wholly groundless" exception is necessary to deter frivolous motions to compel arbitration. Again, we may not rewrite the statute simply to accommodate that policy concern. In any event, Archer and White overstates the potential problem. Arbitrators can efficiently dispose of frivolous cases by quickly ruling that a claim is not in fact arbitrable. And under certain circumstances, arbitrators may be able to respond to frivolous arguments for arbitration by imposing fee-shifting and cost-shifting sanctions, which in turn will help deter and remedy frivolous motions to compel arbitration. We are not aware that frivolous motions to compel arbitration have caused a substantial problem in those Circuits that have not recognized a "wholly groundless" exception.

In sum, we reject the "wholly groundless" exception. The exception is inconsistent with the statutory text and with our precedent. It confuses the question of who decides arbitrability with the separate question of who prevails on arbitrability. When the parties' contract delegates the arbitrability question to an arbitrator, the courts must respect the parties' decision as embodied in the contract.

We express no view about whether the contract at issue in this case in fact delegated the arbitrability question to an

arbitrator. The Court of Appeals did not decide that issue. Under our cases, courts "should not assume that the parties agreed to arbitrate arbitrability unless there is 'clear and unmistakable' evidence that they did so." *First Options*, 514 U. S., at 944 (alterations omitted). On remand, the Court of Appeals may address that issue in the first instance, as well as other arguments that Archer and White has properly preserved.

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

It is so ordered.

Syllabus

STOKELING *v.* UNITED STATES

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

No. 17–5554. Argued October 9, 2018—Decided January 15, 2019

Petitioner Stokeling pleaded guilty to possessing a firearm and ammunition after having been convicted of a felony, in violation of 18 U. S. C. § 922(g)(1). Based on Stokeling's prior criminal history, the probation office recommended the mandatory minimum 15-year prison term that the Armed Career Criminal Act (ACCA) provides for § 922(g) violators who have three previous convictions "for a violent felony," § 924(e). As relevant here, Stokeling objected that his prior Florida robbery conviction was not a "violent felony," which ACCA defines, in relevant part, as "any crime punishable by imprisonment for a term exceeding one year" that "has as an element the use, attempted use, or threatened use of physical force against the person of another," § 924(e)(2)(B)(i). The District Court held that Stokeling's actions during the robbery did not justify an ACCA sentence enhancement, but the Eleventh Circuit reversed.

Held:

1. ACCA's elements clause encompasses a robbery offense that requires the defendant to overcome the victim's resistance. Pp. 77–85.

(a) As originally enacted, ACCA prescribed a sentence enhancement for certain individuals with three prior convictions "for robbery or burglary," 18 U. S. C. App. § 1202(a) (1982 ed., Supp. II), and defined robbery as an unlawful taking "by force or violence," § 1202(c)(8)—a clear reference to common-law robbery, which required a level of "force" or "violence" sufficient to overcome the resistance of the victim, however slight. When Congress amended ACCA two years later, it replaced the enumerated crimes with the elements clause, an expanded enumerated-offenses clause, and the now-defunct residual clause. The new elements clause extended ACCA to cover *any* offense that has as an element "the use, attempted use, or threatened use of physical *force*," § 924(e)(2)(B)(i) (emphasis added). By replacing robbery with a clause that has "force" as its touchstone, Congress retained the same common-law definition that undergirded the definition of robbery in the original ACCA. This understanding is buttressed by the then widely accepted definitions of robbery among the States, a significant majority of which

Syllabus

defined nonaggravated robbery as requiring a degree of force sufficient only to overcome a victim's resistance. Under Stokeling's reading, many of those state robbery statutes would not qualify as ACCA predicates. But federal criminal statutes should not be construed in ways that would render them inapplicable in many States. Pp. 77–82.

(b) This understanding of "physical force" comports with *Johnson* v. *United States*, 559 U. S. 133. The force necessary for misdemeanor battery addressed in *Johnson* does not require resistance or even physical aversion on the part of the victim. Rather, the "slightest offensive touching" would qualify. *Id.*, at 139. It is thus different in kind from the force necessary to overcome resistance by a victim, which is inherently "violent" in the sense contemplated by *Johnson* and "suggest[s] a degree of power that would not be satisfied by the merest touching." *Ibid.* *Johnson* did not purport, as Stokeling suggests, to establish a force threshold so high as to exclude even robbery from ACCA's scope. Pp. 82–84.

(c) Stokeling's suggested definition of "physical force"—force "reasonably expected to cause pain or injury"—is inconsistent with the degree of force necessary to commit robbery at common law. Moreover, the Court declined to adopt this standard in *Johnson*. Stokeling's proposal would prove exceedingly difficult to apply, would impose yet another indeterminable line-drawing exercise on the lower courts, and is not supported by *United States* v. *Castleman*, 572 U. S. 157. Pp. 84–85.

2. Robbery under Florida law qualifies as an ACCA-predicate offense under the elements clause. The term "physical force" in ACCA encompasses the degree of force necessary to commit common-law robbery. And the Florida Supreme Court has made clear that the robbery statute requires "resistance by the victim that is overcome by the physical force of the offender." *Robinson* v. *State*, 692 So. 2d 883, 886. Pp. 85–87.

684 Fed. Appx. 870, affirmed.

THOMAS, J., delivered the opinion of the Court, in which BREYER, ALITO, GORSUCH, and KAVANAUGH, JJ., joined. SOTOMAYOR, J., filed a dissenting opinion, in which ROBERTS, C. J., and GINSBURG and KAGAN, JJ., joined, *post*, p 87.

Brenda G. Bryn argued the cause for petitioner. With her on the briefs were *Andrew L. Adler* and *Amir H. Ali*.

Frederick Liu argued the cause for the United States. With him on the brief were *Solicitor General Francisco*, *As-*

sistant Attorney General Benczkowski, *Eric J. Feigin*, and *John M. Pellettieri*.*

JUSTICE THOMAS delivered the opinion of the Court.

This case requires us to decide whether a robbery offense that has as an element the use of force sufficient to overcome a victim's resistance necessitates the use of "physical force" within the meaning of the Armed Career Criminal Act (ACCA), 18 U. S. C. § 924(e)(2)(B)(i). We conclude that it does.

I

In the early hours of July 27, 2015, two people burgled the Tongue & Cheek restaurant in Miami Beach, Florida. Petitioner Denard Stokeling was an employee of the restaurant, and the Miami Beach Police identified him as a suspect based on surveillance video from the burglary and witness statements. After conducting a criminal background check, police learned that Stokeling had previously been convicted of three felonies—home invasion, kidnaping, and robbery. When confronted, Stokeling admitted that he had a gun in his backpack. The detectives opened the backpack and discovered a 9-mm semiautomatic firearm, a magazine, and 12 rounds of ammunition.

Stokeling pleaded guilty in federal court to possessing a firearm and ammunition after having been convicted of a felony, in violation of 18 U. S. C. § 922(g)(1). The probation office recommended that Stokeling be sentenced as an armed career criminal under ACCA, which provides that a person who violates § 922(g) and who has three previous convictions for a "violent felony" shall be imprisoned for a minimum of 15 years. § 924(e). ACCA defines "violent felony" as "any

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Hyland Hunt, *Ruthanne M. Deutsch*, *Jonathan D. Hacker*, and *Deanna M. Rice* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae* urging reversal.

crime punishable by imprisonment for a term exceeding one year" that

> "(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
>
> (ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another." § 924(e)(2)(B).

As relevant here, Stokeling objected that his 1997 Florida robbery conviction was not a predicate offense under ACCA. This conviction, he argued, did not qualify under the first clause—the "elements clause"—because Florida robbery does not have "as an element the use, attempted use, or threatened use of physical force."*

Under Florida law, robbery is defined as "the taking of money or other property . . . from the person or custody of another, . . . when in the course of the taking there is the use of force, violence, assault, or putting in fear." Fla. Stat. § 812.13(1) (1995). The Florida Supreme Court has explained that the "use of force" necessary to commit robbery requires "resistance by the victim that is overcome by the physical force of the offender." *Robinson* v. *State*, 692 So. 2d 883, 886 (1997).

Instead of applying a categorical approach to the elements clause, the District Court evaluated whether the facts of Stokeling's robbery conviction were serious enough to warrant an enhancement. The court concluded that, although Stokeling "'grabbed [the victim] by the neck and tried to remove her necklaces'" as she "'held onto'" them, his actions did not "justify an enhancement." Sentencing Hearing in

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*The Government did not argue that Florida robbery should qualify under § 924(e)(2)(B)(ii), presumably because robbery is not among the enumerated offenses and the Court held the "residual clause" unconstitutionally vague in *Johnson* v. *United States*, 576 U. S. 591 (2015).

No. 15–cr–20815 (SD Fla.), Doc. 45, pp. 10–11. The court then sentenced Stokeling to less than half of the mandatory minimum 15-year term of imprisonment provided by ACCA.

The Eleventh Circuit reversed. 684 Fed. Appx. 870 (2017). It held that the District Court erred in making its own factual determination about the level of violence involved in Stokeling's particular robbery offense. *Id.*, at 871. The court also rejected Stokeling's argument that Florida robbery does not categorically require sufficient force to constitute a violent felony under ACCA's elements clause. *Id.*, at 871–872.

We granted certiorari to address whether the "force" required to commit robbery under Florida law qualifies as "physical force" for purposes of the elements clause. 584 U. S. 915 (2018). We now affirm.

II

Construing the language of the elements clause in light of the history of ACCA and our opinion in *Johnson* v. *United States*, 559 U. S. 133 (2010), we conclude that the elements clause encompasses robbery offenses that require the criminal to overcome the victim's resistance.

A

As originally enacted, ACCA prescribed a 15-year minimum sentence for any person who received, possessed, or transported a firearm following three prior convictions "for robbery or burglary." 18 U. S. C. App. § 1202(a) (1982 ed., Supp. II). Robbery was defined in relevant part as "any felony consisting of the taking of the property of another from the person or presence of another *by force or violence.*" § 1202(c)(8) (1982 ed., Supp. II) (emphasis added).

The statute's definition mirrored the elements of the common-law crime of robbery, which has long required force or violence. At common law, an unlawful taking was merely larceny unless the crime involved "violence." 2 J. Bishop,

Criminal Law § 1156, p. 860 (J. Zane & C. Zollmann eds., 9th ed. 1923). And "violence" was "committed if sufficient force [was] exerted to overcome the resistance encountered." *Id.*, at 861.

A few examples illustrate the point. Under the common law, it was robbery "to seize another's watch or purse, and use sufficient force to break a chain or guard by which it is attached to his person, or to run against another, or rudely push him about, for the purpose of diverting his attention and robbing him." W. Clark & W. Marshall, Law of Crimes 554 (H. Lazell ed., 2d ed. 1905) (Clark & Marshall) (footnotes omitted). Similarly, it was robbery to pull a diamond pin out of a woman's hair when doing so tore away hair attached to the pin. See 2 W. Russell, Crimes and Indictable Misdemeanors 68 (2d ed. 1828). But the crime was larceny, not robbery, if the thief did not have to overcome such resistance.

In fact, common-law authorities frequently used the terms "violence" and "force" interchangeably. See *ibid.* (concluding that "if any injury be done to the person, or there be any struggle by the party to keep possession of the property before it be taken from him, there will be a sufficient actual 'violence'" to establish robbery); Clark & Marshall 553 ("Sufficient *force* must be used to overcome resistance. . . . If there is any injury to the person of the owner, or if he resists the attempt to rob him, and his resistance is overcome, there is sufficient *violence* to make the taking robbery, however slight the resistance" (emphasis added)). The common law also did not distinguish between gradations of "violence." If an act physically overcame a victim's resistance, "however slight" that resistance might be, it necessarily constituted violence. *Ibid.*; 4 W. Blackstone, Commentaries on the Laws of England 242 (1769) (distinguishing "taking . . . by force" from "privately stealing," and stating that the use of this "violence" differentiates robbery from other larcenies); see also 3 *id.*, at 120 (explaining, in the battery context, that

"the law cannot draw the line between different degrees of violence, and therefore totally prohibits the first and lowest stage of it").

The overlap between "force" and "violence" at common law is reflected in modern legal and colloquial usage of these terms. "Force" means "[p]ower, violence, or pressure directed against a person or thing," Black's Law Dictionary 656 (7th ed. 1999), or "unlawful violence threatened or committed against persons or property," Random House Dictionary of the English Language 748 (2d ed. 1987). Likewise, "violence" implies force, including an "unjust or unwarranted use of force." Black's Law Dictionary, at 1564; accord, Random House Dictionary, at 2124 ("rough or injurious physical force, action, or treatment," or "an unjust or unwarranted exertion of force or power, as against rights or laws").

Against this background, Congress, in the original ACCA, defined robbery as requiring the use of "force or violence"—a clear reference to the common law of robbery. See *Samantar* v. *Yousuf*, 560 U. S. 305, 320, n. 13 (2010) ("Congress 'is understood to legislate against a background of common-law . . . principles' "). And the level of "force" or "violence" needed at common law was by this time well established: "Sufficient force must be used to overcome resistance . . . however slight the resistance." Clark & Marshall 553.

In 1986, Congress amended the relevant provisions of ACCA to their current form. The amendment was titled Expansion of Predicate Offenses for Armed Career Criminal Penalties. See Career Criminals Amendment Act of 1986, § 1402, 100 Stat. 3207–39. This amendment replaced the two enumerated crimes of "robbery or burglary" with the current elements clause, a new enumerated-offenses list, and a (now-defunct) residual clause. See *Johnson* v. *United States*, 576 U. S. 591 (2015). In the new statute, robbery was no longer enumerated as a predicate offense. But the newly created elements clause extended ACCA to cover

any offense that has as an element "the use, attempted use, or threatened use of physical *force*." 18 U. S. C. § 924(e)(2)(B)(i) (2012 ed.) (emphasis added).

"'[I]f a word is obviously transplanted from another legal source, whether the common law or other legislation, it brings the old soil with it.'" *Hall* v. *Hall*, 584 U. S. 59, 73 (2018) (quoting Frankfurter, Some Reflections on the Reading of Statutes, 47 Colum. L. Rev. 527, 537 (1947)). That principle supports our interpretation of the term "force" here. By retaining the term "force" in the 1986 version of ACCA and otherwise "[e]xpan[ding]" the predicate offenses under ACCA, Congress made clear that the "force" required for common-law robbery would be sufficient to justify an enhanced sentence under the new elements clause. We can think of no reason to read "force" in the revised statute to require anything more than the degree of "force" required in the 1984 statute. And it would be anomalous to read "force" as *excluding* the quintessential ACCA-predicate crime of robbery, despite the amendment's retention of the term "force" and its stated intent to expand the number of qualifying offenses.

The symmetry between the 1984 definition of robbery (requiring the use of "force or violence") and the 1986 elements clause (requiring the use of "physical force") is striking. By replacing robbery as an enumerated offense with a clause that has "force" as its touchstone, Congress made clear that "force" retained the same common-law definition that undergirded the original definition of robbery adopted a mere two years earlier. That conclusion is reinforced by the fact that the original 1984 statute defined "robbery" using terms with well-established common-law meanings.

Our understanding of "physical force" is further buttressed by the then widely accepted definitions of robbery in the States. In 1986, a significant majority of the States defined nonaggravated robbery as requiring force that over-

comes a victim's resistance. The Government counts 43 States that measured force by this degree, 5 States that required "force" to cause bodily injury, and 2 States and the District of Columbia that permitted force to encompass something less, such as purse snatching. App. B to Brief for United States. Stokeling counters that, at most, 31 States defined force as overcoming victim resistance. Reply Brief 21. We need not declare a winner in this numbers game because, either way, it is clear that many States' robbery statutes would not qualify as ACCA predicates under Stokeling's reading.

His reading would disqualify more than just basic-robbery statutes. Departing from the common-law understanding of "force" would also exclude other crimes that have as an element the force required to commit basic robbery. For instance, Florida requires the same element of "force" for both armed robbery and basic robbery. See Fla. Stat. § 812.13(2)(a) (distinguishing armed robbery from robbery by requiring the additional element of "carr[ying] a firearm or other deadly weapon" during the robbery). Thus, as Stokeling's counsel admitted at oral argument, "armed robbery in Florida" would not qualify under ACCA if his view were adopted. Tr. of Oral Arg. 3–4; see *United States* v. *Lee*, 886 F. 3d 1161, 1163, n. 1 (CA11 2018) (treating "Florida strong-arm robbery [*i. e.*, basic robbery], armed robbery, and attempted robbery . . . the same for purposes of analyzing the ACCA's elements clause").

Where, as here, the applicability of a federal criminal statute requires a state conviction, we have repeatedly declined to construe the statute in a way that would render it inapplicable in many States. See, *e. g.*, *United States* v. *Castleman*, 572 U. S. 157, 167 (2014) (reading "physical force" to include common-law force, in part because a different reading would render 18 U. S. C. § 922(g)(9) "ineffectual in at least 10 States"); *Voisine* v. *United States*, 579 U. S. 686, 696 (2016)

(declining to interpret § 912(a)(33)(A) in a way that would "ris[k] rendering § 922(g)(9) broadly inoperative" in 34 States and the District of Columbia). That approach is appropriate here as well.

B

Our understanding of "physical force" comports with *Johnson* v. *United States*, 559 U. S. 133 (2010). There, the Court held that "'actua[l] and intentiona[l] touching'"—the level of force necessary to commit common-law misdemeanor battery—did not require the "degree of force" necessary to qualify as a "violent felony" under ACCA's elements clause. *Id.*, at 138, 140. To reach this conclusion, the Court parsed the meaning of the phrase "physical force." First, it explained that the modifier "physical" "plainly refers to force exerted by and through concrete bodies—distinguishing physical force from, for example, intellectual force or emotional force." *Id.*, at 138. The Court then considered "whether the term 'force' in [the elements clause] has the specialized meaning that it bore in the common-law definition of battery." *Id.*, at 139. After reviewing the context of the statute, the Court rejected the Government's suggestion that "force" encompassed even the "slightest offensive touching." *Ibid.* Instead, it held that "physical force" means "*violent* force—that is, force capable of causing physical pain or injury to another person." *Id.*, at 140. Applying that standard to a Florida battery law criminalizing "*any* intentional physical contact," the Court concluded that the law did not require the use of "physical force" within the meaning of ACCA. *Ibid.*

Stokeling argues that *Johnson* rejected as insufficient the degree of "force" required to commit robbery under Florida law because it is not "substantial force." We disagree. The nominal contact that *Johnson* addressed involved physical force that is different in kind from the violent force necessary to overcome resistance by a victim. The force necessary for misdemeanor battery does not require resistance or

even physical aversion on the part of the victim; the "unwanted" nature of the physical contact itself suffices to render it unlawful. See *State* v. *Hearns*, 961 So. 2d 211, 216 (Fla. 2007).

By contrast, the force necessary to overcome a victim's physical resistance is inherently "violent" in the sense contemplated by *Johnson*, and "suggest[s] a degree of power that would not be satisfied by the merest touching." 559 U. S., at 139. This is true because robbery that must overpower a victim's will—even a feeble or weak-willed victim—necessarily involves a physical confrontation and struggle. The altercation need not cause pain or injury or even be prolonged; it is the physical contest between the criminal and the victim that is itself "capable of causing physical pain or injury." *Id.*, at 140. Indeed, *Johnson* itself relied on a definition of "physical force" that specifically encompassed robbery: "'[f]orce consisting in a physical act, *esp. a violent act directed against a robbery victim*.'" *Id.*, at 139 (quoting Black's Law Dictionary 717 (9th ed. 2009); emphasis added). Robbery thus has always been within the "'category of violent, active crimes'" that Congress included in ACCA. 559 U. S., at 140.

To get around *Johnson*, Stokeling cherry picks adjectives from parenthetical definitions in the opinion, insisting that the level of force must be "severe," "extreme," "furious," or "vehement." These adjectives cannot bear the weight Stokeling would place on them. They merely supported *Johnson*'s actual holding: that common-law battery does not require "force capable of causing physical pain or injury." *Ibid.* *Johnson* did not purport to establish a force threshold so high as to exclude even robbery from ACCA's scope. Moreover, Stokeling ignores that the Court also defined "violence" as "'*unjust or improper* force.'" *Ibid.* (emphasis added). As explained above, the common law similarly linked the terms "violence" and "force." Overcoming a victim's resistance was *per se* violence against the victim, even

if it ultimately caused minimal pain or injury. See Russell, Crimes and Indictable Misdemeanors, at 68.

C

In the wake of *Johnson*, the Court has repeated its holding that "physical force" means " 'force capable of causing physical pain or injury.' " *Sessions* v. *Dimaya*, 584 U. S. 148, 170 (2018) (quoting *Johnson*, *supra*, at 140); see also *Castleman*, *supra*, at 173–174 (Scalia, J., concurring in part and concurring in judgment).

Finding this definition difficult to square with his position, Stokeling urges us to adopt a new, heightened reading of physical force: force that is "reasonably expected to cause pain or injury." For the reasons already explained, that definition is inconsistent with the degree of force necessary to commit robbery at common law. Moreover, the Court declined to adopt that standard in *Johnson*, even after considering similar language employed in a nearby statutory provision, 18 U. S. C. § 922(g)(8)(C)(ii). 559 U. S., at 143. The Court instead settled on "force *capable* of causing physical pain or injury." *Id.*, at 140 (emphasis added). "Capable" means "susceptible" or "having attributes . . . required for performance or accomplishment" or "having traits conducive to or features permitting." Webster's Ninth New Collegiate Dictionary 203 (1983); see also Oxford American Dictionary and Thesaurus 180 (2d ed. 2009) ("having the ability or quality necessary to do"). *Johnson* thus does not require any particular degree of likelihood or probability that the force used will cause physical pain or injury; only potentiality.

Stokeling's proposed standard would also prove exceedingly difficult to apply. Evaluating the statistical probability that harm will befall a victim is not an administrable standard under our categorical approach. Crimes can be committed in many different ways, and it would be difficult to assess whether a crime is categorically likely to harm the

victim, especially when the statute at issue lacks fine-tuned gradations of "force." We decline to impose yet another indeterminable line-drawing exercise on the lower courts.

Stokeling next contends that *Castleman* held that minor uses of force do not constitute "violent force," but he misreads that opinion. In *Castleman*, the Court noted that for purposes of a statute focused on domestic-violence misdemeanors, crimes involving relatively "[m]inor uses of force" that might not "constitute 'violence' in the generic sense" could nevertheless qualify as predicate offenses. 572 U. S., at 165. The Court thus had no need to decide more generally whether, under *Johnson*, conduct that leads to relatively minor forms of injury—such as "'a cut, abrasion, [or] bruise'"—"necessitate[s]" the use of "violent force." 572 U. S., at 170. Only Justice Scalia's separate opinion addressed that question, and he concluded that force as small as "'hitting, slapping, shoving, grabbing, pinching, biting, and hair pulling,'" *id.*, at 182 (alterations omitted), satisfied *Johnson*'s definition. He reasoned that "[n]one of those actions bears any real resemblance to mere offensive touching, and all of them are capable of causing physical pain or injury." 572 U. S., at 182. This understanding of "physical force" is consistent with our holding today that force is "capable of causing physical injury" within the meaning of *Johnson* when it is sufficient to overcome a victim's resistance. Such force satisfies ACCA's elements clause.

III

We now apply these principles to Florida's robbery statute to determine whether it "has as an element the use, attempted use, or threatened use of physical force against the person of another." 18 U. S. C. § 924(e)(2)(B)(i). We conclude that it does.

As explained, Florida law defines robbery as "the taking of money or other property . . . from the person or custody of another, . . . when in the course of the taking there is the

use of force, violence, assault, or putting in fear." Fla. Stat. § 812.13(1). The Florida Supreme Court has made clear that this statute requires "resistance by the victim that is overcome by the physical force of the offender." *Robinson* v. *State*, 692 So. 2d 883, 886 (1997). Mere "snatching of property from another" will not suffice. *Ibid.*

Several cases cited by the parties illustrate the application of the standard articulated in *Robinson*. For example, a defendant who grabs the victim's fingers and peels them back to steal money commits robbery in Florida. *Sanders* v. *State*, 769 So. 2d 506, 507–508 (Fla. App. 2000). But a defendant who merely snatches money from the victim's hand and runs away has not committed robbery. *Goldsmith* v. *State*, 573 So. 2d 445 (Fla. App. 1991). Similarly, a defendant who steals a gold chain does not use "'force,' within the meaning of the robbery statute," simply because the victim "fe[els] his fingers on the back of her neck." *Walker* v. *State*, 546 So. 2d 1165, 1166–1167 (Fla. App. 1989). It is worth noting that, in 1999, Florida enacted a separate "sudden snatching" statute that proscribes this latter category of conduct; under that statute, it is unnecessary to show either that the defendant "used any amount of force beyond that effort necessary to obtain possession of the money or other property" or that "[t]here was any resistance offered by the victim to the offender." Fla. Stat. § 812.131 (1999).

Thus, the application of the categorical approach to the Florida robbery statute is straightforward. Because the term "physical force" in ACCA encompasses the degree of force necessary to commit common-law robbery, and because Florida robbery requires that same degree of "force," Florida robbery qualifies as an ACCA-predicate offense under the elements clause. Cf. *Descamps* v. *United States*, 570 U. S. 254, 261 (2013) ("If the relevant statute has the same elemen[t]," "then the prior conviction can serve as an ACCA predicate").

IV

In sum, "physical force," or "force capable of causing physical pain or injury," *Johnson*, 559 U. S., at 140, includes the amount of force necessary to overcome a victim's resistance. Robbery under Florida law corresponds to that level of force and therefore qualifies as a "violent felony" under ACCA's elements clause. For these reasons, we affirm the judgment of the Eleventh Circuit.

It is so ordered.

JUSTICE SOTOMAYOR, with whom THE CHIEF JUSTICE, JUSTICE GINSBURG, and JUSTICE KAGAN join, dissenting.

In *Johnson* v. *United States*, 559 U. S. 133 (2010), this Court ruled that the words "physical force" in the Armed Career Criminal Act (ACCA), 18 U. S. C. § 924(e)(2), denote a heightened degree of force rather than the minimal contact that would have qualified as "force" for purposes of the common-law crime of battery. 559 U. S., at 139–140. This case asks whether Florida robbery requires such "physical force," and thus qualifies as a "violent felony" under the ACCA, even though it can be committed through use of only slight force. See § 924(e)(2)(B). Under *Johnson*, the answer to that question is no. Because the Court's contrary ruling distorts *Johnson*, I respectfully dissent.

I

As the majority explains, petitioner Denard Stokeling pleaded guilty in 2016 to being a felon in possession of a firearm in violation of 18 U. S. C. § 922(g)(1). The Government and the probation department argued for an increased sentence under the ACCA. Stokeling objected.

The ACCA imposes a 15-year mandatory-minimum sentence on any § 922(g) offender who has been convicted of at least three qualifying predicate convictions. § 924(e)(1). As relevant here, a past conviction can qualify as an ACCA

predicate if it is what the ACCA calls a "violent felony"—that is, "any crime punishable by imprisonment for a term exceeding one year" that

> "(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or
>
> "(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another." § 924(e)(2)(B).

Clause (i) is often called the "elements clause" (or "force clause"), because it requires each qualifying crime to have an element involving force. The first part of clause (ii) is often called the "enumerated clause," because it enumerates certain generic crimes—such as burglary—that Congress sought to cover. The final part of clause (ii), often called the "residual clause," once offered a catchall to sweep in otherwise uncovered convictions, but the Court struck it down as unconstitutionally vague in 2015. See *Johnson* v. *United States*, 576 U. S. 591, 605. So the elements clause and the enumerated clause are now the only channels by which a prior conviction can qualify as an ACCA "violent felony."

Whether Stokeling is subject to the ACCA's 15-year mandatory minimum hinges on whether his 1997 conviction for Florida robbery, see App. 10, qualifies under the elements clause. To determine whether a conviction qualifies as a violent felony under the ACCA, courts apply a method called the categorical approach. See *Taylor* v. *United States*, 495 U. S. 575, 600–602 (1990). In the elements-clause context, that method requires asking whether the least culpable conduct covered by the statute at issue nevertheless "has as an element the use, attempted use, or threatened use of physical force against the person of another." § 924(e)(2); see *Johnson*, 559 U. S., at 137. If it does not, then the statute is too broad to qualify as a "violent felony." In determining what

a state crime covers for purposes of this federal sentencing enhancement, federal courts look to, and are constrained by, state courts' interpretations of state law. See *id.*, at 138.

As relevant here, Florida law defines robbery as "the taking of money or other property . . . from the person or custody of another . . . when in the course of the taking there is the use of force, violence, assault, or putting in fear." Fla. Stat. §812.13(1) (2017). The Florida Supreme Court has interpreted the statute's reference to force to require "force sufficient to overcome a victim's resistance." *Robinson* v. *State*, 692 So. 2d 883, 887 (1997). Otherwise, the "degree of force used is immaterial." *Montsdoca* v. *State*, 84 Fla. 82, 86, 93 So. 157, 159 (1922). If the resistance is minimal, the force need only be minimal as well.

II

Florida robbery, as interpreted and applied by the Florida courts, covers too broad a range of conduct to qualify as a "violent felony" under the ACCA. Both the text and purpose of the ACCA—particularly as they have already been construed by our precedents—demonstrate why.

A

In considering the text of the ACCA, we do not write on a clean slate. As everyone seems to agree, the key precedent here is this Court's decision in *Johnson* v. *United States*, 559 U. S. 133. See *ante*, at 77, 82. But while the majority claims to honor *Johnson*, *ante*, at 82–84, it does so in the breach.

Johnson concerned whether Florida battery qualified as an ACCA predicate under the elements clause. This Court held that it did not. To arrive at that answer, the Court was required to interpret what exactly Congress meant when it used the words "physical force" to define the kind of "violent felony" that should be captured by the ACCA's elements clause. See 559 U. S., at 138–143.

Rather than parsing "cherry pick[ed] adjectives," *ante*, at 83, it is instructive to look to how *Johnson* actually answered that question. Writing for the Court, Justice Scalia explained:

> "We think it clear that in the context of a statutory definition of '*violent* felony,' the phrase 'physical force' means *violent* force—that is, force capable of causing physical pain or injury to another person. See *Flores* v. *Ashcroft*, 350 F. 3d 666, 672 (CA7 2003) (Easterbrook, J.). Even by itself, the word 'violent' in § 924(e)(2)(B) connotes a substantial degree of force. Webster's Second 2846 (defining 'violent' as '[m]oving, acting, or characterized, by physical force, esp. by extreme and sudden or by unjust or improper force; furious; severe; vehement . . . '); 19 Oxford English Dictionary 656 (2d ed. 1989) ('[c]haracterized by the exertion of great physical force or strength'); Black's [Law Dictionary] 1706 [(9th ed. 2009)] ('[o]f, relating to, or characterized by strong physical force'). When the adjective 'violent' is attached to the noun 'felony,' its connotation of strong physical force is even clearer. See *id.*, at 1188 (defining 'violent felony' as '[a] crime characterized by extreme physical force, such as murder, forcible rape, and assault and battery with a dangerous weapon'); see also *United States* v. *Doe*, 960 F. 2d 221, 225 (CA1 1992) (Breyer, C. J.) ('[T]he term to be defined, "violent felony," . . . calls to mind a tradition of crimes that involve the possibility of more closely related, active violence')." 559 U. S., at 140–141.

In other words, in the context of a statute delineating "violent felon[ies]," the phrase "physical force" signifies a degree of force that is "*violent*," "substantial," and "strong"—"that is, force capable of causing physical pain or injury to another person." See *id.*, at 140; see also *id.*, at 142 ("As we have discussed . . . the term 'physical force' itself normally con-

notes force strong enough to constitute 'power'—and all the more so when it is contained in a definition of 'violent felony' ").

The majority, slicing *Johnson* up, concentrates heavily on the phrase "capable of causing physical pain or injury" and emphasizes the dictionary definition of the word "capable" to suggest that *Johnson* "does not require any particular degree of likelihood or probability" of "pain or injury"—merely, as with any law professor's eggshell-victim hypothetical, "potentiality." *Ante*, at 84. Our opinions, however, should not be "parsed as though we were dealing with language of a statute," *Reiter* v. *Sonotone Corp.*, 442 U. S. 330, 341 (1979), and in any event, the majority's parsing goes astray. It is clear in context that the Court in *Johnson* did not mean the word "capable" in the way that the majority uses it today, because *Johnson* rejected an interpretation of "physical force" that would have included a crime of battery that could be satisfied by "[t]he most 'nominal contact,' such as a 'ta[p] . . . on the shoulder without consent.' " 559 U. S., at 138. As any first-year torts student (or person with a shoulder injury) quickly learns, even a tap on the shoulder is "capable of causing physical pain or injury" in certain cases. So the Court could not have meant "capable" in the "potentiality" sense that the majority, *ante*, at 84, ascribes to it. Rather, it meant it in the sense that its entire text indicates: "force capable of causing physical pain or injury" in the sense that a "strong" or "substantial degree of force" can cause physical pain or injury. See *Johnson*, 559 U. S., at 140. The phrase denoted, that is, a heightened degree of force.

Florida robbery, as interpreted by the Florida Supreme Court, cannot meet *Johnson*'s definition of physical force. As noted above, Florida robbery requires "force sufficient to overcome a victim's resistance." *Robinson*, 692 So. 2d, at 887. But that can mean essentially no force at all. See *McCloud* v. *State*, 335 So. 2d 257, 258 (Fla. 1976) ("Any degree

of force suffices to convert larceny into a robbery"); *Montsdoca*, 84 Fla., at 86, 93 So., at 159 ("The degree of force used is immaterial"). For example, the force element of Florida robbery is satisfied by a pickpocket who attempts to pull free after the victim catches his arm. See *Robinson*, 692 So. 2d, at 887, n. 10 (citing *Colby* v. *State*, 46 Fla. 112, 113, 35 So. 189, 190 (1903)). Florida courts have held the same for a thief who pulls cash from a victim's hand by "'peel[ing his] fingers back,'" regardless of "[t]he fact that [the victim] did not put up greater resistance." *Sanders* v. *State*, 769 So. 2d 506, 507 (Fla. App. 2000). The Government concedes, similarly, that a thief who grabs a bag from a victim's shoulder also commits Florida robbery, so long as the victim instinctively holds on to the bag's strap for a moment. See Tr. of Oral Arg. 32–34; see also *Benitez-Saldana* v. *State*, 67 So. 3d 320, 322–323 (Fla. App. 2011). And Stokeling points to at least one person who was convicted of Florida robbery after causing a bill to rip while pulling cash from a victim's hand. See App. B to Brief for Petitioner.

While these acts can, of course, be accomplished with more than minimal force, they need not be. The thief who loosens an already loose grasp or (assuming the angle is right) tears the side of a $5 bill has hardly used any force at all. Nor does the thief who simply pulls his arm free from a store employee's weak grasp or snatches a handbag onto which a victim fleetingly holds use "force capable of causing physical pain or injury to another person" in the sense that *Johnson* meant the phrase, because he does not use "a substantial degree of force" or "strong physical force." 559 U. S., at 140. By providing that "[a]ny degree of force suffices to convert larceny into a robbery," *McCloud*, 335 So. 2d, at 258—and thus making robbers out of thieves who use minimal force—Florida expands its law beyond the line that *Johnson* drew. The least culpable conduct proscribed by Fla. Stat. §812.13 does not entail "physical force,"

§ 924(e)(2)(B)(i), as this Court properly construed that phrase in *Johnson*.

B

The purpose underlying the ACCA confirms that a robbery statute that sweeps as broadly as Florida's does not qualify as an ACCA predicate.

As noted above, the ACCA prescribes a 15-year mandatory-minimum prison term for anyone convicted of being a felon in possession of a firearm so long as that person has three qualifying past convictions. In *Begay* v. *United States*, 553 U. S. 137 (2008), this Court explained that, "[a]s suggested by its title, the Armed Career Criminal Act focuses upon the special danger created when a particular type of offender—a violent criminal or drug trafficker—possesses a gun." *Id.*, at 146. The ACCA, that is to say, does not look to past crimes simply to get a sense of whether a particular defendant is generally a recidivist; rather, it looks to past crimes to determine specifically "the kind or degree of danger the offender would pose were he to possess a gun." *Ibid.*

Begay considered whether a New Mexico felony conviction for driving under the influence of alcohol (DUI) qualified as an ACCA predicate under the now-defunct residual clause. See *id.*, at 141–142. Felony DUI, the Court explained, did not fit with the types of crimes that Congress was trying to capture, because while it "reveal[ed] a degree of callousness toward risk," it did not "show an increased likelihood that the offender is the kind of person who might deliberately point [a] gun and pull the trigger." *Id.*, at 146. The Court had "no reason to believe that Congress intended a 15-year mandatory prison term where that increased likelihood does not exist." *Ibid.*

The same is true here. The lower grade offenders whom Florida still chooses to call "robbers" do not bear the hallmarks of being the kind of people who are likely to point a

gun and pull the trigger, nor have they committed the more aggravated conduct—pointing a weapon, inflicting bodily injury—that most people think of when they hear the colloquial term "robbery." Under Florida law, "robbers" can be glorified pickpockets, shoplifters, and purse snatchers. No one disputes that such an offender, if later discovered illegally in possession of a firearm, will in many cases merit greater punishment as a result of the past offense; unless it occurred far in the past, such a conviction will typically increase that defendant's advisory sentencing range under the U. S. Sentencing Guidelines. See *Rosales-Mireles* v. *United States*, 585 U. S. 129, 133–134 (2018); United States Sentencing Commission, Guidelines Manual §§ 1B1.1(a)(6)–(7), 4A1.1, 4A1.2(e) (Nov. 2018). But there is "no reason to believe that Congress intended a 15-year mandatory prison term" for such offenders, who do not present the increased risk of gun violence that more aggravated offenders present. *Begay*, 553 U. S., at 146.

III

Unable to rely heavily on text, precedent, or purpose to support its holding that Florida robbery qualifies as an ACCA "violent felony," the majority turns to the common law, to legislative and statutory history, and finally to what it perceives as the consequences of ruling for Stokeling. None of these rationales is persuasive.

A

The majority observes that Florida's statute requires no less force than was necessary to commit common-law robbery. That may well be true: The majority notes, for example, that at common law "it was robbery to pull a diamond pin out of a woman's hair when doing so tore away hair attached to the pin," *ante*, at 78, and as anyone who has ever pulled a bobby pin out of her hair knows, hair can break from even the most minimal force. In the majority's telling,

however, the ACCA itself "encompasses the degree of force necessary to commit common-law robbery." *Ante*, at 86. That proposition is flatly inconsistent with *Johnson*.

In explaining its interpretation of "physical force," the Court in *Johnson* expressly rejected the common law's definition of "force," see 559 U. S., at 139, instead recognizing that the phrase should be "give[n] . . . its ordinary meaning," *id.*, at 138. At common law, "force" could be "satisfied by even the slightest offensive touching." *Id.*, at 139. But as the Court observed, "[a]lthough a common-law term of art should be given its established common-law meaning, we do not assume that a statutory word is used as a term of art where that meaning does not fit." *Ibid.* (citation omitted). Rather, "context determines meaning," *ibid.*, and, "in the context of a statutory definition of '*violent* felony,' " the ordinary rather than the common-law meaning of "force" was what fit, *id.*, at 140.

The majority now says that while *Johnson* rejected the common-law meaning of force with regard to battery, it nevertheless meant somehow to preserve the common-law meaning of force with regard to robbery. See *ante*, at 77–80, 82–84. In other words, to reach its conclusion, the majority must construe "physical force" in § 924(e)(2)(B)(i) to bear two different meanings—*Johnson*'s and the majority's—depending on the crime to which it is being applied. That is a radical and unsupportable step.

To be clear, the majority does not simply rule that the phrase "physical force" carries the common-law meaning in one place but a different meaning in another statutory provision. There would certainly be precedent for that. See, *e. g.*, *United States* v. *Castleman*, 572 U. S. 157, 162–168 (2014) (explaining why the phrase "physical force" took on a common-law meaning, rather than its ACCA meaning under *Johnson*, in the context of a statute defining a " 'misdemeanor crime of domestic violence' "). *Johnson*, in fact,

expressly reserved the question whether "physical force" might mean something different in the context of a different statutory definition. See 559 U. S., at 143–144.

What *Johnson* did not do, however, was suggest that "physical force" in a single clause—the elements clause—that *Johnson* addressed might mean two different things for two different crimes. See *id.*, at 143 ("We have interpreted the phrase 'physical force' only in the context of a statutory definition of 'violent felony' "); see also *id.*, at 138–142. *Johnson* had good reason not to say so: because that is not how we have said that statutory interpretation works. See, *e. g.*, *Clark* v. *Martinez*, 543 U. S. 371, 378 (2005) (observing that a single statutory word or phrase "cannot . . . be interpreted to do" two different things "at the same time"); *Ratzlaf* v. *United States*, 510 U. S. 135, 143 (1994) (similar).

Starting today, however, the phrase "physical force" in § 924(e)(2)(B)(i) will apparently lead a Janus-faced existence. When it comes to battery, that phrase will look toward ordinary meaning; when it comes to robbery, that same piece of statutory text will look toward the common law. To the extent that is a tenable construction, the majority has announced a brave new world of textual interpretation. To the extent that a phrase so divided cannot stand, meanwhile, one could be forgiven for thinking that the majority, though it claims to praise *Johnson*, comes instead to bury it.

B

To shore up its argument that the ACCA's use of the phrase "physical force," at least in the context of robbery, takes on the common-law meaning of "force," the majority invokes the history of the ACCA. Statutory history is no help to the majority here.

As the majority notes, a precursor to the ACCA prescribed a mandatory-minimum sentence for people convicted of firearm offenses who had three qualifying prior convictions "for robbery or burglary." 18 U. S. C. App. § 1202(a)

(1982 ed., Supp. II). That statute defined robbery, as relevant, as "the taking of the property of another . . . by force or violence." § 1202(c)(8) (1982 ed., Supp. II). See *ante*, at 77. In other words, it is undisputed that at one point, in a previous statute, Congress enumerated robbery as a qualifying predicate and used the words "force or violence" to describe a generic version of the crime.

Then, in 1986, Congress changed the statute, substituting instead the language we know today. See Career Criminals Amendment Act of 1986, § 1402, 100 Stat. 3207–39. Gone was any explicit reference to "robbery"; in its place came not only the elements clause (our focus here) but also the enumerated clause (which retained an express reference to "burglary" but omitted "robbery") and the capacious residual clause (struck down in 2015). See *ante*, at 79–80; *supra*, at 88; see also *Taylor*, 495 U. S., at 582–584. So Congress did two salient things: It expanded the predicates in general, and it deleted an express reference to robbery.

The majority reasons that because (1) the old law's definition of "robbery" as a taking involving "force or violence" matched various common-law definitions of robbery, (2) Congress kept the word "force" (though not "or violence") in the new law's elements clause while deleting the word "robbery," and (3) Congress meant to expand the enhancement's reach in a general sense, Congress must have meant for the phrase "physical force" in the new law also to carry the common-law meaning of robbery. See *ante*, at 77–80. The conclusion that the majority draws from these premises does not follow, for at least four reasons.

First, as already discussed, the question whether Congress' use of the phrase "physical force" in the new law—that is, in the ACCA's elements clause—carries the common-law meaning of "force" was already asked and answered by *Johnson*: It does not. See 559 U. S., at 138–143, 145; *supra*, at 95–96. This part of the majority's argument may be couched in statutory history, but it is no more than an attempt to relitigate *Johnson*.

Second, Congress deleted the word "robbery" from the statute altogether while still enumerating robbery's former neighbor, "burglary," in the enumerated clause. See *supra*, at 88, 97. When Congress keeps one piece of statutory text while deleting another, we generally "have no trouble concluding that" it does so with purpose, *Director of Revenue of Mo.* v. *CoBank ACB*, 531 U. S. 316, 324 (2001), absent some reason to believe that the missing term simply got "lost in the shuffle," *United States* v. *Wilson*, 503 U. S. 329, 336 (1992). See also, *e. g.*, *Russello* v. *United States*, 464 U. S. 16, 23–24 (1983) ("Where Congress includes limiting language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the limitation was not intended"). Here, it is inconceivable that Congress simply lost track of robbery, one of only two generic crimes that it enumerated in the old statute. Accordingly, if Congress had wanted to retain the old statute's specific emphasis on robbery, the natural reading is that it would have accomplished that goal the same way it did with burglary: by making it an enumerated offense. That it did not do so is telling.

Third, the fact that Congress wished to "expan[d] the predicate offenses triggering the sentence enhancement," *Taylor*, 495 U. S., at 582, is entirely consistent with paring back the statute's sweep with regard to robbery specifically. I may wish to expand the contents of my refrigerator, but that does not mean that I will buy more of every single item that is currently in it the next time that I go shopping. Here, the ACCA—with its (new, generalized) elements clause, its (augmented) enumerated clause, and (until recently) its highly capacious residual clause—undeniably expanded the precursor statute's bare enumeration of robbery and burglary, regardless of how many robbery statutes qualify as predicates specifically under the elements clause.[1]

[1] Of course, whether Congress wished to pull back the throttle with regard to robbery across the whole ACCA is less certain. (Recall that Congress also enacted the capacious residual clause.) But that is why the

Fourth, even assuming that Congress wanted robbery to remain largely encompassed by the ACCA despite deleting the word from the precursor statute, that intent is fully consistent with properly applying *Johnson* here. The majority, by focusing on the elements clause, ignores the residual clause, which—until it was declared unconstitutional in 2015—provided a home for many crimes regardless of whether they included an element of violent "physical force."[2] Hewing to a proper reading of *Johnson*, in other words, does not require assuming that Congress constricted the precursor statute's application to robbery when it enacted today's ACCA; whatever robberies would have qualified under the old statute presumably could have still qualified under the residual clause during its nearly 20-year existence.

In short, the statutory history does not undermine the conclusion that the ACCA's elements clause, under our precedents, is not broad enough to encompass Florida's robbery

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statutory history cannot tell us what the majority claims that it can about the elements clause specifically. Instead, the more reliable guide is the new text that Congress enacted to replace the old. Cf. *West Virginia Univ. Hospitals, Inc.* v. *Casey*, 499 U. S. 83, 98 (1991) ("The best evidence of [Congress'] purpose is the statutory text adopted by both Houses of Congress and submitted to the President"). And here, Congress omitted generic robbery altogether and made the "violent felony" clause at issue require "physical force." See *supra*, at 88, 90–91, 97.

[2] In fact, the case in which this Court ruled that its decision striking down the residual clause applied retroactively on collateral review centered on a Florida robbery conviction under Fla. Stat. § 812.13(1). See *Welch* v. *United States*, 578 U. S. 120, 124–125 (2016). The Eleventh Circuit, reviewing the defendant's ACCA enhancement on direct appeal, had ruled that Florida robbery (including when, under previous law, it could be accomplished merely "by sudden snatching") qualified as an ACCA predicate under the residual clause without deciding whether it also qualified under the elements clause. See *United States* v. *Welch*, 683 F. 3d 1304, 1310–1314 (2012). Other Circuits likewise ruled, in the years before the clause's demise, that other state robbery statutes qualified under the residual clause. See, *e. g.*, *United States* v. *Mitchell*, 743 F. 3d 1054, 1062–1063 (CA6 2014) (collecting cases).

statute. Congress deleted the word "robbery," kept the word "burglary," supplemented burglary with the catchall residual clause that still captured many robberies outside the elements clause, and used the phrase "physical force" in the elements clause to define a type of "violent felony," which *Johnson* tells us requires more force than the term's common-law meaning denotes. See 559 U. S., at 138–143, 145. Statutory history cannot get the majority past both the text and the force of *stare decisis* here.

C

That leaves the majority with only the practical consequences that it asserts would follow if this Court were to hold that Florida robbery does not qualify under the ACCA's elements clause. See *ante*, at 81. While looking to how an interpretation of a federal statute would affect the applicability of related state statutes can be a useful approach in these cases, see, *e. g.*, *Castleman*, 572 U. S., at 167, the results that follow from a proper reading of *Johnson* are not nearly as incongruous as the majority suggests.

To begin, take the majority's assertion "that many States' robbery statutes would not qualify as ACCA predicates," *ante*, at 81, if the Court were to apply *Johnson* as it was written. The accuracy of this statement is far less certain than the majority's opinion lets on. While Stokeling and the Government come close to agreeing that at least 31 States' robbery statutes do have an overcoming-resistance requirement, see *ante*, at 80–81, that number is not conclusive because neither Stokeling nor the Government has offered an accounting of how many of those States allow minimal force to satisfy that requirement, as Florida does. Because robbery laws vary from State to State, and because even similarly worded statutes may be construed differently by different States' courts, some of those 31 States may well require more force than Florida does. See, *e. g.*, *United States* v. *Doctor*, 842 F. 3d 306, 312 (CA4 2016) (ruling that "there is

no indication that South Carolina robbery by violence"—a statute cited by the Government here—"can be committed with minimal actual force"); see also *Gonzales* v. *Duenas-Alvarez*, 549 U. S. 183, 193 (2007) (explaining that the categorical approach "requires a realistic probability, not a theoretical possibility, that the State would apply its statute to conduct that falls outside the generic definition of a crime").[3]

Furthermore, even if it is true "that many States' robbery statutes would not qualify as ACCA predicates" under a faithful reading of *Johnson*, see *ante*, at 81, that outcome would stem just as much (if not more) from the death of the residual clause as from a decision in this case. As discussed above, various state robbery statutes qualified under that expansive clause for nearly 20 years, until vagueness problems led this Court to strike the clause down as unconstitutional. See *supra*, at 99–100, and n. 2; see also *Johnson* v. *United States*, 576 U. S. 591. The fall of that clause would therefore be an independent cause of any drop in qualifying predicates, regardless of what this Court decides today. (A drop in robbery statutes qualifying as ACCA predicates could also, of course, be traceable to Congress' decision not to continue enumerating robbery when it

[3] The majority is able to suggest that following *Johnson* would beget a larger practical effect because it frames the question presented more broadly than is warranted. The majority avers that "[t]his case requires us to decide whether a robbery offense that has as an element the use of force sufficient to overcome a victim's resistance necessitates the use of 'physical force' within the meaning of the [ACCA]." *Ante*, at 75. But this case hinges on the fact that the Florida courts have ruled that the amount of resistance offered—and therefore the amount of force necessary to overcome it—is irrelevant. See *supra*, at 91–92. In other words, this case presents only the narrower question whether a robbery offense that has as an element the use of force sufficient to overcome a victim's resistance—even if that resistance is minimal—necessitates the use of "physical force" within the meaning of the ACCA. See also Brief for Petitioner i. If a state robbery statute's overcoming-resistance requirement were pegged under state law to more than minimal resistance, this would be a different case.

enacted the ACCA in the first place.) In short, the majority, fearful for the camel, errs in blaming the most recent straw.[4]

Separately, even if a number of simple robbery statutes were to cease qualifying as ACCA predicates, that does not mean—as the majority implies, see *ante*, at 80–81—that the same fate necessarily would befall most or even many aggravated-robbery statutes. The majority offers the single example of Florida aggravated robbery, noting that "Florida requires the same element of 'force' for both armed robbery and basic robbery." *Ante*, at 81. But while the majority accurately describes Florida law, there is scant reason to believe that a great many other States' statutes would be similarly affected, because the effect that hewing to *Johnson* would have on Florida aggravated robbery stems from the idiosyncrasy that Florida aggravated robbery requires neither displaying a weapon nor threatening or inflicting bodily injury.[5] The result for Florida aggravated robbery therefore sheds little light on what would happen to other aggravated-

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[4] The majority's doubling down on *Johnson*'s "capable of causing physical pain or injury" language, see *ante*, at 84, suggests nostalgia for the residual clause (which reads: "otherwise involves conduct that presents a serious potential risk of physical injury to another," 18 U. S. C. § 924(e)(2)(B)). Congress could, at any time, re-enumerate robbery (and any other crimes it might have intended the residual clause to cover) if it so chose. The majority's decision today, meanwhile—with its endorsement of the mere "potentiality" of injury, *ante*, at 84—risks sowing confusion in the lower courts for years to come.

[5] Specifically, hewing to a proper reading of *Johnson* would also affect Florida's aggravated-robbery statute because the crime's only element involving force is the one that it shares with Florida simple robbery. See Fla. Stat. § 812.13(1). In Florida, robbery becomes aggravated if the defendant "carrie[s]" a weapon, § 812.13(2), but that means that the crime sweeps in offenders who never brandished, used, or otherwise intimated that they were armed, see, *e. g.*, *State* v. *Burris*, 875 So. 2d 408, 413 (Fla. 2004), and therefore prevents the crime from necessarily involving the "threatened use of physical force," 18 U. S. C. § 924(e)(2)(B)(i). See also Tr. of Oral Arg. 4 (explaining this point).

robbery statutes, the vast majority of which do (and did at the time of the ACCA's enactment) appear to provide for convictions on such grounds—and whose validity as ACCA predicates would not necessarily turn on the question the Court faces today.[6] The majority mistakes one anomalous result for a reason not to apply *Johnson* as it was written.

[6] See, *e. g.*, Ala. Code § 13A–8–41(a)(2) (2015); Alaska Stat. §§ 11.41.500(a)(2)–(3) (2016); Ariz. Rev. Stat. Ann. § 13–1904(A)(2) (2018); Ark. Code Ann. §§ 5–12–103(a)(2)–(3) (2013); Cal. Penal Code Ann. §§ 12022.53, 12022.7 (West 2018 Cum. Supp.); Colo. Rev. Stat. Ann. § 18–4–302(1)(b) (2018); Conn. Gen. Stat. §§ 53a–134(a)(1), (3) (2017); Del. Code Ann., Tit. 11, §§ 832(a)(1)–(3) (2015); Ga. Code Ann. § 16–8–41(a) (2018); Haw. Rev. Stat. §§ 708–840(1)(a), (b)(ii) (2014); Ill. Comp. Stat., ch. 720, §§ 5/18–1(b)(1), 5/18–2(a)(3)–(4) (2018 Cum. Supp.); Ind. Code § 35–42–5–1 (2018 Cum. Supp.); Kan. Stat. Ann. § 21–5420(b)(2) (Supp. 2017); Ky. Rev. Stat. Ann. §§ 515.020(1)(a), (c) (Lexis 2014); La. Rev. Stat. Ann. §§ 14:64.1(A), 64.3, 64.4(A)(1) (West 2016); Me. Rev. Stat. Ann., Tit. 17–A, § 651(1)(D) (2018 Cum. Supp.); Md. Crim. Law Code Ann. § 3–403(a)(2) (2012); Mich. Comp. Laws Ann. § 750.529 (West 2004); Minn. Stat. § 609.245(2) (2018); Miss. Code Ann. § 97–3–79 (2014); Mo. Rev. Stat. §§ 570.023(1)(1), (3)–(4) (2016); Neb. Rev. Stat. §§ 28–324, 28–1205 (2015); N. H. Rev. Stat. Ann. § 636:1(III)(b) (2016); N. Y. Penal Law Ann. §§ 160.10(2)(a)–(b), 160.15(1), (3)–(4) (West 2015); N. D. Cent. Code Ann. §§ 12.1–22–01(1)–(2) (2012); Ohio Rev. Code Ann. §§ 2911.01(A)(1), (3) (Lexis 2014); Okla. Stat. Ann., Tit. 21, §§ 797(1)–(3), 801 (2015); Ore. Rev. Stat. §§ 164.405(1)(a), 164.415(1)(b)–(c) (2017); 18 Pa. Cons. Stat. §§ 3701(a)(1)(i)–(ii), (iv) (2015); R. I. Gen. Laws § 11–39–1(a) (2002); S. D. Codified Laws § 22–30–6 (2017); Tenn. Code Ann. §§ 39–13–402(a), 39–13–403(a) (2011); Tex. Penal Code Ann. § 29.03(a) (West 2011); Utah Code §§ 76–6–302(1)(a)–(b) (2017); Vt. Stat. Ann., Tit. 13, § 608(c) (2009); Va. Code Ann. §§ 18.2–53.1, 18.2–58 (2014); Wash. Rev. Code §§ 9A.56.200 (1)(a)(ii)–(iii) (2015); W. Va. Code Ann. § 61–2–12(a) (Lexis 2014); Wis. Stat. § 943.32(2) (2005); Wyo. Stat. Ann. § 6–2–401(c) (2017); see also Reply Brief 22–23; App. to Reply Brief 9a–18a (listing 29 States with aggravated-robbery statutes that could have qualified at the time of the ACCA's enactment because of a weapon-using, weapon-displaying, or weapon-representing element; an additional 10 States, excluding duplicates, that could have potentially qualified at that time because of a physical-injury element; and an additional 15 States, some duplicative, with potentially qualifying statutes that have been enacted since).

IV

This Court's decision in *Johnson* tells us that when Congress wrote the words "physical force" in the context of a statute targeting "violent felon[ies]," it eschewed the common-law meaning of those words and instead required a higher degree of force. See 559 U. S., at 138–143, 145. *Johnson* resolves this case. Florida law requires no more than minimal force to commit Florida robbery, and Florida law therefore defines that crime more broadly than Congress defined the elements clause.

The crime that most people think of when they think of "robbery" is a serious one. That is all the more reason, however, that this Court should not allow a dilution of the term in state law to drive the expansion of a federal statute targeted at violent recidivists. Florida law applies the label "robbery" to crimes that are, at most, a half-notch above garden-variety pickpocketing or shoplifting. The Court today does no service to Congress' purposes or our own precedent in deeming such crimes to be "violent felonies"—and thus predicates for a 15-year mandatory-minimum sentence in federal prison.

I respectfully dissent.

Syllabus

NEW PRIME INC. *v.* OLIVEIRA

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

No. 17–340. Argued October 3, 2018—Decided January 15, 2019

Petitioner New Prime Inc. is an interstate trucking company, and respondent Dominic Oliveira is one of its drivers. Mr. Oliveira works under an operating agreement that calls him an independent contractor and contains a mandatory arbitration provision. When Mr. Oliveira filed a class action alleging that New Prime denies its drivers lawful wages, New Prime asked the court to invoke its statutory authority under the Federal Arbitration Act to compel arbitration. Mr. Oliveira countered that the court lacked authority because § 1 of the Act excepts from coverage disputes involving "contracts of employment" of certain transportation workers. New Prime insisted that any question regarding § 1's applicability belonged to the arbitrator alone to resolve, or, assuming the court could address the question, that "contracts of employment" referred only to contracts that establish an employer-employee relationship and not to contracts with independent contractors. The District Court and First Circuit agreed with Mr. Oliveira.

Held:

1. A court should determine whether a § 1 exclusion applies before ordering arbitration. A court's authority to compel arbitration under the Act does not extend to all private contracts, no matter how emphatically they may express a preference for arbitration. Instead, antecedent statutory provisions limit the scope of a court's §§ 3 and 4 powers to stay litigation and compel arbitration "accord[ing to] the terms" of the parties' agreement. Section 2 provides that the Act applies only when the agreement is set forth as "a written provision in any maritime transaction or a contract evidencing a transaction involving commerce." And § 1 helps define § 2's terms, warning, as relevant here, that "nothing" in the Act "shall apply" to "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." For a court to invoke its statutory authority under §§ 3 and 4, it must first know if the parties' agreement is excluded from the Act's coverage by the terms of §§ 1 and 2. This sequencing is significant. See, *e. g.*, *Bernhardt* v. *Polygraphic Co. of America*, 350 U. S. 198, 201–202. New Prime notes that the parties' contract contains a "delegation clause," giving the arbitrator authority to decide threshold questions of arbitrability, and that the "severability principle" requires that both sides take all their disputes to arbitration. But a delegation

clause is merely a specialized type of arbitration agreement and is enforceable under §§ 3 and 4 only if it appears in a contract consistent with § 2 that does not trigger § 1's exception. And, the Act's severability principle applies only if the parties' arbitration agreement appears in a contract that falls within the field §§ 1 and 2 describe. Pp. 110–112.

2. Because the Act's term "contract of employment" refers to any agreement to perform work, Mr. Oliveira's agreement with New Prime falls within § 1's exception. Pp. 112–121.

(a) "[I]t's a 'fundamental canon of statutory construction' that words generally should be 'interpreted as taking their ordinary . . . meaning . . . at the time Congress enacted the statute.' " *Wisconsin Central Ltd.* v. *United States*, 585 U. S. 274, 284 (quoting *Perrin* v. *United States*, 444 U. S. 37, 42). After all, if judges could freely invest old statutory terms with new meanings, this Court would risk amending legislation outside the "single, finely wrought and exhaustively considered, procedure" the Constitution commands. *INS* v. *Chadha*, 462 U. S. 919, 951. The Court would risk, too, upsetting reliance interests by subjecting people today to different rules than they enjoyed when the statute was passed. At the time of the Act's adoption in 1925, the phrase "contract of employment" was not a term of art, and dictionaries tended to treat "employment" more or less as a synonym for "work." Contemporaneous legal authorities provide no evidence that a "contract of employment" necessarily signaled a formal employer-employee relationship. Evidence that Congress used the term "contracts of employment" broadly can be found in its choice of the neighboring term "workers," a term that easily embraces independent contractors. Pp. 113–116.

(b) New Prime argues that by 1925, the words "employee" and "independent contractor" had already assumed distinct meanings. But while the words "employee" and "employment" may share a common root and intertwined history, they also developed at different times and in at least some different ways. The evidence remains that, as dominantly understood in 1925, a "contract of employment" did not necessarily imply the existence of an employer-employee relationship. New Prime's argument that early 20th-century courts sometimes used the phrase "contracts of employment" to describe what are recognized today as agreements between employers and employees does nothing to negate the possibility that the term also embraced agreements by independent contractors to perform work. And its effort to explain away the statute's suggestive use of the term "worker" by noting that the neighboring terms "seamen" and "railroad employees" included only employees in 1925 rests on a precarious premise. The evidence suggests that even "seamen" and "railroad employees" could be independent contractors at the time the Arbitration Act passed. Left to appeal to the Act's policy, New Prime suggests that this Court order arbitration to

Syllabus

abide Congress' effort to counteract judicial hostility to arbitration and establish a favorable federal policy toward arbitration agreements. Courts, however, are not free to pave over bumpy statutory texts in the name of more expeditiously advancing a policy goal. Rather, the Court should respect "the limits up to which Congress was prepared" to go when adopting the Arbitration Act. *United States* v. *Sisson*, 399 U. S. 267, 298. This Court also declines to address New Prime's suggestion that it order arbitration anyway under its inherent authority to stay litigation in favor of an alternative dispute resolution mechanism of the parties' choosing. Pp. 116–121.

857 F. 3d 7, affirmed.

GORSUCH, J., delivered the opinion of the Court, in which all other Members joined, except KAVANAUGH, J., who took no part in the consideration or decision of the case. GINSBURG, J., filed a concurring opinion, *post*, p. 121.

Theodore J. Boutrous, Jr., argued the cause for petitioner. With him on the briefs were *Jason C. Schwartz*, *Joshua S. Lipshutz*, and *Amanda C. Machin*.

Jennifer Bennett argued the cause for respondent. With her on the brief were *Leah M. Nicholls*, *Andrew Schmidt*, and *Hillary Schwab*.*

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*Briefs of *amici curiae* urging reversal were filed for American Trucking Associations, Inc., by *Richard Pianka*; for the Cato Institute by *Andrew M. Grossman*, *John B. Lewis*, *Dustin M. Dow*, and *Ilya Shapiro*; for the Chamber of Commerce of the United States of America et al. by *Andrew J. Pincus*, *Archis A. Parasharami*, *Daniel E. Jones*, and *Warren Postman*; for the Customized Logistics and Delivery Association by *Robert G. Hulteng*; and for the New England Legal Foundation by *Benjamin G. Robbins* and *Martin J. Newhouse*.

Briefs of *amici curiae* urging affirmance were filed for the Commonwealth of Massachusetts et al. by *Maura Healey*, Attorney General of Massachusetts, and *Karla E. Zarbo*, Assistant Attorney General, and by the Attorneys General for their respective jurisdictions as follows: *Xavier Becerra* of California, *George Jepsen* of Connecticut, *Karl A. Racine* of the District of Columbia, *Lisa Madigan* of Illinois, *Brian E. Frosh* of Maryland, *Lori Swanson* of Minnesota, *Gurbir S. Grewal* of New Jersey, *Barbara D. Underwood* of New York, *Josh Stein* of North Carolina, *Ellen F. Rosenblum* of Oregon, *Josh Shapiro* of Pennsylvania, *Thomas J. Donovan, Jr.*, of Vermont, *Mark R. Herring* of Virginia, and *Robert W. Ferguson* of Washington; for the American Association for Justice by *Gerson*

JUSTICE GORSUCH delivered the opinion of the Court.

The Federal Arbitration Act requires courts to enforce private arbitration agreements. But like most laws, this one bears its qualifications. Among other things, § 1 says that "nothing herein" may be used to compel arbitration in disputes involving the "contracts of employment" of certain transportation workers. 9 U. S. C. § 1. And that qualification has sparked these questions: When a contract delegates questions of arbitrability to an arbitrator, must a court leave disputes over the application of § 1's exception for the arbitrator to resolve? And does the term "contracts of employment" refer only to contracts between employers and employees, or does it also reach contracts with independent contractors? Because courts across the country have disagreed on the answers to these questions, we took this case to resolve them.

I

New Prime is an interstate trucking company and Dominic Oliveira works as one of its drivers. But, at least on paper, Mr. Oliveira isn't an employee; the parties' contracts label him an independent contractor. Those agreements also instruct that any disputes arising out of the parties' relationship should be resolved by an arbitrator—even disputes over the scope of the arbitrator's authority.

H. Smoger, *Elise Sanguinetti*, and *Jeffrey R. White*; for the Constitutional Accountability Center by *Elizabeth B. Wydra*, *Brianne J. Gorod*, and *Brian R. Frazelle*; for Employment Law Scholars by *Anna P. Prakash* and *John G. Albanese*; for Historians by *Sachin S. Pandya* and *Richard Frankel*; for the International Brotherhood of Teamsters et al. by *Catherine K. Ruckelshaus*; for Public Citizen, Inc., by *Scott L. Nelson* and *Allison M. Zieve*; for Statutory Construction Scholars by *Peter Romer-Friedman*, *Jahan Sagafi*, and *Nantiya Ruan*; for Sen. Sheldon Whitehouse by *Mr. Whitehouse*, *pro se*; and for Steve Viscelli et al. by *D. Michael Dale*, *Craig J. Ackermann*, and *Sam Vahedi*.

Paul D. Cullen, Sr., and *Paul D. Cullen, Jr.*, filed a brief for the Owner-Operator Independent Drivers Association, Inc., as *amicus curiae*.

Eventually, of course, a dispute did arise. In a class-action lawsuit in federal court, Mr. Oliveira argued that New Prime denies its drivers lawful wages. The company may call its drivers independent contractors. But, Mr. Oliveira alleged, in reality New Prime treats them as employees and fails to pay the statutorily due minimum wage. In response to Mr. Oliveira's complaint, New Prime asked the court to invoke its statutory authority under the Act and compel arbitration according to the terms found in the parties' agreements.

That request led to more than a little litigation of its own. Even when the parties' contracts mandate arbitration, Mr. Oliveira observed, the Act doesn't *always* authorize a court to enter an order compelling it. In particular, § 1 carves out from the Act's coverage "contracts of employment of . . . workers engaged in foreign or interstate commerce." And at least for purposes of this collateral dispute, Mr. Oliveira submitted, it doesn't matter whether you view him as an employee or an independent contractor. Either way, his agreement to drive trucks for New Prime qualifies as a "contrac[t] of employment of [a] worke[r] engaged in . . . interstate commerce." Accordingly, Mr. Oliveira argued, the Act supplied the district court with no authority to compel arbitration in this case.

Naturally, New Prime disagreed. Given the extraordinary breadth of the parties' arbitration agreement, the company insisted that any question about § 1's application belonged for the arbitrator alone to resolve. Alternatively and assuming a court could address the question, New Prime contended that the term "contracts of employment" refers only to contracts that establish an employer-employee relationship. And because Mr. Oliveira is, in fact as well as form, an independent contractor, the company argued, § 1's exception doesn't apply; the rest of the statute does; and the district court was (once again) required to order arbitration.

Ultimately, the district court and the First Circuit sided with Mr. Oliveira. 857 F. 3d 7 (2017). The court of appeals

held, first, that in disputes like this a court should resolve whether the parties' contract falls within the Act's ambit or § 1's exclusion before invoking the statute's authority to order arbitration. Second, the court of appeals held that § 1's exclusion of certain "contracts of employment" removes from the Act's coverage not only employer-employee contracts but also contracts involving independent contractors. So under any account of the parties' agreement in this case, the court held, it lacked authority under the Act to order arbitration. We granted certiorari. 583 U. S. 1155 (2018).

II

In approaching the first question for ourselves, one thing becomes clear immediately. While a court's authority under the Arbitration Act to compel arbitration may be considerable, it isn't unconditional. If two parties agree to arbitrate future disputes between them and one side later seeks to evade the deal, §§ 3 and 4 of the Act often require a court to stay litigation and compel arbitration "accord[ing to] the terms" of the parties' agreement. But this authority doesn't extend to *all* private contracts, no matter how emphatically they may express a preference for arbitration.

Instead, antecedent statutory provisions limit the scope of the court's powers under §§ 3 and 4. Section 2 provides that the Act applies only when the parties' agreement to arbitrate is set forth as a "written provision in any maritime transaction or a contract evidencing a transaction involving commerce." And § 1 helps define § 2's terms. Most relevant for our purposes, § 1 warns that "nothing" in the Act "shall apply" to "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." Why this very particular qualification? By the time it adopted the Arbitration Act in 1925, Congress had already prescribed alternative employment dispute resolution regimes for many transportation workers. And it seems Congress "did not wish to unsettle" those arrangements in favor of whatever arbitration procedures the parties' private contracts might happen to contem-

plate. *Circuit City Stores, Inc.* v. *Adams*, 532 U. S. 105, 121 (2001).

Given the statute's terms and sequencing, we agree with the First Circuit that a court should decide for itself whether § 1's "contracts of employment" exclusion applies before ordering arbitration. After all, to invoke its statutory powers under §§ 3 and 4 to stay litigation and compel arbitration according to a contract's terms, a court must first know whether the contract itself falls within or beyond the boundaries of §§ 1 and 2. The parties' private agreement may be crystal clear and require arbitration of every question under the sun, but that does not necessarily mean the Act authorizes a court to stay litigation and send the parties to an arbitral forum.

Nothing in our holding on this score should come as a surprise. We've long stressed the significance of the statute's sequencing. In *Bernhardt* v. *Polygraphic Co. of America*, 350 U. S. 198, 201–202 (1956), we recognized that "Sections 1, 2, and 3 [and 4] are integral parts of a whole. . . . [Sections] 1 and 2 define the field in which Congress was legislating," and §§ 3 and 4 apply only to contracts covered by those provisions. In *Circuit City*, we acknowledged that "Section 1 exempts from the [Act] contracts of employment of transportation workers." 532 U. S., at 119. And in *Southland Corp.* v. *Keating*, 465 U. S. 1, 10–11, and n. 5 (1984), we noted that "the enforceability of arbitration provisions" under §§ 3 and 4 depends on whether those provisions are "part of a written maritime contract or a contract 'evidencing a transaction involving commerce'" under § 2—which, in turn, depends on the application of § 1's exception for certain "contracts of employment."

To be sure, New Prime resists this straightforward understanding. The company argues that an arbitrator should resolve any dispute over § 1's application because of the "delegation clause" in the parties' contract and what is sometimes called the "severability principle." A delegation clause gives an arbitrator authority to decide even the initial

question whether the parties' dispute is subject to arbitration. *Rent-A-Center, West, Inc.* v. *Jackson*, 561 U. S. 63, 68–69 (2010). And under the severability principle, we treat a challenge to the validity of an arbitration agreement (or a delegation clause) separately from a challenge to the validity of the entire contract in which it appears. *Id.*, at 70–71. Unless a party specifically challenges the validity of the agreement to arbitrate, both sides may be required to take all their disputes—including disputes about the validity of their broader contract—to arbitration. *Ibid.* Applying these principles to this case, New Prime notes that Mr. Oliveira has not specifically challenged the parties' delegation clause and submits that any controversy should therefore proceed only and immediately before an arbitrator.

But all this overlooks the necessarily antecedent statutory inquiry we've just discussed. A delegation clause is merely a specialized type of arbitration agreement, and the Act "operates on this additional arbitration agreement just as it does on any other." *Id.*, at 70. So a court may use §§ 3 and 4 to enforce a delegation clause only if the clause appears in a "written provision in . . . a contract evidencing a transaction involving commerce" consistent with § 2. And only if the contract in which the clause appears doesn't trigger § 1's "contracts of employment" exception. In exactly the same way, the Act's severability principle applies only if the parties' arbitration agreement appears in a contract that falls within the field §§ 1 and 2 describe. We acknowledged as much some time ago, explaining that, before invoking the severability principle, a court should "determin[e] that the contract in question is within the coverage of the Arbitration Act." *Prima Paint Corp.* v. *Flood & Conklin Mfg. Co.*, 388 U. S. 395, 402 (1967).

III

That takes us to the second question: Did the First Circuit correctly resolve the merits of the § 1 challenge in this case? Recall that § 1 excludes from the Act's compass "contracts of employment of . . . workers engaged in . . . interstate com-

erce." Happily, everyone before us agrees that Mr. Oliveira qualifies as a "worke[r] engaged in . . . interstate commerce." For purposes of this appeal, too, Mr. Oliveira is willing to assume (but not grant) that his contracts with New Prime establish only an independent contractor relationship.

With that, the disputed question comes into clear view: What does the term "contracts of employment" mean? If it refers only to contracts that reflect an employer-employee relationship, then § 1's exception is irrelevant and a court is free to order arbitration, just as New Prime urges. But if the term *also* encompasses contracts that require an independent contractor to perform work, then the exception takes hold and a court lacks authority under the Act to order arbitration, exactly as Mr. Oliveira argues.

A

In taking up this question, we bear an important caution in mind. "[I]t's a 'fundamental canon of statutory construction' that words generally should be 'interpreted as taking their ordinary . . . meaning . . . at the time Congress enacted the statute.'" *Wisconsin Central Ltd.* v. *United States*, 585 U. S. 274, 284 (2018) (quoting *Perrin* v. *United States*, 444 U. S. 37, 42 (1979)). See also *Sandifer* v. *United States Steel Corp.*, 571 U. S. 220, 227 (2014). After all, if judges could freely invest old statutory terms with new meanings, we would risk amending legislation outside the "single, finely wrought and exhaustively considered, procedure" the Constitution commands. *INS* v. *Chadha*, 462 U. S. 919, 951 (1983). We would risk, too, upsetting reliance interests in the settled meaning of a statute. Cf. 2B N. Singer & J. Singer, Sutherland on Statutes and Statutory Construction § 56A:3 (rev. 7th ed. 2012). Of course, statutes may sometimes refer to an external source of law and fairly warn readers that they must abide that external source of law, later amendments and modifications included. *Id.*, § 51:8 (discussing the reference canon). But nothing like that exists here. Nor has anyone suggested any other appropriate reason that might allow us to depart from the original meaning of the statute at hand.

That, we think, holds the key to the case. To many lawyerly ears today, the term "contracts of employment" might call to mind only agreements between employers and employees (or what the common law sometimes called masters and servants). Suggestively, at least one recently published law dictionary defines the word "employment" to mean "[t]he relationship between master and servant." Black's Law Dictionary 641 (10th ed. 2014). But this modern intuition isn't easily squared with evidence of the term's meaning at the time of the Act's adoption in 1925. At that time, a "contract of employment" usually meant nothing more than an agreement to perform work. As a result, most people then would have understood § 1 to exclude not only agreements between employers and employees but also agreements that require independent contractors to perform work.

What's the evidence to support this conclusion? It turns out that in 1925 the term "contract of employment" wasn't defined in any of the (many) popular or legal dictionaries the parties cite to us. And surely that's a first hint the phrase wasn't then a term of art bearing some specialized meaning. It turns out, too, that the dictionaries of the era consistently afforded the word "employment" a broad construction, broader than may be often found in dictionaries today. Back then, dictionaries tended to treat "employment" more or less as a synonym for "work." Nor did they distinguish between different kinds of work or workers: All work was treated as employment, whether or not the common law criteria for a master-servant relationship happened to be satisfied.[1]

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[1] See, *e. g.*, 3 H. Bradley, A New English Dictionary on Historical Principles 130 (J. Murray ed. 1891) (defining "employment" as, among other things, "[t]he action or process of employing; the state of being employed. The service (of a person). That on which (one) is employed; business; occupation; a special errand or commission. A person's regular occupation or business; a trade or profession"); 3 The Century Dictionary and Cyclopedia 1904

What the dictionaries suggest, legal authorities confirm. This Court's early 20th-century cases used the phrase "contract of employment" to describe work agreements involving independent contractors.[2] Many state court cases did the same.[3] So did a variety of federal statutes.[4] And state

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(1914) (defining "employment" as "[w]ork or business of any kind"); Webster's New International Dictionary 718 (1st ed. 1909) (listing "[w]ork" as a synonym for "employment"); Webster's Collegiate Dictionary 329 (3d ed. 1916) (same); Black's Law Dictionary 422 (2d ed. 1910) ("an engagement or rendering services" for oneself or another); 3 Oxford English Dictionary 130 (1933) ("[t]hat on which (one) is employed; business; occupation; a special errand or commission").

[2] See, *e. g.*, *Watkins* v. *Sedberry*, 261 U. S. 571, 575 (1923) (agreement between trustee and attorney to recover bankrupt's property); *Owen* v. *Dudley & Michener*, 217 U. S. 488, 494 (1910) (agreement between Indian tribe and attorneys to pursue claims).

[3] See, *e. g.*, *Lindsay* v. *McCaslin (Two Cases)*, 123 Me. 197, 200, 122 A. 412, 413 (1923) ("When the contract of employment has been reduced to writing, the question whether the person employed was an independent contractor or merely a servant is determined by the court as a matter of law"); *Tankersley* v. *Webster*, 116 Okla. 208, 210, 243 P. 745, 747 (1925) ("[T]he contract of employment between Tankersley and Casey was admitted in evidence without objections, and we think conclusively shows that Casey was an independent contractor"); *Waldron* v. *Garland Pocahontas Coal Co.*, 89 W. Va. 426, 427, 109 S. E. 729 (1921) (syllabus) ("Whether a person performing work for another is an independent contractor depends upon a consideration of the contract of employment, the nature of the business, the circumstances under which the contract was made and the work was done"); see also App. to Brief for Respondent 1a–12a (citing additional examples).

[4] See, *e. g.*, Act of Mar. 19, 1924, ch. 70, § 5, 43 Stat. 28 (limiting payment of fees to attorneys "employed" by the Cherokee Tribe to litigate claims against the United States to those "stipulated in the contract of employment"); Act of June 7, 1924, ch. 300, §§ 2, 5, 43 Stat. 537–538 (providing same for Choctaw and Chickasaw Tribes); Act of Aug. 24, 1921, ch. 89, 42 Stat. 192 (providing that no funds may be used to compensate "any attorney, regular or special, for the United States Shipping Board or the United States Shipping Board Emergency Fleet Corporation unless the contract of employment has been approved by the Attorney General of the United

statutes too.[5] We see here no evidence that a "contract of employment" necessarily signaled a formal employer-employee or master-servant relationship.

More confirmation yet comes from a neighboring term in the statutory text. Recall that the Act excludes from its coverage "contracts of employment of . . . any . . . class of *workers* engaged in foreign or interstate commerce." 9 U. S. C. § 1 (emphasis added). Notice Congress didn't use the word "employees" or "servants," the natural choices if the term "contracts of employment" addressed them alone. Instead, Congress spoke of "workers," a term that everyone agrees easily embraces independent contractors. That word choice may not mean everything, but it does supply further evidence still that Congress used the term "contracts of employment" in a broad sense to capture any contract for the performance of *work* by *workers*.

B

What does New Prime have to say about the case building against it? Mainly, it seeks to shift the debate from the term "contracts of employment" to the word "employee." Today, the company emphasizes, the law often distinguishes between employees and independent contractors. Employees are generally understood as those who work "in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the

States"). See also App. to Brief for Respondent 13a (citing additional examples).

[5] See, *e. g.*, Act of Mar. 10, 1909, ch. 70, § 1, 1909 Kan. Sess. Laws p. 121 (referring to "contracts of employment of auditors, accountants, engineers, attorneys, counselors and architects for any special purpose"); Act of Mar. 4, 1909, ch. 4, § 4, 1909 Okla. Sess. Laws p. 118 ("Should the amount of the attorney's fee be agreed upon in the contract of employment, then such attorney's lien and cause of action against such adverse party shall be for the amount so agreed upon"); Act of Mar. 4, 1924, ch. 88, § 1, 1924 Va. Acts ch. 91 (allowing extension of "contracts of employment" between the State and contractors with respect to the labor of prisoners); App. to Brief for Respondent 14a–15a (citing additional examples).

right to control the details of work performance." Black's Law Dictionary, at 639. Meanwhile, independent contractors are sometimes described as those "entrusted to undertake a specific project but who [are] left free to do the assigned work and to choose the method for accomplishing it." *Id.*, at 888. New Prime argues that, by 1925, the words "employee" and "independent contractor" had already assumed these distinct meanings.[6] And given that, the company contends, the phrase "contracts of *employment*" should be understood to refer only to relationships between *employers and employees*.

Unsurprisingly, Mr. Oliveira disagrees. He replies that, while the term "employment" dates back many centuries, the word "employee" only made its first appearance in English in the 1800s. See Oxford English Dictionary (3d ed., Mar. 2014), www.oed.com/view/Entry/61374 (all Internet materials as last visited Jan. 9, 2019). At that time, the word from which it derived, "employ," simply meant to "apply (a thing) to some definite purpose." 3 H. Bradley, A New English Dictionary on Historical Principles 129 (J. Murray ed. 1891). And even in 1910, Black's Law Dictionary reported that the term "employee" had only "'become somewhat naturalized in our language.'" Black's Law Dictionary 421 (2d ed. 1910).

Still, the parties do share some common ground. They agree that the word "employee" eventually came into wide circulation and came to denote those who work for a wage at the direction of another. They agree, too, that all this came to pass in part because the word "employee" didn't suffer from the same "historical baggage" of the older common law term "servant," and because it proved useful when drafting legislation to regulate burgeoning industries and their labor forces in the early 20th century.[7] The parties even agree

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[6] See, *e. g.*, *Atlantic Transp. Co.* v. *Coneys*, 82 F. 177, 178 (CA2 1897); *Nyback* v. *Champagne Lumber Co.*, 109 F. 732, 741 (CA7 1901).

[7] See Carlson, Why the Law Still Can't Tell an Employee When It Sees One and How It Ought To Stop Trying, 22 Berkeley J. Emp. & Lab. L. 295, 309 (2001) (discussing the "historical baggage" of the term "servant");

that the development of the term "employee" may have come to influence and narrow our understanding of the word "employment" in comparatively recent years and may be why today it might signify to some a "relationship between master and servant."[8]

But if the parties' extended etymological debate persuades us of anything, it is that care is called for. The words "employee" and "employment" may share a common root and an intertwined history. But they also developed at different times and in at least some different ways. The only question in this case concerns the meaning of the term "contracts of *employment*" in 1925. And, whatever the word "employee" may have meant at that time, and however it may have later influenced the meaning of "employment," the evidence before us remains that, as dominantly understood in 1925, a contract of *employment* did not necessarily imply the existence of an employer-employee or master-servant relationship.

When New Prime finally turns its attention to the term in dispute, it directs us to *Coppage* v. *Kansas*, 236 U. S. 1, 13 (1915). There and in other cases like it, New Prime notes,

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Broden, General Rules Determining the Employment Relationship Under Social Security Laws: After Twenty Years an Unsolved Problem, 33 Temp. L. Q. 307, 327 (1960) (describing use of the term "employer-employee," in contradistinction to "master-servant," in the Social Security laws). Legislators searched to find a term that fully encompassed the broad protections they sought to provide and considered an "assortment of vague and uncertain terms," including "'servant,' . . . 'employee,' . . . 'workman,' 'laborer,' 'wage earner,' 'operative,' or 'hireling.'" Carlson, 22 Berkeley J. Emp. & Lab. L., at 308. Eventually "'employee' prevailed, if only by default, and the choice was confirmed by the next wave of protective legislation—workers' compensation laws in the early years of the Twentieth Century." *Id.*, at 309.

[8] Black's Law Dictionary 641 (10th ed. 2014); see also P. Durkin, Release Notes: The Changes in Empathy, Employ, and Empire (Mar. 13, 2014), online at https://public.oed.com/blog/march-2014-update-release-notes/ ("Over time" the meaning of several employ-related words have "reflect[ed] changes in the world of work" and their meaning "shows an increasingly marked narrowing").

courts sometimes used the phrase "contracts of employment" to describe what today we'd recognize as agreements between employers and employees. But this proves little. No one doubts that employer-employee agreements to perform work qualified as "contracts of employment" in 1925—and documenting that fact does nothing to negate the possibility that "contracts of employment" *also* embraced agreements by independent contractors to perform work. Coming a bit closer to the mark, New Prime eventually cites a handful of early 20th-century legal materials that seem to use the term "contracts of employment" to refer *exclusively* to employer-employee agreements.[9] But from the record amassed before us, these authorities appear to represent at most the vanguard, not the main body, of contemporaneous usage.

New Prime's effort to explain away the statute's suggestive use of the term "worker" proves no more compelling. The company reminds us that the statute excludes "contracts of employment" for "seamen" and "railroad employees" as well as other transportation workers. And because "seamen" and "railroad employees" included *only* employees in 1925, the company reasons, we should understand "any other class of workers engaged in . . . interstate commerce" to bear a similar construction. But this argument rests on a precarious premise. At the time of the Act's passage, shipboard surgeons who tended injured sailors were considered "seamen" though they likely served in an independent contractor capacity.[10] Even the term "railroad employees" may have

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[9] See, *e. g.*, 1 T. Conyngton, Business Law: A Working Manual of Every-day Law 302–303 (2d ed. 1920); *Newland* v. *Bear*, 218 App. Div. 308, 309, 218 N. Y. S. 81, 81–82 (1926); *Anderson* v. *State Indus. Acc. Comm'n*, 107 Ore. 304, 311–312, 215 P. 582, 583, 585 (1923); N. Dosker, Manual of Compensation Law: State and Federal 8 (1917).

[10] See, *e. g.*, *The Sea Lark*, 14 F. 2d 201 (WD Wash. 1926); *The Buena Ventura*, 243 F. 797, 799 (SDNY 1916); *Holt* v. *Cummings*, 102 Pa. 212, 215 (1883); *Allan* v. *State S. S. Co.*, 132 N. Y. 91, 99, 30 N. E. 482, 485 (1892) ("The work which the physician does after the vessel starts on the voyage is his and not the ship owner's").

swept more broadly at the time of the Act's passage than might seem obvious today. In 1922, for example, the Railroad Labor Board interpreted the word "employee" in the Transportation Act of 1920 to refer to anyone "engaged in the customary work directly contributory to the operation of the railroads."[11] And the Erdman Act, a statute enacted to address disruptive railroad strikes at the end of the 19th century, seems to evince an equally broad understanding of "railroad employees."[12]

Unable to squeeze more from the statute's text, New Prime is left to appeal to its policy. This Court has said that Congress adopted the Arbitration Act in an effort to counteract judicial hostility to arbitration and establish "a liberal federal policy favoring arbitration agreements." *Moses H. Cone Memorial Hospital* v. *Mercury Constr. Corp.*, 460 U. S. 1, 24 (1983). To abide that policy, New Prime suggests, we must order arbitration according to the terms of the parties' agreement. But often and by design it is "hard-fought compromis[e]," not cold logic, that supplies the solvent needed for a bill to survive the legislative process. *Board of Governors, FRS* v. *Dimension Financial Corp.*, 474 U. S. 361, 374 (1986). If courts felt free to pave over bumpy statutory texts in the name of more expeditiously advancing a policy goal, we would risk failing to "tak[e] . . . account of" legislative compromises essential to a law's passage and, in that way, thwart rather than honor "the effectu-

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[11] Transportation Act of 1920, §§ 304, 307, 41 Stat. 456; *Railway Employees' Dept., A. F. of L.* v. *Indiana Harbor Belt R. Co.*, Decision No. 982, 3 R. L. B. 332, 337 (1922).

[12] The Act provided for arbitration between railroads and workers, and defined "employees" as "all persons actually engaged in any capacity in train operation or train service of any description." Act of June 1, 1898, ch. 370, 30 Stat. 424. The Act also specified that the railroads would "be responsible for the acts and defaults of such employees in the same manner and to the same extent as if . . . said employees [were] directly employed by it." *Id.*, at 425. See Dempsey, Transportation: A Legal History, 30 Transp. L. J. 235, 273 (2003).

ation of congressional intent." *Ibid.* By respecting the qualifications of § 1 today, we "respect the limits up to which Congress was prepared" to go when adopting the Arbitration Act. *United States* v. *Sisson*, 399 U. S. 267, 298 (1970).

Finally, and stretching in a different direction entirely, New Prime invites us to look beyond the Act. Even if the statute doesn't supply judges with the power to compel arbitration in this case, the company says we should order it anyway because courts always enjoy the inherent authority to stay litigation in favor of an alternative dispute resolution mechanism of the parties' choosing. That, though, is an argument we decline to tangle with. The courts below did not address it, and we granted certiorari only to resolve existing confusion about the application of the Arbitration Act, not to explore other potential avenues for reaching a destination it does not.

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When Congress enacted the Arbitration Act in 1925, the term "contracts of employment" referred to agreements to perform work. No less than those who came before him, Mr. Oliveira is entitled to the benefit of that same understanding today. Accordingly, his agreement with New Prime falls within § 1's exception, the court of appeals was correct that it lacked authority under the Act to order arbitration, and the judgment is

Affirmed.

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

JUSTICE GINSBURG, concurring.

"[W]ords generally should be 'interpreted as taking their ordinary . . . meaning . . . at the time Congress enacted the statute.'" *Ante*, at 113 (quoting *Wisconsin Central Ltd.* v. *United States*, 585 U. S. 274, 284 (2018)). The Court so reaffirms, and I agree. Looking to the period of enactment to

gauge statutory meaning ordinarily fosters fidelity to the "regime . . . Congress established." *MCI Telecommunications Corp.* v. *American Telephone & Telegraph Co.*, 512 U. S. 218, 234 (1994).

Congress, however, may design legislation to govern changing times and circumstances. See, *e. g.*, *Kimble* v. *Marvel Entertainment, LLC*, 576 U. S. 446, 461 (2015) ("Congress . . . intended [the Sherman Antitrust Act's] reference to 'restraint of trade' to have 'changing content,' and authorized courts to oversee the term's 'dynamic potential.' " (quoting *Business Electronics Corp.* v. *Sharp Electronics Corp.*, 485 U. S. 717, 731–732 (1988))); *SEC* v. *Zandford*, 535 U. S. 813, 819 (2002) (In enacting the Securities Exchange Act, "Congress sought to substitute a philosophy of full disclosure for the philosophy of *caveat emptor* . . . . Consequently, . . . the statute should be construed not technically and restrictively, but flexibly to effectuate its remedial purposes." (internal quotation marks and paragraph break omitted)); *H. J. Inc.* v. *Northwestern Bell Telephone Co.*, 492 U. S. 229, 243 (1989) ("The limits of the relationship and continuity concepts that combine to define a [Racketeer Influenced and Corrupt Organizations Act] pattern . . . cannot be fixed in advance with such clarity that it will always be apparent whether in a particular case a 'pattern of racketeering activity' exists. The development of these concepts must await future cases . . . ."). As these illustrations suggest, sometimes, "[w]ords in statutes can enlarge or contract their scope as other changes, in law or in the world, require their application to new instances or make old applications anachronistic." *West* v. *Gibson*, 527 U. S. 212, 218 (1999).

Syllabus

HELSINN HEALTHCARE S. A. *v.* TEVA PHARMACEUTICALS USA, INC., ET AL.

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

No. 17–1229. Argued December 4, 2018—Decided January 22, 2019

Petitioner Helsinn Healthcare S. A. makes a treatment for chemotherapy-induced nausea and vomiting using the chemical palonosetron. While Helsinn was developing its palonosetron product, it entered into two agreements with another company granting that company the right to distribute, promote, market, and sell a 0.25 mg dose of palonosetron in the United States. The agreements required that the company keep confidential any proprietary information received under the agreements. Nearly two years later, in January 2003, Helsinn filed a provisional patent application covering a 0.25 mg dose of palonosetron. Over the next 10 years, Helsinn filed four patent applications that claimed priority to the January 2003 date. Relevant here, Helsinn filed its fourth patent application in 2013. That patent (the '219 patent) covers a fixed dose of 0.25 mg of palonosetron in a 5 ml solution and is covered by the Leahy-Smith America Invents Act (AIA).

In 2011, respondents Teva Pharmaceutical Industries, Ltd., and Teva Pharmaceuticals USA, Inc. (collectively Teva), sought approval to market a generic 0.25 mg palonosetron product. Helsinn sued Teva for infringing its patents, including the '219 patent. Teva countered that the '219 patent was invalid under the "on sale" provision of the AIA—which precludes a person from obtaining a patent on an invention that was "in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention," 35 U. S. C. § 102(a)(1)—because the 0.25 mg dose was "on sale" more than one year before Helsinn filed the provisional patent application in 2003. The District Court held that the AIA's "on sale" provision did not apply because the public disclosure of the agreements did not disclose the 0.25 mg dose. The Federal Circuit reversed, holding that the sale was publicly disclosed, regardless of whether the details of the invention were publicly disclosed in the terms of the sale agreements.

Held: A commercial sale to a third party who is required to keep the invention confidential may place the invention "on sale" under § 102(a). The patent statute in force immediately before the AIA included an on-sale bar. This Court's precedent interpreting that provision supports

the view that a sale or offer of sale need not make an invention available to the public to constitute invalidating prior art. See, *e. g.*, *Pfaff* v. *Wells Electronics, Inc.*, 525 U. S. 55, 67. The Federal Circuit had made explicit what was implicit in this Court's pre-AIA precedent, holding that "secret sales" could invalidate a patent. *Special Devices, Inc.* v. *OEA, Inc.*, 270 F. 3d 1353, 1357. Given this settled pre-AIA precedent, the Court applies the presumption that when Congress reenacted the same "on sale" language in the AIA, it adopted the earlier judicial construction of that phrase. The addition of the catchall phrase "or otherwise available to the public" is not enough of a change for the Court to conclude that Congress intended to alter the meaning of "on sale." *Paroline* v. *United States*, 572 U. S. 434, and *Federal Maritime Comm'n* v. *Seatrain Lines, Inc.*, 411 U. S. 726, distinguished. Pp. 129–132.

855 F. 3d 1356, affirmed.

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

Kannon K. Shanmugam argued the cause for petitioner. With him on the briefs were *David M. Krinsky*, *Amy Mason Saharia*, *A. Joshua Podoll*, *Joseph M. O'Malley, Jr.*, *Eric W. Dittmann*, *Isaac S. Ashkenazi*, *Stephen B. Kinnaird*, and *Charles M. Lizza*.

Deputy Solicitor General Stewart argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Francisco*, *Acting Assistant Attorney General Readler*, *Jenny C. Ellickson*, *Mark R. Freeman*, and *Megan Barbero*.

William M. Jay argued the cause for respondents. With him on the brief were *Steffen N. Johnson*, *Andrew C. Nichols*, *David J. Zimmer*, and *Joshua J. Bone*.*

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*Briefs of *amici curiae* urging reversal were filed for the American Intellectual Property Law Association by *Lynn C. Tyler*; for the Bar Association of the District of Columbia by *William F. Lawrence* and *Jonathan A. Herstoff*; for the Biotechnology Innovation Organization by *Alice O. Martin*, *Daniel P. Albers*, *Hans Sauer*, *Melissa A. Brand*, and *Brian P. Barrett*; for the Intellectual Property Law Association of Chicago by *Charles W. Shifley*, *Robert H. Resis*, and *Donald W. Rupert*; for the Massachusetts Biotechnology Council by *Sophie F. Wang* and *Eric J. Marandett*; for Pharmaceutical Research and Manufacturers of America by *Scott*

JUSTICE THOMAS delivered the opinion of the Court.

The Leahy-Smith America Invents Act (AIA) bars a person from receiving a patent on an invention that was "in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention." 35 U. S. C. § 102(a)(1). This case requires us to decide whether the sale of an invention to a third party who is contractually obligated to keep the invention confidential places the invention "on sale" within the meaning of § 102(a).

More than 20 years ago, this Court determined that an invention was "on sale" within the meaning of an earlier version of § 102(a) when it was "the subject of a commercial offer for sale" and "ready for patenting." *Pfaff* v. *Wells Electronics, Inc.*, 525 U. S. 55, 67 (1998). We did not further require that the sale make the details of the invention available to the public. In light of this earlier construction, we deter-

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E. Kamholz, *James C. Stansel*, and *David E. Korn*; and for US Inventor, Inc., by *Kathleen B. Carr*, *David G. Conlin*, and *Joseph D. Rutkowski.*

Briefs of *amici curiae* urging affirmance were filed for the Association for Accessible Medicines by *Matthew S. Hellman*, *Adam G. Unikowsky*, and *Jeffrey K. Francer*; for IEEE–USA by *Maura K. Moran*; for Intel Corporation by *Boris Bershteyn* and *John Neukom*; for the R Street Institute et al. by *Charles Duan*; for SPCM S. A. et al. by *James W. Dabney*, *Khue V. Hoang*, *Richard M. Koehl*, *Emma L. Baratta*, *Stefanie M. Lopatkin*, and *John F. Duffy*; for Congresswoman Zoe Lofgren by *John C. O'Quinn* and *Megan M. Wold*; and for 45 Intellectual Property Professors by *Mark A. Lemley*, and *Michael A. Carrier*, *Ralph D. Clifford*, *Samuel F. Ernst*, *Shubha Ghosh*, *Brian J. Love*, *Joseph Scott Miller*, *Michael S. Mireles*, *Michael Risch*, *Sharon Sandeen*, *Joshua Sarnoff*, *Jason Schultz*, *Ted Sichelman*, and *Katherine J. Strandburg*, all *pro se.*

Briefs of *amici curiae* were filed for the Austin Intellectual Property Law Association by *Stephen R. Dartt* and *Lei Sun*; for the Houston Intellectual Property Law Association by *Iftikhar Ahmed* and *L. Lee Eubanks IV*; for the Intellectual Property Owners Association by *Robert M. Isackson*, *Matthew Kaufman*, *Lauren Sabol*, and *Mark W. Lauroesch*; for the Naples Roundtable by *Matthew J. Dowd* and *Andrew Baluch*; and for Congressman Lamar Smith by *Robert A. Armitage.*

mine that the reenactment of the phrase "on sale" in the AIA did not alter this meaning. Accordingly, a commercial sale to a third party who is required to keep the invention confidential may place the invention "on sale" under the AIA.

I

Petitioner Helsinn Healthcare S. A. (Helsinn) is a Swiss pharmaceutical company that makes Aloxi, a drug that treats chemotherapy-induced nausea and vomiting. Helsinn acquired the right to develop palonosetron, the active ingredient in Aloxi, in 1998. In early 2000, it submitted protocols for Phase III clinical trials to the Food and Drug Administration (FDA), proposing to study a 0.25 mg and a 0.75 mg dose of palonosetron. In September 2000, Helsinn announced that it was beginning Phase III clinical trials and was seeking marketing partners for its palonosetron product.

Helsinn found its marketing partner in MGI Pharma, Inc. (MGI), a Minnesota pharmaceutical company that markets and distributes drugs in the United States. Helsinn and MGI entered into two agreements: a license agreement and a supply and purchase agreement. The license agreement granted MGI the right to distribute, promote, market, and sell the 0.25 mg and 0.75 mg doses of palonosetron in the United States. In return, MGI agreed to make upfront payments to Helsinn and to pay future royalties on distribution of those doses. Under the supply and purchase agreement, MGI agreed to purchase exclusively from Helsinn any palonosetron product approved by the FDA. Helsinn in turn agreed to supply MGI however much of the approved doses it required. Both agreements included dosage information and required MGI to keep confidential any proprietary information received under the agreements.

Helsinn and MGI announced the agreements in a joint press release, and MGI also reported the agreements in its Form 8–K filing with the Securities and Exchange Commission. Although the 8–K filing included redacted copies of

the agreements, neither the 8–K filing nor the press releases disclosed the specific dosage formulations covered by the agreements.

On January 30, 2003, nearly two years after Helsinn and MGI entered into the agreements, Helsinn filed a provisional patent application covering the 0.25 mg and 0.75 mg doses of palonosetron. Over the next 10 years, Helsinn filed four patent applications that claimed priority to the January 30, 2003, date of the provisional application. Helsinn filed its fourth patent application—the one relevant here—in May 2013, and it issued as U. S. Patent No. 8,598,219 ('219 patent). The '219 patent covers a fixed dose of 0.25 mg of palonosetron in a 5 ml solution. By virtue of its effective date, the '219 patent is governed by the AIA. See § 101(i).

Respondents Teva Pharmaceutical Industries, Ltd., and Teva Pharmaceuticals USA, Inc. (Teva), are, respectively, an Israeli company that manufactures generic drugs and its American affiliate. In 2011, Teva sought approval from the FDA to market a generic 0.25 mg palonosetron product. Helsinn then sued Teva for infringing its patents, including the '219 patent. In defense, Teva asserted that the '219 patent was invalid because the 0.25 mg dose was "on sale" more than one year before Helsinn filed the provisional patent application covering that dose in January 2003.

The AIA precludes a person from obtaining a patent on an invention that was "on sale" before the effective filing date of the patent application:

> "A person shall be entitled to a patent unless . . . the claimed invention was patented, described in a printed publication, or in public use, *on sale*, or otherwise available to the public before the effective filing date of the claimed invention." 35 U. S. C. § 102(a)(1) (emphasis added).

See also § 102(b)(1) (exception for certain disclosures made within a year before the effective filing date). Disclosures

described in § 102(a)(1) are often referred to as "prior art."

The patent statute in effect before the passage of the AIA included a similar proscription, known as the "on-sale bar":

> "A person shall be entitled to a patent unless—
>
> "(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or
>
> "(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or *on sale* in this country, more than one year prior to the date of the application for patent in the United States." 35 U. S. C. §§ 102(a)–(b) (2006 ed.) (emphasis added).

The District Court determined that the "on sale" provision did not apply. It concluded that, under the AIA, an invention is not "on sale" unless the sale or offer in question made the claimed invention available to the public. *Helsinn Healthcare S. A.* v. *Dr. Reddy's Labs. Ltd.*, 387 F. Supp. 3d 439, 505 (NJ 2016). Because the companies' public disclosure of the agreements between Helsinn and MGI did not disclose the 0.25 mg dose, the court determined that the invention was not "on sale" before the critical date. *Id.*, at 504–505.

The Federal Circuit reversed. 855 F. 3d 1356, 1360 (2017). It concluded that "if the existence of the sale is public, the details of the invention need not be publicly disclosed in the terms of sale" to fall within the AIA's on-sale bar. *Id.*, at 1371. Because the sale between Helsinn and MGI was publicly disclosed, it held that the on-sale bar applied. *Id.*, at 1364, 1371.

We granted certiorari to determine whether, under the AIA, an inventor's sale of an invention to a third party who is obligated to keep the invention confidential qualifies as prior art for purposes of determining the patentability of the

invention. 585 U. S. 1015 (2018). We conclude that such a sale can qualify as prior art.

II

A

The United States Constitution authorizes Congress "[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Art. 1, § 8, cl. 8. Under this grant of authority, Congress has crafted a federal patent system that encourages "the creation and disclosure of new, useful, and nonobvious advances in technology and design" by granting inventors "the exclusive right to practice the invention for a period of years." *Bonito Boats, Inc.* v. *Thunder Craft Boats, Inc.*, 489 U. S. 141, 151 (1989).

To further the goal of "motivating innovation and enlightenment" while also "avoiding monopolies that unnecessarily stifle competition," *Pfaff*, 525 U. S., at 63, Congress has imposed several conditions on the "limited opportunity to obtain a property right in an idea," *Bonito Boats*, *supra*, at 149. One such condition is the on-sale bar, which reflects Congress' "reluctance to allow an inventor to remove existing knowledge from public use" by obtaining a patent covering that knowledge. *Pfaff*, *supra*, at 64; see also *Pennock* v. *Dialogue*, 2 Pet. 1, 19 (1829) (explaining that "it would materially retard the progress of science and the useful arts" to allow an inventor to "sell his invention publicly" and later "take out a patent" and "exclude the public from any farther use than what should be derived under it").

Every patent statute since 1836 has included an on-sale bar. *Pfaff*, *supra*, at 65. The patent statute in force immediately before the AIA prevented a person from receiving a patent if, "more than one year prior to the date of the application for patent in the United States," "the invention was . . . on sale" in the United States. 35 U. S. C. § 102(b) (2006

ed.). The AIA, as relevant here, retained the on-sale bar and added the catchall phrase "or otherwise available to the public." § 102(a)(1) (2012 ed.) ("A person shall be entitled to a patent unless" the "claimed invention was . . . in public use, on sale, or otherwise available to the public . . ."). We must decide whether these changes altered the meaning of the "on sale" bar. We hold that they did not.

B

Congress enacted the AIA in 2011 against the backdrop of a substantial body of law interpreting § 102's on-sale bar. In 1998, we determined that the pre-AIA on-sale bar applies "when two conditions are satisfied" more than a year before an inventor files a patent application. *Pfaff*, 525 U. S., at 67. "First, the product must be the subject of a commercial offer for sale." *Ibid.* "Second, the invention must be ready for patenting," which we explained could be shown by proof of "reduction to practice" or "drawings or other descriptions of the invention that were sufficiently specific to enable a person skilled in the art to practice the invention." *Id.*, at 67–68.

Although this Court has never addressed the precise question presented in this case, our precedents suggest that a sale or offer of sale need not make an invention available to the public. For instance, we held in *Pfaff* that an offer for sale could cause an inventor to lose the right to patent, without regard to whether the offer discloses each detail of the invention. *E.g.*, *id.*, at 67. Other cases focus on whether the invention had been sold, not whether the details of the invention had been made available to the public or whether the sale itself had been publicly disclosed. *E.g.*, *Consolidated Fruit-Jar Co.* v. *Wright*, 94 U. S. 92, 94 (1877) ("[A] single instance of sale or of use by the patentee may, under the circumstances, be fatal to the patent . . ."); cf. *Smith & Griggs Mfg. Co.* v. *Sprague*, 123 U. S. 249, 257 (1887) ("A single sale to another . . . would certainly have defeated his

right to a patent . . .”); *Elizabeth* v. *Pavement Co.*, 97 U. S. 126, 136 (1878) (“It is not a public knowledge of his invention that precludes the inventor from obtaining a patent for it, but a public use or sale of it”).

The Federal Circuit—which has “exclusive jurisdiction” over patent appeals, 28 U. S. C. § 1295(a)—has made explicit what was implicit in our precedents. It has long held that “secret sales” can invalidate a patent. *E.g.*, *Special Devices, Inc.* v. *OEA, Inc.*, 270 F. 3d 1353, 1357 (2001) (invalidating patent claims based on “sales for the purpose of the commercial stockpiling of an invention” that “took place in secret”); *Woodland Trust* v. *Flowertree Nursery, Inc.*, 148 F. 3d 1368, 1370 (1998) (“Thus an inventor’s own prior commercial use, albeit kept secret, may constitute a public use or sale under § 102(b), barring him from obtaining a patent”).

In light of this settled pre-AIA precedent on the meaning of “on sale,” we presume that when Congress reenacted the same language in the AIA, it adopted the earlier judicial construction of that phrase. See *Shapiro* v. *United States*, 335 U. S. 1, 16 (1948) (“In adopting the language used in the earlier act, Congress ‘must be considered to have adopted also the construction given by this Court to such language, and made it a part of the enactment’ ”). The new § 102 retained the exact language used in its predecessor statute (“on sale”) and, as relevant here, added only a new catchall clause (“or otherwise available to the public”). As *amicus* United States noted at oral argument, if “on sale” had a settled meaning before the AIA was adopted, then adding the phrase “or otherwise available to the public” to the statute “would be a fairly oblique way of attempting to overturn” that “settled body of law.” Tr. of Oral Arg. 27–28. The addition of “or otherwise available to the public” is simply not enough of a change for us to conclude that Congress intended to alter the meaning of the reenacted term “on sale.” Cf. *Holder* v. *Martinez Gutierrez*, 566 U. S. 583, 593 (2012) (determining that a reenacted provision did not ratify an earlier

judicial construction where the provision omitted the word on which the prior judicial constructions were based).

Helsinn disagrees, arguing that our construction reads "otherwise" out of the statute. Citing *Paroline* v. *United States*, 572 U. S. 434 (2014), and *Federal Maritime Comm'n* v. *Seatrain Lines, Inc.*, 411 U. S. 726 (1973), Helsinn contends that the associated-words canon requires us to read "otherwise available to the public" to limit the preceding terms in § 102 to disclosures that make the claimed invention available to the public.

As an initial matter, neither of the cited decisions addresses the reenactment of terms that had acquired a well-settled judicial interpretation. And Helsinn's argument places too much weight on § 102's catchall phrase. Like other such phrases, "otherwise available to the public" captures material that does not fit neatly into the statute's enumerated categories but is nevertheless meant to be covered. Given that the phrase "on sale" had acquired a well-settled meaning when the AIA was enacted, we decline to read the addition of a broad catchall phrase to upset that body of precedent.

III

Helsinn does not ask us to revisit our pre-AIA interpretation of the on-sale bar. Nor does it dispute the Federal Circuit's determination that the invention claimed in the '219 patent was "on sale" within the meaning of the pre-AIA statute. Because we determine that Congress did not alter the meaning of "on sale" when it enacted the AIA, we hold that an inventor's sale of an invention to a third party who is obligated to keep the invention confidential can qualify as prior art under § 102(a). We therefore affirm the judgment of the Federal Circuit.

It is so ordered.

Syllabus

MOORE *v.* TEXAS

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

No. 18–443. Decided February 19, 2019

A Texas trial court determined that Bobby James Moore had an intellectual disability that rendered him ineligible for the death penalty under *Atkins* v. *Virginia*, 536 U. S. 304. The Texas Court of Criminal Appeals reversed. *Ex parte Moore*, 470 S. W. 3d 481, 527–528. This Court vacated that decision and remanded the case for further consideration "not inconsistent with" the Court's analysis. *Moore* v. *Texas*, 581 U. S. 1, 21. After remand, the Texas appeals court again concluded that Moore had not demonstrated that he had an intellectual disability. *Ex parte Moore*, 548 S. W. 3d 552. Moore filed a petition for certiorari seeking reversal of that determination. The Texas district attorney agrees that Moore is intellectually disabled and cannot be executed; the Texas attorney general disagrees, moves to intervene, and asks the Court to deny Moore's petition.

Held: Because the trial court record demonstrates that Moore is a person with an intellectual disability, the Court reverses the appeals court's contrary determination. The appeals court's opinion after remand rests in critical parts on the same analysis that this Court previously found wanting. First, the appeals court again relied less upon Moore's adaptive deficits than upon Moore's apparent adaptive strengths. See *Moore*, 581 U. S., at 15. And while the appeals court emphasized Moore's capacity to communicate, read, and write based in part on pro se papers Moore filed in court, that relevant evidence lacks convincing strength without a determination that Moore wrote the papers on his own, a finding the appeals court declined to make. The appeals court also relied heavily upon adaptive improvements made in prison, even though this Court's prior opinion cautioned against doing so. See *id.*, at 16. Further, the appeals court concluded that Moore failed to show that the "cause of [his] deficient social behavior was related to any deficits in general mental abilities" rather than "emotional problems." *Ex parte Moore*, 548 S. W. 3d, at 570. This Court previously stated that the appeals court had "departed from clinical practice" when it followed similar reasoning, however, and pointed to the position of the American Psychological Association that a mental-health issue is "not evidence that a person does not also have intellectual disability." 581 U. S., at 17. Finally, the appeals court stated that it would abandon reliance

on evidentiary factors set forth in a Texas case called *Ex parte Briseno*, 135 S. W. 3d 1, but the similarity between those factors and the appeals court's statements suggests that *Briseno* continues to permeate that court's analysis. The appeals court's opinion, taken as a whole and read in light of both of the Court's prior opinion and the trial court record, rests upon analysis that too closely resembles what the Court previously found improper. On the basis of the record, Moore has shown he is a person with intellectual disability.

Certiorari granted; 548 S. W. 3d 552, reversed and remanded.

PER CURIAM.

In 2015, the Texas Court of Criminal Appeals held that petitioner, Bobby James Moore, did *not* have intellectual disability and consequently was eligible for the death penalty. *Ex parte Moore*, 470 S. W. 3d 481, 527–528 (*Ex parte Moore I*). We previously considered the lawfulness of that determination, vacated the appeals court's decision, and remanded the case for further consideration of the issue. *Moore* v. *Texas*, 581 U. S. 1, 20–21 (2017). The appeals court subsequently reconsidered the matter but reached the same conclusion. *Ex parte Moore*, 548 S. W. 3d 552, 573 (Tex. Crim. App. 2018) (*Ex parte Moore II*). We again review its decision, and we reverse its determination.

I

When we first heard this case, in *Moore*, we noted that the state trial court (a state habeas court) "received affidavits and heard testimony from Moore's family members, former counsel, and a number of court-appointed mental-health experts." 581 U. S., at 6. We described the evidence as "reveal[ing]" the following:

> "Moore had significant mental and social difficulties beginning at an early age. At 13, Moore lacked basic understanding of the days of the week, the months of the year, and the seasons; he could scarcely tell time or comprehend the standards of measure or the basic principle that subtraction is the reverse of addition. At school,

> because of his limited ability to read and write, Moore could not keep up with lessons. Often, he was separated from the rest of the class and told to draw pictures. Moore's father, teachers, and peers called him 'stupid' for his slow reading and speech. After failing every subject in the ninth grade, Moore dropped out of high school. Cast out of his home, he survived on the streets, eating from trash cans, even after two bouts of food poisoning." *Id.*, at 6–7 (citations omitted).

On the basis of this and other evidence, the trial court found that Moore had intellectual disability and thus was ineligible for the death penalty under *Atkins* v. *Virginia*, 536 U. S. 304 (2002). App. to Pet. for Cert. 310a–311a. The Texas Court of Criminal Appeals reversed that determination, *Ex parte Moore I*, 470 S. W. 3d 481, and we reviewed its decision, *Moore*, 581 U. S. 1.

At the outset of our opinion, we recognized as valid the three underlying legal criteria that both the trial court and appeals court had applied. *Id.*, at 7–8 (citing American Association on Intellectual and Developmental Disabilities, Intellectual Disability: Definition, Classification, and Systems of Supports (11th ed. 2010) (AAIDD–11); American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (5th ed. 2013) (DSM–5)). To make a finding of intellectual disability, a court must see: (1) deficits in intellectual functioning—primarily a test-related criterion, see DSM–5, at 37; (2) adaptive deficits, "assessed using both clinical evaluation and individualized . . . measures," *ibid.*; and (3) the onset of these deficits while the defendant was still a minor, *id.*, at 38. With respect to the first criterion, we wrote that Moore's intellectual testing indicated his was a borderline case, but that he had demonstrated sufficient intellectual-functioning deficits to require consideration of the second criterion—adaptive functioning. *Moore*, 581 U. S., at 13–15. With respect to the third criterion, we

found general agreement that any onset took place when Moore was a minor. *Id.*, at 7, n. 3.

But there was significant disagreement between the state courts about whether Moore had the adaptive deficits needed for intellectual disability. "In determining the significance of adaptive deficits, clinicians look to whether an individual's adaptive performance falls two or more standard deviations below the mean in any of the three adaptive skill sets (conceptual, social, and practical)." *Id.*, at 8 (citing AAIDD–11, at 43). Based on the evidence before it, the trial court found that "Moore's performance fell roughly two standard deviations below the mean in *all three* skill categories." 581 U. S., at 8; see App. to Pet. for Cert. 309a. Reversing that decision, the appeals court held that Moore had "not proven by a preponderance of the evidence" that he possessed the requisite adaptive deficits, and thus was eligible for the death penalty. *Ex parte Moore I*, 470 S. W. 3d, at 520. We disagreed with the appeals court's adaptive-functioning analysis, however, and identified at least five errors.

First, the Texas Court of Criminal Appeals "overemphasized Moore's perceived adaptive strengths." *Moore*, 581 U. S., at 15. "But the medical community," we said, "focuses the adaptive-functioning inquiry on adaptive *deficits*." *Ibid.*

Second, the appeals court "stressed Moore's improved behavior in prison." *Id.*, at 16. But "[c]linicians . . . caution against reliance on adaptive strengths developed 'in a controlled setting,' as a prison surely is." *Ibid.* (quoting DSM–5, at 38).

Third, the appeals court "concluded that Moore's record of academic failure, . . . childhood abuse[,] and suffering . . . detracted from a determination that his intellectual and adaptive deficits were related." 581 U. S., at 16. But "in the medical community," those "traumatic experiences" are considered "'*risk factors*' *for* intellectual disability." *Ibid.* (quoting AAIDD–11, at 59–60).

Fourth, the Texas Court of Criminal Appeals required "Moore to show that his adaptive deficits were not related to 'a personality disorder.' " 581 U. S., at 17 (quoting *Ex parte Moore I*, 470 S. W. 3d, at 488). But clinicians recognize that the "existence of a personality disorder or mental-health issue . . . is 'not evidence that a person does not also have intellectual disability.' " 581 U. S., at 17 (quoting Brief for American Psychological Association (APA) et al. as *Amici Curiae* in *Moore* v. *Texas*, O. T. 2016, No. 15–797, p. 19).

Fifth, the appeals court directed state courts, when examining adaptive deficits, to rely upon certain factors set forth in a Texas case called *Ex parte Briseno*, 135 S. W. 3d 1 (Tex. Crim. App. 2004). *Ex parte Moore I*, 470 S. W. 3d, at 486, 489. The *Briseno* factors were: whether "those who knew the person best during the developmental stage" thought of him as "mentally retarded"; whether he could "formulat[e] plans" and "car[ry] them through"; whether his conduct showed "leadership"; whether he showed a "rational and appropriate" "response to external stimuli"; whether he could answer questions "coherently" and "rationally"; whether he could "hide facts or lie effectively"; and whether the commission of his offense required "forethought, planning, and complex execution of purpose." 135 S. W. 3d, at 8–9.

We criticized the use of these factors both because they had no grounding in prevailing medical practice and because they invited "lay perceptions of intellectual disability" and "lay stereotypes" to guide assessment of intellectual disability. *Moore*, 581 U. S., at 18. Emphasizing the *Briseno* factors over clinical factors, we said, " 'creat[es] an unacceptable risk that persons with intellectual disability will be executed.' " 581 U. S., at 17 (quoting *Hall* v. *Florida*, 572 U. S. 701, 704 (2014)). While our decisions in "*Atkins* and *Hall* left to the States 'the task of developing appropriate ways to enforce' the restriction on executing the intellectually disabled," 581 U. S., at 13 (quoting *Hall*, 572 U. S., at 719), a court's intellectual disability determination "must be 'in-

formed by the medical community's diagnostic framework,'" 581 U. S., at 13 (quoting *Hall*, 572 U. S., at 721).

Three Members of this Court dissented from the majority's treatment of Moore's intellectual functioning and with aspects of its adaptive-functioning analysis, but all agreed about the impropriety of the *Briseno* factors. As THE CHIEF JUSTICE wrote in his dissenting opinion, the *Briseno* factors were "an unacceptable method of enforcing the guarantee of *Atkins*" and the Texas Court of Criminal Appeals "therefore erred in using them to analyze adaptive deficits." *Moore*, 581 U. S., at 21 (opinion of ROBERTS, C. J.).

For the reasons we have described, the Court set aside the judgment of the appeals court and remanded the case "for further proceedings not inconsistent with this opinion." *Id.*, at 21.

II

On remand the Texas Court of Criminal Appeals reconsidered the appeal and reached the same basic conclusion, namely, that Moore had not demonstrated intellectual disability. *Ex parte Moore II*, 548 S. W. 3d, at 555. The court again noted the three basic criteria: intellectual-functioning deficits, adaptive deficits, and early onset. *Id.*, at 560–562. But this time it focused almost exclusively on the second criterion, adaptive deficits. The court said that, in doing so, it would "abandon reliance on the *Briseno* evidentiary factors." *Id.*, at 560. It would instead use "'current medical diagnostic standards'" set forth in the American Psychiatric Association's DSM–5. *Id.*, at 559–560. In applying those standards to the trial court record, it found the State's expert witness, Dr. Kristi Compton, "'far more credible and reliable'" than the other experts considered by the trial court. *Id.*, at 562. (As in our last opinion, we neither second nor second-guess that judgment.) And, as we have said, it reached the same conclusion it had before.

Moore has now filed a petition for certiorari in which he argues that the trial court record demonstrates his intellec-

tual disability. He asks us to reverse the appeals court's contrary holding. Pet. for Cert. 2. The prosecutor, the district attorney of Harris County, "agrees with the petitioner that he is intellectually disabled and cannot be executed." Brief in Opposition 9. The APA, American Bar Association (ABA), and various individuals have also filed *amicus curiae* briefs supporting the position of Moore and the prosecutor. Brief for APA et al. as *Amici Curiae*; Brief for ABA as *Amicus Curiae*; Brief for Donald B. Ayer et al. as *Amici Curiae*. The attorney general of Texas, however, has filed a motion for leave to intervene and asks us to deny Moore's petition. Motion for Leave To Intervene as a Respondent.

III

After reviewing the trial court record and the court of appeals' opinion, we agree with Moore that the appeals court's determination is inconsistent with our opinion in *Moore*. We have found in its opinion too many instances in which, with small variations, it repeats the analysis we previously found wanting, and these same parts are critical to its ultimate conclusion.

For one thing, the court of appeals again relied less upon the adaptive *deficits* to which the trial court had referred than upon Moore's apparent adaptive *strengths*. See *Moore*, 581 U. S., at 15 (criticizing the appeals court's "overemphas[is]" upon Moore's "perceived adaptive strengths"); *supra*, at 136. The appeals court's discussion of Moore's "[c]ommunication [s]kills" does not discuss the evidence relied upon by the trial court. *Ex parte Moore II*, 548 S. W. 3d, at 563–565. That evidence includes the young Moore's inability to understand and answer family members, even a failure on occasion to respond to his own name. App. to Pet. for Cert. 289a–290a. Its review of Moore's "[r]eading and [w]riting" refers to deficits only in observing that "in prison, [Moore] progressed from being illiterate to being able to write at a

seventh-grade level." *Ex parte Moore II*, 548 S. W. 3d, at 565. But the trial court heard, among other things, evidence that in school Moore was made to draw pictures when other children were reading, and that by sixth grade Moore struggled to read at a second-grade level. App. to Pet. for Cert. 290a, 295a.

Instead, the appeals court emphasized Moore's capacity to communicate, read, and write based in part on *pro se* papers Moore filed in court. *Ex parte Moore II*, 548 S. W. 3d, at 565–566. That evidence is relevant, but it lacks convincing strength without a determination about whether Moore wrote the papers on his own, a finding that the court of appeals declined to make. Rather, the court dismissed the possibility of outside help: Even if other inmates "composed" these papers, it said, Moore's "ability to copy such documents by hand" was "within the realm of only a few intellectually disabled people." *Id.*, at 565. Similarly, the court of appeals stressed Moore's "coherent" testimony in various proceedings, but acknowledged that Moore had "a lawyer to coach him" in all but one. *Id.*, at 564, and n. 95. As for that *pro se* hearing, the court observed that Moore read letters into the record "without any apparent difficulty." *Ibid.*

For another thing, the court of appeals relied heavily upon adaptive improvements made in prison. See *Moore*, 581 U. S., at 16 ("caution[ing] against reliance on adaptive strengths developed" in "prison"); *supra*, at 136. It concluded that Moore has command of elementary math, but its examples concern trips to the prison commissary, commissary purchases, and the like. *Ex parte Moore II*, 548 S. W. 3d, at 566–569. It determined that Moore had shown leadership ability in prison by refusing, on occasion, "to mop up some spilled oatmeal," shave, get a haircut, or sit down. *Id.*, at 570–571, and n. 149. And as we have said, it stressed correspondence written in prison. *Id.*, at 565. The length and detail of the court's discussion on these points is difficult to

square with our caution against relying on prison-based development.

Further, the court of appeals concluded that Moore failed to show that the "cause of [his] deficient social behavior was related to any deficits in general mental abilities" rather than "emotional problems." *Id.*, at 570. But in our last review, we said that the court of appeals had "departed from clinical practice" when it required Moore to prove that his "problems in kindergarten" stemmed from his intellectual disability rather than "'emotional problems.'" *Moore*, 581 U. S., at 17 (quoting *Ex parte Moore I*, 470 S. W. 3d, at 488, 526). And we pointed to an *amicus* brief in which the APA explained that a personality disorder or mental-health issue is "'not evidence that a person does not also have intellectual disability.'" 581 U. S., at 17 (quoting Brief for APA et al. as *Amici Curiae* in No. 15–797, at 19).

Finally, despite the court of appeals' statement that it would "abandon reliance on the *Briseno* evidentiary factors," *Ex parte Moore II*, 548 S. W. 3d, at 560, it seems to have used many of those factors in reaching its conclusion. See *supra*, at 137 (detailing those factors). Thus, *Briseno* asked whether the "offense require[d] forethought, planning, and complex execution of purpose." 135 S. W. 3d, at 9. The court of appeals wrote that Moore's crime required "a level of planning and forethought." *Ex parte Moore II*, 548 S. W. 3d, at 572, 603 (observing that Moore "w[ore] a wig, conceal[ed] the weapon, and fle[d]" after the crime).

Briseno asked whether the defendant could "respond coherently, rationally, and on point to oral and written questions." 135 S. W. 3d, at 8. The court of appeals found that Moore "responded rationally and coherently to questions." *Ex parte Moore II*, 548 S. W. 3d, at 564.

And *Briseno* asked whether the defendant's "conduct show[s] leadership or . . . that he is led around by others." 135 S. W. 3d, at 8. The court of appeals wrote that Moore's

"refus[al] to mop up some spilled oatmeal" (and other such behavior) showed that he "influences others and stands up to authority." *Ex parte Moore II*, 548 S. W. 3d, at 570–571.

Of course, clinicians also ask questions to which the court of appeals' statements might be relevant. See AAIDD–11, at 44 (noting that how a person "follows rules" and "obeys laws" can bear on assessment of her social skills). But the similarity of language and content between *Briseno*'s factors and the court of appeals' statements suggests that *Briseno* continues to "pervasively infec[t] the [the appeals courts'] analysis." *Moore*, 581 U. S., at 21.

To be sure, the court of appeals opinion is not identical to the opinion we considered in *Moore*. There are sentences here and there suggesting other modes of analysis consistent with what we said. But there are also sentences here and there suggesting reliance upon what we earlier called "lay stereotypes of the intellectually disabled." *Id.*, at 18. Compare *Ex parte Moore II*, 548 S. W. 3d, at 570–571 (finding evidence that Moore "had a girlfriend" and a job as tending to show he lacks intellectual disability), with AAIDD–11, at 151 (criticizing the "incorrect stereotypes" that persons with intellectual disability "never have friends, jobs, spouses, or children"), and Brief for APA et al. as *Amici Curiae* 8 ("[I]t is estimated that between nine and forty percent of persons with intellectual disability have some form of paid employment").

We conclude that the appeals court's opinion, when taken as a whole and when read in the light both of our prior opinion and the trial court record, rests upon analysis too much of which too closely resembles what we previously found improper. And extricating that analysis from the opinion leaves too little that might warrant reaching a different conclusion than did the trial court. We consequently agree with Moore and the prosecutor that, on the basis of the trial court record, Moore has shown he is a person with intellectual disability.

* * *

The petition for certiorari is granted. The attorney general of Texas' motion to intervene is denied; we have considered that filing as an *amicus* brief. The judgment of the Texas Court of Criminal Appeals is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

CHIEF JUSTICE ROBERTS, concurring.

When this case was before us two years ago, I wrote in dissent that the majority's articulation of how courts should enforce the requirements of *Atkins* v. *Virginia*, 536 U. S. 304 (2002), lacked clarity. *Moore* v. *Texas*, 581 U. S. 1, 29–30 (2017). It still does. But putting aside the difficulties of applying *Moore* in other cases, it is easy to see that the Texas Court of Criminal Appeals misapplied it here. On remand, the court repeated the same errors that this Court previously condemned—if not quite *in haec verba*, certainly in substance. The court repeated its improper reliance on the factors articulated in *Ex parte Briseno*, 135 S. W. 3d 1, 8 (Tex. Crim. App. 2004), and again emphasized Moore's adaptive strengths rather than his deficits. That did not pass muster under this Court's analysis last time. It still doesn't. For those reasons, I join the Court's opinion reversing the judgment below.

JUSTICE ALITO, with whom JUSTICE THOMAS and JUSTICE GORSUCH join, dissenting.

Two years ago, this Court vacated a judgment of the Texas Court of Criminal Appeals holding that Bobby James Moore was not intellectually disabled and was therefore eligible for the death penalty. *Moore* v. *Texas*, 581 U. S. 1 (2017). While the Court divided on the appropriate disposition, both the majority and the dissent agreed that the Court of Criminal Appeals should have assessed Moore's claim of intellec-

tual disability under contemporary standards rather than applying the outdated evidentiary factors laid out in *Ex parte Briseno*, 135 S. W. 3d 1, 8 (Tex. Crim. App. 2004). *Moore*, 581 U. S., at 5–6; *id.*, at 21 (ROBERTS, C. J., dissenting). On remand, the Court of Criminal Appeals adopted the leading contemporary clinical standards for assessing intellectual disability, applied those standards to the record, and once again determined that Moore is eligible for the death penalty. *Ex parte Moore*, 548 S. W. 3d 552, 555 (2018).

Today, the Court reverses that most recent decision, holding that the Court of Criminal Appeals failed to follow our decision in *Moore*. Such a failure would be understandable given the "lack of guidance [*Moore*] offers to States seeking to enforce the holding of *Atkins*." *Moore*, 581 U. S., at 29 (ROBERTS, C. J., dissenting). Indeed, each of the errors that the majority ascribes to the state court's decision is traceable to *Moore*'s failure to provide a clear rule. For example, the majority faults the Court of Criminal Appeals for "rel[ying] less upon the adaptive *deficits* . . . than upon Moore's apparent adaptive *strengths*," *ante*, at 139, and for "rel[ying] heavily upon adaptive improvements made in prison," *ante*, at 140. But in *Moore*, we said only that a court ought not "overemphasiz[e]" adaptive strengths or place too much "stres[s]" on improved behavior in prison. This left "[t]he line between the permissible—consideration, maybe even emphasis—and the forbidden—'overemphasis'—. . . not only thin, but totally undefined . . . ." *Moore*, 581 U. S., at 31 (ROBERTS, C. J., dissenting). The majority's belief that the state court failed to follow *Moore* on remand merely proves that "[n]either the Court's articulation of this standard [in *Moore*] nor its application sheds any light on what it means." *Id.*, at 30 (ROBERTS, C. J., dissenting).

Having concluded that the Court of Criminal Appeals failed to apply the standard allegedly set out in *Moore*, the Court today takes it upon itself to correct these factual find-

ings and reverse the judgment.* This is not our role. "We do not grant a certiorari to review evidence and discuss specific facts." *United States* v. *Johnston*, 268 U. S. 220, 227 (1925); see also *Salazar-Limon* v. *Houston*, 581 U. S. 946, 947–948 (2017) (ALITO, J., concurring in denial of certiorari) ("[W]e rarely grant review where the thrust of the claim is that a lower court simply erred in applying a settled rule of law to the facts of a particular case"). If the Court is convinced that the Court of Criminal Appeals made a legal error, it should vacate the judgment below, pronounce the standard that we failed to provide in *Moore*, and remand for the state court to apply that standard. The Court's decision, instead, to issue a summary reversal belies our role as "a court of review, not of first view." *Cutter* v. *Wilkinson*, 544 U. S. 709, 718, n. 7 (2005).

The Court's foray into factfinding is an unsound departure from our usual practice. The error in this litigation was not the state court's decision on remand but our own failure to provide a coherent rule of decision in *Moore*. I would deny the petition for a writ of certiorari. I certainly would not summarily reverse and make our own finding of fact without even giving the State the opportunity to brief and argue the question. I therefore respectfully dissent.

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*The Court excuses its usurpation of the factfinding role by contrasting the conclusions of "the trial court," *ante*, at 139–140, 142, with the views of "the court of appeals," *ante*, at 140–141. But in Texas habeas proceedings, the Texas Court of Criminal Appeals is "the ultimate factfinder" and has authority to accept, alter, or reject the "recommendation" of the habeas court. *Ex parte Reed*, 271 S. W. 3d 698, 727 (2008).

Syllabus

TIMBS *v.* INDIANA

CERTIORARI TO THE SUPREME COURT OF INDIANA

No. 17–1091. Argued November 28, 2018—Decided February 20, 2019

Tyson Timbs pleaded guilty in Indiana state court to dealing in a controlled substance and conspiracy to commit theft. At the time of Timbs's arrest, the police seized a Land Rover SUV Timbs had purchased for $42,000 with money he received from an insurance policy when his father died. The State sought civil forfeiture of Timbs's vehicle, charging that the SUV had been used to transport heroin. Observing that Timbs had recently purchased the vehicle for more than four times the maximum $10,000 monetary fine assessable against him for his drug conviction, the trial court denied the State's request. The vehicle's forfeiture, the court determined, would be grossly disproportionate to the gravity of Timbs's offense, and therefore unconstitutional under the Eighth Amendment's Excessive Fines Clause. The Court of Appeals of Indiana affirmed, but the Indiana Supreme Court reversed, holding that the Excessive Fines Clause constrains only federal action and is inapplicable to state impositions.

Held: The Eighth Amendment's Excessive Fines Clause is an incorporated protection applicable to the States under the Fourteenth Amendment's Due Process Clause. Pp. 150–156.

(a) The Fourteenth Amendment's Due Process Clause incorporates and renders applicable to the States Bill of Rights protections "fundamental to our scheme of ordered liberty," or "deeply rooted in this Nation's history and tradition." *McDonald* v. *Chicago*, 561 U. S. 742, 767 (alterations omitted). If a Bill of Rights protection is incorporated, there is no daylight between the federal and state conduct it prohibits or requires. P. 150.

(b) The prohibition embodied in the Excessive Fines Clause carries forward protections found in sources from Magna Carta to the English Bill of Rights to state constitutions from the colonial era to the present day. Protection against excessive fines has been a constant shield throughout Anglo-American history for good reason: Such fines undermine other liberties. They can be used, *e. g.*, to retaliate against or chill the speech of political enemies. They can also be employed, not in service of penal purposes, but as a source of revenue. The historical and logical case for concluding that the Fourteenth Amendment incorporates the Excessive Fines Clause is indeed overwhelming. Pp. 151–154.

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(c) Indiana argues that the Clause does not apply to its use of civil *in rem* forfeitures, but this Court held in *Austin* v. *United States*, 509 U. S. 602, that such forfeitures fall within the Clause's protection when they are at least partially punitive. Indiana cannot prevail unless the Court overrules *Austin* or holds that, in light of *Austin*, the Excessive Fines Clause is not incorporated because its application to civil *in rem* forfeitures is neither fundamental nor deeply rooted.

The first argument, overturning *Austin*, is not properly before this Court. The Indiana Supreme Court held only that the Excessive Fines Clause did not apply to the States. The court did not address the Clause's application to civil *in rem* forfeitures, nor did the State ask it to do so. Timbs thus sought this Court's review only of the question whether the Excessive Fines Clause is incorporated by the Fourteenth Amendment. Indiana attempted to reformulate the question to ask whether the Clause restricted States' use of civil *in rem* forfeitures and argued on the merits that *Austin* was wrongly decided. Respondents' "right . . . to restate the questions presented," however, "does not give them the power to expand [those] questions," *Bray* v. *Alexandria Women's Health Clinic*, 506 U. S. 263, 279, n. 10 (emphasis deleted), particularly where the proposed reformulation would lead the Court to address a question neither pressed nor passed upon below, cf. *Cutter* v. *Wilkinson*, 544 U. S. 709, 718, n. 7.

The second argument, that the Excessive Fines Clause cannot be incorporated if it applies to civil *in rem* forfeitures, misapprehends the nature of the incorporation inquiry. In considering whether the Fourteenth Amendment incorporates a Bill of Rights protection, this Court asks whether the right guaranteed—not each and every particular application of that right—is fundamental or deeply rooted. To suggest otherwise is inconsistent with the approach taken in cases concerning novel applications of rights already deemed incorporated. See, *e. g.*, *Packingham* v. *North Carolina*, 582 U. S. 98, 101. The Excessive Fines Clause is thus incorporated regardless of whether application of the Clause to civil *in rem* forfeitures is itself fundamental or deeply rooted. Pp. 154–156.

84 N. E. 3d 1179, vacated and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and BREYER, ALITO, SOTOMAYOR, KAGAN, GORSUCH, and KAVANAUGH, JJ., joined. GORSUCH, J., filed a concurring opinion, *post*, p. 157. THOMAS, J., filed an opinion concurring in the judgment, *post*, p. 157.

Wesley P. Hottot argued the cause for petitioner. With him on the briefs were *Samuel B. Gedge*, *Scott G. Bullock*, and *Darpana M. Sheth*.

Thomas M. Fisher, Solicitor General of Indiana, argued the cause for respondent. With him on the brief were *Curtis T. Hill, Jr.*, Attorney General, *Kian J. Hudson*, Deputy Solicitor General, and *Aaron T. Craft* and *Julia C. Payne*, Deputy Attorneys General.*

JUSTICE GINSBURG delivered the opinion of the Court.

Tyson Timbs pleaded guilty in Indiana state court to dealing in a controlled substance and conspiracy to commit theft. The trial court sentenced him to one year of home detention and five years of probation, which included a court-

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*Briefs of *amici curiae* urging reversal were filed for the American Bar Association by *Robert M. Carlson* and *Robert N. Weiner*; for the American Civil Liberties Union et al. by *Nusrat J. Choudhury, Orion Danjuma, Dennis D. Parker, Ezekiel Edwards, David Cole, Charles Duan, Nila Bala*, and *Samuel Brooke*; for the American Civil Rights Union by *Kenneth A. Klukowski*; for Cause of Action Institute by *John J. Vecchione, Julie A. Smith*, and *Cynthia F. Crawford*; for the Chamber of Commerce of the United States of America by *Bert W. Rein, Carol A. Laham, Andrew G. Woodson*, and *Daryl Joseffer*; for the Constitutional Accountability Center by *Elizabeth B. Wydra, Brianne J. Gorod, David H. Gans*, and *Brian R. Frazelle*; for the DKT Liberty Project et al. by *Jessica Ring Amunson, Clark M. Neily III, Jay R. Schweikert, Shana-Tara O'Toole, Timothy Sandefur*, and *Aditya Dynar*; for the Drug Policy Alliance et al. by *Vincent Levy* and *Daniel M. Sullivan*; for Indiana Criminal Defense Lawyers by *William B. Shields* and *James T. Giles*; for the Institute for Free Speech by *Allen Dickerson, Zac Morgan*, and *Owen Yeates*; for Judicial Watch, Inc., et al. by *Chris Fedeli*; for the Juvenile Law Center et al. by *Marsha L. Levick* and *Jessica Feierman*; for the NAACP Legal Defense & Educational Fund, Inc., by *Daniel S. Harawa, Sherrilyn A. Ifill, Janai S. Nelson*, and *Samuel Spital*; for the National Association of Criminal Defense Lawyers by *Jeffrey T. Green*; for the Pacific Legal Foundation by *Christina M. Martin, Lawrence G. Salzman*, and *Anthony L. François*; for The Rutherford Institute by *D. Alicia Hickok* and *John W. Whitehead*; and for Scholars by *Eugene Volokh*.

Lawrence Rosenthal and *Lisa Soronen* filed a brief for the National Association of Counties et al. as *amici curiae* urging affirmance.

Briefs of *amici curiae* were filed for Eighth Amendment Scholars by *David Schulmeister*; and for the Foundation for Moral Law by *John A. Eidsmoe*.

supervised addiction-treatment program. The sentence also required Timbs to pay fees and costs totaling $1,203. At the time of Timbs's arrest, the police seized his vehicle, a Land Rover SUV Timbs had purchased for about $42,000. Timbs paid for the vehicle with money he received from an insurance policy when his father died.

The State engaged a private law firm to bring a civil suit for forfeiture of Timbs's Land Rover, charging that the vehicle had been used to transport heroin. After Timbs's guilty plea in the criminal case, the trial court held a hearing on the forfeiture demand. Although finding that Timbs's vehicle had been used to facilitate violation of a criminal statute, the court denied the requested forfeiture, observing that Timbs had recently purchased the vehicle for $42,000, more than four times the maximum $10,000 monetary fine assessable against him for his drug conviction. Forfeiture of the Land Rover, the court determined, would be grossly disproportionate to the gravity of Timbs's offense, hence unconstitutional under the Eighth Amendment's Excessive Fines Clause. The Court of Appeals of Indiana affirmed that determination, but the Indiana Supreme Court reversed. 84 N. E. 3d 1179 (2017). The Indiana Supreme Court did not decide whether the forfeiture would be excessive. Instead, it held that the Excessive Fines Clause constrains only federal action and is inapplicable to state impositions. We granted certiorari. 585 U. S. 1002 (2018).

The question presented: Is the Eighth Amendment's Excessive Fines Clause an "incorporated" protection applicable to the States under the Fourteenth Amendment's Due Process Clause? Like the Eighth Amendment's proscriptions of "cruel and unusual punishments" and "[e]xcessive bail," the protection against excessive fines guards against abuses of government's punitive or criminal-law-enforcement authority. This safeguard, we hold, is "fundamental to our scheme of ordered liberty," with "dee[p] root[s] in [our] history and tradition." *McDonald* v. *Chicago*, 561 U. S. 742,

767 (2010) (internal quotation marks omitted; emphasis deleted). The Excessive Fines Clause is therefore incorporated by the Due Process Clause of the Fourteenth Amendment.

I

A

When ratified in 1791, the Bill of Rights applied only to the Federal Government. *Barron ex rel. Tiernan* v. *Mayor of Baltimore*, 7 Pet. 243 (1833). "The constitutional Amendments adopted in the aftermath of the Civil War," however, "fundamentally altered our country's federal system." *McDonald*, 561 U. S., at 754. With only "a handful" of exceptions, this Court has held that the Fourteenth Amendment's Due Process Clause incorporates the protections contained in the Bill of Rights, rendering them applicable to the States. *Id.*, at 764–765, and nn. 12–13. A Bill of Rights protection is incorporated, we have explained, if it is "fundamental to our scheme of ordered liberty," or "deeply rooted in this Nation's history and tradition." *Id.*, at 767 (internal quotation marks omitted; emphasis deleted).

Incorporated Bill of Rights guarantees are "enforced against the States under the Fourteenth Amendment according to the same standards that protect those personal rights against federal encroachment." *Id.*, at 765 (internal quotation marks omitted). Thus, if a Bill of Rights protection is incorporated, there is no daylight between the federal and state conduct it prohibits or requires.[1]

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[1] The sole exception is our holding that the Sixth Amendment requires jury unanimity in federal, but not state, criminal proceedings. *Apodaca* v. *Oregon*, 406 U. S. 404 (1972). As we have explained, that "exception to th[e] general rule . . . was the result of an unusual division among the Justices," and it "does not undermine the well-established rule that incorporated Bill of Rights protections apply identically to the States and the Federal Government." *McDonald*, 561 U. S., at 766, n. 14.

B

Under the Eighth Amendment, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Taken together, these Clauses place "parallel limitations" on "the power of those entrusted with the criminal-law function of government." *Browning-Ferris Industries of Vt., Inc.* v. *Kelco Disposal, Inc.*, 492 U. S. 257, 263 (1989) (quoting *Ingraham* v. *Wright*, 430 U. S. 651, 664 (1977)). Directly at issue here is the phrase "nor excessive fines imposed," which "limits the government's power to extract payments, whether in cash or in kind, 'as punishment for some offense.'" *United States* v. *Bajakajian*, 524 U. S. 321, 327–328 (1998) (quoting *Austin* v. *United States*, 509 U. S. 602, 609–610 (1993)). The Fourteenth Amendment, we hold, incorporates this protection.

The Excessive Fines Clause traces its venerable lineage back to at least 1215, when Magna Carta guaranteed that "[a] Free-man shall not be amerced for a small fault, but after the manner of the fault; and for a great fault after the greatness thereof, saving to him his contenement . . . ." § 20, 9 Hen. 3, ch. 14, in 1 Eng. Stat. at Large 5 (1225).[2] As relevant here, Magna Carta required that economic sanctions "be proportioned to the wrong" and "not be so large as to deprive [an offender] of his livelihood." *Browning-Ferris*, 492 U. S., at 271. See also 4 W. Blackstone, Commentaries on the Laws of England 372 (1769) ("[N]o man shall have a larger amercement imposed upon him, than his circumstances or personal estate will bear . . . ."). But cf. *Bajakaj-*

[2] "Amercements were payments to the Crown, and were required of individuals who were 'in the King's mercy,' because of some act offensive to the Crown." *Browning-Ferris*, 492 U. S., at 269. "[T]hough fines and amercements had distinct historical antecedents, they served fundamentally similar purposes—and, by the seventeenth and eighteenth centuries, the terms were often used interchangeably." Brief for Eighth Amendment Scholars as *Amici Curiae* 12.

ian, 524 U. S., at 340, n. 15 (taking no position on the question whether a person's income and wealth are relevant considerations in judging the excessiveness of a fine).

Despite Magna Carta, imposition of excessive fines persisted. The 17th century Stuart kings, in particular, were criticized for using large fines to raise revenue, harass their political foes, and indefinitely detain those unable to pay. *E. g.*, The Grand Remonstrance ¶¶17, 34 (1641), in The Constitutional Documents of the Puritan Revolution 1625–1660, pp. 210, 212 (S. Gardiner ed., 3d ed. rev. 1906); *Browning-Ferris*, 492 U. S., at 267. When James II was overthrown in the Glorious Revolution, the attendant English Bill of Rights reaffirmed Magna Carta's guarantee by providing that "excessive Bail ought not to be required, nor excessive Fines imposed; nor cruel and unusual Punishments inflicted." 1 Wm. & Mary, ch. 2, § 10, in 3 Eng. Stat. at Large 441 (1689).

Across the Atlantic, this familiar language was adopted almost verbatim, first in the Virginia Declaration of Rights, then in the Eighth Amendment, which states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Adoption of the Excessive Fines Clause was in tune not only with English law; the Clause resonated as well with similar colonial-era provisions. See, *e. g.*, Pa. Frame of Govt., Laws Agreed Upon in England, Art. XVIII (1682), in 5 Federal and State Constitutions 3061 (F. Thorpe ed. 1909) ("[A]ll fines shall be moderate, and saving men's contenements, merchandize, or wainage."). In 1787, the constitutions of eight States—accounting for 70% of the U. S. population—forbade excessive fines. Calabresi, Agudo, & Dore, State Bills of Rights in 1787 and 1791, 85 S. Cal. L. Rev. 1451, 1517 (2012).

An even broader consensus obtained in 1868 upon ratification of the Fourteenth Amendment. By then, the constitutions of 35 of the 37 States—accounting for over 90% of the U. S. population—expressly prohibited excessive fines. Calabresi & Agudo, Individual Rights Under State Constitu-

tions When the Fourteenth Amendment Was Ratified in 1868, 87 Texas L. Rev. 7, 82 (2008).

Notwithstanding the States' apparent agreement that the right guaranteed by the Excessive Fines Clause was fundamental, abuses continued. Following the Civil War, Southern States enacted Black Codes to subjugate newly freed slaves and maintain the prewar racial hierarchy. Among these laws' provisions were draconian fines for violating broad proscriptions on "vagrancy" and other dubious offenses. See, *e. g.*, Mississippi Vagrant Law, Laws of Miss. § 2 (1865), in 1 W. Fleming, Documentary History of Reconstruction 283–285 (1950). When newly freed slaves were unable to pay imposed fines, States often demanded involuntary labor instead. *E. g.*, *id.* § 5; see Finkelman, John Bingham and the Background to the Fourteenth Amendment, 36 Akron L. Rev. 671, 681–685 (2003) (describing Black Codes' use of fines and other methods to "replicate, as much as possible, a system of involuntary servitude"). Congressional debates over the Civil Rights Act of 1866, the joint resolution that became the Fourteenth Amendment, and similar measures repeatedly mentioned the use of fines to coerce involuntary labor. See, *e. g.*, Cong. Globe, 39th Cong., 1st Sess., 443 (1866); *id.*, at 1123–1124.

Today, acknowledgment of the right's fundamental nature remains widespread. As Indiana itself reports, all 50 States have a constitutional provision prohibiting the imposition of excessive fines either directly or by requiring proportionality. Brief in Opposition 8–9. Indeed, Indiana explains that its own Supreme Court has held that the Indiana Constitution should be interpreted to impose the same restrictions as the Eighth Amendment. *Id.*, at 9 (citing *Norris* v. *State*, 271 Ind. 568, 576, 394 N. E. 2d 144, 150 (1979)).

For good reason, the protection against excessive fines has been a constant shield throughout Anglo-American history: Exorbitant tolls undermine other constitutional liberties. Excessive fines can be used, for example, to retaliate against or chill the speech of political enemies, as the Stuarts' critics

learned several centuries ago. See *Browning-Ferris*, 492 U. S., at 267. Even absent a political motive, fines may be employed "in a measure out of accord with the penal goals of retribution and deterrence," for "fines are a source of revenue," while other forms of punishment "cost a State money." *Harmelin* v. *Michigan*, 501 U. S. 957, 979, n. 9 (1991) (opinion of Scalia, J.) ("it makes sense to scrutinize governmental action more closely when the State stands to benefit"). This concern is scarcely hypothetical. See Brief for American Civil Liberties Union et al. as *Amici Curiae* 7 ("Perhaps because they are politically easier to impose than generally applicable taxes, state and local governments nationwide increasingly depend heavily on fines and fees as a source of general revenue.").

In short, the historical and logical case for concluding that the Fourteenth Amendment incorporates the Excessive Fines Clause is overwhelming. Protection against excessive punitive economic sanctions secured by the Clause is, to repeat, both "fundamental to our scheme of ordered liberty" and "deeply rooted in this Nation's history and tradition." *McDonald*, 561 U. S., at 767 (internal quotation marks omitted; emphasis deleted).

II

The State of Indiana does not meaningfully challenge the case for incorporating the Excessive Fines Clause as a general matter. Instead, the State argues that the Clause does not apply to its use of civil *in rem* forfeitures because, the State says, the Clause's specific application to such forfeitures is neither fundamental nor deeply rooted.

In *Austin* v. *United States*, 509 U. S. 602 (1993), however, this Court held that civil *in rem* forfeitures fall within the Clause's protection when they are at least partially punitive. *Austin* arose in the federal context. But when a Bill of Rights protection is incorporated, the protection applies "identically to both the Federal Government and the States." *McDonald*, 561 U. S., at 766, n. 14. Accordingly, to prevail, Indiana must persuade us either to overrule our decision in

Austin or to hold that, in light of *Austin*, the Excessive Fines Clause is not incorporated because the Clause's application to civil *in rem* forfeitures is neither fundamental nor deeply rooted. The first argument is not properly before us, and the second misapprehends the nature of our incorporation inquiry.

A

In the Indiana Supreme Court, the State argued that forfeiture of Timbs's SUV would not be excessive. See Brief in Opposition 5. It never argued, however, that civil *in rem* forfeitures were categorically beyond the reach of the Excessive Fines Clause. The Indiana Supreme Court, for its part, held that the Clause did not apply to the States at all, and it nowhere addressed the Clause's application to civil *in rem* forfeitures. See 84 N. E. 3d 1179. Accordingly, Timbs sought our review of the question "[w]hether the Eighth Amendment's Excessive Fines Clause is incorporated against the States under the Fourteenth Amendment." Pet. for Cert. i. In opposing review, Indiana attempted to reformulate the question to ask "[w]hether the Eighth Amendment's Excessive Fines Clause restricts States' use of civil asset forfeitures." Brief in Opposition i. And on the merits, Indiana has argued not only that the Clause is not incorporated, but also that *Austin* was wrongly decided. Respondents' "right, in their brief in opposition, to restate the questions presented," however, "does not give them the power to expand [those] questions." *Bray* v. *Alexandria Women's Health Clinic*, 506 U. S. 263, 279, n. 10 (1993) (emphasis deleted). That is particularly the case where, as here, a respondent's reformulation would lead us to address a question neither pressed nor passed upon below. Cf. *Cutter* v. *Wilkinson*, 544 U. S. 709, 718, n. 7 (2005) ("[W]e are a court of review, not of first view . . . ."). We thus decline the State's invitation to reconsider our unanimous judgment in *Austin* that civil *in rem* forfeitures are fines for purposes of the Eighth Amendment when they are at least partially punitive.

B

As a fallback, Indiana argues that the Excessive Fines Clause cannot be incorporated if it applies to civil *in rem* forfeitures. We disagree. In considering whether the Fourteenth Amendment incorporates a protection contained in the Bill of Rights, we ask whether the right guaranteed—not each and every particular application of that right—is fundamental or deeply rooted.

Indiana's suggestion to the contrary is inconsistent with the approach we have taken in cases concerning novel applications of rights already deemed incorporated. For example, in *Packingham* v. *North Carolina*, 582 U. S. 98 (2017), we held that a North Carolina statute prohibiting registered sex offenders from accessing certain commonplace social media websites violated the First Amendment right to freedom of speech. In reaching this conclusion, we noted that the First Amendment's Free Speech Clause was "applicable to the States under the Due Process Clause of the Fourteenth Amendment." *Id.*, at 101. We did not, however, inquire whether the Free Speech Clause's application specifically to social media websites was fundamental or deeply rooted. See also, *e. g.*, *Riley* v. *California*, 573 U. S. 373 (2014) (holding, without separately considering incorporation, that States' warrantless search of digital information stored on cell phones ordinarily violates the Fourth Amendment). Similarly here, regardless of whether application of the Excessive Fines Clause to civil *in rem* forfeitures is itself fundamental or deeply rooted, our conclusion that the Clause is incorporated remains unchanged.

* * *

For the reasons stated, the judgment of the Indiana Supreme Court is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE GORSUCH, concurring.

The majority faithfully applies our precedent and, based on a wealth of historical evidence, concludes that the Fourteenth Amendment incorporates the Eighth Amendment's Excessive Fines Clause against the States. I agree with that conclusion. As an original matter, I acknowledge, the appropriate vehicle for incorporation may well be the Fourteenth Amendment's Privileges or Immunities Clause, rather than, as this Court has long assumed, the Due Process Clause. See, *e. g.*, *post*, at 157–159 (THOMAS, J., concurring in judgment); *McDonald* v. *Chicago*, 561 U. S. 742, 805–858 (2010) (THOMAS, J., concurring in part and concurring in judgment) (documenting evidence that the "privileges or immunities of citizens of the United States" include, at minimum, the individual rights enumerated in the Bill of Rights); Wildenthal, Nationalizing the Bill of Rights: Revisiting the Original Understanding of the Fourteenth Amendment in 1866–67, 68 Ohio St. L. J. 1509 (2007); A. Amar, The Bill of Rights: Creation and Reconstruction 163–214 (1998); M. Curtis, No State Shall Abridge: The Fourteenth Amendment and the Bill of Rights (1986). But nothing in this case turns on that question, and, regardless of the precise vehicle, there can be no serious doubt that the Fourteenth Amendment requires the States to respect the freedom from excessive fines enshrined in the Eighth Amendment.

JUSTICE THOMAS, concurring in the judgment.

I agree with the Court that the Fourteenth Amendment makes the Eighth Amendment's prohibition on excessive fines fully applicable to the States. But I cannot agree with the route the Court takes to reach this conclusion. Instead of reading the Fourteenth Amendment's Due Process Clause to encompass a substantive right that has nothing to do with "process," I would hold that the right to be free from excessive fines is one of the "privileges or immunities of citi-

zens of the United States" protected by the Fourteenth Amendment.

I

The Fourteenth Amendment provides that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." "On its face, this appears to grant . . . United States citizens a certain collection of rights—*i. e.*, privileges or immunities—attributable to that status." *McDonald* v. *Chicago*, 561 U. S. 742, 808 (2010) (THOMAS, J., concurring in part and concurring in judgment). But as I have previously explained, this Court "marginaliz[ed]" the Privileges or Immunities Clause in the late 19th century by defining the collection of rights covered by the Clause "quite narrowly." *Id.*, at 808–809. Litigants seeking federal protection of substantive rights against the States thus needed "an alternative fount of such rights," and this Court "found one in a most curious place," *id.*, at 809—the Fourteenth Amendment's Due Process Clause, which prohibits "any State" from "depriv[ing] any person of life, liberty, or property, without due process of law."

Because this Clause speaks only to "process," the Court has "long struggled to define" what substantive rights it protects. *McDonald*, *supra*, at 810 (opinion of THOMAS, J.). The Court ordinarily says, as it does today, that the Clause protects rights that are "fundamental." *Ante*, at 149, 150, 154, 156. Sometimes that means rights that are "'deeply rooted in this Nation's history and tradition.'" *Ante*, at 150, 154 (quoting *McDonald*, *supra*, at 767 (majority opinion)). Other times, when that formulation proves too restrictive, the Court defines the universe of "fundamental" rights so broadly as to border on meaningless. See, *e. g.*, *Obergefell* v. *Hodges*, 576 U. S. 644, 651–652 (2015) ("rights that allow persons, within a lawful realm, to define and express their identity"); *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833, 851 (1992) ("At the heart of liberty is the right to define

one's own concept of existence, of meaning, of the universe, and of the mystery of human life"). Because the oxymoronic "substantive" "due process" doctrine has no basis in the Constitution, it is unsurprising that the Court has been unable to adhere to any "guiding principle to distinguish 'fundamental' rights that warrant protection from nonfundamental rights that do not." *McDonald*, *supra*, at 811 (opinion of THOMAS, J.). And because the Court's substantive due process precedents allow the Court to fashion fundamental rights without any textual constraints, it is equally unsurprising that among these precedents are some of the Court's most notoriously incorrect decisions. *E. g.*, *Roe* v. *Wade*, 410 U. S. 113 (1973); *Dred Scott* v. *Sandford*, 19 How. 393, 450 (1857).

The present case illustrates the incongruity of the Court's due process approach to incorporating fundamental rights against the States. Petitioner argues that the forfeiture of his vehicle is an excessive punishment. He does not argue that the Indiana courts failed to "'proceed according to the "law of the land"—that is, according to written constitutional and statutory provisions,'" or that the State failed to provide "some baseline procedures." *Nelson* v. *Colorado*, 581 U. S. 128, 150, n. 1 (2017) (THOMAS, J., dissenting). His claim has nothing to do with any "process" "due" him. I therefore decline to apply the "legal fiction" of substantive due process. *McDonald*, 561 U. S., at 811 (opinion of THOMAS, J.).

II

When the Fourteenth Amendment was ratified, "the terms 'privileges' and 'immunities' had an established meaning as synonyms for 'rights.'" *Id.*, at 813. Those "rights" were the "inalienable rights" of citizens that had been "long recognized," and "the ratifying public understood the Privileges or Immunities Clause to protect constitutionally enumerated rights" against interference by the States. *Id.*, at 822, 837. Many of these rights had been adopted from English law into colonial charters, then state constitutions and bills of rights,

and finally the Constitution. "Consistent with their English heritage, the founding generation generally did not consider many of the rights identified in [the Bill of Rights] as new entitlements, but as inalienable rights of all men, given legal effect by their codification in the Constitution's text." *Id.*, at 818.

The question here is whether the Eighth Amendment's prohibition on excessive fines was considered such a right. The historical record overwhelmingly demonstrates that it was.

A

The Excessive Fines Clause "was taken verbatim from the English Bill of Rights of 1689," *United States* v. *Bajakajian*, 524 U. S. 321, 335 (1998), which itself formalized a longstanding English prohibition on disproportionate fines. The Charter of Liberties of Henry I, issued in 1101, stated that "[i]f any of my barons or men shall have committed an offence he shall not give security to the extent of forfeiture of his money, as he did in the time of my father, or of my brother, but *according to the measure of the offence so shall he pay* . . . ." Sources of English Legal and Constitutional History ¶8, p. 50 (M. Evans & R. Jack eds. 1984) (emphasis added). Expanding this principle, Magna Carta required that "amercements (the medieval predecessors of fines) should be proportioned to the offense and that they should not deprive a wrongdoer of his livelihood," *Bajakajian*, *supra*, at 335:

> "A free man shall be amerced for a small fault only according to the measure thereof, and for a great crime according to its magnitude, saving his position; and in like manner, a merchant saving his trade, and a villein saving his tillage, if they should fall under Our mercy." Magna Carta, ch. 20 (1215), in A. Howard, Magna Carta: Text & Commentary 42 (rev. ed. 1998).

Similar clauses levying amercements "only in proportion to the measure of the offense" applied to earls, barons, and clergymen. Chs. 21–22, *ibid.* One historian posits that, due to the prevalence of amercements and their use in increasing the English treasury, "[v]ery likely there was no clause in Magna Carta more grateful to the mass of the people than that about amercements." Pleas of the Crown for the County of Gloucester xxxiv (F. Maitland ed. 1884).

The principle was reiterated in the First Statute of Westminster, which provided that no man should "be amerced, without reasonable cause, and according to the quantity of his Trespass." 3 Edw., ch. 6 (1275). The English courts have long enforced this principle. In one early case, for example, the King commanded the bailiff "to take a moderate amercement proper to the magnitude and manner of th[e] offense, according to the tenour of the Great Charter of the Liberties of England," and the bailiff was sued for extorting "a heavier ransom." *Le Gras* v. *Bailiff of Bishop of Winchester*, Y. B. Mich. 10 Edw. II, pl. 4 (1316), reprinted in 52 Selden Society 3, 5 (1934); see also *Richard Godfrey's Case*, 11 Co. Rep. 42a, 44a, 77 Eng. Rep. 1199, 1202 (K. B. 1615) (excessive fines are "against law").

During the reign of the Stuarts in the period leading up to the Glorious Revolution of 1688–1689, fines were a flashpoint "in the constitutional and political struggles between the king and his parliamentary critics." L. Schwoerer, The Declaration of Rights, 1689, p. 91 (1981) (Schwoerer). From 1629 to 1640, Charles I attempted to govern without convening Parliament, but "in the absence of parliamentary grants," he needed other ways of raising revenue. 4 H. Walter, A History of England 135 (1834); see 1 T. Macaulay, History of England 85 (1899). He thus turned "to exactions, some odious and obsolete, some of very questionable legality, and others clearly against law." 1 H. Hallam, Constitutional History of England: From the Accession of Henry VII to the

Death of George II 462 (1827) (Hallam); see 4 Walter, *supra*, at 135.

The Court of Star Chamber, for instance, "imposed heavy fines on the king's enemies," Schwoerer 91, in disregard "of the provision of the Great Charter, that no man shall be amerced even to the full extent of his means . . . ." 2 Hallam *47. "[T]he strong interest of th[is] court in these fines . . . had a tendency to aggravate the punishment . . . ." 1 *id.*, at 490. "The statute abolishing" the Star Chamber in 1641 "specifically prohibited any court thereafter from . . . levying . . . excessive fines." Schwoerer 91.

"But towards the end of Charles II's reign" in the 1670s and early 1680s, courts again "imposed ruinous fines on the critics of the crown." *Ibid.* In 1680, a committee of the House of Commons "examined the transcripts of all the fines imposed in King's Bench since 1677," *ibid.*, and found that "the Court of King's Bench, in the Imposition of Fines on Offenders of late Years, hath acted arbitrarily, illegally, and partially; favouring Papists, and Persons popishly affected; and excessively oppressing his Majesty's Protestant Subjects," 9 Journals of the House of Commons 692 (Dec. 23, 1680). The House of Commons determined that the actions of the judges of the King's Bench, particularly the actions of Chief Justice William Scroggs, had been so contrary to law that it prepared articles of impeachment against him. The articles alleged that Scroggs had "most notoriously departed from all Rules of Justice and Equality, in the Imposition of Fines upon Persons convicted of Misdemeanors" without "any Regard to the Nature of the Offences, or the Ability of the Persons." *Id.*, at 698.

Yet "[o]ver the next few years fines became even more excessive and partisan." Schwoerer 91. The King's Bench, presided over by the infamous Chief Justice Jeffreys, fined Anglican cleric Titus Oates 2,000 marks (among other punishments) for perjury. *Id.*, at 93. For speaking against the Duke of York, the sheriff of London was fined £100,000 in

1682, which corresponds to well over $10 million in present-day dollars[1]—"an amount, which, as it extended to the ruin of the criminal, was directly contrary to the spirit of [English] law." R. Vaughan, The History of England Under the House of Stuart, pt. 2, p. 801 (1840). The King's Bench fined Sir Samuel Barnadiston £10,000 for allegedly seditious letters, a fine that was overturned by the House of Lords as "exorbitant and excessive." 14 Journals of the House of Lords 210 (May 14, 1689). Several members of the committees that would draft the Declaration of Rights—which included the prohibition on excessive fines that was enacted into the English Bill of Rights of 1689—had themselves "suffered heavy fines." Schwoerer 91–92. And in 1684, judges in the case of John Hampden held that Magna Carta did not limit "fines for great offences" against the King, and imposed a £40,000 fine. *Trial of Hampden*, 9 How. St. Tr. 1054, 1125 (K. B.); 1 J. Stephen, A History of the Criminal Law of England 490 (1883).

"Freedom from excessive fines" was considered "indisputably an ancient right of the subject," and the Declaration of Rights' indictment against James II "charged that during his reign judges had imposed excessive fines, thereby subverting the laws and liberties of the kingdom." Schwoerer 90. Article 10 of the Declaration declared "[t]hat excessive Bayle ought not to be required nor excessive fynes imposed nor cruel and unusuall Punishments inflicted." *Id.*, at 297.

Shortly after the English Bill of Rights was enacted, Parliament addressed several excessive fines imposed before the Glorious Revolution. For example, the House of Lords overturned a £30,000 fine against the Earl of Devonshire as "excessive and exorbitant, against Magna Charta, the common right of the subject, and against the law of the land." *Case of Earl of Devonshire*, 11 How. St. Tr. 1354, 1371 (K. B.

[1] See Currency Converter: 1270–2017 (estimating the 2017 equivalent of £100,000 in 1680), http://nationalarchives.gov.uk/currency-converter (as last visited Feb. 8, 2019)

1687). Although the House of Lords refused to reverse the judgments against Titus Oates, a minority argued that his punishments were "'contrary to Law and ancient Practice'" and violated the prohibition on "'excessive Fines.'" *Harmelin* v. *Michigan*, 501 U. S. 957, 971 (1991) (opinion of Scalia, J.); *Trial of Oates*, 10 How. St. Tr. 1080, 1325 (K. B. 1685). The House of Commons passed a bill to overturn Oates' conviction, and eventually, after a request from Parliament, the King pardoned Oates. *Id.*, at 1329–1330.

Writing a few years before our Constitution was adopted, Blackstone—"whose works constituted the preeminent authority on English law for the founding generation," *Alden* v. *Maine*, 527 U. S. 706, 715 (1999)—explained that the prohibition on excessive fines contained in the English Bill of Rights "had a retrospect to some unprecedented proceedings in the court of king's bench." 4 Commentaries on the Laws of England 372 (1769). Blackstone confirmed that this prohibition was "only declaratory . . . of the old constitutional law of the land," which had long "regulated" the "discretion" of the courts in imposing fines. *Ibid.*

In sum, at the time of the founding, the prohibition on excessive fines was a longstanding right of Englishmen.

B

"As English subjects, the colonists considered themselves to be vested with the same fundamental rights as other Englishmen," *McDonald*, 561 U. S., at 816 (opinion of THOMAS, J.), including the prohibition on excessive fines. *E. g.*, J. Dummer, A Defence of the New-England Charters 16–17 (1721) ("The Subjects Abroad claim the Privilege of *Magna Charta*, which says that no Man shall be fin'd above the Nature of his Offence, and whatever his Miscarriage be, a *Salvo Contenemento suo* is to be observ'd by the Judge"). Thus, the text of the Eighth Amendment was "'based directly on . . . the Virginia Declaration of Rights,' which 'adopted verbatim the language of the English Bill of

Rights.'" *Browning-Ferris Industries of Vt., Inc.* v. *Kelco Disposal, Inc.*, 492 U. S. 257, 266 (1989) (quoting *Solem* v. *Helm*, 463 U. S. 277, 285, n. 10 (1983)); see *Jones* v. *Commonwealth*, 5 Va. 555, 557 (1799) (opinion of Carrington, J.) (explaining that the clause in the Virginia Declaration of Rights embodied the traditional legal understanding that any "fine or amercement ought to be according to the degree of the fault and the estate of the defendant").

When the States were considering whether to ratify the Constitution, advocates for a separate bill of rights emphasized the need for an explicit prohibition on excessive fines mirroring the English prohibition. In colonial times, fines were "the drudge-horse of criminal justice," "probably the most common form of punishment." L. Friedman, Crime and Punishment in American History 38 (1993). To some, this fact made a constitutional prohibition on excessive fines all the more important. As the well-known Anti-Federalist Brutus argued in an essay, a prohibition on excessive fines was essential to "the security of liberty" and was "as necessary under the general government as under that of the individual states; for the power of the former is as complete to the purpose of requiring bail, imposing fines, inflicting punishments, . . . and seizing . . . property . . . as the other." Brutus II (Nov. 1, 1787), in The Complete Bill of Rights 621 (N. Cogan ed. 1997). Similarly, during Virginia's ratifying convention, Patrick Henry pointed to Virginia's own prohibition on excessive fines and said that it would "depart from the genius of your country" for the Federal Constitution to omit a similar prohibition. Debate on Virginia Convention (June 14, 1788), in 3 Debates on the Federal Constitution 447 (J. Elliot 2d ed. 1854). Henry continued: "[W]hen we come to punishments, no latitude ought to be left, nor dependence put on the virtue of representatives" to "define punishments without this control." *Ibid.*

Governor Edmund Randolph responded to Henry, arguing that Virginia's charter was "nothing more than an investi-

ture, in the hands of the Virginia citizens, of those rights which belonged to British subjects." *Id.*, at 466. According to Randolph, "the exclusion of excessive bail and fines . . . would follow of itself, without a bill of rights," for such fines would never be imposed absent "corruption in the House of Representatives, Senate, and President," or judges acting "contrary to justice." *Id.*, at 467–468.

For all the debate about whether an explicit prohibition on excessive fines was necessary in the Federal Constitution, all agreed that the prohibition on excessive fines was a well-established and fundamental right of citizenship. When the Excessive Fines Clause was eventually considered by Congress, it received hardly any discussion before "it was agreed to by a considerable majority." 1 Annals of Cong. 754 (1789). And when the Bill of Rights was ratified, most of the States had a prohibition on excessive fines in their constitutions.[2]

Early commentary on the Clause confirms the widespread agreement about the fundamental nature of the prohibition on excessive fines. Justice Story, writing a few decades before the ratification of the Fourteenth Amendment, explained that the Eighth Amendment was "adopted, as an admonition to all departments of the national government, to warn them against such violent proceedings, as had taken

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[2] Del. Const., Art. I, § 11 (1792), in 1 Federal and State Constitutions 569 (F. Thorpe ed. 1909); Md. Const., Decl. of Rights, Art. XXII (1776), in 3 *id.*, at 1688; Mass. Const., pt. 1, Art. XXVI (1780), in *id.*, at 1892; N. H. Const., pt. 1, Art. 1, § XXXIII (1784), in 4 *id.*, at 2457; N. C. Const., Decl. of Rights, Art. X (1776), in 5 *id.*, at 2788; Pa. Const., Art. IX, § 13 (1790), in *id.*, at 3101; S. C. Const., Art. IX, § 4 (1790), in 6 *id.*, at 3264; Va. Const., Bill of Rights, § 9 (1776), in 7 *id.*, at 3813. Vermont had a clause specifying that "all fines shall be proportionate to the offences." Vt. Const., ch. II, § XXIX (1786), in *id.*, at 3759. Georgia's 1777 Constitution had an excessive-fines clause, Art. LIX, but its 1789 Constitution did not. And the Northwest Territory Ordinance provided that "[a]ll fines shall be moderate; and no cruel or unusual punishments inflicted." Art. II, 1 Stat. 52, n. (*a*) (1787).

place in England in the arbitrary reigns of some of the Stuarts," when "[e]normous fines and amercements were . . . sometimes imposed." 3 J. Story, Commentaries on the Constitution of the United States § 1896, pp. 750–751 (1833). Story included the prohibition on excessive fines as a right, along with the "right to bear arms" and others protected by the Bill of Rights, that "operates, as a qualification upon powers, actually granted by the people to the government"; without such a "restrict[ion]," the government's "exercise or abuse" of its power could be "dangerous to the people." *Id.*, § 1858, at 718–719.

Chancellor Kent likewise described the Eighth Amendment as part of the "right of personal security . . . guarded by provisions which have been transcribed into the constitutions in this country from *magna carta*, and other fundamental acts of the English Parliament." 2 J. Kent, Commentaries on American Law 9 (1827). He understood the Eighth Amendment to "guard against abuse and oppression," and emphasized that "the constitutions of almost every state in the Unio[n] contain the same declarations in substance, and nearly in the same language." *Ibid.* Accordingly, "they must be regarded as fundamental doctrines in every state, for all the colonies were parties to the national declaration of rights in 1774, in which the . . . rights and liberties of English subjects were peremptorily claimed as their undoubted inheritance and birthright." *Ibid.*; accord, W. Rawle, A View of the Constitution of the United States of America 125 (1825) (describing the prohibition on excessive fines as "founded on the plainest principles of justice").

C

The prohibition on excessive fines remained fundamental at the time of the Fourteenth Amendment. In 1868, 35 of 37 state constitutions "expressly prohibited excessive fines." *Ante*, at 152. Nonetheless, as the Court notes, abuses of

fines continued, especially through the Black Codes adopted in several States. *Ante*, at 153. The "centerpiece" of the Codes was their "attempt to stabilize the black work force and limit its economic options apart from plantation labor." E. Foner, Reconstruction: America's Unfinished Revolution 1863–1877, p. 199 (1988). Under the Codes, "the state would enforce labor agreements and plantation discipline, punish those who refused to contract, and prevent whites from competing among themselves for black workers." *Ibid.* The Codes also included "'antienticement' measures punishing anyone offering higher wages to an employee already under contract." *Id.*, at 200.

The 39th Congress focused on these abuses during its debates over the Fourteenth Amendment, the Civil Rights Act of 1866, and the Freedmen's Bureau Act. During those well-publicized debates, Members of Congress consistently highlighted and lamented the "severe penalties" inflicted by the Black Codes and similar measures, Cong. Globe, 39th Cong., 1st Sess., 474 (1866) (Sen. Trumbull), suggesting that the prohibition on excessive fines was understood to be a basic right of citizenship.

For example, under Mississippi law, adult "freedmen, free negroes and mulattoes" "without lawful employment" faced $50 in fines and 10 days' imprisonment for vagrancy. Reports of Assistant Commissioners of Freedmen, and Synopsis of Laws on Persons of Color in Late Slave States, S. Exec. Doc. No. 6, 39th Cong., 2d Sess., 192 (1867). Those convicted had five days to pay or they would be arrested and leased to "any person who will, for the shortest period of service, pay said fine and forfeiture and all costs." *Ibid.* Members of Congress criticized such laws "for selling [black] men into slavery in punishment of crimes of the slightest magnitude." Cong. Globe, 39th Cong., 1st Sess., at 1123 (Rep. Cook); see *id.*, at 1124 ("It is idle to say these men will be protected by the States").

Similar examples abound. One congressman noted that Alabama's "aristocratic and anti-republican laws, almost reenacting slavery, among other harsh inflictions impose . . . a fine of fifty dollars and six months' imprisonment on any servant or laborer (white or black) who loiters away his time or is stubborn or refractory." *Id.*, at 1621 (Rep. Myers). He also noted that Florida punished vagrants with "a fine not exceeding $500 and imprison[ment] for a term not exceeding twelve months, or by being sold for a term not exceeding twelve months, at the discretion of the court." *Ibid.* At the time, such fines would have been ruinous for laborers. Cf. *id.*, at 443 (Sen. Howe) ("A thousand dollars! That sells a negro for his life").

These and other examples of excessive fines from the historical record informed the Nation's consideration of the Fourteenth Amendment. Even those opposed to civil-rights legislation understood the Privileges or Immunities Clause to guarantee those "fundamental principles" "fixed" by the Constitution, including "immunity from . . . excessive fines." 2 Cong. Rec. 384–385 (1874) (Rep. Mills); see also *id.*, at App. 241 (Sen. Norwood). And every post-1855 state constitution banned excessive fines. S. Calabresi & S. Agudo, Individual Rights Under State Constitutions When the Fourteenth Amendment Was Ratified in 1868, 87 Texas L. Rev. 7, 82 (2008). The attention given to abusive fines at the time of the Fourteenth Amendment, along with the ubiquity of state excessive-fines provisions, demonstrates that the public continued to understand the prohibition on excessive fines to be a fundamental right of American citizenship.

* * *

The right against excessive fines traces its lineage back in English law nearly a millennium, and from the founding of our country, it has been consistently recognized as a core right worthy of constitutional protection. As a constitution-

ally enumerated right understood to be a privilege of American citizenship, the Eighth Amendment's prohibition on excessive fines applies in full to the States.

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DAWSON ET UX. *v.* STEAGER, WEST VIRGINIA STATE TAX COMMISSIONER

CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 17–419. Argued December 3, 2018—Decided February 20, 2019

After petitioner James Dawson retired from the U. S. Marshals Service, his home State of West Virginia taxed his federal pension benefits as it does all former federal employees. The pension benefits of certain former state and local law enforcement employees, however, are exempt from state taxation. See W. Va. Code Ann. § 11–21–12(c)(6). Mr. Dawson sued, alleging that the state statute violates the intergovernmental tax immunity doctrine as codified at 4 U. S. C. § 111. Under that statute, the United States consents to state taxation of the pay or compensation of federal employees, but only if the state tax does not discriminate on the basis of the source of the pay or compensation. A West Virginia trial court found no significant differences between Mr. Dawson's job duties as a federal marshal and those of the state and local law enforcement officers exempted from taxation and held that the state statute violates § 111's antidiscrimination provision. Reversing, the West Virginia Supreme Court of Appeals emphasized that the state tax exemption applies only to a narrow class of state retirees and was never intended to discriminate against former federal marshals.

Held: The West Virginia statute unlawfully discriminates against Mr. Dawson as § 111 forbids. A State violates § 111 when it treats retired state employees more favorably than retired federal employees and no "significant differences between the two classes" justify the differential treatment. *Davis* v. *Michigan Dept. of Treasury*, 489 U. S. 803, 814–816. Here, West Virginia expressly affords state law enforcement retirees a tax benefit that federal retirees cannot receive, and there are no "significant differences" between Mr. Dawson's former job responsibilities and those of the tax-exempt state law enforcement retirees.

The narrow preference should be permitted, the State argues, because it affects too few people to meaningfully interfere with federal government operations. Section 111, however, disallows *any* state tax that discriminates against a federal officer or employee—not just those that seem especially cumbersome. And in *Davis*, the Court refused a similar invitation to add unwritten qualifications to § 111. That is not to say

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that the narrowness of a state tax exemption is irrelevant. If a State exempts only a narrow subset of state retirees, it can comply with § 111 by exempting only the comparable class of federal retirees. The State also argues that the statute is not intended to harm federal retirees but to help certain state retirees. The "State's interest in adopting the discriminatory tax," however, "is simply irrelevant." *Davis*, 489 U. S., at 816.

For reasons other than job responsibilities, the State insists, retired U. S. Marshals and tax-exempt state law enforcement retirees are not "similarly situated." But the State's statute does not draw any such lines. It singles out for preferential treatment retirement plans associated with particular state law enforcement officers. The distinguishing characteristic of the retirement plans is the nature of the jobs previously held by retirees who may participate in them. The state trial court found no "significant differences" between Mr. Dawson's former job responsibilities as a U. S. Marshal and those of the state law enforcement retirees who qualify for the tax exemption, and the West Virginia Supreme Court of Appeals did not upset that finding. By submitting that Mr. Dawson's former job responsibilities are also similar to those of other state law enforcement retirees who do not qualify for a tax exemption, the State mistakes the nature of the inquiry. The relevant question under § 111 is not whether federal retirees are similarly situated to state retirees who do not receive a tax break; it is whether they are similarly situated to those who do. Finally, the State says that the real distinction may not be based on job duties at all but on the relative generosity of pension benefits. The statute as enacted, however, does not classify persons or groups on that basis. And an implicit but lawful distinction cannot save an express and unlawful one. See, *e. g.*, *id.*, at 817. Pp. 175–180.

Reversed and remanded.

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

Lawrence D. Rosenberg argued the cause for petitioners. With him on the briefs were *Victoria Dorfman*, *Mark C. Savignac*, *Meghan Sweeney Bean*, *Anne Marie Lofaso*, *John M. Allan*, and *David E. Cowling*.

Michael R. Huston argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Acting Solicitor General Wall*, *Principal Deputy Assistant Attorney General Zuckerman*, *Deputy Solicitor*

General Stewart, *Gilbert S. Rothenberg*, *Bruce R. Ellisen*, and *Nathaniel S. Pollock*.

Lindsay S. See, Solicitor General of West Virginia, argued the cause for respondent. With her on the brief were *Patrick Morrisey*, Attorney General of West Virginia, *Katherine A. Schultz*, Senior Deputy Attorney General, and *Thomas T. Lampman* and *Sean M. Whelan*, Assistant Attorneys General.*

JUSTICE GORSUCH delivered the opinion of the Court.

If you spent your career as a state law enforcement officer in West Virginia, you're likely to be eligible for a generous tax exemption when you retire. But if you served in federal law enforcement, West Virginia will deny you the same benefit. The question we face is whether a State may discriminate against federal retirees in that way.

For most of his career, James Dawson worked in the U. S. Marshals Service. After he retired, he began looking into the tax treatment of his pension. It turns out that his home State, West Virginia, doesn't tax the pension benefits of certain former state law enforcement employees. But it does tax the benefits of all former federal employees. So Mr. Dawson brought this lawsuit alleging that West Virginia violated 4 U. S. C. § 111. In that statute, the United States has consented to state taxation of the "pay or compensation" of "officer[s] or employee[s] of the United States," but only if the "taxation does not discriminate against the officer or employee because of the source of the pay or compensation." § 111(a).

Section 111 codifies a legal doctrine almost as old as the Nation. In *McCulloch* v. *Maryland*, 4 Wheat. 316 (1819), this Court invoked the Constitution's Supremacy Clause to invalidate Maryland's effort to levy a tax on the Bank of the United States. Chief Justice Marshall explained that "the

**Michael A. Vatis* filed a brief for NARFE as *amicus curiae* urging reversal.

power to tax involves the power to destroy," and he reasoned that if States could tax the Bank they could "defeat" the federal legislative policy establishing it. *Id.*, at 431–432. For the next few decades, this Court interpreted *McCulloch* "to bar most taxation by one sovereign of the employees of another." *Davis* v. *Michigan Dept. of Treasury*, 489 U. S. 803, 810 (1989). In time, though, the Court softened its stance and upheld neutral income taxes—those that treated federal and state employees with an even hand. See *Helvering* v. *Gerhardt*, 304 U. S. 405 (1938); *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466 (1939). So eventually the intergovernmental tax immunity doctrine came to be understood to bar only *discriminatory* taxes. It was this understanding that Congress "consciously . . . drew upon" when adopting § 111 in 1939. *Davis*, 489 U. S., at 813.

It is this understanding, too, that has animated our application of § 111. Since the statute's adoption, we have upheld an Alabama income tax that did not discriminate on the basis of the source of the employees' compensation. *Jefferson County* v. *Acker*, 527 U. S. 423 (1999). But we have invalidated a Michigan tax that discriminated "in favor of retired state employees and against retired federal employees." *Davis*, 489 U. S., at 814. We have struck down a Kansas law that taxed the retirement benefits of federal military personnel at a higher rate than state and local government retirement benefits. *Barker* v. *Kansas*, 503 U. S. 594, 599 (1992). And we have rejected a Texas scheme that imposed a property tax on a private company operating on land leased from the federal government, but a "less burdensome" tax on property leased from the State. *Phillips Chemical Co.* v. *Dumas Independent School Dist.*, 361 U. S. 376, 378, 380 (1960).

Mr. Dawson's own attempt to invoke § 111 met with mixed success. A West Virginia trial court found it "undisputed" that "there are no significant differences between Mr. Dawson's powers and duties as a US Marshal and the powers and

duties of the state and local law enforcement officers" that West Virginia exempts from income tax. App. to Pet. for Cert. 22a. In the trial court's judgment, the State's statute thus represented "precisely the type of favoritism" § 111 prohibits. *Id.*, at 23a. But the West Virginia Supreme Court of Appeals saw it differently. In reversing, the court emphasized that relatively few state employees receive the tax break denied Mr. Dawson. The court stressed, too, that the statute's "intent . . . was to give a benefit to a narrow class of state retirees," not to harm federal retirees. *Id.*, at 15a. Because cases in this field have yielded inconsistent results, much as this one has, we granted certiorari to afford additional guidance. 585 U. S. 1015 (2018).

We believe the state trial court had it right. A State violates § 111 when it treats retired state employees more favorably than retired federal employees and no "significant differences between the two classes" justify the differential treatment. *Davis*, 489 U. S., at 814–816 (internal quotation marks omitted); *Phillips Chemical Co.*, 361 U. S., at 383. Here, West Virginia expressly affords state law enforcement retirees a tax benefit that federal retirees cannot receive. And before us everyone accepts the trial court's factual finding that there aren't any "significant differences" between Mr. Dawson's former job responsibilities and those of the tax-exempt state law enforcement retirees. Given all this, we have little difficulty concluding that West Virginia's law unlawfully "discriminate[s]" against Mr. Dawson "because of the source of [his] pay or compensation," just as § 111 forbids.

The State offers this ambitious rejoinder. Even if its statute favors some state law enforcement retirees, the favored class is very small. Most state retirees are treated no better than Mr. Dawson. And this narrow preference, the State suggests, should be permitted because it affects so few people that it couldn't meaningfully interfere with the operations of the federal government.

We are unpersuaded. Section 111 disallows *any* state tax that discriminates against a federal officer or employee—not just those that seem to us especially cumbersome. Nor are we inclined to accept West Virginia's invitation to adorn § 111 with a new and judicially manufactured qualification that cannot be found in its text. In fact, we have already refused an almost identical request. In *Davis*, we rejected Michigan's suggestion that a discriminatory state income tax should be allowed to stand so long as it treats federal employees or retirees the same as "the vast majority of voters in the State." 489 U. S., at 815, n. 4. We rejected, too, any suggestion that a discriminatory tax is permissible so long as it "does not interfere with the Federal Government's ability to perform its governmental functions." *Id.*, at 814. In fact, as long ago as *McCulloch*, Chief Justice Marshall warned against enmeshing courts in the "perplexing" business, "so unfit for the judicial department," of attempting to delineate "what degree of taxation is the legitimate use, and what degree may amount to the abuse of the power." 4 Wheat., at 430.

That's not to say the breadth or narrowness of a state tax exemption is irrelevant. Under § 111, the scope of a State's tax exemption may affect the scope of its resulting duties. So if a State exempts from taxation all state employees, it must likewise exempt all federal employees. Conversely, if the State decides to exempt only a narrow subset of state retirees, the State can comply with § 111 by exempting only the comparable class of federal retirees. But the narrowness of a discriminatory state tax law has never been enough to render it necessarily lawful.

With its primary argument lost, the State now proceeds more modestly. Echoing the West Virginia Supreme Court of Appeals, the State argues that we should uphold its statute because it isn't intended to harm federal retirees, only to help certain state retirees. But under the terms of § 111, the "State's interest in adopting the discriminatory tax, no

matter how substantial, is simply irrelevant." *Davis*, 489 U. S., at 816. We can safely assume that discriminatory laws like West Virginia's are almost always enacted with the purpose of benefiting state employees rather than harming their federal counterparts. Yet that wasn't enough to save the state statutes in *Davis*, *Barker*, or *Phillips*, and it can't be enough here. Under § 111 what matters isn't the intent lurking behind the law but whether the letter of the law "treat[s] those who deal with" the federal government "as well as it treats those with whom [the State] deals itself." *Phillips Chemical Co.*, 361 U. S., at 385.

If treatment rather than intent is what matters, the State suggests that it should still prevail for other reasons. Section 111 prohibits "discriminat[ion]," something we've often described as treating similarly situated persons differently. See *Davis*, 489 U. S., at 815–816; *Phillips Chemical Co.*, 361 U. S., at 383. And before us West Virginia insists that even if retired U. S. Marshals and tax-exempt state law enforcement retirees had similar job responsibilities, they aren't "similarly situated" for other reasons. Put another way, the State contends that the difference in treatment its law commands doesn't qualify as unlawful discrimination because it is "directly related to, and justified by," a lawful and "significant differenc[e]" between the two classes. *Davis*, 489 U. S., at 816 (internal quotation marks omitted).

In approaching this argument, everyone before us agrees on at least one thing. Whether a State treats similarly situated state and federal employees differently depends on how the State has defined the favored class. See *id.*, at 817. So if the State defines the favored class by reference to job responsibilities, a similarly situated federal worker will be one who performs comparable duties. But if the State defines the class by reference to some other criteria, our attention should naturally turn there. If a State gives a tax benefit to all retirees over a certain age, for example, the comparable federal retiree would be someone who is also over that age.

So how has West Virginia chosen to define the favored class in this case? The state statute singles out for preferential treatment retirement plans associated with West Virginia police, firefighters, and deputy sheriffs. See W. Va. Code Ann. § 11–21–12(c)(6) (Lexis 2017). The distinguishing characteristic of these plans is the nature of the jobs previously held by retirees who may participate in them; thus, a similarly situated federal retiree is someone who had similar job responsibilities to a state police officer, firefighter, or deputy sheriff. The state trial court correctly focused on this point of comparison and found no "significant differences" between Mr. Dawson's former job responsibilities as a U. S. Marshal and those of the state law enforcement retirees who qualify for the tax exemption. App. to Pet. for Cert. 22a. Nor did the West Virginia Supreme Court of Appeals upset this factual finding. So looking to how the State has chosen to define its favored class only seems to confirm that it has treated similarly situated persons differently because of the source of their compensation.

Of course, West Virginia sees it otherwise. It accepts (for now) that its statute distinguishes between persons based on their former job duties. It accepts, too, the trial court's finding that Mr. Dawson's former job responsibilities are materially identical to those of state retirees who qualify for its tax exemption. But, the State submits, Mr. Dawson's former job responsibilities are *also* similar to those of other state law enforcement retirees who *don't* qualify for its tax exemption. And, the State insists, the fact that it treats federal retirees no worse than (some) similarly situated state employees should be enough to save its statute.

But this again mistakes the nature of our inquiry. Under § 111, the relevant question isn't whether federal retirees are similarly situated to state retirees who *don't* receive a tax benefit; the relevant question is whether they are similarly situated to those who *do*. So, for example, in *Phillips* we compared the class of federal lessees with the *favored* class

of state lessees, even though the State urged us to focus instead on the disfavored class of private lessees. 361 U. S., at 381–382. In *Davis*, we likewise rejected the State's effort to compare the class of federal retirees with state residents who did not benefit from the tax exemption rather than those who did. See 489 U. S., at 815, n. 4.

At this point the State is left to play its final card. Now, it says, maybe the real distinction its statute draws isn't based on former job duties at all. Maybe its statute actually favors certain state law enforcement retirees only because their pensions are less generous than those of their federal law enforcement counterparts. At the least, the State suggests, we should remand the case to the West Virginia courts to explore this possibility.

The problem here is fundamental. While the State was free to draw whatever classifications it wished, the statute it enacted does not classify persons or groups based on the relative generosity of their pension benefits. Instead, it extends a special tax benefit to retirees who served as West Virginia police officers, firefighters, or deputy sheriffs—and it categorically denies that same benefit to retirees who served in similar federal law enforcement positions. Even if Mr. Dawson's pension turned out to be *identical* to a state law enforcement officer's pension, the law as written would deny him a tax exemption. West Virginia's law thus discriminates "because of the source of . . . pay or compensation" in violation of §111. Whether the unlawful classification found in the text of a statute might serve as some sort of proxy for a lawful classification hidden behind it is neither here nor there. No more than a beneficent legislative intent, an implicit but lawful distinction cannot save an express and unlawful one.

Our precedent confirms this too. In *Davis*, Michigan argued that a state law expressly discriminating between federal and state retirees was really just distinguishing between those with more and less generous pensions. *Id.*, at

816. We rejected this attempt to rerationalize the statute, explaining that "[a] tax exemption truly intended to account for differences in retirement benefits would not discriminate on the basis of the source of those benefits" but "would discriminate on the basis of the amount of benefits received by individual retirees." *Id.*, at 817. The fact is, when States seek to tax the use of a fellow sovereign's property, the Constitution and Congress have always carefully constrained their authority. *Id.*, at 810–814. And in this sensitive field it is not too much to ask that, if a State *wants* to draw a distinction based on the generosity of pension benefits, it enact a law that actually *does* that.

Because West Virginia's statute unlawfully discriminates against Mr. Dawson, we reverse the judgment of the West Virginia Supreme Court of Appeals and remand the case for further proceedings not inconsistent with this opinion, including the determination of an appropriate remedy.

It is so ordered.

Syllabus

YOVINO, FRESNO COUNTY SUPERINTENDENT OF SCHOOLS *v.* RIZO

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

No. 18–272. Decided February 25, 2019

Aileen Rizo brought suit against the Fresno County superintendent of schools claiming, among other things, that the county was violating the Equal Pay Act of 1963, 77 Stat. 56–57, 29 U. S. C. § 206(d). After the District Court denied the county's motion for summary judgment, the Ninth Circuit granted the county's petition for interlocutory review. A three-judge panel of the Ninth Circuit vacated the decision of the District Court based on a prior Ninth Circuit decision, *Kouba* v. *Allstate Ins. Co.*, 691 F. 2d 873, and the court granted en banc review. Subsequently, on March 29, 2018, a Ninth Circuit judge, the Honorable Stephen Reinhardt, died. On April 9, 2018, the Ninth Circuit issued its en banc opinion in this case, and included the following footnote: "Prior to his death, Judge Reinhardt fully participated in this case and authored this opinion. The majority opinion and all concurrences were final, and voting was completed by the en banc court prior to his death." 887 F. 3d 453, 456, n. *.

Held: Because Judge Reinhardt was no longer a judge when the en banc decision in this case was filed, the Ninth Circuit erred in counting him as a member of the majority. The Ninth Circuit's statement that the votes and opinions in the en banc case were inalterably final at least 12 days prior to the date on which the decision was "filed" and released to the public is inconsistent with well-established judicial practice, federal statutory law, and judicial precedent. As for judicial practice, the Court is not aware of any rule or decision of the Ninth Circuit that renders judges' votes and opinions immutable prior to their public release. And it is generally understood that a judge may change his or her position up to the very moment when a decision is released. The Court endorsed this rule in *United States* v. *American-Foreign S. S. Corp.*, 363 U. S. 685, which interpreted an earlier version of 28 U. S. C. § 46(c), the statutory provision authorizing the courts of appeals to hear cases en banc. The current version of this provision permits a circuit to adopt a rule allowing a senior circuit judge to sit on an en banc case under certain circumstances, but at the time of the Court's decision in *American-Foreign S. S. Corp.*, only active judges could sit en banc. See 28 U. S. C. § 46(c) (1958 ed.). In *American-Foreign S. S. Corp.*,

Per Curiam

Judge Harold Medina was one of the five active judges on the Second Circuit when the court granted a petition for rehearing en banc. After briefing was complete but before an opinion issued, Judge Medina took senior status. When the en banc court issued its decision, the majority opinion was joined by Judge Medina and two active Circuit Judges; the two other active Circuit Judges dissented. This Court vacated the judgment and remanded the case, holding that "[a]n 'active' judge is a judge who has not retired 'from regular active service,' " and "[a] case or controversy is 'determined' when it is decided." 363 U. S., at 688. Similarly here, when the Ninth Circuit issued its opinion in this case, Judge Reinhardt was neither an active judge nor a senior judge. For that reason, by statute he was without power to participate in the en banc court's decision at the time it was rendered. The Ninth Circuit's error is also shown by the innumerable courts of appeals that have invoked § 46(c) and § 46(d) to hold that when one of the judges on a three-judge panel dies, retires, or resigns after an appeal is argued or is submitted for decision without argument, the other two judges on the panel may issue a decision if they agree. The Court is not aware of any case still on the books in which a court of appeals panel has purported to issue a binding decision that was joined at the time of release by less than a quorum of the judges who were alive at that time. By counting Judge Reinhardt as a member of the majority here, the Ninth Circuit effectively allowed a judge to exercise the judicial power of the United States after his death. But federal judges are appointed for life, not for eternity.

Certiorari granted; 887 F. 3d 453, vacated and remanded.

PER CURIAM.

The petition in this case presents the following question: May a federal court count the vote of a judge who dies before the decision is issued?

A judge on the United States Court of Appeals for the Ninth Circuit, the Honorable Stephen Reinhardt, died on March 29, 2018, but the Ninth Circuit counted his vote in cases decided after that date.* In the present case, Judge

*In *Altera Corp.* v. *Commissioner*, 2018 WL 3542989 (CA9, July 24, 2018), decided four months after Judge Reinhardt died, his vote was initially counted as one of the two judges in the majority. A footnote in the opinion stated: "Judge Reinhardt fully participated in this case and formally concurred in the majority opinion prior to his death." *Id.*, at

Reinhardt was listed as the author of an en banc decision issued on April 9, 2018, 11 days after he passed away. By counting Judge Reinhardt's vote, the court deemed Judge Reinhardt's opinion to be a majority opinion, which means that it constitutes a precedent that all future Ninth Circuit panels must follow. See *United States* v. *Caperna*, 251 F. 3d 827, 831, n. 2 (2001). Without Judge Reinhardt's vote, the opinion attributed to him would have been approved by only 5 of the 10 members of the en banc panel who were still living when the decision was filed. Although the other five living judges concurred in the judgment, they did so for different reasons. The upshot is that Judge Reinhardt's vote made a difference. Was that lawful?

I

Aileen Rizo, an employee of the Fresno County Office of Education, brought suit against the superintendent of schools, claiming, among other things, that the county was violating the Equal Pay Act of 1963, 77 Stat. 56–57, 29 U. S. C. § 206(d). The District Court denied the county's motion for summary judgment, and the Ninth Circuit granted the county's petition for interlocutory review. A three-judge panel of the Ninth Circuit vacated the decision of the District Court based on a prior Ninth Circuit decision, *Kouba* v. *Allstate Ins. Co.*, 691 F. 2d 873 (1982), that the panel "believed it was compelled to follow." 887 F. 3d 453, 459 (2018) (en banc). The court then granted en banc review "to clarify the law, including the vitality and effect of *Kouba*." *Ibid.* Like other courts of appeals, the Ninth Circuit takes the position that a panel decision like that in *Kouba* can be overruled only by a decision of the en banc court or this Court, see *Naruto* v. *Slater*, 888 F. 3d 418, 421 (2018), and therefore a clear purpose of the en banc decision issued on

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*1, n. **. Later, however, the court vacated the opinion and issued an order reconstituting the panel. *Altera Corp.* v. *Commissioner*, 898 F. 3d 1266 (CA9 2018). No similar action was taken in this case.

April 9 was to announce a new binding Ninth Circuit interpretation of the Equal Pay Act issue previously addressed by *Kouba*. The opinion authored by Judge Reinhardt and issued 11 days after his death purports to do that, but its status as a majority opinion of the en banc court depends on counting Judge Reinhardt's vote.

The opinions issued by the en banc Ninth Circuit state that they were "Filed April 9, 2018," and they were entered on the court's docket on that date. A footnote at the beginning of the en banc opinion states:

> "Prior to his death, Judge Reinhardt fully participated in this case and authored this opinion. The majority opinion and all concurrences were final, and voting was completed by the en banc court prior to his death." 887 F. 3d, at 456, n. *.

II

The Ninth Circuit did not expressly explain why it concluded that it could count Judge Reinhardt's opinion as "[t]he majority opinion" even though it was not endorsed by a majority of the living judges at the time of issuance, but the justification suggested by the footnote noted above is that the votes and opinions in the en banc case were inalterably fixed at least 12 days prior to the date on which the decision was "filed," entered on the docket, and released to the public. This justification is inconsistent with well-established judicial practice, federal statutory law, and judicial precedent.

As for judicial practice, we are not aware of any rule or decision of the Ninth Circuit that renders judges' votes and opinions immutable at some point in time prior to their public release. And it is generally understood that a judge may change his or her position up to the very moment when a decision is released.

We endorsed this rule in *United States* v. *American-Foreign S. S. Corp.*, 363 U. S. 685 (1960), which interpreted an earlier version of 28 U. S. C. § 46(c), the statutory provi-

sion authorizing the courts of appeals to hear cases en banc. The current version of this provision permits a circuit to adopt a rule allowing a senior circuit judge to sit on an en banc case under certain circumstances, but at the time of our decision in *American-Foreign S. S. Corp.*, this was not allowed. Instead, only active judges could sit en banc. See 28 U. S. C. § 46(c) (1958 ed.).

In *American-Foreign S. S. Corp.*, Judge Harold Medina was one of the five active judges on the Second Circuit when the court granted a petition for rehearing en banc. After briefing was complete but before an opinion issued, Judge Medina took senior status. When the en banc court issued its decision, the majority opinion was joined by Judge Medina and two active Circuit Judges; the two other active Circuit Judges dissented. We vacated the judgment and remanded the case, holding that "[a]n 'active' judge is a judge who has not retired 'from regular active service,'" and "[a] case or controversy is 'determined' when it is decided." 363 U. S., at 688. Because Judge Medina was not in regular active service when the opinion issued, he was "without power to participate" in the en banc decision. *Id.*, at 687, 691; cf. *id.*, at 691–692 (Harlan, J., dissenting).

Our holding in *American-Foreign S. S. Corp.* applies with equal if not greater force here. When the Ninth Circuit issued its opinion in this case, Judge Reinhardt was neither an active judge nor a senior judge. For that reason, by statute he was without power to participate in the en banc court's decision at the time it was rendered.

In addition to § 46(c), § 46(d) also shows that what the Ninth Circuit did here was unlawful. That provision states:

> "A majority of the number of judges authorized to constitute a court or panel thereof, as provided in paragraph (c), shall constitute a quorum."

Under § 46(c), a court of appeals case may be decided by a panel of three judges, and therefore on such a panel

two judges constitute a quorum and are able to decide an appeal—provided, of course, that they agree. Invoking this rule, innumerable court of appeals decisions hold that when one of the judges on a three-judge panel dies, retires, or resigns after an appeal is argued or is submitted for decision without argument, the other two judges on the panel may issue a decision if they agree. See, *e. g.*, *United States* v. *Allied Stevedoring Corp.*, 241 F. 2d 925, 927 (CA2 1957); *Murray* v. *National Broadcasting Co.*, 35 F. 3d 45, 47 (CA2 1994); *Singh* v. *Ashcroft*, 121 Fed. Appx. 471, 472, n. (CA3 2005); *ASW Allstate Painting & Constr. Co.* v. *Lexington Ins. Co.*, 188 F. 3d 307, 309, n. (CA5 1999); *Clark* v. *Metropolitan Life Ins. Co.*, 67 F. 3d 299, n. ** (CA6 1995); *Kulumani* v. *Blue Cross Blue Shield Assn*, 224 F. 3d 681, 683, n. ** (CA7 2000). See also *Nguyen* v. *United States*, 539 U. S. 69, 82 (2003) ("[S]ettled law permits a quorum to proceed to judgment when one member of the panel dies or is disqualified"). With the exception of one recent decision issued by the Ninth Circuit after Judge Reinhardt's death but subsequently withdrawn, see *supra*, at 182–183, n., we are aware of no cases in which a court of appeals panel has purported to issue a binding decision that was joined at the time of release by less than a quorum of the judges who were alive at that time.

* * *

Because Judge Reinhardt was no longer a judge at the time when the en banc decision in this case was filed, the Ninth Circuit erred in counting him as a member of the majority. That practice effectively allowed a deceased judge to exercise the judicial power of the United States after his death. But federal judges are appointed for life, not for eternity.

We therefore grant the petition for certiorari, vacate the judgment of the United States Court of Appeals for the

Ninth Circuit, and remand the case for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SOTOMAYOR concurs in the judgment.

Syllabus

NUTRACEUTICAL CORP. *v.* LAMBERT

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

No. 17–1094. Argued November 27, 2018—Decided February 26, 2019

Respondent Troy Lambert filed a class action in federal court alleging that petitioner Nutraceutical Corporation's marketing of a dietary supplement ran afoul of California consumer-protection law. On February 20, 2015, the District Court ordered the class decertified. Pursuant to Federal Rule of Civil Procedure 23(f), Lambert had 14 days from that point to ask the Court of Appeals for permission to appeal the order. Instead, he filed a motion for reconsideration on March 12, which the District Court denied on June 24. Fourteen days later, Lambert petitioned the Court of Appeals for permission to appeal the decertification order. Nutraceutical objected that Lambert's petition was untimely because it was filed far more than 14 days from the February 20 decertification order. The Ninth Circuit held, however, that Rule 23(f)'s deadline should be tolled under the circumstances because Lambert had "acted diligently." On the merits, the court reversed the decertification order.

Held: Rule 23(f) is not subject to equitable tolling. Pp. 191–198.

(a) Rule 23(f) is properly classified as a nonjurisdictional claim-processing rule, but that does not render it malleable in every respect. Whether a rule precludes equitable tolling turns not on its jurisdictional character but rather on whether its text leaves room for such flexibility. See *Carlisle* v. *United States*, 517 U. S. 416, 421. Here, the governing rules speak directly to the issue of Rule 23(f)'s flexibility and make clear that its deadline is not subject to equitable tolling. While Federal Rule of Appellate Procedure 2 authorizes a court of appeals for good cause to "suspend any provision . . . in a particular case," it does so with a caveat: "except as otherwise provided in Rule 26(b)." Rule 26(b), which generally authorizes extensions of time, in turn includes the carveout that a court of appeals "may not extend the time to file . . . a petition for permission to appeal"—the precise type of filing at issue here. The Rules thus express a clear intent to compel rigorous enforcement of Rule 23(f)'s deadline, even where good cause for equitable tolling might otherwise exist. Precedent confirms this understanding. See *Carlisle*, 517 U. S. 416, and *United States* v. *Robinson*, 361 U. S. 220. Pp. 191–194.

(b) Lambert's counterarguments do not withstand scrutiny. Lambert argues that Rule 26(b)'s prohibition on extending the time to file a petition for permission to appeal should be understood to foreclose only formal extensions granted *ex ante* and to leave courts free to excuse late filings on equitable grounds after the fact. But this Court has already rejected an indistinguishable argument concerning Federal Rule of Criminal Procedure 45(b) in *Robinson*, and Lambert offers no sound basis for reading Rule 26(b) differently. Further, the 1998 Advisory Committee Notes to Rule 23(f) speak to a court of appeals' discretion to decide whether a particular certification decision warrants review in an interlocutory posture, not to its determination whether a petition is timely. Finally, Lambert notes that every Court of Appeals to have considered the question would accept a Rule 23(f) petition filed within 14 days of the resolution of a motion for reconsideration that was itself filed within 14 days of the original order. Although his own reconsideration motion was not filed until after the initial 14 days had run, he cites the lower courts' handling of such cases as evidence that Rule 23(f) is amenable to tolling. However, a timely motion for reconsideration affects the antecedent issue of when the 14-day limit begins to run, not the availability of tolling. See *United States* v. *Ibarra*, 502 U. S. 1, 4, n. 2. Pp. 194–197.

(c) On remand, the Court of Appeals can address other preserved arguments about whether Lambert's Rule 23(f) petition was timely even without resort to tolling. Pp. 197–198.

870 F. 3d 1170, reversed and remanded.

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

John C. Hueston argued the cause for petitioner. With him on the briefs were *Steven N. Feldman* and *Joseph A. Reiter*.

Jonathan A. Herstoff argued the cause for respondent. With him on the brief were *Ronald A. Marron* and *Michael Houchin*.

JUSTICE SOTOMAYOR delivered the opinion of the Court.

To take an immediate appeal from a federal district court's order granting or denying class certification, a party must first seek permission from the relevant court of appeals

"within 14 days after the order is entered." Fed. Rule Civ. Proc. 23(f). This case poses the question whether a court of appeals may forgive on equitable tolling grounds a failure to adhere to that deadline when the opposing party objects that the appeal was untimely. The applicable rules of procedure make clear that the answer is no.

I

In March 2013, respondent Troy Lambert sued petitioner Nutraceutical Corporation in federal court, alleging that its marketing of a dietary supplement ran afoul of California consumer-protection law. The District Court for the Central District of California initially permitted Lambert to litigate on behalf of a class of similarly situated consumers. On February 20, 2015, however, the District Court revisited that decision and ordered the class decertified. From that point, Lambert had 14 days to ask the Court of Appeals for the Ninth Circuit for permission to appeal the order. See *ibid.*

Instead of filing a petition for permission to appeal, Lambert informed the District Court at a status conference on March 2 (10 days after the decertification order) that he would "want to file a motion for reconsideration" in the near future. App. to Pet. for Cert. 74. The court told Lambert to file any such motion "no later than" March 12. *Id.*, at 76. Neither Lambert nor the District Court mentioned the possibility of an appeal.

Lambert filed his motion for reconsideration, in compliance with the District Court's schedule, on March 12 (20 days after the decertification order). The District Court denied the motion on June 24, 2015. Fourteen days later, on July 8, Lambert petitioned the Court of Appeals for permission to appeal the decertification order. Nutraceutical's response argued that Lambert's petition was untimely because more than four months had elapsed since the District Court's February

20 order decertifying the class, far more than the 14 days that Federal Rule of Civil Procedure 23(f) allows. App. 41.

Notwithstanding the petition's apparent untimeliness, the Court of Appeals "deem[ed] Lambert's petition timely" because, in its view, the Rule 23(f) deadline should be "tolled" under the circumstances. 870 F. 3d 1170, 1176 (CA9 2017). The Court of Appeals reasoned that Rule 23(f)'s time limit is "non-jurisdictional, and that equitable remedies softening the deadline are therefore generally available." *Ibid.* Tolling was warranted, the court concluded, because Lambert "informed the [District Court] orally of his intention to seek reconsideration" within Rule 23(f)'s 14-day window, complied with the District Court's March 12 deadline, and "otherwise acted diligently." *Id.*, at 1179. On the merits, the Court of Appeals held that the District Court abused its discretion in decertifying the class. *Id.*, at 1182–1184. It reversed the decertification order. *Id.*, at 1184.

In accepting Lambert's petition, the Court of Appeals "recognize[d] that other circuits would likely not toll the Rule 23(f) deadline in Lambert's case."[1] *Id.*, at 1179. We granted certiorari. 585 U. S. 1015 (2018).

II

When Lambert filed his petition, Federal Rule of Civil Procedure 23(f) authorized courts of appeals to "permit an appeal from an order granting or denying class-action certification . . . if a petition for permission to appeal is filed . . . within 14 days after the order is entered."[2] The Court of

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[1] See *Nucor Corp.* v. *Brown*, 760 F. 3d 341, 343 (CA4 2014); *Fleischman* v. *Albany Med. Ctr.*, 639 F. 3d 28, 31 (CA2 2011); *Gutierrez* v. *Johnson & Johnson*, 523 F. 3d 187, 193, and n. 5 (CA3 2008); *McNamara* v. *Felderhof*, 410 F. 3d 277, 281 (CA5 2005); *Gary* v. *Sheahan*, 188 F. 3d 891, 892 (CA7 1999).

[2] Rule 23(f) has since been amended and now reads, in relevant part: "A court of appeals may permit an appeal from an order granting or denying class-action certification . . . . A party must file a petition for permission

Appeals held that Rule 23(f)'s time limitation is nonjurisdictional and thus, necessarily, subject to equitable tolling. While we agree that Rule 23(f) is nonjurisdictional, we conclude that it is not subject to equitable tolling.

Because Rule 23(f)'s time limitation is found in a procedural rule, not a statute, it is properly classified as a nonjurisdictional claim-processing rule. See *Hamer* v. *Neighborhood Housing Servs. of Chicago*, 583 U. S. 17, 25 (2017).[3] It therefore can be waived or forfeited by an opposing party. See *Kontrick* v. *Ryan*, 540 U. S. 443, 456 (2004). The mere fact that a time limit lacks jurisdictional force, however, does not render it malleable in every respect. Though subject to waiver and forfeiture, some claim-processing rules are "mandatory"—that is, they are "'unalterable'" if properly raised by an opposing party. *Manrique* v. *United States*, 581 U. S. 116, 121 (2017) (quoting *Eberhart* v. *United States*, 546 U. S. 12, 15 (2005) (*per curiam*)); see also *Kontrick*, 540 U. S., at 456. Rules in this mandatory camp are not susceptible of the equitable approach that the Court of Appeals applied here. Cf. *Manrique*, 581 U. S., at 125 ("By definition, mandatory claim-processing rules . . . are not subject to harmless-error analysis").

Whether a rule precludes equitable tolling turns not on its jurisdictional character but rather on whether the text of the rule leaves room for such flexibility. See *Carlisle* v. *United States*, 517 U. S. 416, 421 (1996). Where the pertinent rule or rules invoked show a clear intent to preclude tolling,

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to appeal . . . within 14 days after the order is entered . . . ." The difference is immaterial for purposes of this case.

[3] To be sure, this Court has previously suggested that time limits for taking an appeal are "mandatory and jurisdictional." *Budinich* v. *Becton Dickinson & Co.*, 486 U. S. 196, 203 (1988). As our more recent precedents have made clear, however, this Court once used that phrase in a "'less than meticulous'" manner. *Hamer*, 583 U. S., at 27; *Kontrick* v. *Ryan*, 540 U. S. 443, 454 (2004). Those earlier statements did not necessarily signify that the rules at issue were formally "jurisdictional" as we use that term today.

courts are without authority to make exceptions merely because a litigant appears to have been diligent, reasonably mistaken, or otherwise deserving. *Ibid.*; see *Kontrick*, 540 U. S., at 458; *United States* v. *Robinson*, 361 U. S. 220, 229 (1960). Courts may not disregard a properly raised procedural rule's plain import any more than they may a statute's. See *Bank of Nova Scotia* v. *United States*, 487 U. S. 250, 255 (1988).

Here, the governing rules speak directly to the issue of Rule 23(f)'s flexibility and make clear that its deadline is not subject to equitable tolling. To begin with, Rule 23(f) itself conditions the possibility of an appeal on the filing of a petition "within 14 days" of "an order granting or denying class-action certification." Federal Rule of Appellate Procedure 5(a)(2) likewise says that a petition for permission to appeal "must be filed within the time specified." To be sure, the simple fact that a deadline is phrased in an unqualified manner does not necessarily establish that tolling is unavailable. See Fed. Rule App. Proc. 2 (allowing suspension of other Rules for "good cause"); Fed. Rule App. Proc. 26(b) (similar); Fed. Rule Crim. Proc. 45(b) (similar); Fed. Rule Civ. Proc. 6(b) (similar). Here, however, the Federal Rules of Appellate Procedure single out Civil Rule 23(f) for inflexible treatment. While Appellate Rule 2 authorizes a court of appeals for good cause to "suspend any provision of these rules in a particular case," it does so with a conspicuous caveat: "except as otherwise provided in Rule 26(b)." Appellate Rule 26(b), which generally authorizes extensions of time, in turn includes this express carveout: A court of appeals "may not extend the time to file . . . a petition for permission to appeal." Fed. Rule App. Proc. 26(b)(1). In other words, Appellate Rule 26(b) says that the deadline for the precise type of filing at issue here may not be extended. The Rules thus express a clear intent to compel rigorous enforcement of Rule 23(f)'s deadline, even where good cause for equitable tolling might otherwise exist.

Precedent confirms this understanding. *Carlisle*, 517 U. S. 416, and *Robinson*, 361 U. S. 220, both centered on Federal Rule of Criminal Procedure 45(b), an extension-of-time provision that parallels Appellate Rule 26(b). *Carlisle* addressed Rule 45(b)'s interaction with the time limit in Criminal Rule 29 for filing a postverdict motion for judgment of acquittal. See 517 U. S., at 419–423. Rule 45(b), as it was then written, made clear that "'the court may not extend the time for taking any action'" under Rule 29, "'except to the extent and under the conditions'" stated therein. *Id.*, at 421. Because the Court found the text's purpose to foreclose acceptance of untimely motions "plain and unambiguous," the Court held that the District Court lacked that authority. *Ibid.* Likewise, in *Robinson*, the Court held that an earlier iteration of Rule 45(b) that said "'the court may not enlarge . . . the period for taking an appeal'" prohibited a court from accepting a notice of appeal that was untimely filed. 361 U. S., at 224 (quoting Fed. Rule Crim. Proc. 45(b)).

Because Rule 23(f) is not amenable to equitable tolling, the Court of Appeals erred in accepting Lambert's petition on those grounds.

III

Lambert resists the foregoing conclusion on a variety of grounds. None withstands scrutiny.

Most pertinently, Lambert argues that the above-mentioned Rules are less emphatic than they first appear. Rule 26(b)'s general grant of authority to relax time limits, he notes, refers both to "extend[ing]" the time to file a petition for permission to appeal and "permit[ting]" a petition to be filed after the deadline. See Fed. Rule App. Proc. 26(b) ("For good cause, the court may extend the time prescribed by these rules . . . to perform any act, *or* may permit an act to be done after that time expires" (emphasis added)). Rule 26(b)(1) then prohibits courts only from "extend[ing] the time to file," while making no further mention of "per-

mit[ting] an act to be done after that time expires." In Lambert's view, Rule 26(b)(1)'s prohibition on "extend[ing] the time to file" a petition for permission to appeal therefore should be understood to foreclose only formal extensions granted *ex ante*, and to leave courts free to excuse late filings on equitable grounds after the fact.

Whatever we would make of this contention were we writing on a blank slate, this Court has already rejected an indistinguishable argument in *Robinson*. There, Rule 45(b) generally authorized both "'enlarg[ing]'" a filing period and "'permit[ting] the act to be done after [its] expiration,'" then specifically forbade "'enlarg[ing] . . . the period for taking an appeal.'" 361 U. S., at 223. The lower court had accepted a late filing on the ground that to do so "would not be to 'enlarge' the period for taking an appeal, but rather would be only to 'permit the act to be done' after the expiration of the specified period." *Ibid.*; see also *id.*, at 230 (Black and Douglas, JJ., dissenting). This Court reversed, explaining that acceptance of the late filing did, in fact, "enlarge" the relevant filing period. *Id.*, at 224. Lambert offers no sound basis for reading Rule 26(b) differently, and none is apparent. Cf. *Torres* v. *Oakland Scavenger Co.*, 487 U. S. 312, 315 (1988) ("Permitting courts to exercise jurisdiction over unnamed parties after the time for filing a notice of appeal has passed is equivalent to permitting courts to extend the time for filing a notice of appeal").[4]

Likewise unavailing is Lambert's reliance on the 1998 Advisory Committee Notes to Rule 23(f), which say that a petition "may be granted or denied on the basis of any con-

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[4] Lambert's other textual arguments center on rules addressed to appeals as of right. See Brief for Respondent 9–12, 17–18, 36–38 (discussing, *e. g.*, Fed. Rules App. Proc. 3 and 4). As noted above, Rules 5 and 26 specifically address petitions for permission to appeal from nonfinal orders such as the one at issue here. Lambert's attempts to reason by implication from other, inapposite Rules therefore bear little weight. See *Manrique* v. *United States*, 581 U. S. 116, 123–124 (2017).

sideration that the court of appeals finds persuasive." Advisory Committee's Notes on 1998 Amendments to Fed. Rule Civ. Proc. 23, 28 U. S. C. App., p. 815; see also *Microsoft Corp.* v. *Baker*, 582 U. S. 23, 31–33, and n. 6 (2017). That comment, however, speaks to a court of appeals' discretion to decide whether a particular certification decision warrants review in an interlocutory posture, not its determination whether a petition is timely. If anything, the comment serves as a reminder that interlocutory appeal is an exception to the general rule that appellate review must await final judgment—which is fully consistent with a conclusion that Rule 23(f)'s time limit is purposefully unforgiving. See *Mohawk Industries, Inc.* v. *Carpenter*, 558 U. S. 100, 107 (2009) ("The justification for immediate appeal must . . . be sufficiently strong to overcome the usual benefits of deferring appeal until litigation concludes"); cf. *Baker*, 582 U. S., at 31 (describing Rule 23(f) as "the product of careful calibration").[5]

Finally, Lambert notes that every Court of Appeals to have considered the question would accept a Rule 23(f) petition filed within 14 days of the resolution of a motion for reconsideration that was itself filed within 14 days of the original order. See 870 F. 3d, at 1177–1178, n. 3 (collecting cases). Although Lambert's own reconsideration motion was not filed until after the initial 14 days had run,[6] he cites the lower courts' handling of such cases as evidence that Rule 23(f) is indeed amenable to tolling. He further sug-

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[5] Lambert also argues that interpreting Rule 23(f) flexibly would be consistent with the Rules' generally equitable approach. Brief for Respondent 21—27. But that simply fails to engage with the dispositive point here: Any such background preference for flexibility has been overcome by the clear text of the relevant rules. See, *e. g.*, *Young* v. *United States*, 535 U. S. 43, 49 (2002).

[6] Lambert argues that his counsel's statements 10 days after the District Court's decertification order constituted an oral motion for reconsideration, but the transcript belies any such claim. See App. to Pet. for Cert. 71 (requesting only "leave to file"); *id.*, at 74 (informing the District Court that Lambert "will want to file" a reconsideration motion).

gests that there is no basis for relaxing the 14-day limit in one situation but not the other.

Lambert's argument relies on a mistaken premise. A timely motion for reconsideration filed within a window to appeal does not toll anything; it "renders an otherwise final decision of a district court not final" for purposes of appeal. *United States* v. *Ibarra*, 502 U. S. 1, 6 (1991) (*per curiam*). In other words, it affects the antecedent issue of when the 14-day limit begins to run, not the availability of tolling. See *id.*, at 4, n. 2 (noting that this practice is not "a matter of tolling").[7]

IV

Lambert devotes much of his merits brief to arguing the distinct question whether his Rule 23(f) petition was timely even without resort to tolling. First, he argues that, even if his motion for reconsideration was not filed within 14 days of the decertification order, it was filed within the time allowed (either by the Federal Rules or by the District Court at the March 2 hearing). The timeliness of that motion, Lambert contends, "cause[d] the time to appeal to run from the disposition of the reconsideration motion, not from the original order." Brief for Respondent 8; see *id.*, at 9–18. Alternatively, he argues that the District Court's order denying reconsideration was itself "'an order granting or denying class-action certification'" under Rule 23(f). *Id.*, at 8–9,

[7] We therefore have no occasion to address the effect of a motion for reconsideration filed within the 14-day window. Moreover, because nothing the District Court did misled Lambert about the appeal filing deadline, see *supra*, at 190, we similarly have no occasion to address the question whether his motion would be timely if that had occurred. See *Carlisle* v. *United States*, 517 U. S. 416, 428 (1996); *id.*, at 435–436 (GINSBURG, J., concurring) (discussing *Thompson* v. *INS*, 375 U. S. 384, 386–387 (1964) (*per curiam*), and *Harris Truck Lines, Inc.* v. *Cherry Meat Packers, Inc.*, 371 U. S. 215, 216–217 (1962) (*per curiam*)). We also have no occasion to address whether an insurmountable impediment to filing timely might compel a different result. Cf. Fed. Rule App. Proc. 26(a)(3) (addressing computation of time when "the clerk's office is inaccessible").

19–20. The Court of Appeals did not rule on these alternative grounds, which are beyond the scope of the question presented. Mindful of our role, we will not offer the first word. See *United States* v. *Stitt*, 586 U. S. 27, 36 (2018); *Pacific Bell Telephone Co.* v. *linkLine Communications, Inc.*, 555 U. S. 438, 457 (2009). If the Court of Appeals concludes that these arguments have been preserved, it can address them in the first instance on remand.

* * *

The relevant Rules of Civil and Appellate Procedure clearly foreclose the flexible tolling approach on which the Court of Appeals relied to deem Lambert's petition timely. The judgment of the Court of Appeals is therefore reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

JAM ET AL. *v.* INTERNATIONAL FINANCE CORP.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17–1011. Argued October 31, 2018—Decided February 27, 2019

In 1945, Congress passed the International Organizations Immunities Act (IOIA), which, among other things, grants international organizations the "same immunity from suit . . . as is enjoyed by foreign governments." 22 U. S. C. § 288a(b). At that time, foreign governments were entitled to virtually absolute immunity as a matter of international grace and comity. In 1952, the State Department adopted a more restrictive theory of foreign sovereign immunity, which Congress subsequently codified in the Foreign Sovereign Immunities Act (FSIA), 28 U. S. C. § 1602. The FSIA gives foreign sovereign governments presumptive immunity from suit, § 1604, subject to several statutory exceptions, including, as relevant here, an exception for actions based on commercial activity with a sufficient nexus with the United States, § 1605(a)(2).

Respondent International Finance Corporation (IFC), an IOIA international organization, entered into a loan agreement with Coastal Gujarat Power Limited, a company based in India, to finance the construction of a coal-fired power plant in Gujarat. Petitioners sued the IFC, claiming that pollution from the plant harmed the surrounding air, land, and water. The District Court, however, held that the IFC was immune from suit because it enjoyed the virtually absolute immunity that foreign governments enjoyed when the IOIA was enacted. The D. C. Circuit affirmed in light of its decision in *Atkinson* v. *Inter-American Development Bank*, 156 F. 3d 1335.

Held: The IOIA affords international organizations the same immunity from suit that foreign governments enjoy today under the FSIA. Pp. 207–215.

(a) The IOIA "same as" formulation is best understood as making international organization immunity and foreign sovereign immunity continuously equivalent. The IOIA is thus like other statutes that use similar or identical language to place two groups on equal footing. See, *e. g.*, Civil Rights Act of 1866, 42 U. S. C. §§ 1981(a), 1982; Federal Tort Claims Act, 28 U. S. C. § 2674. Whatever the ultimate purpose of international organization immunity may be, the immediate purpose of the IOIA immunity provision is expressed in language that Congress

typically uses to make one thing continuously equivalent to another. Pp. 207–209.

(b) That reading is confirmed by the "reference canon" of statutory interpretation. When a statute refers to a general subject, the statute adopts the law on that subject as it exists whenever a question under the statute arises. In contrast, when a statute refers to another statute by specific title, the referenced statute is adopted as it existed when the referring statute was enacted, without any subsequent amendments. Federal courts have often relied on the reference canon to harmonize a statute with an external body of law that the statute refers to generally. The IOIA's reference to the immunity enjoyed by foreign governments is to an external body of potentially evolving law, not to a specific provision of another statute. Nor is it a specific reference to a common law concept with a fixed meaning. The phrase "immunity enjoyed by foreign governments" is not a term of art with substantive content but rather a concept that can be given scope and content only by reference to the rules governing foreign sovereign immunity. Pp. 209–211.

(c) The D. C. Circuit relied upon *Atkinson*'s conclusion that the reference canon's probative force was outweighed by an IOIA provision authorizing the President to alter the immunity of an international organization. But the fact that the President has power to modify otherwise applicable immunity rules is perfectly compatible with the notion that those rules might themselves change over time in light of developments in the law governing foreign sovereign immunity. The *Atkinson* court also did not consider the opinion of the State Department, whose views in this area ordinarily receive "special attention," *Bolivarian Republic of Venezuela* v. *Helmerich & Payne Int'l Drilling Co.*, 581 U. S. 170, 181, and which took the position that immunity rules of the IOIA and the FSIA were linked following the FSIA's enactment. Pp. 211–213.

(d) The IFC contends that interpreting the IOIA immunity provision to grant only restrictive immunity would defeat the purpose of granting immunity in the first place, by subjecting international organizations to suit under the commercial activity exception of the FSIA for most or all of their core activities. This would be particularly true with respect to international development banks, which use the tools of commerce to achieve their objectives. Those concerns are inflated. The IOIA provides only default rules. An international organization's charter can always specify a different level of immunity, and many do. Nor is it clear that the lending activity of all development banks qualifies as commercial activity within the meaning of the FSIA. But even if it does

qualify as commercial, that does not mean the organization is automatically subject to suit, since other FSIA requirements must also be met, see, *e. g.*, 28 U. S. C. §§ 1603, 1605(a)(2). Pp. 213–215.

860 F. 3d 703, reversed and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which THOMAS, GINSBURG, ALITO, SOTOMAYOR, KAGAN, and GORSUCH, JJ., joined. BREYER, J., filed a dissenting opinion, *post*, p. 216. KAVANAUGH, J., took no part in the consideration or decision of the case.

Jeffrey L. Fisher argued the cause for petitioners. With him on the briefs were *Pamela S. Karlan*, *David T. Goldberg*, *Richard L. Herz*, *Marco B. Simons*, *Michelle C. Harrison*, *Anton Metlitsky*, *Jennifer Sokoler*, *Samantha Goldstein*, and *Jason Zarrow*.

Jonathan Y. Ellis argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Francisco*, *Deputy Solicitor General Kneedler*, *Sharon Swingle*, *Lewis S. Yelin*, and *Jennifer G. Newstead*.

Donald B. Verrilli, Jr., argued the cause for respondent. With him on the brief were *Ginger D. Anders*, *Christopher M. Lynch*, *Jonathan S. Meltzer*, *Francis A. Vasquez, Jr.*, *Dana Foster*, and *Maxwell J. Kalmann*.*

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*Briefs of *amici curiae* urging reversal were filed for Bipartisan Members of Congress by *Nikesh Jindal*, *Jeremy M. Bylund*, *Justin A. Torres*, *Anne M. Voigts*, and *Samuel J. Dubbin*; for Center for International Environmental Law et al. by *Henry C. Su*; and for Professors of International Organization and International Law by *Patrick W. Pearsall* and *Lori F. Damrosch*.

Briefs of *amici curiae* urging affirmance were filed for the African Union et al. by *Jonathan I. Blackman*; for Former Executive Branch Attorneys by *Jonathan S. Franklin* and *Peter B. Siegal*; for Former Secretaries of State et al. by *Stephen M. Nickelsburg*; for International Bank for Reconstruction and Development et al. by *Jeffrey T. Green*, *Frank R. Volpe*, and *Jennifer J. Clark*; for International Law Experts by *Lawrence H. Martin* and *Peter R. Shults*; and for Member Countries et al. by *Paul D. Clement*, *Erin E. Murphy*, and *Ruthanne M. Deutsch*.

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

The International Organizations Immunities Act of 1945 grants international organizations such as the World Bank and the World Health Organization the "same immunity from suit . . . as is enjoyed by foreign governments." 22 U. S. C. §288a(b). At the time the IOIA was enacted, foreign governments enjoyed virtually absolute immunity from suit. Today that immunity is more limited. Most significantly, foreign governments are not immune from actions based upon certain kinds of commercial activity in which they engage. This case requires us to determine whether the IOIA grants international organizations the virtually absolute immunity foreign governments enjoyed when the IOIA was enacted, or the more limited immunity they enjoy today.

Respondent International Finance Corporation is an international organization headquartered in the United States. The IFC finances private-sector development projects in poor and developing countries around the world. About 10 years ago, the IFC financed the construction of a power plant in Gujarat, India. Petitioners are local farmers and fishermen and a small village. They allege that the power plant has polluted the air, land, and water in the surrounding area. Petitioners sued the IFC for damages and injunctive relief in Federal District Court, but the IFC claimed absolute immunity from suit. Petitioners argued that the IFC was entitled under the IOIA only to the limited or "restrictive" immunity that foreign governments currently enjoy. We agree.

I

A

In the wake of World War II, the United States and many of its allies joined together to establish a host of new international organizations. Those organizations, which included the United Nations, the International Monetary Fund, and the World Bank, were designed to allow member countries to

collectively pursue goals such as stabilizing the international economy, rebuilding war-torn nations, and maintaining international peace and security.

Anticipating that those and other international organizations would locate their headquarters in the United States, Congress passed the International Organizations Immunities Act of 1945, 59 Stat. 669. The Act grants international organizations a set of privileges and immunities, such as immunity from search and exemption from property taxes. 22 U. S. C. §§ 288a(c), 288c.

The IOIA defines certain privileges and immunities by reference to comparable privileges and immunities enjoyed by foreign governments. For example, with respect to customs duties and the treatment of official communications, the Act grants international organizations the privileges and immunities that are "accorded under similar circumstances to foreign governments." § 288a(d). The provision at issue in this case provides that international organizations "shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments." § 288a(b).

The IOIA authorizes the President to withhold, withdraw, condition, or limit the privileges and immunities it grants in light of the functions performed by any given international organization. § 288. Those privileges and immunities can also be expanded or restricted by a particular organization's founding charter.

B

When the IOIA was enacted in 1945, courts looked to the views of the Department of State in deciding whether a given foreign government should be granted immunity from a particular suit. If the Department submitted a recommendation on immunity, courts deferred to the recommendation. If the Department did not make a recommendation, courts decided for themselves whether to grant immunity, although they did so by reference to State Department policy. *Samantar* v. *Yousuf*, 560 U. S. 305, 311–312 (2010).

Until 1952, the State Department adhered to the classical theory of foreign sovereign immunity. According to that theory, foreign governments are entitled to "virtually absolute" immunity as a matter of international grace and comity. At the time the IOIA was enacted, therefore, the Department ordinarily requested, and courts ordinarily granted, immunity in suits against foreign governments. *Ibid.*; *Verlinden B. V.* v. *Central Bank of Nigeria*, 461 U. S. 480, 486 (1983).[1]

In 1952, however, the State Department announced that it would adopt the newer "restrictive" theory of foreign sovereign immunity. Under that theory, foreign governments are entitled to immunity only with respect to their sovereign acts, not with respect to commercial acts. The State Department explained that it was adopting the restrictive theory because the "widespread and increasing practice on the part of governments of engaging in commercial activities" made it "necessary" to "enable persons doing business with them to have their rights determined in the courts." Letter from Jack B. Tate, Acting Legal Adviser, Dept. of State, to Acting Attorney General Philip B. Perlman (May 19, 1952), reprinted in 26 Dept. State Bull. 984–985 (1952).

In 1976, Congress passed the Foreign Sovereign Immunities Act. The FSIA codified the restrictive theory of foreign sovereign immunity but transferred "primary responsibility for immunity determinations from the Executive to the Judicial Branch." *Republic of Austria* v. *Altmann*, 541 U. S. 677, 691 (2004); see 28 U. S. C. § 1602. Under the FSIA, foreign governments are presumptively immune from suit. § 1604. But a foreign government may be subject to suit under one of several statutory exceptions. Most perti-

[1] The immunity was "virtually" absolute because it was subject to occasional exceptions for specific situations. In *Republic of Mexico* v. *Hoffman*, 324 U. S. 30 (1945), for example, the State Department declined to recommend, and the Court did not grant, immunity from suit with respect to a ship that Mexico owned but did not possess.

nent here, a foreign government may be subject to suit in connection with its commercial activity that has a sufficient nexus with the United States. § 1605(a)(2).

C

The International Finance Corporation is an international development bank headquartered in Washington, D. C. The IFC is designated as an international organization under the IOIA. Exec. Order No. 10680, 3 CFR 86 (1957); see 22 U. S. C. §§ 282, 288. One hundred eighty-four countries, including the United States, are members of the IFC.

The IFC is charged with furthering economic development "by encouraging the growth of productive private enterprise in member countries, particularly in the less developed areas, thus supplementing the activities of" the World Bank. Articles of Agreement of the International Finance Corporation, Art. I, Dec. 5, 1955, 7 U. S. T. 2198, T. I. A. S. No. 3620. Whereas the World Bank primarily provides loans and grants to developing countries for public-sector projects, the IFC finances private-sector development projects that cannot otherwise attract capital on reasonable terms. See Art. I(i), *ibid.* In 2018, the IFC provided some $23 billion in such financing.

The IFC expects its loan recipients to adhere to a set of performance standards designed to "avoid, mitigate, and manage risks and impacts" associated with development projects. IFC Performance Standards on Environmental and Social Sustainability, Jan. 1, 2012, p. 2, ¶1. Those standards are usually more stringent than any established by local law. The IFC includes the standards in its loan agreements and enforces them through an internal review process. Brief for Respondent 10.

In 2008, the IFC loaned $450 million to Coastal Gujarat Power Limited, a company located in India. The loan helped finance the construction of a coal-fired power plant in the state of Gujarat. Under the terms of the loan agree-

ment, Coastal Gujarat was required to comply with an environmental and social action plan designed to protect areas around the plant from damage. The agreement allowed the IFC to revoke financial support for the project if Coastal Gujarat failed to abide by the terms of the agreement.

The project did not go smoothly. According to the IFC's internal audit, Coastal Gujarat did not comply with the environmental and social action plan in constructing and operating the plant. The audit report criticized the IFC for inadequately supervising the project.

In 2015, a group of farmers and fishermen who live near the plant, as well as a local village, sued the IFC in the United States District Court for the District of Columbia. They claimed that pollution from the plant, such as coal dust, ash, and water from the plant's cooling system, had destroyed or contaminated much of the surrounding air, land, and water. Relying on the audit report, they asserted several causes of action against the IFC, including negligence, nuisance, trespass, and breach of contract. The IFC maintained that it was immune from suit under the IOIA and moved to dismiss for lack of subject matter jurisdiction.

The District Court, applying D. C. Circuit precedent, concluded that the IFC was immune from suit because the IOIA grants international organizations the virtually absolute immunity that foreign governments enjoyed when the IOIA was enacted. 172 F. Supp. 3d 104, 108–109 (DC 2016) (citing *Atkinson* v. *Inter-American Development Bank*, 156 F. 3d 1335 (CADC 1998)). The D. C. Circuit affirmed in light of its precedent. 860 F. 3d 703 (2017). Judge Pillard wrote separately to say that she would have decided the question differently were she writing on a clean slate. *Id.*, at 708 (concurring opinion). Judge Pillard explained that she thought the D. C. Circuit "took a wrong turn" when it "read the IOIA to grant international organizations a static, absolute immunity that is, by now, not at all the same 'as is enjoyed by foreign governments,' but substantially broader."

Ibid. Judge Pillard also noted that the Third Circuit had expressly declined to follow the D. C. Circuit's approach. See *OSS Nokalva, Inc.* v. *European Space Agency*, 617 F. 3d 756 (CA3 2010).

We granted certiorari. 584 U. S. 992 (2018).

II

The IFC contends that the IOIA grants international organizations the "same immunity" from suit that foreign governments enjoyed in 1945. Petitioners argue that it instead grants international organizations the "same immunity" from suit that foreign governments enjoy today. We think petitioners have the better reading of the statute.

A

The language of the IOIA more naturally lends itself to petitioners' reading. In granting international organizations the "same immunity" from suit "as is enjoyed by foreign governments," the Act seems to continuously link the immunity of international organizations to that of foreign governments, so as to ensure ongoing parity between the two. The statute could otherwise have simply stated that international organizations "shall enjoy absolute immunity from suit," or specified some other fixed level of immunity. Other provisions of the IOIA, such as the one making the property and assets of international organizations "immune from search," use such noncomparative language to define immunities in a static way. 22 U. S. C. §288a(c). Or the statute could have specified that it was incorporating the law of foreign sovereign immunity as it existed on a particular date. See, *e. g.*, Energy Policy Act of 1992, 30 U. S. C. §242(c)(1) (certain land patents "shall provide for surface use to the same extent as is provided under applicable law prior to October 24, 1992"). Because the IOIA does neither of those things, we think the "same as" formulation is best un-

derstood to make international organization immunity and foreign sovereign immunity continuously equivalent.

That reading finds support in other statutes that use similar or identical language to place two groups on equal footing. In the Civil Rights Act of 1866, for instance, Congress established a rule of equal treatment for newly freed slaves by giving them the "same right" to make and enforce contracts and to buy and sell property "as is enjoyed by white citizens." 42 U. S. C. §§ 1981(a), 1982. That provision is of course understood to guarantee continuous equality between white and nonwhite citizens with respect to the rights in question. See *Jones* v. *Alfred H. Mayer Co.*, 392 U. S. 409, 427–430 (1968). Similarly, the Federal Tort Claims Act states that the "United States shall be liable" in tort "in the same manner and to the same extent as a private individual under like circumstances." 28 U. S. C. § 2674. That provision is most naturally understood to make the United States liable in the same way as a private individual at any given time. See *Richards* v. *United States*, 369 U. S. 1, 6–7 (1962). Such "same as" provisions dot the statute books, and federal and state courts commonly read them to mandate ongoing equal treatment of two groups or objects. See, *e. g.*, *Adamson* v. *Bowen*, 855 F. 2d 668, 671–672 (CA10 1988) (statute making United States liable for fees and expenses "to the same extent that any other party would be liable under the common law or under the terms of any statute" interpreted to continuously tie liability of United States to that of any other party); *Kugler's Appeal*, 55 Pa. 123, 124–125 (1867) (statute making the procedure for dividing election districts "the same as" the procedure for dividing townships interpreted to continuously tie the former procedure to the latter).

The IFC objects that the IOIA is different because the purpose of international organization immunity is entirely distinct from the purpose of foreign sovereign immunity. Foreign sovereign immunity, the IFC argues, is grounded

in the mutual respect of sovereigns and serves the ends of international comity and reciprocity. The purpose of international organization immunity, on the other hand, is to allow such organizations to freely pursue the collective goals of member countries without undue interference from the courts of any one member country. The IFC therefore urges that the IOIA should not be read to tether international organization immunity to changing foreign sovereign immunity.

But that gets the inquiry backward. We ordinarily assume, "absent a clearly expressed legislative intention to the contrary," that "the legislative purpose is expressed by the ordinary meaning of the words used." *American Tobacco Co.* v. *Patterson*, 456 U. S. 63, 68 (1982) (alterations omitted). Whatever the ultimate purpose of international organization immunity may be—the IOIA does not address that question—the immediate purpose of the immunity provision is expressed in language that Congress typically uses to make one thing continuously equivalent to another.

B

The more natural reading of the IOIA is confirmed by a canon of statutory interpretation that was well established when the IOIA was drafted. According to the "reference" canon, when a statute refers to a general subject, the statute adopts the law on that subject as it exists whenever a question under the statute arises. 2 J. Sutherland, Statutory Construction §§ 5207–5208 (3d ed. 1943). For example, a statute allowing a company to "collect the same tolls and enjoy the same privileges" as other companies incorporates the law governing tolls and privileges as it exists at any given moment. *Snell* v. *Chicago*, 133 Ill. 413, 437–439, 24 N. E. 532, 537 (1890). In contrast, a statute that refers to another statute by specific title or section number in effect cuts and pastes the referenced statute as it existed when the referring statute was enacted, without any subsequent

amendments. See, *e. g.*, *Culver* v. *People ex rel. Kochersperger*, 161 Ill. 89, 95–99, 43 N. E. 812, 814–815 (1896) (tax-assessment statute referring to specific article of another statute does not adopt subsequent amendments to that article).

Federal courts have often relied on the reference canon, explicitly or implicitly, to harmonize a statute with an external body of law that the statute refers to generally. Thus, for instance, a statute that exempts from disclosure agency documents that "would not be *available by law* to a party . . . in litigation with the agency" incorporates the general law governing attorney work-product privilege as it exists when the statute is applied. *FTC* v. *Grolier Inc.*, 462 U. S. 19, 20, 26–27 (1983) (emphasis added); *id.*, at 34, n. 6 (Brennan, J., concurring in part and concurring in judgment). Likewise, a general reference to federal discovery rules incorporates those rules "as they are found on any given day, today included," *El Encanto, Inc.* v. *Hatch Chile Co.*, 825 F. 3d 1161, 1164 (CA10 2016), and a general reference to "the crime of piracy as defined by the law of nations" incorporates a definition of piracy "that changes with advancements in the law of nations," *United States* v. *Dire*, 680 F. 3d 446, 451, 467–469 (CA4 2012).

The same logic applies here. The IOIA's reference to the immunity enjoyed by foreign governments is a general rather than specific reference. The reference is to an external body of potentially evolving law—the law of foreign sovereign immunity—not to a specific provision of another statute. The IOIA should therefore be understood to link the law of international organization immunity to the law of foreign sovereign immunity, so that the one develops in tandem with the other.

The IFC contends that the IOIA's reference to the immunity enjoyed by foreign governments is not a general reference to an external body of law, but is instead a specific reference to a common law concept that had a fixed meaning

when the IOIA was enacted in 1945. And because we ordinarily presume that "Congress intends to incorporate the well-settled meaning of the common-law terms it uses," *Neder* v. *United States*, 527 U. S. 1, 23 (1999), the IFC argues that we should read the IOIA to incorporate what the IFC maintains was the then-settled meaning of the "immunity enjoyed by foreign governments": virtually absolute immunity.

But in 1945, the "immunity enjoyed by foreign governments" did not *mean* "virtually absolute immunity." The phrase is not a term of art with substantive content, such as "fraud" or "forgery." See *id.*, at 22; *Gilbert* v. *United States*, 370 U. S. 650, 655 (1962). It is rather a concept that can be given scope and content only by reference to the rules governing foreign sovereign immunity. It is true that under the rules applicable in 1945, the *extent* of immunity from suit was virtually absolute, while under the rules applicable today, it is more limited. But in 1945, as today, the IOIA's instruction to grant international organizations the immunity "enjoyed by foreign governments" is an instruction to look up the applicable rules of foreign sovereign immunity, wherever those rules may be found—the common law, the law of nations, or a statute. In other words, it is a general reference to an external body of (potentially evolving) law.

C

In ruling for the IFC, the D. C. Circuit relied upon its prior decision in *Atkinson*, 156 F. 3d 1335. *Atkinson* acknowledged the reference canon, but concluded that the canon's probative force was "outweighed" by a structural inference the court derived from the larger context of the IOIA. *Id.*, at 1341. The *Atkinson* court focused on the provision of the IOIA that gives the President the authority to withhold, withdraw, condition, or limit the otherwise applicable privileges and immunities of an international organization, "in the light of the functions performed by any such international

organization." 22 U. S. C. § 288. The court understood that provision to "delegate to the President the responsibility for updating the immunities of international organizations in the face of changing circumstances." *Atkinson*, 156 F. 3d, at 1341. That delegation, the court reasoned, "undermine[d]" the view that Congress intended the IOIA to in effect update itself by incorporating changes in the law governing foreign sovereign immunity. *Ibid.*

We do not agree. The delegation provision is most naturally read to allow the President to modify, on a case-by-case basis, the immunity rules that would otherwise apply to a particular international organization. The statute authorizes the President to take action with respect to a single organization—"any such organization"—in light of the functions performed by "such organization." 22 U. S. C. § 288. The text suggests retail rather than wholesale action, and that is in fact how authority under § 288 has been exercised in the past. See, *e. g.*, Exec. Order No. 12425, 3 CFR 193 (1984) (designating INTERPOL as an international organization under the IOIA but withholding certain privileges and immunities); Exec. Order No. 11718, 3 CFR 177 (1974) (same for INTELSAT). In any event, the fact that the President has power to modify otherwise applicable immunity rules is perfectly compatible with the notion that those rules might themselves change over time in light of developments in the law governing foreign sovereign immunity.

The D. C. Circuit in *Atkinson* also gave no consideration to the opinion of the State Department, whose views in this area ordinarily receive "special attention." *Bolivarian Republic of Venezuela* v. *Helmerich & Payne Int'l Drilling Co.*, 581 U. S. 170, 181 (2017). Shortly after the FSIA was enacted, the State Department took the position that the immunity rules of the IOIA and the FSIA were now "link[ed]." Letter from D. Vagts, Office of the Legal Adviser, to R. Carswell, Jr., Senior Legal Officer, Organization of American States, p. 2 (Mar. 24, 1977). The Department reaffirmed that view dur-

ing subsequent administrations, and it has reaffirmed it again here.[2] That longstanding view further bolsters our understanding of the IOIA's immunity provision.

D

The IFC argues that interpreting the IOIA's immunity provision to grant anything less than absolute immunity would lead to a number of undesirable results.

The IFC first contends that affording international organizations only restrictive immunity would defeat the purpose of granting them immunity in the first place. Allowing international organizations to be sued in one member country's courts would in effect allow that member to second-guess the collective decisions of the others. It would also expose international organizations to money damages, which would in turn make it more difficult and expensive for them to fulfill their missions. The IFC argues that this problem is especially acute for international development banks. Because those banks use the tools of commerce to achieve their objectives, they may be subject to suit under the FSIA's commercial activity exception for most or all of their core activities,

[2] See Letter from Roberts B. Owen, Legal Adviser, to Leroy D. Clark, Gen. Counsel, EEOC (June 24, 1980), in Nash, Contemporary Practice of the United States Relating to International Law, 74 Am. J. Int'l L. 917, 918 (1980) ("By virtue of the FSIA, and unless otherwise specified in their constitutive agreements, international organizations are now subject to the jurisdiction of our courts in respect of their commercial activities, while retaining immunity for their acts of a public character."); Letter from Arnold Kanter, Acting Secretary of State, to President George H. W. Bush (Sept. 12, 1992), in Digest of United States Practice in International Law 1016–1017 (S. Cummins & D. Stewart eds. 2005) (explaining that the Headquarters Agreement of the Organization of American States affords the OAS "full immunity from judicial process, thus going beyond the usual United States practice of affording restrictive immunity," in exchange for assurances that OAS would provide for "appropriate modes of settlement of those disputes for which jurisdiction would exist against a foreign government under the" FSIA); Brief for United States as *Amicus Curiae* 24–29.

unlike foreign sovereigns. According to the IFC, allowing such suits would bring a flood of foreign-plaintiff litigation into U. S. courts, raising many of the same foreign-relations concerns that we identified when considering similar litigation under the Alien Tort Statute. See *Jesner* v. *Arab Bank, PLC*, 584 U. S. 241, 270–272 (2018); *Kiobel* v. *Royal Dutch Petroleum Co.*, 569 U. S. 108, 116–117 (2013).

The IFC's concerns are inflated. To begin, the privileges and immunities accorded by the IOIA are only default rules. If the work of a given international organization would be impaired by restrictive immunity, the organization's charter can always specify a different level of immunity. The charters of many international organizations do just that. See, *e. g.*, Convention on Privileges and Immunities of the United Nations, Art. II, § 2, Feb. 13, 1946, 21 U. S. T. 1422, T. I. A. S. No. 6900 ("The United Nations . . . shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity"); Articles of Agreement of the International Monetary Fund, Art. IX, § 3, Dec. 27, 1945, 60 Stat. 1413, T. I. A. S. No. 1501 (IMF enjoys "immunity from every form of judicial process except to the extent that it expressly waives its immunity"). Notably, the IFC's own charter does not state that the IFC is absolutely immune from suit.

Nor is there good reason to think that restrictive immunity would expose international development banks to excessive liability. As an initial matter, it is not clear that the lending activity of all development banks qualifies as commercial activity within the meaning of the FSIA. To be considered "commercial," an activity must be "the *type*" of activity "by which a private party engages in" trade or commerce. *Republic of Argentina* v. *Weltover, Inc.*, 504 U. S. 607, 614 (1992); see 28 U. S. C. § 1603(d). As the Government suggested at oral argument, the lending activity of at least some development banks, such as those that make condi-

tional loans to governments, may not qualify as "commercial" under the FSIA. See Tr. of Oral Arg. 27–30.

And even if an international development bank's lending activity does qualify as commercial, that does not mean the organization is automatically subject to suit. The FSIA includes other requirements that must also be met. For one thing, the commercial activity must have a sufficient nexus to the United States. See 28 U. S. C. §§ 1603, 1605(a)(2). For another, a lawsuit must be "based upon" either the commercial activity itself or acts performed in connection with the commercial activity. See § 1605(a)(2). Thus, if the "gravamen" of a lawsuit is tortious activity abroad, the suit is not "based upon" commercial activity within the meaning of the FSIA's commercial activity exception. See *OBB Personenverkehr AG* v. *Sachs*, 577 U. S. 27, 35 (2015); *Saudi Arabia* v. *Nelson*, 507 U. S. 349, 356–359 (1993). At oral argument in this case, the Government stated that it has "serious doubts" whether petitioners' suit, which largely concerns allegedly tortious conduct in India, would satisfy the "based upon" requirement. Tr. of Oral Arg. 25–26. In short, restrictive immunity hardly means unlimited exposure to suit for international organizations.

* * *

The International Organizations Immunities Act grants international organizations the "same immunity" from suit "as is enjoyed by foreign governments" at any given time. Today, that means that the Foreign Sovereign Immunities Act governs the immunity of international organizations. The International Finance Corporation is therefore not absolutely immune from suit.

The judgment of the United States Court of Appeals for the D. C. Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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

JUSTICE BREYER, dissenting.

The International Organizations Immunities Act of 1945 extends to international organizations "the same immunity from suit and every form of judicial process as is enjoyed by foreign governments." 22 U. S. C. § 288a(b). The majority, resting primarily upon the statute's language and canons of interpretation, holds that the statute's reference to "immunity" moves with the times. As a consequence, the statute no longer allows international organizations immunity from lawsuits arising from their commercial activities. In my view, the statute grants international organizations that immunity—just as foreign governments possessed that immunity when Congress enacted the statute in 1945. In reaching this conclusion, I rest more heavily than does the majority upon the statute's history, its context, its purposes, and its consequences. And I write in part to show that, in difficult cases like this one, purpose-based methods of interpretation can often shine a useful light upon opaque statutory language, leading to a result that reflects greater legal coherence and is, as a practical matter, more likely to prove sound.

I

The general question before us is familiar: Do the words of a statute refer to their subject matter "statically," as it was when the statute was written? Or is their reference to that subject matter "dynamic," changing in scope as the subject matter changes over time? It is hardly surprising, given the thousands of different statutes containing an untold number of different words, that there is no single, universally applicable answer to this question.

Fairly recent cases from this Court make that clear. Compare *New Prime Inc.* v. *Oliveira*, 586 U. S. 105, 114 (2019) (adopting the interpretation of " 'contracts of employ-

ment' " that prevailed at the time of the statute's adoption in 1925); *Wisconsin Central Ltd.* v. *United States*, 585 U. S. 274, 277 (2018) (adopting the meaning of " 'money' " that prevailed at the time of the statute's enactment in 1937); *Carcieri* v. *Salazar*, 555 U. S. 379, 388 (2009) (interpreting the statutory phrase " 'now under Federal jurisdiction' " to cover only those tribes that were under federal jurisdiction at the time of the statute's adoption in 1934); and *Republic of Argentina* v. *Weltover, Inc.*, 504 U. S. 607, 612–613 (1992) (adopting the meaning of " 'commercial' " that was "attached to that term under the restrictive theory" when the Foreign Sovereign Immunities Act was enacted in 1976), with *Kimble* v. *Marvel Entertainment, LLC*, 576 U. S. 446, 461 (2015) (noting that the words " 'restraint of trade' " in the Sherman Act have been interpreted dynamically); *West* v. *Gibson*, 527 U. S. 212, 218 (1999) (interpreting the term " 'appropriate' " in Title VII's remedies provision dynamically); and *Allied-Bruce Terminix Cos.* v. *Dobson*, 513 U. S. 265, 275–276 (1995) (interpreting the term " 'involving commerce' " in the Federal Arbitration Act dynamically).

The Court, like petitioners, believes that the language of the statute itself helps significantly to answer the static/dynamic question. See *ante*, at 207–209. I doubt that the language itself helps in this case. Petitioners point to the words "as is" in the phrase that grants the international organizations the "same immunity from suit . . . *as is* enjoyed by foreign governments." Brief for Petitioners 23–24 (emphasis added). They invoke the Dictionary Act, which states that "words used in the present tense include the future" "unless the context indicates otherwise." 1 U. S. C. § 1. But that provision creates only a presumption. And it did not even appear in the statute until 1948, *after* Congress had passed the Immunities Act. Compare § 1, 61 Stat. 633, with § 6, 62 Stat. 859.

More fundamentally, the words "as is enjoyed" do not conclusively tell us *when* enjoyed. Do they mean "as is en-

joyed" at the time of the statute's enactment? Or "as is enjoyed" at the time a plaintiff brings a lawsuit? If the former, international organizations enjoy immunity from lawsuits based upon their commercial activities, for that was the scope of immunity that foreign governments enjoyed in 1945 when the Immunities Act became law. If the latter, international organizations do not enjoy that immunity, for foreign governments can no longer claim immunity from lawsuits based upon certain commercial activities. See 28 U. S. C. § 1605(a)(2).

Linguistics does not answer the temporal question. Nor do our cases, which are not perfectly consistent on the matter. Compare *McNeill* v. *United States*, 563 U. S. 816, 821 (2011) (present-tense verb in the Armed Career Criminal Act requires applying the law at the time of previous conviction, not the later time when the Act is applied), with *Dole Food Co.* v. *Patrickson*, 538 U. S. 468, 478 (2003) (present-tense verb requires applying the law "at the time suit is filed"). The problem is simple: "Without knowing the point in time at which the law speaks, it is impossible to tell what is past and what is present or future." *Carr* v. *United States*, 560 U. S. 438, 463 (2010) (ALITO, J., dissenting). It is *purpose*, not linguistics, that can help us here.

The words "same . . . as," in the phrase "same immunity . . . as," provide no greater help. The majority finds support for its dynamic interpretation in the Civil Rights Act of 1866, which gives all citizens the "*same* right" to make and enforce contracts and to buy and sell property "*as* is enjoyed by white citizens." 42 U. S. C. §§ 1981(a), 1982 (emphasis added). But it is *purpose*, not words, that readily resolves any temporal linguistic ambiguity in that statute. The Act's objective, like that of the Fourteenth Amendment itself, was a Nation that treated its citizens equally. Its purpose—revealed by its title, historical context, and other language in the statute—was "to guarantee the then newly freed slaves the same legal rights that other citizens enjoy."

CBOCS West, Inc. v. *Humphries*, 553 U. S. 442, 448 (2008). Given this purpose, its dynamic nature is obvious.

Similarly, judges interpreting the words "same . . . as" have long resolved ambiguity not by looking at the words alone, but by examining the statute's purpose as well. Compare, *e. g.*, *Kugler's Appeal*, 55 Pa. 123, 123–125 (1867) (adopting a dynamic interpretation of "same as" statute in light of "plain" and "manifest" statutory purpose); and *Gaston* v. *Lamkin*, 115 Mo. 20, 34, 21 S. W. 1100, 1104 (1893) (adopting a dynamic interpretation of "same as" election statute given the legislature's intent to achieve "simplicity and uniformity in the conduct of elections"), with *O'Flynn* v. *East Rochester*, 292 N. Y. 156, 162, 54 N. E. 2d 343, 346 (1944) (adopting a static interpretation of "same as" statute given that the legislature "did not contemplate" that subsequent changes to a referenced statute would apply (interpreting N. Y. Gen. Mun. Law Ann. § 360(5) (West 1934))). There is no hard-and-fast rule that the statutory words "as is" or the statutory words "same as" require applying the law as it stands today.

The majority wrongly believes that it can solve the temporal problem by bringing statutory canons into play. It relies on what it calls the "reference canon." That canon, as it appeared more than 75 years ago in Sutherland's book on statutory construction, says that "when a statute refers to a general subject, the statute adopts the law on that subject as it exists *whenever a question under the statute arises.*" *Ante*, at 209 (citing 2 J. Sutherland, Statutory Construction §§ 5207–5208 (3d ed. 1943); emphasis added).

But a canon is at most a rule of thumb. Indeed, Sutherland himself says that "[n]o single canon of interpretation can purport to give a certain and unerring answer." 2 *id.*, § 4501, p. 316. And hornbooks, summarizing case law, have long explained that whether a reference statute adopts the law as it stands on the date of enactment or includes subsequent changes in the law to which it refers is "fundamentally a question of legislative intent and purpose." Fox, Effect of

Modification or Repeal of Constitutional or Statutory Provision Adopted by Reference in Another Provision, 168 A. L. R. 627, 628 (1947); see also 82 C. J. S., Statutes § 485, p. 637 (2009) ("The question of whether a statute which has adopted another statute by reference will be affected by amendments made to the adopted statute is one of legislative intent and purpose"); *id.*, at 638 (statute that refers generally to another body of law will ordinarily include subsequent changes in the adopted law only "as far as the changes are consistent with the purpose of the adopting statute").

Thus, all interpretive roads here lead us to the same place, namely, to context, to history, to purpose, and to consequences. Language alone cannot resolve the statute's linguistic ambiguity.

II

"Statutory interpretation," however, "is not a game of blind man's bluff." *Dole Food Co.*, 538 U. S., at 484 (BREYER, J., concurring in part and dissenting in part). We are "free to consider statutory language in light of a statute's basic purposes," *ibid.*, as well as "'the history of the times when it was passed,'" *Leo Sheep Co.* v. *United States*, 440 U. S. 668, 669 (1979) (quoting *United States* v. *Union Pacific R. Co.*, 91 U. S. 72, 79 (1875)). In this case, historical context, purpose, and related consequences tell us a great deal about the proper interpretation of the Immunities Act.

Congressional reports explain that Congress, acting in the immediate aftermath of World War II, intended the Immunities Act to serve two related purposes. First, it would "enabl[e] this country to fulfill its commitments in connection with its membership in international organizations." S. Rep. No. 861, 79th Cong., 1st Sess., 3 (1945); see also *id.*, at 2–3 (explaining that the Immunities Act was "basic legislation" expected to "satisfy in full the requirements of . . . international organizations conducting activities in the United States"); H. R. Rep. No. 1203, 79th Cong., 1st Sess., 3 (1945) (similar). And second, it would "facilitate fully the

functioning of international organizations in this country." S. Rep. No. 861, at 3.

A

I first examine the international commitments that Congress sought to fulfill. By 1945, the United States had entered into agreements creating several important multilateral organizations, including the United Nations (UN), the International Monetary Fund (IMF), the World Bank, the UN Relief and Rehabilitation Administration (UNRRA), and the Food and Agriculture Organization (FAO). See *id.*, at 2.

The founding agreements for several of these organizations required member states to grant them broad immunity from suit. The Bretton Woods Agreements, for example, provided that the IMF "shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity." Articles of Agreement of the International Monetary Fund, Art. IX, § 3, Dec. 27, 1945, 60 Stat. 1413, T. I. A. S. No. 1501. UNRRA required members, absent waiver, to accord the organization "the facilities, privileges, immunities, and exemptions which they accord to each other, including . . . [i]mmunity from suit and legal process." 2 UNRRA, A Compilation of the Resolutions on Policy: First and Second Sessions of the UNRRA Council, Res. No. 32, p. 51 (1944). And the UN Charter required member states to accord the UN "such privileges and immunities as are necessary for the fulfillment of its purposes." Charter of the United Nations, Art. 105, 59 Stat. 1053, June 26, 1945, T. S. No. 993.

These international organizations expected the United States to provide them with essentially full immunity. And at the time the treaties were written, Congress understood that foreign governments normally enjoyed immunity with respect to their commercial, as well as their noncommercial, activities. Thus, by granting international organizations "the same immunity from suit" that foreign governments enjoyed, Congress expected that international organizations

would similarly have immunity in both commercial and noncommercial suits.

More than that, Congress likely recognized that immunity in the commercial area was even more important for many international organizations than it was for most foreign governments. Unlike foreign governments, international organizations are *not* sovereign entities engaged in a host of different activities. See R. Higgins, Problems & Process: International Law and How We Use It 93 (1994) (organizations do not act with " 'sovereign authority,' " and "to assimilate them to states . . . is not correct"). Rather, many organizations (including four of the five I mentioned above) have specific missions that often require them to engage in what U. S. law may well consider to be commercial activities. See *infra*, at 226–227.

Nonetheless, under the majority's view, the immunity of many organizations contracted in scope in 1952, when the State Department modified foreign government immunity to exclude commercial activities. Most organizations could not rely on the treaty provisions quoted above to supply the necessary immunity. That is because, unless the treaty provision granting immunity is "self-executing," *i. e.*, automatically applicable, the immunity will not be effective in U. S. courts until Congress enacts additional legislation to implement it. See *Medellín* v. *Texas*, 552 U. S. 491, 504–505 (2008); but see *id.*, at 546–547 (BREYER, J., dissenting). And many treaties are not self-executing. Thus, in the ordinary case, not even a treaty can guarantee immunity in cases arising from commercial activities.

The UN provides a good example. As noted, the UN Charter required the United States to grant the UN all "necessary" immunities, but it was not self-executing. In 1946, the UN made clear that it needed absolute immunity from suit, including in lawsuits based upon its commercial activities. See Convention on Privileges and Immunities of the United Nations, Art. II, § 2, Feb. 13, 1946, 21 U. S. T. 1422,

T. I. A. S. No. 6900 (entered into force Apr. 29, 1970); see also App. to S. Exec. Rep. No. 91–17, p. 14 (1970) ("[T]he U. N.'s immunity from legal process extends to matters arising out of its commercial dealings . . . "). But until Congress ratified that comprehensive immunity provision in 1970, no U. S. law provided that immunity *but for* the Immunities Act. *Id.*, at 1. Both the UN and the United States found this circumstance satisfactory because they apparently assumed the Immunities Act extended immunity in cases involving both commercial and noncommercial activities: When Congress eventually (in 1970) ratified the UN's comprehensive immunity provision, the Senate reported that the long delay in ratification "appears to have been the result of the executive branch being content to operate under the provisions of the" Immunities Act. *Id.*, at 2.

In light of this history, how likely is it that Congress, seeking to "satisfy *in full* the requirements of . . . international organizations conducting activities in the United States," S. Rep. No. 861, at 3 (emphasis added), would have understood the statute to take from many international organizations with one hand the immunity it had given them with the other? If Congress wished the Act to carry out one of its core purposes—fulfilling the country's international commitments—Congress would not have wanted the statute to change over time, taking on a meaning that would fail to grant not only full, but even partial, immunity to many of those organizations.

B

Congress also intended to facilitate international organizations' ability to pursue their missions in the United States. To illustrate why that purpose is better served by a static interpretation, consider in greater detail the work of the organizations to which Congress wished to provide broad immunity. Put the IMF to the side, for Congress enacted a separate statute providing it with immunity (absent waiver) in all cases. See 22 U. S. C. § 286h. But UNRRA, the

World Bank, the FAO, and the UN itself all originally depended upon the Immunities Act for the immunity they sought.

Consider, for example, the mission of UNRRA. The United States and other nations created that organization in 1943, as the end of World War II seemed in sight. Its objective was, in the words of President Roosevelt, to "'assure a fair distribution of available supplies among'" those liberated in World War II, and "'to ward off death by starvation or exposure among these peoples.'" 1 G. Woodbridge, UNRRA: The History of the United Nations Relief and Rehabilitation Administration 3 (1950). By the time Congress passed the Immunities Act in 1945, UNRRA had obtained and shipped billions of pounds of food, clothing, and other relief supplies to children freed from Nazi concentration camps and to others in serious need. 3 *id.*, at 429; see generally L. Nicholas, Cruel World: The Children of Europe in the Nazi Web 442–513 (2005).

These activities involved contracts, often made in the United States, for transportation and for numerous commercial goods. See B. Shephard, The Long Road Home: The Aftermath of the Second World War 54, 57–58 (2012). Indeed, the United States conditioned its participation on UNRRA's spending what amounted to 67% of its budget on purchases of goods and services in the United States. *Id.*, at 57–58; see also Sawyer, Achievements of UNRRA as an International Health Organization, 37 Am. J. Pub. Health 41, 57 (1947) (describing UNRRA training programs for foreign doctors within the United States, which presumably required entering into contracts); *International Refugee Org.* v. *Republic S. S. Corp.*, 189 F. 2d 858, 860 (CA4 1951) (describing successor organization's transportation of displaced persons, presumably also under contract). Would Congress, believing that it had provided the absolute immunity that UNRRA sought and expected, also have intended that the statute be interpreted "dynamically," thereby removing most of the immunity that it had then provided—not only

potentially from UNRRA itself but also from other future international organizations with UNRRA-like objectives and tasks?

C

This history makes clear that Congress enacted the Immunities Act as part of an effort to encourage international organizations to locate their headquarters and carry on their missions in the United States. It also makes clear that Congress intended to enact "basic legislation" that would fulfill its broad immunity-based commitments to the UN, UNRRA, and other nascent organizations. S. Rep. No. 861, at 2. And those commitments, of necessity, included immunity from suit in commercial areas, since organizations were buying goods and making contracts in the United States.

To achieve these purposes, Congress enacted legislation that granted necessarily broad immunity. And that fact strongly suggests that Congress would not have wanted the statute to reduce significantly the scope of immunity that international organizations enjoyed, particularly organizations engaged in development finance, refugee assistance, or other tasks that U. S. law could well decide were "commercial" in nature. See *infra*, at 226–227.

To that extent, an examination of the statute's purpose supports a static, not a dynamic, interpretation of its cross-reference to the immunity of foreign governments. Unlike the purpose of the Civil Rights Act, the purpose here was not to ensure parity of treatment for international organizations and foreign governments. Instead, as the Court of Appeals for the D. C. Circuit pointed out years ago, the statute's reference to the immunities of "foreign governments" was a "shorthand" for the immunities those foreign governments enjoyed at the time the Act was passed. *Atkinson* v. *Inter-American Development Bank*, 156 F. 3d 1335, 1340, 1341 (1998).

III

Now consider the consequences that the majority's reading of the statute will likely produce—consequences that run

counter to the statute's basic purposes. Although the UN itself is no longer dependent upon the Immunities Act, many other organizations, such as the FAO and several multilateral development banks, continue to rely upon that Act to secure immunity, for the United States has never ratified treaties nor enacted statutes that might extend the necessary immunity, commercial and noncommercial alike.

A

The "commercial activity" exception to the sovereign immunity of foreign nations is broad. We have said that a foreign state engages in "commercial activity" when it exercises "'powers that can also be exercised by private citizens.'" *Republic of Argentina*, 504 U. S., at 614. Thus, "a contract to buy army boots or even bullets is a 'commercial' activity," even if the government enters into the contract to "fulfil[l] uniquely sovereign objectives." *Ibid.*; see also H. R. Rep. No. 94–1487, p. 16 (1976) ("[A] transaction to obtain goods or services from private parties would not lose its otherwise commercial character because it was entered into in connection with an [Agency for International Development] program").

As a result of the majority's interpretation, many of the international organizations to which the United States belongs will discover that they are now exposed to civil lawsuits based on their (U. S.-law-defined) commercial activity. And because "commercial activity" may well have a broad definition, today's holding will at the very least create uncertainty for organizations involved in finance, such as the World Bank, the Inter-American Development Bank, and the Multilateral Investment Guarantee Agency. The core functions of these organizations are at least arguably "commercial" in nature; the organizations exist to promote international development by investing in foreign companies and projects across the world. See Brief for International Bank for Reconstruction and Development et al. as *Amici Curiae*

1–4; Brief for Member Countries and the Multilateral Investment Guarantee Agency as *Amici Curiae* 13–15. The World Bank, for example, encourages development either by guaranteeing private loans or by providing financing from its own funds if private capital is not available. See Articles of Agreement of the International Bank for Reconstruction and Development, Art. I, Dec. 27, 1945, 60 Stat. 1440, T. I. A. S. No. 1502.

Some of these organizations, including the International Finance Corporation (IFC), themselves believe they do not need broad immunity in commercial areas, and they have waived it. See, *e. g.*, Articles of Agreement of the International Finance Corporation, Art. 6, § 3, Dec. 5, 1955, 7 U. S. T. 2214, 264 U. N. T. S. 118 (implemented by 22 U. S. C. § 282g); see also 860 F. 3d 703, 706 (CADC 2017). But today's decision will affect them nonetheless. That is because courts have long interpreted their waivers in a manner that protects their core objectives. See, *e. g.*, *Mendaro* v. *World Bank*, 717 F. 2d 610, 614–615 (CADC 1983). (This very case provides a good example. The D. C. Circuit held below that the IFC's waiver provision does not cover petitioners' claims because they "threaten the [IFC's] policy discretion." 860 F. 3d, at 708.) But today's decision exposes these organizations to potential liability in *all* cases arising from their commercial activities, without regard to the scope of their waivers.

Under the majority's interpretation, that broad exposure to liability is at least a reasonable possibility. And that being so, the interpretation undercuts Congress' original objectives and the expectations that it had when it enacted the Immunities Act in 1945.

B

The majority's opinion will have a further important consequence—one that more clearly contradicts the statute's objectives and overall scheme. It concerns the important goal of weeding out lawsuits that are likely bad or harmful—

those likely to produce rules of law that interfere with an international organization's public interest tasks.

To understand its importance, consider again that international organizations, unlike foreign nations, are multilateral, with members from many different nations. See H. R. Rep. No. 1203, at 1. That multilateralism is threatened if one nation alone, through application of its own liability rules (by nonexpert judges), can shape the policy choices or actions that an international organization believes it must take or refrain from taking. Yet that is the effect of the majority's interpretation. By restricting the immunity that international organizations enjoy, it "opens the door to divided decisions of the courts of different member states," including U. S. courts, "passing judgment on the rules, regulations, and decisions of the international bodies." *Broadbent* v. *Organization of Am. States*, 628 F. 2d 27, 35 (CADC 1980); cf. Singer, Jurisdictional Immunity of International Organizations: Human Rights and Functional Necessity Concerns, 36 Va. J. Int'l L. 53, 63–64 (1995) (recognizing that "[i]t would be inappropriate for municipal courts to cut deep into the region of autonomous decision-making authority of institutions such as the World Bank").

Many international organizations, fully aware of their moral (if not legal) obligations to prevent harm to others and to compensate individuals when they do cause harm, have sought to fulfill those obligations without compromising their ability to operate effectively. Some, as I have said, waive their immunity in U. S. courts at least in part. And the D. C. Circuit, for nearly 40 years, has interpreted those waivers in a way that protects the organization against interference by any single state. See, *e. g.*, *Mendaro*, 717 F. 2d, at 615. The D. C. Circuit allows a lawsuit to proceed when "insistence on immunity would actually prevent or hinder the organization from conducting its activities." *Id.*, at 617. Thus, a direct beneficiary of a World Bank loan can generally sue the Bank, because "the commercial reliability of the

Bank's direct loans . . . would be significantly vitiated" if "beneficiaries were required to accept the Bank's obligations without recourse to judicial process." *Id.*, at 618. Where, however, allowing a suit would lead to "disruptive interference" with the organization's functions, the waiver does not apply. *Ibid.*

Other organizations have attempted to solve the liability/immunity problem by turning to multilateral, not single-nation, solutions. The UN, for instance, has agreed to "make provisions for appropriate modes of settlement of . . . disputes arising out of contracts or other disputes of a private law character." Convention on Privileges and Immunities of the United Nations, Art. VIII, § 29, 21 U. S. T. 1438, T. I. A. S. No. 6900. It generally does so by agreeing to submit commercial disputes to arbitration. See Restatement (Third) of Foreign Relations Law of the United States § 467, Reporters' Note 7 (1987). Other organizations, including the IFC, have set up alternative accountability schemes to resolve disputes that might otherwise end up in court. See World Bank, Inspection Panel: About Us (describing World Bank's three-member "independent complaints mechanism" for those "who believe that they have been . . . adversely affected by a World Bank-funded project"), https://inspectionpanel.org/about-us/about-inspection-panel (as last visited Feb. 25, 2019); Compliance Advisor Ombudsman, How We Work: CAO Dispute Resolution (describing IFC and Multilateral Investment Guarantee Agency dispute-resolution process, the main objective of which is to help resolve issues raised about the "social and environmental impacts of IFC/MIGA projects"), www.cao-ombudsman.org/howwework/ombudsman.

These alternatives may sometimes prove inadequate. And, if so, the Immunities Act itself offers a way for America's Executive Branch to set aside an organization's immunity and to allow a lawsuit to proceed in U. S. courts. The Act grants to the President the authority to "withhold," to

"withdraw," to "condition," or to "limit" any of the Act's "immunities" in "light of the functions performed by any such international organization." 22 U. S. C. § 288.

Were we to interpret the statute statically, then, the default rule would be immunity in suits arising from an organization's commercial activities. But the Executive Branch would have the power to withdraw immunity where immunity is not warranted, as the Act itself provides. And in making that determination, it could consider whether allowing the lawsuit would jeopardize the organization's ability to carry out its public interest tasks. In a word, the Executive Branch, under a static interpretation, would have the authority needed to separate lawsuit sheep from lawsuit goats.

Under the majority's interpretation, by contrast, there is no such flexibility. The Executive does not have the power to tailor immunity by taking into account the risk of a lawsuit's unjustified interference with institutional objectives or other institutional needs. Rather, the majority's holding takes away an international organization's immunity (in cases arising from "commercial" activities) across the board. And without a new statute, there is no way to restore it, in whole or in part. Nothing in the present statute gives the Executive, the courts, or the organization the power to restore immunity, or to tailor any resulting potential liability, where a lawsuit threatens seriously to interfere with an organization's legitimate needs and goals.

Thus, the static interpretation comes equipped with flexibility. It comes equipped with a means to withdraw immunity where justified. But the dynamic interpretation freezes potential liability into law. It withdraws immunity automatically and irretrievably, irrespective of institutional harm. It seems highly unlikely that Congress would have wanted this result.

* * *

At the end of World War II, many in this Nation saw international cooperation through international organization as

one way both to diminish the risk of conflict and to promote economic development and commercial prosperity. Congress at that time and at the request of many of those organizations enacted the Immunities Act. Given the differences between international organizations and nation states, along with the Act's purposes and the risk of untoward consequences, I would leave the Immunities Act where we found it—as providing for immunity in both commercial and noncommercial suits.

My decision rests primarily not upon linguistic analysis but upon basic statutory purposes. Linguistic methods alone, however artfully employed, too often can be used to justify opposite conclusions. Purposes, derived from context, informed by history, and tested by recognition of related consequences, will more often lead us to legally sound, workable interpretations—as they have consistently done in the past. These methods of interpretation can help voters hold officials accountable for their decisions and permit citizens of our diverse democracy to live together productively and in peace—basic objectives in America of the rule of law itself.

With respect, I dissent.

Syllabus

GARZA *v.* IDAHO

CERTIORARI TO THE SUPREME COURT OF IDAHO

No. 17–1026. Argued October 30, 2018—Decided February 27, 2019

Petitioner Gilberto Garza, Jr., signed two plea agreements, each arising from state criminal charges and each containing a clause stating that Garza waived his right to appeal. Shortly after sentencing, Garza told his trial counsel that he wished to appeal. Instead of filing a notice of appeal, counsel informed Garza that an appeal would be "problematic" given Garza's appeal waiver. After the time period for Garza to preserve an appeal lapsed, he sought state postconviction relief, alleging that his trial counsel had rendered ineffective assistance by failing to file a notice of appeal despite his repeated requests. The Idaho trial court denied relief, and the Idaho Court of Appeals affirmed. Also affirming, the Idaho Supreme Court held that Garza could not show the requisite deficient performance by counsel and resulting prejudice. In doing so, the court concluded that the presumption of prejudice recognized in *Roe* v. *Flores-Ortega*, 528 U. S. 470, when trial counsel fails to file an appeal as instructed does not apply when the defendant has agreed to an appeal waiver.

Held: *Flores-Ortega*'s presumption of prejudice applies regardless of whether a defendant has signed an appeal waiver. Pp. 237–247.

(a) Under *Strickland* v. *Washington*, 466 U. S. 668, a defendant who claims ineffective assistance of counsel must prove (1) "that counsel's representation fell below an objective standard of reasonableness," *id.*, at 687–688, and (2) that any such deficiency was "prejudicial to the defense," *id.*, at 692. However, "prejudice is presumed" in "certain Sixth Amendment contexts," *ibid.*, such as "when counsel's constitutionally deficient performance deprives a defendant of an appeal that he otherwise would have taken," *Flores-Ortega*, 528 U. S., at 484. P. 237.

(b) This case hinges on two procedural devices: appeal waivers and notices of appeal. No appeal waiver serves as an absolute bar to all appellate claims. Because a plea agreement is essentially a contract, it does not bar claims outside its scope. And, like any contract, the language of appeal waivers can vary widely, leaving many types of claims unwaived. A waived appellate claim may also proceed if the prosecution forfeits or waives the waiver or if the government breaches the agreement. Separately, some claims are treated as unwaiveable. Most fundamentally, courts agree that defendants retain the right to challenge whether the waiver itself was knowing and voluntary.

Syllabus

The filing of a notice of appeal is "a purely ministerial task that imposes no great burden on counsel." *Flores-Ortega*, 528 U. S., at 474. Filing requirements reflect that appellate claims are likely to be ill defined or unknown at the filing stage. And within the division of labor between defendants and their attorneys, the "ultimate authority" to decide whether to "take an appeal" belongs to the accused. *Jones* v. *Barnes*, 463 U. S. 745, 751. Pp. 238–240.

(c) Garza's attorney rendered deficient performance by not filing a notice of appeal in light of Garza's clear requests. Given the possibility that a defendant will end up raising claims beyond an appeal waiver's scope, simply filing a notice of appeal does not necessarily breach a plea agreement. Thus, counsel's choice to override Garza's instructions was not a strategic one. In any event, the bare decision whether to appeal is ultimately the defendant's to make. Pp. 241–242.

(d) Because there is no dispute that Garza wished to appeal, a direct application of *Flores-Ortega*'s language resolves this case. *Flores-Ortega* reasoned that because a presumption of prejudice applies whenever "'the accused is denied counsel at a critical stage,'" it makes greater sense to presume prejudice when counsel's deficiency forfeits an "appellate proceeding altogether." 528 U. S., at 483. Because Garza retained a right to appeal at least some issues despite his waivers, he had a right to a proceeding and was denied that proceeding altogether as a result of counsel's deficient performance. That he surrendered many claims by signing appeal waivers does not change things. First, the presumption of prejudice does not bend because a particular defendant seems to have had poor prospects. See, *e. g.*, *Jae Lee* v. *United States*, 582 U. S. 357, 367–368. Second, while the defendant in *Flores-Ortega* did not sign an appeal waiver, he did plead guilty, which "reduces the scope of potentially appealable issues" on its own. 528 U. S., at 480. Pp. 242–244.

(e) Contrary to the argument by Idaho and the U. S. Government, as *amicus*, that Garza never "had a right" to his appeal and thus that any deficient performance by counsel could not have caused the loss of any such appeal, Garza did retain a right to his appeal; he simply had fewer possible claims than some other appellants. The Government also proposes a rule that would require a defendant to show—on a case-by-case basis—that he would have presented claims that would have been considered by the appellate court on the merits. This Court, however, has already rejected attempts to condition the restoration of a defendant's appellate rights forfeited by ineffective counsel on proof that the defendant's appeal had merit. See, *e. g.*, *Rodriquez* v. *United States*, 395 U. S. 327, 330. Moreover, it is not the defendant's role to decide what arguments to press, making it especially improper to impose that

role upon the defendant simply because his opportunity to appeal was relinquished by deficient counsel. And because there is no right to counsel in postconviction proceedings and, thus, most applicants proceed *pro se*, the Government's proposal would be unfair, ill advised, and unworkable. Pp. 244–247.

162 Idaho 791, 405 P. 3d 576, reversed and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, KAGAN, and KAVANAUGH, JJ., joined. THOMAS, J., filed a dissenting opinion, in which GORSUCH, J., joined, and in which ALITO, J., joined as to Parts I and II, *post*, p. 248.

Amir H. Ali argued the cause for petitioner. With him on the briefs were *David M. Shapiro*, *Catherine E. Stetson*, *Colleen E. Roh Sinzdak*, *Mitchell P. Reich*, and *Maya P. Waldron*.

Kenneth K. Jorgensen, Deputy Attorney General of Idaho, argued the cause for respondent. With him on the brief were *Lawrence G. Wasden*, Attorney General of Idaho, and *Paul R. Panther* and *Kale D. Gans*, Deputy Attorneys General.

Allon Kedem argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Francisco*, *Assistant Attorney General Benczkowski*, *Eric J. Feigin*, and *Sangita K. Rao*.*

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*Briefs of *amici curiae* urging reversal were filed for the Cato Institute by *Clark M. Neily III* and *Jay R. Schweikert*; for the Ethics Bureau at Yale by *Lawrence J. Fox* and *Susan D. Reece Martyn*; and for the Idaho Association of Criminal Defense Lawyers et al. by *Lauren M. Weinstein*, *Robert K. Kry*, *Jonah Horwitz*, *Brian McComas*, and *Craig Durham*.

A brief of *amici curiae* urging affirmance was filed for the State of Louisiana et al. by *Jeff Landry*, Attorney General of Louisiana, *Elizabeth B. Murrill*, Solicitor General, and *Michelle Ghetti*, Deputy Solicitor General, and by the Attorneys General for their respective jurisdictions as follows: *Steve Marshall* of Alabama, *Mark Brnovich* of Arizona, *Leslie Rutledge* of Arkansas, *Curtis T. Hill, Jr.*, of Indiana, *Derek Schmidt* of Kansas, *Doug Peterson* of Nebraska, *Josh Shapiro* of Pennsylvania, *Peter F. Kilmartin* of Rhode Island, *Alan Wilson* of South Carolina, *Ken Paxton* of Texas, *Sean Reyes* of Utah, *Brad Schimel* of Wisconsin, and *Peter K. Michael* of Wyoming.

JUSTICE SOTOMAYOR delivered the opinion of the Court.

In *Roe* v. *Flores-Ortega*, 528 U. S. 470 (2000), this Court held that when an attorney's deficient performance costs a defendant an appeal that the defendant would have otherwise pursued, prejudice to the defendant should be presumed "with no further showing from the defendant of the merits of his underlying claims." *Id.*, at 484. This case asks whether that rule applies even when the defendant has, in the course of pleading guilty, signed what is often called an "appeal waiver"—that is, an agreement forgoing certain, but not all, possible appellate claims. We hold that the presumption of prejudice recognized in *Flores-Ortega* applies regardless of whether the defendant has signed an appeal waiver.

I

In early 2015, petitioner Gilberto Garza, Jr., signed two plea agreements, each arising from criminal charges brought by the State of Idaho. Each agreement included a clause stating that Garza "waive[d] his right to appeal." App. to Pet. for Cert. 44a, 49a. The Idaho trial court accepted the agreements and sentenced Garza to terms of prison in accordance with the agreements.

Shortly after sentencing, Garza told his trial counsel that he wished to appeal.[1] In the days that followed, he would later attest, Garza "continuously reminded" his attorney of this directive "via phone calls and letters," Record 210, and Garza's trial counsel acknowledged in his own affidavit that Garza had "told me he wanted to appeal the sentence(s) of

[1] The record suggests that Garza may have been confused as to whether he had waived his appellate rights in the first place. See Record 97 (answering "No" on a court advisory form asking whether Garza had "waived [his] right to appeal [his] judgment of conviction and sentence as part of [his] plea agreement"); see also *id.*, at 118, 121, 132 (showing that Garza's sentencing judge and judgments of conviction provided, despite the appeal waiver, generalized notice of a "right to appeal"). Because our ruling does not turn on these facts, we do not address them further.

the court," *id.*, at 151.[2] Garza's trial counsel, however, did not file a notice of appeal. Instead, counsel "informed Mr. Garza that an appeal was problematic because he waived his right to appeal." *Ibid.* The period of time for Garza's appeal to be preserved came and went with no notice having been filed on Garza's behalf.

Roughly four months after sentencing, Garza sought post-conviction relief in Idaho state court. As relevant here, Garza alleged that his trial counsel rendered ineffective assistance by failing to file notices of appeal despite Garza's requests. The Idaho trial court denied relief, and both the Idaho Court of Appeals and the Idaho Supreme Court affirmed that decision. See 162 Idaho 791, 793, 405 P. 3d 576, 578 (2017). The Idaho Supreme Court ruled that Garza, given the appeal waivers, needed to show both deficient performance and resulting prejudice; it concluded that he could not. See *id.*, at 798, 405 P. 3d, at 583.

In ruling that Garza needed to show prejudice, the Idaho Supreme Court acknowledged that it was aligning itself with the minority position among courts. For example, 8 of the 10 Federal Courts of Appeals to have considered the question have applied *Flores-Ortega*'s presumption of prejudice even when a defendant has signed an appeal waiver.[3] 162 Idaho, at 795, 405 P. 3d, at 580.

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[2] Garza's affidavit states that he wished to argue, at least in part, that he "was persuaded to plead guilty by [the] prosecuting attorney and [his] counsel which was not voluntarily [*sic*]." *Id.*, at 210.

[3] Compare *Campbell* v. *United States*, 686 F. 3d 353, 359 (CA6 2012); *Watson* v. *United States*, 493 F. 3d 960, 964 (CA8 2007); *United States* v. *Poindexter*, 492 F. 3d 263, 273 (CA4 2007); *United States* v. *Tapp*, 491 F. 3d 263, 266 (CA5 2007); *Campusano* v. *United States*, 442 F. 3d 770, 775 (CA2 2006); *Gomez-Diaz* v. *United States*, 433 F. 3d 788, 791–794 (CA11 2005); *United States* v. *Sandoval-Lopez*, 409 F. 3d 1193, 1195–1199 (CA9 2005); *United States* v. *Garrett*, 402 F. 3d 1262, 1266–1267 (CA10 2005), with *Nunez* v. *United States*, 546 F. 3d 450, 455 (CA7 2008); *United States* v. *Mabry*, 536 F. 3d 231, 241 (CA3 2008). At least two state courts have

We granted certiorari to resolve the split of authority. 585 U. S. 1002 (2018). We now reverse.

II

A

The Sixth Amendment guarantees criminal defendants "the right . . . to have the Assistance of Counsel for [their] defence." The right to counsel includes "'the right to the effective assistance of counsel.'" *Strickland* v. *Washington*, 466 U. S. 668, 686 (1984) (quoting *McMann* v. *Richardson*, 397 U. S. 759, 771, n. 14 (1970)). Under *Strickland*, a defendant who claims ineffective assistance of counsel must prove (1) "that counsel's representation fell below an objective standard of reasonableness," 466 U. S., at 687–688, and (2) that any such deficiency was "prejudicial to the defense," *id.*, at 692.

"In certain Sixth Amendment contexts," however, "prejudice is presumed." *Ibid.* For example, no showing of prejudice is necessary "if the accused is denied counsel at a critical stage of his trial," *United States* v. *Cronic*, 466 U. S. 648, 659 (1984), or left "entirely without the assistance of counsel on appeal," *Penson* v. *Ohio*, 488 U. S. 75, 88 (1988). Similarly, prejudice is presumed "if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing." *Cronic*, 466 U. S., at 659. And, most relevant here, prejudice is presumed "when counsel's constitutionally deficient performance deprives a defendant of an appeal that he otherwise would have taken." *Flores-Ortega*, 528 U. S., at 484. We hold today that this final presumption applies even when the defendant has signed an appeal waiver.

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declined to apply *Flores-Ortega* in the face of appeal waivers. See *Buettner* v. *State*, 382 Mont. 410, 363 P. 3d 1147 (2015) (Table); *Stewart* v. *United States*, 37 A. 3d 870, 877 (D. C. 2012); see also *Kargus* v. *State*, 284 Kan. 908, 922, 928, 169 P. 3d 307, 316, 320 (2007).

B

It is helpful, in analyzing Garza's case, to first address two procedural devices on which the case hinges: appeal waivers and notices of appeal.

1

We begin with the term "appeal waivers." While the term is useful shorthand for clauses like those in Garza's plea agreements, it can misleadingly suggest a monolithic end to all appellate rights.[4] In fact, however, no appeal waiver serves as an absolute bar to all appellate claims.

As courts widely agree, "[a] valid and enforceable appeal waiver . . . only precludes challenges that fall within its scope." *United States* v. *Hardman*, 778 F. 3d 896, 899 (CA11 2014); see also *ibid.*, n. 2 (collecting cases from the 11 other Federal Courts of Appeals with criminal jurisdiction); *State* v. *Patton*, 287 Kan. 200, 228–229, 195 P. 3d 753, 771 (2008). That an appeal waiver does not bar claims outside its scope follows from the fact that, "[a]lthough the analogy may not hold in all respects, plea bargains are essentially contracts." *Puckett* v. *United States*, 556 U. S. 129, 137 (2009).

As with any type of contract, the language of appeal waivers can vary widely, with some waiver clauses leaving many types of claims unwaived.[5] Additionally, even a waived appellate claim can still go forward if the prosecution forfeits

[4] While this Court has never recognized a "constitutional right to an appeal," it has "held that if an appeal is open to those who can pay for it, an appeal must be provided for an indigent." *Jones* v. *Barnes*, 463 U. S. 745, 751 (1983); see also *Douglas* v. *California*, 372 U. S. 353 (1963); *Griffin* v. *Illinois*, 351 U. S. 12, 18 (1956) (plurality opinion). Today, criminal defendants in nearly all States have a right to appeal either by statute or by court rule. See generally Robertson, The Right To Appeal, 91 N. C. L. Rev. 1219, 1222, and n. 8 (2013). Criminal defendants in federal court have appellate rights under 18 U. S. C. § 3742(a) and 28 U. S. C. § 1291.

[5] See generally Brief for Idaho Association of Criminal Defense Lawyers et al. as *Amici Curiae* 6–10 (collecting examples of appeal waivers that allowed challenges to the defendant's sentence or conviction or allowed claims based on prosecutorial misconduct or changes in law).

or waives the waiver. *E. g.*, *United States* v. *Story*, 439 F. 3d 226, 231 (CA5 2006). Accordingly, a defendant who has signed an appeal waiver does not, in directing counsel to file a notice of appeal, necessarily undertake a quixotic or frivolous quest.

Separately, all jurisdictions appear to treat at least some claims as unwaiveable. Most fundamentally, courts agree that defendants retain the right to challenge whether the waiver itself is valid and enforceable—for example, on the grounds that it was unknowing or involuntary.[6] Consequently, while signing an appeal waiver means giving up some, many, or even most appellate claims, some claims nevertheless remain.

2

It is also important to consider what it means—and does not mean—for trial counsel to file a notice of appeal.

"Filing such a notice is a purely ministerial task that imposes no great burden on counsel." *Flores-Ortega*, 528 U. S., at 474. It typically takes place during a compressed

[6] See, *e. g.*, *United States* v. *Brown*, 892 F. 3d 385, 394 (CADC 2018) ("Like all other courts of appeals, our circuit holds that a defendant 'may waive his right to appeal his sentence as long as his decision is knowing, intelligent, and voluntary' "); *Spann* v. *State*, 704 N. W. 2d 486, 491 (Minn. 2005) ("Jurisdictions allowing a defendant to waive his or her right to appeal a conviction require that the waiver be made 'intelligently, voluntarily and with an understanding of the consequences' "). Lower courts have also applied exceptions for other kinds of claims, including "claims that a sentence is based on race discrimination, exceeds the statutory maximum authorized, or is the product of ineffective assistance of counsel." King & O'Neill, Appeal Waivers and the Future of Sentencing Policy, 55 Duke L. J. 209, 224 (2005) (footnotes omitted) (collecting federal cases); see also, *e. g.*, *United States* v. *Puentes-Hurtado*, 794 F. 3d 1278, 1284 (CA11 2015) ("[A]ppellate review is also permitted when a defendant claims that the government breached the very plea agreement which purports to bar him from appealing or collaterally attacking his conviction and sentence"); *State* v. *Dye*, 291 Neb. 989, 999, 870 N. W. 2d 628, 634 (2015) (holding that appeal waivers are subject to a "miscarriage of justice" exception). We make no statement today on what particular exceptions may be required.

window: 42 days in Idaho, for example, and just 14 days in federal court. See Idaho Rule App. Proc. 14(a) (2017); Fed. Rule App. Proc. 4(b)(1)(A). By the time this window has closed, the defendant likely will not yet have important documents from the trial court, such as transcripts of key proceedings, see, *e. g.*, Idaho Rules App. Proc. 19 and 25; Fed. Rule App. Proc. 10(b), and may well be in custody, making communication with counsel difficult, see *Peguero* v. *United States*, 526 U. S. 23, 26 (1999). And because some defendants receive new counsel for their appeals, the lawyer responsible for deciding which appellate claims to raise may not yet even be involved in the case.

Filing requirements reflect that claims are, accordingly, likely to be ill defined or unknown at this stage. In the federal system, for example, a notice of appeal need only identify who is appealing; what "judgment, order, or part thereof" is being appealed; and "the court to which the appeal is taken." Fed. Rule App. Proc. 3(c)(1). Generally speaking, state requirements are similarly nonsubstantive.[7]

A notice of appeal also fits within a broader division of labor between defendants and their attorneys. While "the accused has the ultimate authority" to decide whether to "take an appeal," the choice of what specific arguments to make within that appeal belongs to appellate counsel. *Jones* v. *Barnes*, 463 U. S. 745, 751 (1983); see also *McCoy* v. *Louisiana*, 584 U. S. 414, 421–422 (2018). In other words, filing a notice of appeal is, generally speaking, a simple, nonsubstantive act that is within the defendant's prerogative.

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[7] *E. g.*, Miss. Rule Crim. Proc. 29.1(b) (2017); Ohio Rule App. Proc. 3(D) (Lexis 2017). While Idaho requires a notice of appeal to "contain substantially . . . [a] preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal," the Rule in question also makes clear that "any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal." Idaho Rule App. Proc. 17(f).

C

With that context in mind, we turn to the precise legal issues here. As an initial matter, we note that Garza's attorney rendered deficient performance by not filing the notice of appeal in light of Garza's clear requests. As this Court explained in *Flores-Ortega*:

> "We have long held that a lawyer who disregards specific instructions from the defendant to file a notice of appeal acts in a manner that is professionally unreasonable. This is so because a defendant who instructs counsel to initiate an appeal reasonably relies upon counsel to file the necessary notice. Counsel's failure to do so cannot be considered a strategic decision; filing a notice of appeal is a purely ministerial task, and the failure to file reflects inattention to the defendant's wishes." 528 U. S., at 477 (citations omitted); see also *id.*, at 478.

Idaho maintains that the risk of breaching the defendant's plea agreement renders counsel's choice to override the defendant's instructions a strategic one. See *Strickland*, 466 U. S., at 690–691 ("[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable . . . "). That is not so. While we do not address what constitutes a defendant's breach of an appeal waiver or any responsibility counsel may have to discuss the potential consequences of such a breach, it should be clear from the foregoing that simply filing a notice of appeal does not necessarily breach a plea agreement, given the possibility that the defendant will end up raising claims beyond the waiver's scope. And in any event, the bare decision whether to appeal is ultimately the defendant's, not counsel's, to make.[8] See *McCoy*, 584 U. S., at 421–422; *Barnes*,

[8] That does not mean, of course, that appellate counsel must then make unsupportable arguments. After an appeal has been preserved and counsel has reviewed the case, counsel may always, in keeping with longstand-

463 U. S., at 751. Where, as here, a defendant has expressly requested an appeal, counsel performs deficiently by disregarding the defendant's instructions.[9]

D

We now address the crux of this case: whether *Flores-Ortega*'s presumption of prejudice applies despite an appeal waiver. The holding, principles, and facts of *Flores-Ortega* show why that presumption applies equally here.

With regard to prejudice, *Flores-Ortega* held that, to succeed in an ineffective-assistance claim in this context, a defendant need make only one showing: "that, but for counsel's deficient failure to consult with him about an appeal, he would have timely appealed." 528 U. S., at 484. So long as a defendant can show that "counsel's constitutionally deficient performance deprive[d him] of an appeal that he otherwise would have taken," courts are to "presum[e] prejudice with no further showing from the defendant of the merits of his underlying claims." *Ibid.* Because there is no dispute here that Garza wished to appeal, see *supra*, at 235–236, a direct application of *Flores-Ortega*'s language resolves this case. See 528 U. S., at 484.

Flores-Ortega's reasoning shows why an appeal waiver does not complicate this straightforward application. That case, like this one, involves a lawyer who forfeited an appellate proceeding by failing to file a notice of appeal. *Id.*, at 473–475. As the Court explained, given that past prece-

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ing precedent, "advise the court and request permission to withdraw," while filing "a brief referring to anything in the record that might arguably support the appeal." *Anders* v. *California*, 386 U. S. 738, 744 (1967). The existence of this procedure reinforces that a defendant's appellate rights should not hinge "on appointed counsel's bare assertion that he or she is of the opinion that there is no merit to the appeal." *Penson* v. *Ohio*, 488 U. S. 75, 80 (1988).

[9] We leave undisturbed today *Flores-Ortega*'s separate discussion of how to approach situations in which a defendant's wishes are less clear. See 528 U. S., at 478–481.

dents call for a presumption of prejudice whenever "'the accused is denied counsel at a critical stage,'" it makes even greater sense to presume prejudice when counsel's deficiency forfeits an "appellate proceeding altogether." *Id.*, at 483. After all, there is no disciplined way to "accord any '"presumption of reliability"' . . . to judicial proceedings that never took place." *Ibid.* (quoting *Smith* v. *Robbins*, 528 U. S. 259, 286 (2000)).

That rationale applies just as well here because, as discussed *supra*, at 238–239, and nn. 5, 6, Garza retained a right to appeal at least some issues despite the waivers he signed.[10] In other words, Garza had a right to a proceeding, and he was denied that proceeding altogether as a result of counsel's deficient performance.

That Garza surrendered many claims by signing his appeal waivers does not change things. First, this Court has made clear that when deficient counsel causes the loss of an entire proceeding, it will not bend the presumption-of-prejudice rule simply because a particular defendant seems to have had poor prospects. See, *e. g.*, *Jae Lee* v. *United States*, 582 U. S. 357, 367–368 (2017). We hew to that principle again here.

Second, while the defendant in *Flores-Ortega* did not sign an appeal waiver, he did plead guilty, and—as the Court pointed out—"a guilty plea reduces the scope of potentially appealable issues" on its own. See 528 U. S., at 480. In other words, with regard to the defendant's appellate prospects, *Flores-Ortega* presented at most a difference of degree, not kind, and prescribed a presumption of prejudice regardless of how many appellate claims were foreclosed. See *id.*, at 484. We do no different today.

Instead, we reaffirm that, "when counsel's constitutionally deficient performance deprives a defendant of an appeal that

[10] Or the State might not have invoked the waiver at all. *E. g.*, *United States* v. *Archie*, 771 F. 3d 217, 223, n. 2 (CA4 2014); *State* v. *Rendon*, 2012 WL 9492805, *1, n. 1 (Idaho Ct. App., May 11, 2012).

he otherwise would have taken, the defendant has made out a successful ineffective assistance of counsel claim entitling him to an appeal," with no need for a "further showing" of his claims' merit, *ibid.*, regardless of whether the defendant has signed an appeal waiver.

III

Flores-Ortega states, in one sentence, that the loss of the "entire [appellate] proceeding itself, which a defendant wanted at the time and to which he had a right, . . . demands a presumption of prejudice." *Id.*, at 483. Idaho and the U. S. Government, participating as an *amicus* on Idaho's behalf, seize on this language, asserting that Garza never "had a right" to his appeal and thus that any deficient performance by counsel could not have caused the loss of any such appeal. See Brief for Respondent 11, 23–26; Brief for United States as *Amicus Curiae* 7, 13, 21–22. These arguments miss the point. Garza did retain a right to his appeal; he simply had fewer possible claims than some other appellants. Especially because so much is unknown at the notice-of-appeal stage, see *supra*, at 239–240, it is wholly speculative to say that counsel's deficiency forfeits no proceeding to which a defendant like Garza has a right.[11]

The Government also takes its causation argument one step further. Arguing that, in the appeal-waiver context, "a generalized request that an attorney file an appeal . . . is not enough to show that appellate merits review would have followed," Brief for United States as *Amicus Curiae* 22, the Government proposes a rule that would require a defendant

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[11] The possibility that an appellate court confronted with a waived claim (and a motion to enforce the waiver) would technically "dismiss the appeal without reaching the merits," see Brief for United States as *Amicus Curiae* 17; see also Brief for Respondent 26, does not alter this conclusion. Whatever the label, the defendant loses the opportunity to raise any appellate claims at all—including those that would, or at least could, be heard on the merits.

to show—on a "case-specific" basis, *id.*, at 23—either (1) "that he in fact requested, or at least expressed interest in, an appeal on a non-waived issue," *id.*, at 21–22, or alternatively (2) "'that there were nonfrivolous grounds for appeal' despite the waiver," *id.*, at 22 (quoting *Flores-Ortega*, 528 U. S., at 485). We decline this suggestion, because it cannot be squared with our precedent and would likely prove both unfair and inefficient in practice.

This Court has already rejected attempts to condition the restoration of a defendant's appellate rights forfeited by ineffective counsel on proof that the defendant's appeal had merit. In *Flores-Ortega*, the Court explained that prejudice should be presumed "with no further showing from the defendant of the merits of his underlying claims." *Id.*, at 484; see also *id.*, at 486. In *Rodriquez* v. *United States*, 395 U. S. 327 (1969), similarly, the Court rejected a rule that required a defendant whose appeal had been forfeited by counsel "to specify the points he would raise were his right to appeal reinstated." *Id.*, at 330. So too here.

Moreover, while it is the defendant's prerogative whether to appeal, it is not the defendant's role to decide what arguments to press. See *Barnes*, 463 U. S., at 751, 754. That makes it especially improper to impose that role upon the defendant simply because his opportunity to appeal was relinquished by deficient counsel. "Those whose right to appeal has been frustrated should be treated exactly like any other appellants; they should not be given an additional hurdle to clear just because their rights were violated at some earlier stage in the proceedings." *Rodriquez*, 395 U. S., at 330. We accordingly decline to place a pleading barrier between a defendant and an opportunity to appeal that he never should have lost.

Meanwhile, the Government's assumption that unwaived claims can reliably be distinguished from waived claims through case-by-case postconviction review is dubious. There is no right to counsel in postconviction proceedings,

see *Pennsylvania* v. *Finley*, 481 U. S. 551, 555 (1987), and most applicants proceed *pro se*.[12] That means that the Government effectively puts its faith in asking "an indigent, perhaps *pro se*, defendant to demonstrate that his hypothetical appeal might have had merit before any advocate has ever reviewed the record in his case in search of potentially meritorious grounds for appeal," *Flores-Ortega*, 528 U. S., at 486. We have already explained why this would be "unfair" and ill advised. See *ibid.*; see also *Rodriquez*, 395 U. S., at 330. Compounding the trouble, defendants would be asked to make these showings in the face of the heightened standards and related hurdles that attend many postconviction proceedings. See, *e. g.*, 28 U. S. C. §§ 2254, 2255; see also Brief for Idaho Association of Criminal Defense Lawyers et al. as *Amici Curiae* 22–25.

The Government's proposal is also unworkable. For one, it would be difficult and time consuming for a postconviction court to determine—perhaps years later—what appellate claims a defendant was contemplating at the time of conviction.[13] Moreover, because most postconviction petitioners will be *pro se*, courts would regularly have to parse both (1) what claims a *pro se* defendant seeks to raise and (2) whether each plausibly invoked claim is subject to the defendant's appeal waiver (which can be complex, see *supra*, at 238–239, and nn. 5, 6), all without the assistance of counseled briefing. We are not persuaded that this would be a more efficient or trustworthy process than the one we reaffirm today.

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[12] For example, researchers have found that over 90% of noncapital federal habeas petitioners proceed without counsel. See N. King et al., Final Technical Report: Habeas Litigation in U. S. District Courts 23 (2007).

[13] To the extent relief would turn on what precisely a defendant said to counsel regarding specific claims, moreover, Garza rightly points out the serious risk of "causing indigent defendants to forfeit their rights simply because they did not know what words to use." Reply Brief 17.

The more administrable and workable rule, rather, is the one compelled by our precedent: When counsel's deficient performance forfeits an appeal that a defendant otherwise would have taken, the defendant gets a new opportunity to appeal. That is the rule already in use in 8 of the 10 Federal Circuits to have considered the question, see *supra*, at 236, and n. 3, and neither Idaho nor its *amici* have pointed us to any evidence that it has proved unmanageable there.[14] That rule does no more than restore the status quo that existed before counsel's deficient performance forfeited the appeal, and it allows an appellate court to consider the appeal as that court otherwise would have done—on direct review, and assisted by counsel's briefing.

IV

We hold today that the presumption of prejudice recognized in *Flores-Ortega* applies regardless of whether a defendant has signed an appeal waiver. This ruling follows squarely from *Flores-Ortega* and from the fact that even the broadest appeal waiver does not deprive a defendant of all appellate claims. Accordingly where, as here, an attorney performed deficiently in failing to file a notice of appeal despite the defendant's express instructions, prejudice is presumed "with no further showing from the defendant of the merits of his underlying claims." See *Flores-Ortega*, 528 U. S., at 484.

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

It is so ordered.

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[14] It is, of course, inevitable that some defendants under this rule will seek to raise issues that are within the scope of their appeal waivers. We are confident that courts can continue to deal efficiently with such cases via summary dispositions and the procedures outlined in *Anders*. See 386 U. S., at 744; n. 9, *supra*.

JUSTICE THOMAS, with whom JUSTICE GORSUCH joins, and with whom JUSTICE ALITO joins as to Parts I and II, dissenting.

Petitioner Gilberto Garza avoided a potential life sentence by negotiating with the State of Idaho for reduced charges and a 10-year sentence. In exchange, Garza waived several constitutional and statutory rights, including "his right to appeal." App. to Pet. for Cert. 44a, 49a. Despite this express waiver, Garza asked his attorney to challenge on appeal the very sentence for which he had bargained. Garza's counsel quite reasonably declined to file an appeal for that purpose, recognizing that his client had waived this right and that filing an appeal would potentially jeopardize his plea bargain. Yet, the majority finds Garza's counsel constitutionally ineffective, holding that an attorney's performance is *per se* deficient and *per se* prejudicial any time the attorney declines a criminal defendant's request to appeal an issue that the defendant has waived. In effect, this results in a "defendant-always-wins" rule that has no basis in *Roe* v. *Flores-Ortega*, 528 U. S. 470 (2000), or our other ineffective-assistance precedents, and certainly no basis in the original meaning of the Sixth Amendment. I respectfully dissent.

I

In 2015, in accordance with two plea agreements, Garza entered an *Alford*[1] plea to aggravated assault and pleaded guilty to possession with intent to deliver methamphetamine. Under the terms of the plea agreements, Idaho agreed not to (1) file additional burglary and grand theft charges; (2) refer Garza for federal prosecution on a charge of unlawful possession of ammunition by a felon, see 18 U. S. C. § 922(g)(1); or (3) seek a "Persistent violator" sentencing enhancement that would expose Garza to a potential life sen-

[1] See *North Carolina* v. *Alford*, 400 U. S. 25, 37–38 (1970) (permitting courts to accept guilty pleas where defendants admit that there is a factual basis for the plea, but do not admit actual guilt).

tence, see Idaho Code Ann. § 19–2514 (2017). In exchange, Garza agreed to "'waiv[e] his right to appeal'" and his right to file a motion for correction or reduction of his sentence.[2] *Ante*, at 235. And both parties agreed to specific sentences totaling 10 years of imprisonment, which would be binding on the District Court if it accepted the plea agreements. See Idaho Crim. Rules 11(f)(1)(C) and (f)(3) (2017) (allowing parties to agree to a binding sentence). Thus, the judge could impose no sentence other than the 10 years for which Garza had bargained.[3]

The trial court accepted the plea agreements and, as required, sentenced Garza to 10 years' imprisonment. However, the court noted that if the cases had been "considered individually," a "harsher sentence" might have been warranted due to Garza's "history of violent crime" and the "gratuitous aggression" displayed by Garza in the aggravated-assault case. Record 336.

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[2] The majority questions the validity of Garza's appellate waivers by suggesting that "Garza may have been confused as to whether he had waived his appellate rights in the first place." *Ante*, at 235, n. 1. I read the record differently. It is true that, in the guilty form related to his possession charge, Garza checked "no" as to whether he was waiving his appeal rights. But, in the guilty form related to his aggravated-assault charge, he checked "yes" to waiving his appeal rights. And at the plea hearing for that offense, he acknowledged under oath that he understood all the questions, had received enough time with the guilty form, and answered each question honestly. He also acknowledged at the sentencing hearing for both offenses that he would be "go[ing] away for ten years," as negotiated for in the signed plea agreements that included the appeal waivers. Record 131. Finally, the trial court in postconviction proceedings concluded that Garza had never contended "at any stage of these post-conviction cases" that "he did not appreciate or understand the appeal waivers when he entered his pleas." *Id.*, at 185.

[3] See *id.*, at 96, 108 ("I understand that my plea agreement is a binding plea agreement. This means that if the district court does not impose the specific sentence as recommended by both parties, I will be allowed to withdraw my plea of guilty pursuant to Rule 11(d)(4) of the Idaho Criminal Rules and proceed to a jury trial"); see also *id.*, at 128.

Four months later, Garza filed the petitions for postconviction relief at issue here. Among other things, he claimed that his pleas were not voluntary and that his counsel had been constitutionally ineffective for failing to file an appeal despite repeated requests that he do so. For relief, Garza requested that his sentences "run concurrent." *Id.*, at 207. The trial court appointed counsel to pursue Garza's collateral challenges. It subsequently dismissed Garza's claim that his plea was involuntary for "lack of supporting evidence," but it allowed the ineffective-assistance claim to proceed. App. to Pet for Cert. 29a; 162 Idaho 791, 793–794, 405 P. 3d 576, 578–579 (2017).

In response to Garza's ineffective-assistance claim, Idaho submitted an affidavit from Garza's trial counsel, which stated, "Garza indicated to me that he knew he agreed not to appeal his sentence(s) but he told me he wanted to appeal the sentence(s)" anyway. Record 151. The trial counsel explained that he did not honor that request because "Garza received the sentence(s) he bargained for in his [Idaho Criminal Rule] 11(f)(1)(c) Agreement," and he told Garza "that an appeal was problematic because he waived his right to appeal in his Rule 11 agreements." *Ibid.* Garza, through his newly appointed collateral counsel, admitted that the appeal waiver "was by the book," that he "received exactly what he bargained for in exchange for his plea," and that there was "no ambiguity" as to the appropriate sentence. *Id.*, at 161–162, 276–277. Garza also conceded that, if forced to identify an issue he would raise on appeal, "[t]he only issue that could be identified is sentencing review." *Id.*, at 176, 371.

The trial court granted summary judgment to Idaho. It explained that Garza needed to identify "non-frivolous grounds for contending on appeal either that (i) the appeal waiver is invalid or unenforceable, or (ii) the issues he wants to pursue on appeal are outside the waiver's scope." App. to Pet. for Cert. 38a. The Idaho Court of Appeals and the Idaho Supreme Court affirmed. Notably, the Idaho Su-

preme Court declined to presume negligent performance because state law imposes a duty on counsel not to file frivolous litigation and to avoid taking actions that will jeopardize the benefit his client gained from the plea bargain. The Idaho Supreme Court also found *Flores-Ortega* inapplicable, reasoning that once a defendant waives his appellate rights, he no longer has a right to an appellate proceeding at all.

II

As with most ineffective-assistance claims, a defendant seeking to show that counsel was constitutionally ineffective for failing to file an appeal must show deficient performance and prejudice. *Strickland* v. *Washington*, 466 U. S. 668, 687 (1984). Relying on *Flores-Ortega*, the majority finds that Garza has satisfied both prongs. In so holding, it adopts a rule whereby a criminal defendant's invocation of the words "I want to appeal" can undo all sworn attestations to the contrary and resurrect waived statutory rights.

This rule is neither compelled by precedent nor consistent with the use of appeal waivers in plea bargaining. In my view, a defendant who has executed an appeal waiver cannot show prejudice arising from his counsel's decision not to appeal unless he (1) identifies claims he would have pursued that were outside the appeal waiver; (2) shows that the plea was involuntary or unknowing; or (3) establishes that the government breached the plea agreement. Garza has not made any such showing, so he cannot establish prejudice. Furthermore, because Garza's counsel acted reasonably, Garza also cannot establish deficient performance. I would therefore affirm.

A

The majority relies on *Flores-Ortega* to create its new rule, but if anything, that decision undermines the majority's *per se* approach. In *Flores-Ortega*, the defendant pleaded guilty to second-degree murder without waiving *any* of his appellate rights. 528 U. S., at 473–474. On federal collat-

eral review, the defendant alleged that his counsel was ineffective for failing to file a notice of appeal after she promised to do so. *Id.*, at 474. The record contained conflicting evidence as to whether the defendant had communicated his desire to appeal, and the District Court concluded that he failed to carry his burden. *Id.*, at 475. The Ninth Circuit reversed, reasoning that "a habeas petitioner need only show that his counsel's failure to file a notice of appeal was without the petitioner's consent." *Id.*, at 475–476.

This Court reversed. We first concluded that the Ninth Circuit's rule "effectively impose[d] an obligation on counsel in all cases either (1) to file a notice of appeal, or (2) to discuss the possibility of an appeal with the defendant, ascertain his wishes, and act accordingly." *Id.*, at 478. We rejected "this *per se* rule as inconsistent with *Strickland*'s holding that 'the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances.'" *Ibid.* (quoting 466 U. S., at 688). We also faulted the Ninth Circuit for "fail[ing] to engage in the circumstance-specific reasonableness inquiry required by *Strickland*." 528 U. S., at 478. We concluded that this failure "alone mandates vacatur and remand." *Ibid.*

We further explained that counsel's failure to consult with the client about an appeal constitutes deficient performance only when counsel *should* have consulted. *Id.*, at 479. The Court was clear: "We cannot say, as a *constitutional* matter, that in every case counsel's failure to consult with the defendant about an appeal is necessarily unreasonable." *Ibid.* In determining whether counsel has a duty to consult, we stated that "a highly relevant factor in this inquiry will be whether the conviction follows a trial or guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." *Id.*, at 480. Finally, "[e]ven in cases when the defendant pleads guilty,

the court must consider such factors as whether the defendant received the sentence bargained for as part of the plea and whether the plea expressly reserved or waived some or all appeal rights." *Ibid.* We rejected the argument that choosing not to consult was outside the scope of valid, strategic decisionmaking, as "we have consistently declined to impose mechanical rules on counsel." *Id.*, at 481. In sum, we "reject[ed] a bright-line rule that counsel must always consult with the defendant regarding an appeal" and instructed courts to evaluate whether the decision to consult was "reasonable" under the circumstances. *Id.*, at 480–481.

We also rejected the Ninth Circuit's "*per se* prejudice rule" because it "ignore[d] the critical requirement that counsel's deficient performance must actually cause the forfeiture of the defendant's appeal." *Id.*, at 484. We held that, "to show prejudice in these circumstances, a defendant must demonstrate that there is a reasonable probability that, but for counsel's deficient failure to consult with him about an appeal, he would have timely appealed." *Ibid.* After the defendant makes that showing, we held that he was entitled to a presumption of prejudice because he was denied counsel during the entire appellate proceeding, rendering it presumptively unreliable. *Id.*, at 483–485.

The Court purports to follow *Flores-Ortega*, but glosses over the important factual and legal differences between that case and this one. The most obvious difference is also the most crucial: There was no appellate waiver in *Flores-Ortega*. The proximate cause of the defendant's failure to appeal in that case was his counsel's failure to file one. Not so here. Garza knowingly waived his appeal rights and never expressed a desire to withdraw his plea. It was thus Garza's agreement to waive his appeal rights, not his attorney's actions, that caused the forfeiture of his appeal. Thus, *Flores-Ortega* is inapposite.

B

Because *Flores-Ortega* does not control cases involving defendants who voluntarily waive their appeal rights, this case should be resolved based on a straightforward application of *Strickland*. Under that framework, Garza has failed to demonstrate either (1) that his counsel was deficient or (2) that he was prejudiced in any way by that alleged deficiency.

1

As to deficiency, "[n]o particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel." *Strickland*, 466 U. S., at 688–689. Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential" and focus on "the reasonableness of counsel's challenged conduct on the facts of the particular case." *Id.*, at 689–690.

Counsel's choice not to appeal Garza's sentence—the only issue Garza asked his counsel to challenge—was not only not deficient; it was the only professionally reasonable course of action for counsel under the circumstances. That is because filing an appeal would have been worse than pointless even judging by Garza's own express desires; it would have created serious risks for Garza while having no chance at all of achieving Garza's stated goals for an appeal. Garza had pleaded guilty under Rule 11, expressly waived his right to appeal his sentence, and stated that his desire in appealing was to have his consecutive sentences "r[u]n concurrent." Record 207. But that kind of appeal challenges the defining feature of a Rule 11 plea: the agreed-upon sentence from which the trial court has no discretion to deviate. Here, that sentence includes the consecutive sentences that Garza agreed to, then sought to challenge. Had Garza's counsel reflexively filed an appeal and triggered resentencing, Garza might have faced life in prison, especially in light of the trial court's concern that the agreed-upon sentence (from which it could not deviate under Rule 11) might have been too lenient.

And Garza's admissions at the plea hearings and his written plea form could have been (and thus likely *would* have been) used against him if he had proceeded to trial on any additional charges filed by the State after breaching the plea agreements. See *id.*, at 104 ("[S]hould the court reinstate a plea of not guilty on his behalf, the State will use Defendant's testimony during his entry of plea of guilty and his written plea form, during the State's case at trial"); *id.*, at 92 (same).

Under these circumstances, it is eminently reasonable for an attorney to "respec[t] his client's formal waiver of appeal" and uphold his duty "to avoid taking steps that will cost the client the benefit of the plea bargain." *Nunez* v. *United States*, 546 F. 3d 450, 453, 455 (CA7 2008) (Easterbrook, C. J.). And because filing an appeal places the defendant's plea agreement in jeopardy, an attorney's decision not to file in the face of an appellate waiver does not amount to the failure to perform "a purely ministerial task" that "cannot be considered a strategic decision." *Flores-Ortega*, 528 U. S., at 477. Even where state law or a plea agreement preserves limited appeal rights, an attorney does not fail to "show up for appeal" by declining to challenge a waived issue. *Nunez*, *supra*, at 454.

The deficiency analysis in this case would likely be different if Garza had informed his counsel that he desired to breach the plea agreements and file an appeal—despite the waiver and in full awareness of the associated risks—for the sake of an identified goal that had any hope of being advanced by the filing of an appeal. But the record shows that Garza simply sought a more lenient sentence. Since that goal could not be advanced by an appeal in this case, counsel had no duty to file one. The Constitution does not compel attorneys to take irrational means to their client's stated ends when doing so only courts disaster.

Garza ultimately faults his plea-stage attorney for failing to put his plea agreements in jeopardy. But I have no doubt that if a similarly situated attorney breached a plea agree-

ment by appealing a waived issue and subjected his client to an increased prison term, that defendant would argue that his counsel was ineffective for filing the appeal. What Garza wants—and what the majority gives him—is a *per se* deficiency rule ensuring that criminal defendants can always blame their plea-stage counsel on collateral review, even where they did not ask counsel to appeal nonwaived claims or breach the plea agreement for the sake of some further (achievable) goal. Declining to file an appeal under these circumstances is reasonable, not deficient.

2

As for prejudice, Garza cannot benefit from a presumed-prejudice finding since he cannot establish that his counsel caused the forfeiture of his appeal, as *Flores-Ortega* requires. Garza knowingly and voluntarily bargained away his right to appeal in exchange for a lower sentence. If any prejudice resulted from that decision, it cannot be attributed to his counsel.

It does not matter that certain appellate issues—specifically, (1) the voluntariness of the plea agreement and (2) a breach of the agreement by the State—are not waivable. Garza did not ask his counsel to appeal those issues. In fact, Garza has not identified any nonwaived issue that he would have brought on direct appeal; he simply identified "sentencing review" as his primary objective. Moreover, declining to file an appeal raising these nonwaivable claims is unlikely to be prejudicial; this Court has repeatedly stated that collateral review is a better avenue to address involuntariness and ineffective-assistance claims, as these claims often require extra record materials and present conflicts with counsel. See generally *Massaro* v. *United States*, 538 U. S. 500 (2003).

The Court's decision in *McCoy* v. *Louisiana*, 584 U. S. 414 (2018), does not change the analysis. *McCoy* acknowledges that some decisions are "reserved for the client," including

the decision whether to "forgo an appeal." *Id.*, at 422. But Garza exercised his right to decide whether to appeal. He chose not to when he entered the plea agreements. Like many constitutional and statutory rights, the right to appeal can be waived by the defendant, and once that choice is finally made, the defendant is bound by the decision and cannot fault his attorney for the self-inflicted prejudicial effects that he suffers. For instance, a defendant cannot waive his right against self-incrimination by testifying at his trial, and then claim that his attorney prejudiced him by not moving to strike his damaging testimony from the record. Nor can a defendant waive his right to a jury trial, and then later claim prejudice when his attorney declines to seek a mistrial on the ground that the judge found him guilty. In the same way, Garza was not prejudiced by his attorney's refusal to file an appeal challenging his sentence, a right that he had expressly waived. The lack of prejudice is especially pronounced in this case, as Garza's instruction to appeal did not acknowledge that he wanted to challenge or rescind the plea agreements.

C

There is no persuasive reason to depart from an ordinary *Strickland* analysis in cases involving an attorney's decision to honor his client's agreement to waive his appeal rights. Garza contends that it is unfair to require *pro se* defendants to identify the issues they would have raised on appeal. But *pro se* defendants always bear the burden of showing ineffective assistance of counsel; I see no reason why this kind of ineffective-assistance claim should be any different. Regardless, Garza's fairness argument rings hollow because Garza has been represented by counsel at every stage of this collateral litigation and has yet to articulate a single nonfrivolous, nonwaived issue that he would have raised on appeal. His inability to identify any issues that he preserved simply underscores the fact that he waived them all.

The Court's rule may be easy to "administ[er]," *ante*, at 247, but it undermines the finality of criminal judgments—a primary purpose of plea agreements—and disadvantages the public by allowing defendants to relitigate issues that they waived in exchange for substantial benefits. The Court's rule also burdens the appellate courts that must address the new, meritless appeals authorized by today's decision. And, ironically, the Court's rule may prejudice the defendants it is designed to help, as prosecutors may understandably be less willing to offer generous plea agreements when courts refuse to afford the government the benefit of *its* bargain—fewer resources spent defending appeals.

Finally, because Garza's requested relief is categorically barred by the plea agreements, the majority offers Garza an appeal he is certain to lose. And should Garza accept the majority's invitation, he could give up much more. If Garza appeals his sentence and thereby breaches his plea agreements, Idaho will be free to file additional charges against him, argue for a "Persistent violator" sentencing enhancement that could land him in prison for life, and refer him for federal prosecution. It simply defies logic to describe counsel's attempt to avoid those consequences as deficient or prejudicial.

III

In addition to breaking from this Court's precedent, today's decision moves the Court another step further from the original meaning of the Sixth Amendment. The Sixth Amendment provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." That provision "as originally understood and ratified meant only that a defendant had a right to employ counsel, or to use volunteered services of counsel." *Padilla* v. *Kentucky*, 559 U. S. 356, 389 (2010) (Scalia, J., dissenting). Yet, the Court has read the Constitution to require not only a right to counsel at taxpayers' expense, but a right to *effective* counsel. The result is that

convicted criminals can relitigate their trial and appellate claims through collateral challenges couched as ineffective-assistance-of-counsel claims. Because little available evidence suggests that this reading is correct as an original matter, the Court should tread carefully before extending our precedents in this area.

A

The Sixth Amendment right to the assistance of counsel grew out of the Founders' reaction to the English common-law rule that denied counsel for treason and felony offenses with respect to issues of fact, while allowing counsel for misdemeanors. See 4 W. Blackstone, Commentaries on the Laws of England 349–350 (1769); 1 J. Stephen, A History of the Criminal Law of England 341 (1883); *Powell* v. *Alabama*, 287 U. S. 45, 60 (1932) ("Originally, in England, a person charged with treason or felony was denied the aid of counsel, except in respect of legal questions which the accused himself might suggest"). It was not until 1696 that England created a narrow exception to this rule for individuals accused of treason or misprision of treason—by statute, Parliament provided both that the accused may retain counsel and that the court must appoint counsel if requested. 7 & 8 Will. 3, ch. 3, § 1. Only in 1836 did England permit all criminally accused to appear and defend with counsel, and even then it did not require court-appointed counsel at government expense. 6 & 7 Will. 4, ch. 114, § 1. It would be another 67 years—112 years after the ratification of the Sixth Amendment, and 35 years after the ratification of the Fourteenth Amendment—before England provided court-appointed counsel for all felonies. Poor Prisoners' Defence Act, 1903, 3 Edw. 7, ch. 38, § 1.

The traditional common-law rule that there was no right to assistance of counsel for felony offenses received widespread criticism. As Blackstone noted, this rule "seems to be not at all of a piece with the rest of the humane treatment of

prisoners by the English law." 4 Commentaries on the Laws of England, at 349; see *ibid.* ("[U]pon what face of reason can that assistance be denied to save the life of a man, which yet is allowed him in prosecutions for every petty trespass"). The founding generation apparently shared this sentiment, as most States adopted some kind of statutory or constitutional provision providing the accused the right to retain counsel. W. Beaney, The Right to Counsel in American Courts 14–22 (1955). In fact, at least 12 of the 13 States at the ratification of the Constitution had rejected the English common-law rule, providing for the right to counsel in at least some circumstances. See *Powell*, 287 U. S., at 64–65; *id.*, at 61–64 (surveying the States' right-to-counsel provisions); see also *Betts* v. *Brady*, 316 U. S. 455, 465–467 (1942) (discussing early state constitutional provisions), overruled by *Gideon* v. *Wainwright*, 372 U. S. 335 (1963). Read against this backdrop, the Sixth Amendment appears to have been understood at the time of ratification as a rejection of the English common-law rule that prohibited counsel, not as a guarantee of government-funded counsel.

This understanding—that the Sixth Amendment did not require appointed counsel for defendants—persisted in the Court's jurisprudence for nearly 150 years. See *United States* v. *Van Duzee*, 140 U. S. 169, 173 (1891) ("There is, however, no general obligation on the part of the government [to] retain counsel for defendants or prisoners"); *Bute* v. *Illinois*, 333 U. S. 640, 661, n. 17 (1948) (" 'It is probably safe to say that from its adoption in 1791 until 1938, the right conferred on the accused by the Sixth Amendment . . . was not regarded as imposing on the trial judge in a Federal court the duty to appoint counsel for an indigent defendant' "). Nor evidently was there any suggestion that defendants could mount a constitutional attack based on their counsel's failure to render effective assistance.[4]

[4] A defendant could bring a state-law tort action against his attorney. As one commentator explained:

The Court began shifting direction in 1932, when it suggested that a right to appointed counsel might exist in at least some capital cases, albeit as a right guaranteed by the Due Process Clause. *Powell*, *supra*, at 71. Soon thereafter, the Court held that the Sixth Amendment secures a right to court-appointed counsel in all federal criminal cases. *Johnson* v. *Zerbst*, 304 U. S. 458, 462–463 (1938). And in 1963, the Court applied this categorical rule to the States through the Fourteenth Amendment, stating "that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him." *Gideon*, *supra*, at 344. Neither of these opinions attempted to square the expansive rights they recognized with the original meaning of the "right . . . to have the Assistance of Counsel." Amdt. 6.

B

After the Court announced a constitutional right to appointed counsel rooted in the Sixth Amendment, it went on to fashion a constitutional new-trial remedy for cases in which counsel performed poorly. The Courts of Appeals had initially adopted a "farce and mockery" standard that they rooted in the Due Process Clause. This standard permitted a defendant to make out an ineffective-assistance

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"An attorney is bound to exercise such skill, care and diligence in any matter entrusted to him, as members of the legal profession commonly possess and exercise in such matters. . . . He will be liable if his client's interests suffer on account of his failure to understand and apply those rules and principles of law that are well established and clearly defined in the elementary books, or which have been declared in adjudged cases that have been duly reported and published a sufficient length of time to have become known to those who exercise reasonable diligence in keeping pace with the literature of the profession." 2 T. Cooley, Law of Torts 1389–1390 (3d ed. 1906).

Thus, reasonable choices not clearly foreclosed by law or precedent would apparently permit an attorney to successfully defend against the suit.

claim only "where the circumstances surrounding the trial shocked the conscience of the court and made the proceedings a farce and a mockery of justice." *Diggs* v. *Welch*, 148 F. 2d 667, 670 (CADC 1945); see *Bottiglio* v. *United States*, 431 F. 2d 930, 931 (CA1 1970) (*per curiam*); *Williams* v. *Beto*, 354 F. 2d 698, 704 (CA5 1965); *Frand* v. *United States*, 301 F. 2d 102, 103 (CA10 1962); *O'Malley* v. *United States*, 285 F. 2d 733, 734 (CA6 1961); *Snead* v. *Smyth*, 273 F. 2d 838, 842 (CA4 1959); *Cofield* v. *United States*, 263 F. 2d 686, 689 (CA9), vacated on other grounds, 360 U. S. 472 (1959); *Johnston* v. *United States*, 254 F. 2d 239, 240 (CA8 1958); *United States* v. *Wight*, 176 F. 2d 376, 379 (CA2 1949); *United States ex rel. Feeley* v. *Ragen*, 166 F. 2d 976, 980–981 (CA7 1948).

Beginning in 1970, the Courts of Appeals moved from the "farce and mockery" standard to a "reasonable competence" standard. See *Trapnell* v. *United States*, 725 F. 2d 149, 151–152 (CA2 1983) (collecting cases). That same year, this Court similarly held that defendants are "entitled to the effective assistance of competent counsel," defined as receipt of legal advice that is "within the range of competence demanded of attorneys in criminal cases." *McMann* v. *Richardson*, 397 U. S. 759, 771 (1970).

Then, in *Strickland*, the Court crafted the current standard for evaluating claims of ineffective assistance of counsel. Without discussing the original meaning of the Sixth Amendment, the Court stated that "[t]he Sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel's playing a role that is critical to the ability of the adversarial system to produce just results." 466 U. S., at 685. The Court thus held that, to succeed on an ineffective-assistance claim, the defendant must show (1) "that counsel's representation fell below an objective standard of reasonableness" and (2) "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.*, at

688, 694. The Court applies this standard in most situations, but, as it does today, it has also created an increasing number of *per se* rules in lieu of applying *Strickland*'s fact-specific inquiry, thereby departing even further from the original meaning of the Sixth Amendment.

There are a few problems with these precedents that should cause us to pause before extending them. First, the ineffective-assistance standard apparently originated not in the Sixth Amendment, but in our Due Process Clause jurisprudence. See *McMann*, *supra*, at 771, n. 14. Second, "[t]he Constitution, by its terms, does not mandate any particular remedy for violations of its own provisions." *United States* v. *Gonzalez-Lopez*, 548 U. S. 140, 157 (2006) (ALITO, J., dissenting); cf. *Collins* v. *Virginia*, 584 U. S. 586, 602–606 (2018) (THOMAS, J., concurring) (explaining that the exclusionary rule is not required by the Fourth Amendment). *Strickland* does not explain how the Constitution requires a new trial for violations of any right to counsel.

Third, our precedents seek to use the Sixth Amendment right to counsel to achieve an end it is not designed to guarantee. The right to counsel is not an assurance of an error-free trial or even a reliable result. It ensures fairness in a single respect: permitting the accused to employ the services of an attorney. The structural protections provided in the Sixth Amendment certainly seek to promote reliable criminal proceedings, but there is no substantive right to a particular level of reliability. In assuming otherwise, our ever-growing right-to-counsel precedents directly conflict with the government's legitimate interest in the finality of criminal judgments. I would proceed with far more caution than the Court has traditionally demonstrated in this area.

C

The Court should hesitate before further extending our precedents and imposing additional costs on the taxpayers

and the Judiciary.[5] History proves that the States and the Federal Government are capable of making the policy determinations necessary to assign public resources for appointed counsel. The Court has acknowledged as much. *Betts*, 316 U. S., at 471 (declining to extend the right to counsel to the States because "the matter has generally been deemed one of legislative policy"). Before the Court decided *Gideon*, the Court noted that "most of the States have by legislation authorized or even required the courts to assign counsel for the defense of indigent and unrepresented prisoners. As to capital cases, all the States so provide. Thirty-four States so provide for felonies and 28 for misdemeanors." *Bute*, 333 U. S., at 663 (internal quotation marks omitted). It is beyond our constitutionally prescribed role to make these policy choices ourselves. Even if we adhere to this line of precedents, our dubious authority in this area should give us pause before we extend these precedents further.

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[5] In 2018, the Federal Government's budget for defense counsel had grown to more than $1 billion. See Consolidated Appropriations Act, 2018, Pub. L. 115–141, Div. E, Tit. III, 132 Stat. 348. And the collateral challenges produced by the Court's right-to-counsel jurisprudence consume much of the federal courts' resources. Cf. Statistical Tables for the Federal Judiciary—June 2018, Table B–7 (for 12-month period ending June 30, 2018, roughly 24% of appeals filed in the courts of appeals—8,914 of 37,487—were categorized as "Habeas Corpus" or "Motions to Vacate Sentence"), https://www.uscourts.gov/statistics-reports/statistical-tables-federal-judiciary-june-2018 (as last visited Feb. 25, 2019); *id.*, Table C–2 (22,478 of 281,202 cases filed in federal district court, or roughly 8%).

Syllabus

MADISON *v.* ALABAMA

CERTIORARI TO THE CIRCUIT COURT OF ALABAMA, MOBILE COUNTY

No. 17–7505. Argued October 2, 2018—Decided February 27, 2019

In *Ford* v. *Wainwright*, 477 U. S. 399, this Court held that the Eighth Amendment's ban on cruel and unusual punishments precludes executing a prisoner who has "lost his sanity" after sentencing. *Id.*, at 406. And in *Panetti* v. *Quarterman*, 551 U. S. 930, the Court set out the appropriate competency standard: A State may not execute a prisoner whose "mental state is so distorted by a mental illness" that he lacks a "rational understanding" of "the State's rationale for [his] execution." *Id.*, at 958–959.

Petitioner Vernon Madison was found guilty of capital murder and sentenced to death. While awaiting execution, he suffered a series of strokes and was diagnosed with vascular dementia. In 2016, Madison petitioned the state trial court for a stay of execution on the ground that he was mentally incompetent, stressing that he could not recollect committing the crime for which he had been sentenced to die. Alabama responded that Madison had a rational understanding of the reasons for his execution, even assuming he had no memory of committing his crime. And more broadly, the State claimed that Madison failed to implicate *Ford* and *Panetti* because both decisions concerned themselves with gross delusions, which Madison did not have. Following a competency hearing, the trial court found Madison competent to be executed. On federal habeas review, this Court summarily reversed the Eleventh Circuit's grant of relief, holding that, under the "demanding" and "deferential standard" of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), "[n]either *Panetti* nor *Ford* 'clearly established' that a prisoner is incompetent to be executed" because of a simple failure to remember his crime. *Dunn* v. *Madison*, 583 U. S. 10, 13. But the Court "express[ed] no view" on the question of Madison's competency outside of the AEDPA context. *Id.*, at 14. When Alabama set a 2018 execution date, Madison returned to state court, arguing once more that his mental condition precluded the State from going forward. The state court again found Madison mentally competent.

Held:

1. Under *Ford* and *Panetti*, the Eighth Amendment may permit executing a prisoner even if he cannot remember committing his crime. *Panetti* asks only about a person's comprehension of the State's reasons

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for resorting to punishment, not his memory of the crime itself. And the one may exist without the other. Such memory loss, however, still may factor into the analysis *Panetti* demands. If that loss combines and interacts with other mental shortfalls to deprive a person of the capacity to comprehend why the State is exacting death as a punishment, then the *Panetti* standard will be satisfied. Pp. 274–277.

2. Under *Ford* and *Panetti*, the Eighth Amendment may prohibit executing a prisoner even though he suffers from dementia or another disorder rather than psychotic delusions. The *Panetti* standard focuses on whether a mental disorder has had a particular *effect*; it has no interest in establishing any precise *cause*. *Panetti*'s references to "gross delusions," 551 U. S., at 960, are no more than a predictable byproduct of that case's facts. *Ford* and *Panetti* hinge on the prisoner's "[in]comprehension of why he has been singled out" to die, 477 U. S., at 409, and kick in if and when that failure of understanding is present, irrespective of whether one disease or another is to blame. In evaluating competency, a judge must therefore look beyond any given diagnosis to a downstream consequence. Pp. 277–279.

3. Because this Court is uncertain whether the state court's decision was tainted by legal error, this case is remanded to that court for renewed consideration of Madison's competency. The state court's brief 2018 ruling—which states only that Madison "did not prove a substantial threshold showing of insanity[ ]"—does not provide any assurance that the court knew a person with dementia, and not psychotic delusions, might receive a stay of execution. Nor does that court's initial 2016 opinion. The sole question on which Madison's competency depends is whether he can reach a rational understanding of why the State wants to execute him. In answering that question—on which this Court again expresses no view—the state court may not rely on any arguments or evidence tainted with the legal errors addressed by this Court. Pp. 280–283.

Vacated and remanded.

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, and SOTOMAYOR, JJ., joined. ALITO, J., filed a dissenting opinion, in which THOMAS and GORSUCH, JJ., joined, *post*, p. 283. KAVANAUGH, J., took no part in the consideration or decision of the case.

Bryan A. Stevenson argued the cause for petitioner. With him on the briefs were *Angela L. Setzer* and *Randall S. Susskind*.

Thomas R. Govan, Jr., Deputy Attorney General of Alabama, argued the cause for respondent. On the brief were

Steve Marshall, Attorney General of Alabama, *Clay Crenshaw*, Chief Deputy Attorney General, *Eric Palmer*, Assistant Solicitor General, and *James R. Houts*, Deputy Attorney General.*

JUSTICE KAGAN delivered the opinion of the Court.

The Eighth Amendment, this Court has held, prohibits the execution of a prisoner whose mental illness prevents him from "rational[ly] understanding" why the State seeks to impose that punishment. *Panetti* v. *Quarterman*, 551 U. S. 930, 959 (2007). In this case, Vernon Madison argued that his memory loss and dementia entitled him to a stay of execution, but an Alabama court denied the relief. We now address two questions relating to the Eighth Amendment's bar, disputed below but not in this Court. First, does the Eighth Amendment forbid execution whenever a prisoner shows that a mental disorder has left him without any memory of committing his crime? We (and, now, the parties) think not, because a person lacking such a memory may still be able to form a rational understanding of the reasons for his death sentence. Second, does the Eighth Amendment apply similarly to a prisoner suffering from dementia as to one experiencing psychotic delusions? We (and, now, the parties)

**David W. Ogden, Daniel S. Volchok, Aaron M. Panner, Nathalie F. P. Gilfoyle*, and *Deanne M. Ottaviano* filed a brief for the American Psychological Association et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the State of Texas et al. by *Ken Paxton*, Attorney General of Texas, *Scott A. Keller*, Solicitor General, *Jeffrey C. Mateer*, First Assistant Attorney General, and *Rance Craft*, Assistant Solicitor General, and by the Attorneys General for their respective States as follows: *Mark Brnovich* of Arizona, *Leslie Rutledge* of Arkansas, *Pamela Jo Bondi* of Florida, *Christopher M. Carr* of Georgia, *Lawrence G. Wasden* of Idaho, *Curtis T. Hill, Jr.*, of Indiana, *Derek Schmidt* of Kansas, *Jeff Landry* of Louisiana, *Jim Hood* of Mississippi, *Josh Hawley* of Missouri, *Mike Hunter* of Oklahoma, *Alan Wilson* of South Carolina, and *Herbert H. Slatery III* of Tennessee; and for the National Association of Police Organizations by *Thomas R. McCarthy, J. Michael Connolly*, and *William J. Johnson*.

think so, because either condition may—or, then again, may not—impede the requisite comprehension of his punishment. The only issue left, on which the parties still disagree, is what those rulings mean for Madison's own execution. We direct that issue to the state court for further consideration in light of this opinion.

I

A

This Court decided in *Ford* v. *Wainwright*, 477 U. S. 399 (1986), that the Eighth Amendment's ban on cruel and unusual punishments precludes executing a prisoner who has "lost his sanity" after sentencing. *Id.*, at 406. While on death row, Alvin Ford was beset by "pervasive delusion[s]" associated with "[p]aranoid [s]chizophrenia." *Id.*, at 402–403. Surveying both the common law and state statutes, the Court found a uniform practice against taking the life of such a prisoner. See *id.*, at 406–409. Among the reasons for that time-honored bar, the Court explained, was a moral "intuition" that "killing one who has no capacity" to understand his crime or punishment "simply offends humanity." *Id.*, at 407, 409; see *id.*, at 409 (citing the "natural abhorrence civilized societies feel" at performing such an act). Another rationale rested on the lack of "retributive value" in executing a person who has no comprehension of the meaning of the community's judgment. *Ibid.*; see *id.*, at 421 (Powell, J., concurring in part and concurring in judgment) (stating that the death penalty's "retributive force[ ] depends on the defendant's awareness of the penalty's existence and purpose"). The resulting rule, now stated as a matter of constitutional law, held "a category of defendants defined by their mental state" incompetent to be executed. *Id.*, at 419.

The Court clarified the scope of that category in *Panetti* v. *Quarterman* by focusing on whether a prisoner can "reach a rational understanding of the reason for [his] execution." 551 U. S., at 958. Like Alvin Ford, Scott Panetti suffered

from "gross delusions" stemming from "extreme psychosis." *Id.*, at 936, 960. In reversing a ruling that he could still be executed, the *Panetti* Court set out the appropriate "standard for competency." *Id.*, at 957. *Ford*, the Court now noted, had not provided "specific criteria." 551 U. S., at 957. But *Ford* had explored what lay behind the Eighth Amendment's prohibition, highlighting that the execution of a prisoner who cannot comprehend the reasons for his punishment offends moral values and "serves no retributive purpose." 551 U. S., at 958. Those principles, the *Panetti* Court explained, indicate how to identify prisoners whom the State may not execute. The critical question is whether a "prisoner's mental state is so distorted by a mental illness" that he lacks a "rational understanding" of "the State's rationale for [his] execution." *Id.*, at 958–959. Or similarly put, the issue is whether a "prisoner's concept of reality" is "so impair[ed]" that he cannot grasp the execution's "meaning and purpose" or the "link between [his] crime and its punishment." *Id.*, at 958, 960.

B

Vernon Madison killed a police officer in 1985 during a domestic dispute. An Alabama jury found him guilty of capital murder, and the trial court sentenced him to death. He has spent most of the ensuing decades on the State's death row.

In recent years, Madison's mental condition has sharply deteriorated. Madison suffered a series of strokes, including major ones in 2015 and 2016. See Tr. 19, 46–47 (Apr. 14, 2016). He was diagnosed as having vascular dementia, with attendant disorientation and confusion, cognitive impairment, and memory loss. See *id.*, at 19–20, 52–54. In particular, Madison claims that he can no longer recollect committing the crime for which he has been sentenced to die. See Tr., Pet. Exh. 2, p. 8.

After his 2016 stroke, Madison petitioned the trial court for a stay of execution on the ground that he had become

mentally incompetent. Citing *Ford* and *Panetti*, he argued that "he no longer understands" the "status of his case" or the "nature of his conviction and sentence." Pet. for Suspension in No. CC–85–1385.80 (C. C. Mobile Cty., Ala., Feb. 12, 2016), pp. 11, 14. And in a later filing, Madison emphasized that he could not "independently recall the facts of the offense he is convicted of." Brief Pursuant to Order (Apr. 21, 2016), p. 8. Alabama countered that Madison had "a rational understanding of [the reasons for] his impending execution," as required by *Ford* and *Panetti*, even assuming he had no memory of committing his crime. Brief on Madison's Competency (April 21, 2016), pp. 4–5, 8. And more broadly, the State claimed that Madison could not possibly qualify as incompetent under those two decisions because both "concerned themselves with '[g]ross delusions' "—which all agree Madison does not have. *Id.*, at 2; see *ibid.* (Madison "failed to implicate" *Ford* and *Panetti* because he "does not suffer from psychosis or delusions").

Expert reports from two psychologists largely aligned with the parties' contending positions. Dr. John Goff, Madison's expert, found that although Madison "underst[ood] the nature of execution" in the abstract, he did not comprehend the "reasoning behind" Alabama's effort to execute *him*. Tr., Pet. Exh. 2 (Apr. 14, 2016), p. 8; see *id.*, at 9. Goff stated that Madison had "Major Vascular Neurological Disorder"—also called vascular dementia—which had caused "significant cognitive decline." *Ibid.* And Goff underscored that Madison "demonstrate[d] retrograde amnesia" about his crime, meaning that he had no "independent recollection[ ]" of the murder. *Id.*, at 8; see *id.*, at 9. For his part, Dr. Karl Kirkland, the court-appointed expert, reported that Madison "was able to discuss his case" accurately and "appear[ed] to understand his legal situation." Tr., Ct. Exh. 1, pp. 10–11. Although Kirkland acknowledged that Madison's strokes had led to cognitive decline, see *id.*, at 10, the psychologist made no mention of Madison's diagnosed vascular dementia.

Rather, Kirkland highlighted that "[t]here was no evidence of psychosis, paranoia, or delusion." *Id.*, at 9; see *ibid.* (Madison "did not seem delusional at all").

At a competency hearing, Alabama similarly stressed Madison's absence of psychotic episodes or delusions. The State asked both experts to affirm that Madison was "neither delusional [n]or psychotic." Tr. 56; see *id.*, at 22. And its closing argument focused on their agreement that he was not. As the State summarized: "He's not psychotic. He's not delusional." *Id.*, at 81. On the State's view, that fact answered the competency question because "[t]he Supreme Court is looking at whether someone's delusions or someone's paranoia or someone's psychosis is standing in the way of" rationally understanding his punishment. *Id.*, at 82. Madison's counsel disputed that point. "[T]he State would like to say, well, he's not delusional, he's not psychotic," the attorney recapped. *Id.*, at 83. But, she continued, "[t]hat's not really the criteria" under *Panetti*. Tr. 83. Rather, the Court there barred executing a person with any mental illness—"dementia" and "brain injuries" no less than psychosis and delusions—that prevents him from comprehending "why he is being executed." *Ibid.*

The trial court found Madison competent to be executed. Its order first recounted the evidence given by each expert witness. The summary of Kirkland's report and testimony began by stating that the psychologist had "found no evidence of paranoia[,] delusion [or] psychosis." Order (Apr. 29, 2016), p. 5 (2016 Order). The court then noted Kirkland's view that Madison could "give details of the history of his case" and "appear[ed] to understand his legal situation." *Ibid.* Turning to the Goff report, the court noted the expert's finding that Madison was "amnesic" and could not recollect his crime. *Id.*, at 6; see *id.*, at 7. In a single, final paragraph, the court provided both its ruling and its reasoning. Madison had failed to show, the court wrote, that he did not "rationally understand the punishment he is about

to suffer and why he is about to suffer it." *Id.*, at 10. The court "accept[ed] the testimony of Dr. Kirkland as to the understanding Madison has concerning the situation." *Ibid.* "Further," the court concluded, "the evidence does not support that Mr. Madison is delusional." *Ibid.*

Madison next sought habeas relief in federal court, where he faced the heavy burden of showing that the state-court ruling "involved an unreasonable application of[ ] clearly established federal law" or rested on an "unreasonable determination of the facts." Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U. S. C. § 2254(d). The District Court rejected his petition, but the Court of Appeals for the Eleventh Circuit ruled that Madison had demonstrated both kinds of indisputable error. See *Madison* v. *Commissioner*, 851 F. 3d 1173 (2017). This Court then summarily reversed the appeals court's decision. See *Dunn* v. *Madison*, 583 U. S. 10 (2017) (*per curiam*). We explained, contrary to the Eleventh Circuit's principal holding, that "[n]either *Panetti* nor *Ford* 'clearly established' that a prisoner is incompetent to be executed" because of a simple failure to remember his crime. *Id.*, at 13. And we found that the state court did not act unreasonably—otherwise put, did not err "beyond any possibility for fairminded disagreement"—when it found that Madison had the necessary understanding to be executed. *Id.*, at 14 (internal quotation marks omitted). But we made clear that our decision was premised on AEDPA's "demanding" and "deferential standard." *Id.*, at 12, 14. "We express[ed] no view" on the question of Madison's competency "outside of the AEDPA context." *Id.*, at 14.[1]

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[1] Neither did we opine on—or even mention—the subsidiary legal question whether a mental disorder other than delusions may render a person incompetent to be executed. Alabama told the Eleventh Circuit that it could not, thus reprising the claim the State had made in the trial court. See *Madison*, 851 F. 3d, at 1188 (describing Alabama's argument that "only a prisoner suffering from gross delusions can show incompetency under

When Alabama set an execution date in 2018, Madison returned to state court to argue again that his mental condition precluded the State from going forward. In his petition, Madison reiterated the facts and arguments he had previously presented to the state court. But Madison also claimed that since that court's decision (1) he had suffered further cognitive decline and (2) a state board had suspended Kirkland's license to practice psychology, thus discrediting his prior testimony. See Pet. to Suspend Execution in No. CC–85–1385.80 (C. C. Mobile Cty., Ala., Dec. 18, 2017), pp. 1–2, 16–19.[2] Alabama responded that nothing material had changed since the court's first competency hearing. See Motion to Dismiss (Dec. 20, 2017), p. 9. The State also repeated its argument that *Panetti* permits executing Madison, pointing to the experts' agreement that he is "not delusional or psychotic" and asserting that neither "memory impairment [n]or dementia [could] suffice to satisfy the *Panetti* and *Ford* standards" without "an expansion" of those decisions. Motion to Dismiss 4, 10. A week before the scheduled execution, the state court again found Madison mentally competent. Its brief order stated only that Madison "did not

Panetti"); Recording of Oral Arg. in No. 16–12279 (CA11, June 23, 2016), at 26:36–26:45 ("In this case, what we have is someone who claims to have a mental illness, dementia," but does not have "delusions, which is what *Panetti* requires"); *id.*, at 26:48–27:21 (When asked if someone with "severe dementia" but no delusions could be executed, the State responded "I think so because . . . they don't have delusions"). (Alabama *alternatively* argued that the state court's decision was not based on that view, see Brief for Appellee in No. 16–12279 (CA11), pp. 37–38; the quotations the dissent picks out, see *post*, at 292–294, n. 4, come from that additional argument.) The Eleventh Circuit rejected the State's contention that dementia could not preclude an execution as "inconsistent with the principles underlying" *Ford* and *Panetti*. 851 F. 3d, at 1188. But we had no reason to address that holding in light of the errors we saw in other parts of the appeals court's analysis.

[2] As Madison's petition recounted, the license suspension followed the opening of a criminal investigation into whether Kirkland had committed narcotics offenses. See Pet. to Suspend Execution 17–19.

provide a substantial threshold showing of insanity[ ] sufficient to convince this Court to stay the execution." App. A to Pet. for Cert.

Madison then filed in this Court a request to stay his execution and a petition for certiorari. We ordered the stay on the scheduled execution date and granted the petition a few weeks later. See 583 U. S. 1108 and 1155 (2018). Because the case now comes to us on direct review of the state court's decision (rather than in a habeas proceeding), AEDPA's deferential standard no longer governs. (And for that reason—contrary to the dissent's suggestion, *post*, at 294—our decision on Madison's habeas petition cannot help resolve the questions raised here.)

II

Two issues relating to *Panetti*'s application are before us. Recall that our decision there held the Eighth Amendment to forbid executing a prisoner whose mental illness makes him unable to "reach a rational understanding of the reason for [his] execution." 551 U. S., at 958; see *supra*, at 268. The first question presented is whether *Panetti* prohibits executing Madison merely because he cannot remember committing his crime. The second question raised is whether *Panetti* permits executing Madison merely because he suffers from dementia, rather than psychotic delusions.[3] In

[3] The dissent is in high dudgeon over our taking up the second question, arguing that it was not presented in Madison's petition for certiorari. See *post*, at 283–289. But that is incorrect. The petition presented two questions—the same two we address here. The first question asked whether the Eighth Amendment bars executing Madison because he has no "memory of his commission of the capital offense." Pet. for Cert. iii. The second question asked whether that Amendment bars his execution because his "vascular dementia" and "severe cognitive dysfunction" prevent him from either remembering his crime "or understanding the circumstances of his scheduled execution." *Ibid.* So the first question concerned whether memory loss alone could form the basis of a *Panetti* claim and the second whether the varied consequences of dementia could do so. The

prior stages of this case, as we have described, the parties disagreed about those matters. See *supra*, at 270–274. But at this Court, Madison accepted Alabama's position on the first issue and Alabama accepted Madison's on the second. See, *e. g.*, Tr. of Oral Arg. 11, 36. And rightly so. As the parties now recognize, the standard set out in *Panetti* supplies the answers to both questions. First, a person lacking memory of his crime may yet rationally understand why the State seeks to execute him; if so, the Eighth Amendment poses no bar to his execution. Second, a person suffering from dementia may be unable to rationally understand the reasons for his sentence; if so, the Eighth Amendment does not allow his execution. What matters is whether a person has the "rational understanding" *Panetti* requires—not whether he has any particular memory or any particular mental illness.

A

Consider initially a person who cannot remember his crime because of a mental disorder, but who otherwise has full cognitive function. The memory loss is genuine: Let us say the person has some kind of amnesia, which has produced a black hole where that recollection should be. But the person remains oriented in time and place; he can make logical connections and order his thoughts; and he comprehends familiar concepts of crime and punishment. Can the State execute

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body of the petition, to be sure, devoted more space to the first question. But it clearly referenced the second. See Pet. for Cert. 18 ("[T]his Court has never sought to constrain the world of maladies that can give rise to a finding that a prisoner is incompetent to be executed"); *id.*, at 25 ("[C]ourts have recognized dementia and attendant cognitive decline and memory impairment as a basis for a finding of incompetency to be executed"). And in any event, the number of words spent on each is not what matters. Our Rule states that the Court will consider "[o]nly the questions set out in the petition, or fairly included therein." This Court's Rule 14.1(a). Here, we consider, in order, the two questions set out in Madison's petition.

him for a murder? When we considered this case before, using the deferential standard applicable in habeas, we held that a state court could allow such an execution without committing inarguable error. See *Madison*, 583 U. S., at 13 (stating that no prior decision had "clearly established" the opposite); *supra*, at 272. Today, we address the issue straight-up, sans any deference to a state court. Again, is the failure to remember committing a crime alone enough to prevent a State from executing a prisoner?

It is not, under *Panetti*'s own terms. That decision asks about understanding, not memory—more specifically, about a person's understanding of why the State seeks capital punishment for a crime, not his memory of the crime itself. And the one may exist without the other. Do you have an independent recollection of the Civil War? Obviously not. But you may still be able to reach a rational—indeed, a sophisticated—understanding of that conflict and its consequences. Do you recall your first day of school? Probably not. But if your mother told you years later that you were sent home for hitting a classmate, you would have no trouble grasping the story. And similarly, if you somehow blacked out a crime you committed, but later learned what you had done, you could well appreciate the State's desire to impose a penalty. Assuming, that is, no other cognitive impairment, loss of memory of a crime does not prevent rational understanding of the State's reasons for resorting to punishment. And that kind of comprehension is the *Panetti* standard's singular focus.

The same answer follows from the core justifications *Panetti* offered for framing its Eighth Amendment test as it did. Echoing *Ford*, *Panetti* reasoned that execution has no retributive value when a prisoner cannot appreciate the meaning of a community's judgment. See 551 U. S., at 958–959 (citing 477 U. S., at 407–408); *supra*, at 269. But as just explained, a person who can no longer remember a crime

may yet recognize the retributive message society intends to convey with a death sentence. Similarly, *Ford* and *Panetti* stated that it "offends humanity" to execute a person so wracked by mental illness that he cannot comprehend the "meaning and purpose of the punishment." 477 U. S., at 407; 551 U. S., at 960; see *id.*, at 958. But that offense to morality must be much less when a person's mental disorder causes nothing more than an episodic memory loss. Moral values do not exempt the simply forgetful from punishment, whatever the neurological reason for their lack of recall.

But such memory loss still may factor into the "rational understanding" analysis that *Panetti* demands. If that loss combines and interacts with other mental shortfalls to deprive a person of the capacity to comprehend why the State is exacting death as punishment, then the *Panetti* standard will be satisfied. That may be so when a person has difficulty preserving any memories, so that even newly gained knowledge (about, say, the crime and punishment) will be quickly forgotten. Or it may be so when cognitive deficits prevent the acquisition of such knowledge at all, so that memory gaps go forever uncompensated. As *Panetti* indicated, neurologists, psychologists, and other experts can contribute to a court's understanding of issues of that kind. See *id.*, at 962. But the sole inquiry for the court remains whether the prisoner can rationally understand the reasons for his death sentence.

B

Next consider a prisoner who suffers from dementia or a similar disorder, rather than psychotic delusions. The dementia, as is typical, has compromised this prisoner's cognitive functions. But it has not resulted in the kind of delusional beliefs that Alvin Ford and Scott Panetti held. May the prisoner nonetheless receive a stay of execution under *Ford* and *Panetti*? Or instead, is a delusional disorder a prerequisite to declaring a mentally ill person incompetent

to be executed? We did not address that issue when we last considered this case, on habeas review; in that sense, the question is one of first impression. See *supra*, at 272–273, n. 1.

But here too, *Panetti* has already answered the question. Its standard focuses on whether a mental disorder has had a particular *effect*: an inability to rationally understand why the State is seeking execution. See *supra*, at 268–269. Conversely, that standard has no interest in establishing any precise *cause*: Psychosis or dementia, delusions or overall cognitive decline are all the same under *Panetti*, so long as they produce the requisite lack of comprehension. To be sure, *Panetti* on occasion spoke of "gross delusions" in explaining its holding. 551 U. S., at 960. And similarly, *Ford* talked about the "insane," which sometimes refers to persons holding such irrational beliefs. See, *e. g.*, 477 U. S., at 401, 410.[4] But those references are no more than a predictable byproduct of the two cases' facts. At the same time (and interchangeably), *Panetti* used more inclusive terms, such as "mental illness," "mental disorder," and "psychological dysfunction." 551 U. S., at 936, 959, 960; see *Ford*, 477 U. S., at 408–409, n. 2 (referring to prisoners with "mental illness"). And most important, *Panetti* framed its test, as just described, in a way utterly indifferent to a prisoner's specific mental illness. The *Panetti* standard concerns, once again, not the diagnosis of such illness, but a consequence—to wit, the prisoner's inability to rationally understand his punishment.

And here too, the key justifications *Ford* and *Panetti* offered for the Eighth Amendment's bar confirm our conclusion

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[4] Alternatively, however, the term may also be used to encompass persons with other mental conditions, so long as they are "severe enough [to] prevent[ ] a person from having legal capacity and excuse[ ] the person from criminal or civil responsibility." Black's Law Dictionary 914 (10th ed. 2014). In that different understanding, "insanity" connotes a general standard of legal competency rather than a more limited description of delusional disorders.

about its reach. As described above, those decisions stated that an execution lacks retributive purpose when a mentally ill prisoner cannot understand the societal judgment underlying his sentence. See *Panetti*, 551 U. S., at 958–959; *Ford*, 477 U. S., at 409; *supra*, at 268–269. And they indicated that an execution offends morality in the same circumstance. See 551 U. S., at 958, 960; 477 U. S., at 409; *supra*, at 268–269. Both rationales for the constitutional bar thus hinge (just as the *Panetti* standard deriving from them does) on the prisoner's "[in]comprehension of why he has been singled out" to die. 477 U. S., at 409; see *supra*, at 268–269. Or said otherwise, if and when that failure of understanding is present, the rationales kick in—irrespective of whether one disease or another (say, psychotic delusions or dementia) is to blame.

In evaluating competency to be executed, a judge must therefore look beyond any given diagnosis to a downstream consequence. As *Ford* and *Panetti* recognized, a delusional disorder can be of such severity—can "so impair the prisoner's concept of reality"—that someone in its thrall will be unable "to come to grips with" the punishment's meaning. *Panetti*, 551 U. S., at 958; *Ford*, 477 U. S., at 409. But delusions come in many shapes and sizes, and not all will interfere with the understanding that the Eighth Amendment requires. See *Panetti*, 551 U. S., at 962 (remanding the case to consider expert evidence on whether the prisoner's delusions did so). And much the same is true of dementia. That mental condition can cause such disorientation and cognitive decline as to prevent a person from sustaining a rational understanding of why the State wants to execute him. See *supra*, at 277–278. But dementia also has milder forms, which allow a person to preserve that understanding. Hence the need—for dementia as for delusions as for any other mental disorder—to attend to the particular circumstances of a case and make the precise judgment *Panetti* requires.

III

The only question left—and the only one on which the parties now disagree—is whether Madison's execution may go forward based on the state court's decision below. Madison's counsel says it cannot because that ruling was tainted by legal error—specifically, the idea that only delusions, and not dementia, can support a finding of mental incompetency. See Tr. of Oral Arg. 12, 21, 25, 27. Alabama counters that the state court did not rely on that (concededly) incorrect view of the law. See *id.*, at 37–41. But we come away at the least unsure whether that is so—especially given Alabama's evidence and arguments in the state court.

As noted earlier, the 2018 ruling we review today contains only one sentence of explanation. See *supra*, at 273–274. It states that Madison "did not provide a substantial threshold showing of insanity[ ] sufficient to convince this Court to stay the execution." App. A to Pet. for Cert. If the state court used the word "insanity" to refer to a delusional disorder, then error occurred: The court would have denied a stay on the ground that Madison did not have that specific kind of mental illness. And the likelihood that the court made that mistake is heightened by the State's emphasis, at that stage of the proceedings (as at others), that Madison was "not delusional or psychotic" and that "dementia" could not suffice to bar his execution absent "an expansion of *Ford* and *Panetti*." Motion to Dismiss 4, 10; see *supra*, at 270–274; but see *post*, at 291–292, and n. 4 (disregarding those arguments).[5] Alabama argues, however, that the court spoke of "insanity" only because the state statute under which Madison sought relief uses that term. See Tr. of Oral Arg. 37; Ala. Code § 15–16–23 (2011) (allowing a stay of execution "on account

[5] The State once again repeated that argument in its brief in opposition to Madison's certiorari petition. See Brief in Opposition 11–12 ("Madison does not argue that he is insane. Instead, he argues that he suffers from dementia" and that his execution should be barred "under a yet-unannounced expansion of *Ford* and *Panetti*").

of the [convict's] insanity"). But even if so, that does not advance the State's view that the state court properly understood the Eighth Amendment bar when assessing Madison's competency. Alabama told this Court in opposing certiorari that its statute covers only those with delusional disorders, and not those with dementia. See Brief in Opposition 12 ("[T]he sole question to be answered under the state statute was whether Madison was insane, not whether he suffered from dementia"). The state court's (supposed) echoing of statutory language understood in that way cannot provide assurance that the court knew a person with dementia might receive a stay of execution; indeed, it suggests exactly the opposite. The court's 2018 order thus calls out for a do-over.

Alabama further contends, however, that we should look past the state court's 2018 decision to the court's initial 2016 determination of competency. (The dissent similarly begins with the 2016 ruling, see *post*, at 289, even though that is not the decision under review here.) According to the State, nothing material changed in the interim period, see *supra*, at 273; thus, we may find the meaning of the later ruling in the earlier one, see Tr. of Oral Arg. 36–37. And, the State continues, the 2016 opinion gets the law right. Alabama's proof is that the court, after summarizing the psychologists' testimony, found that "Madison has a rational[ ] understanding, as required by *Panetti*," concerning the "punishment he is about to suffer and why he is about to suffer it." 2016 Order, at 10; see Tr. of Oral Arg. 39; *supra*, at 271–272. (The dissent quotes the same passage. See *post*, at 289.)

But the state court's initial decision does not aid Alabama's cause. First, we do not know that the court in 2018 meant to incorporate everything in its prior opinion. The order says nothing to that effect; and though it came out the same way as the earlier decision, it need not have rested on all the same reasoning. Second, the 2016 opinion itself does not show that the state court realized that persons suffering from dementia could satisfy the *Panetti* standard. True

enough, as Alabama says, that the court accurately stated that standard in its decision. But as described above, Alabama had repeatedly argued to the court (over Madison's objection) that only prisoners suffering from delusional disorders could qualify as incompetent under *Panetti*. See, *e. g.*, Brief on Madison's Competency 2 (Madison "failed to implicate" *Ford* and *Panetti* because he "does not suffer from psychosis or delusions"); Tr. 82 ("The Supreme Court [in *Panetti*] is looking at whether someone's delusions or someone's paranoia or someone's psychosis is standing in the way of" rationally understanding his punishment); see also *supra*, at 270–271; but see *post*, at 291–292, and n. 4 (disregarding those arguments). And Alabama relied on the expert opinion of a psychologist who highlighted Madison's lack of "psychosis, paranoia, or delusion," while never mentioning his dementia. Tr., Ct. Exh. 1 (Apr. 14, 2016), p. 9. That too-limited understanding of *Panetti*'s compass is reflected in the court's 2016 opinion. In its single paragraph of analysis, the court "accept[ed] the testimony" of the State's preferred psychologist.[6] And the court further found that "the evidence does not support that Mr. Madison is delusional"—without ever considering his undisputed dementia. 2016 Order, at 10.

For those reasons, we must return this case to the state court for renewed consideration of Madison's competency (assuming Alabama sets a new execution date). See, *e. g.*, *Kindred Nursing Centers L. P.* v. *Clark*, 581 U. S. 246, 256 (2017) (remanding when "uncertain" whether "an impermissible taint occurred"); *Clemons* v. *Mississippi*, 494 U. S. 738, 751–752 (1990) (similar). In that proceeding, two matters disputed below should now be clear. First, under *Ford* and *Pa-*

[6] The court well understood that expert's exclusive focus on whether Madison had psychotic delusions. In summarizing his testimony, the court began as follows: "Dr. Kirkland in his exam found no evidence of paranoia or delusion at the time of his examin[ation], on March 31, 2016. He also found that there was no psychosis present." 2016 Order, at 5; see *supra*, at 271.

netti, the Eighth Amendment may permit executing Madison even if he cannot remember committing his crime. Second, under those same decisions, the Eighth Amendment may prohibit executing Madison even though he suffers from dementia, rather than delusions. The sole question on which Madison's competency depends is whether he can reach a "rational understanding" of why the State wants to execute him. *Panetti*, 551 U. S., at 958. In answering that question—on which we again express no view, see *supra*, at 272—the state court may not rely on any arguments or evidence tainted with the legal errors we have addressed. And because that is so, the court should consider whether it needs to supplement the existing record. Some evidence in that record, including portions of the experts' reports and testimony, expressly reflects an incorrect view of the relevance of delusions or memory; still other evidence might have implicitly rested on those same misjudgments. The state court, we have little doubt, can evaluate such matters better than we. It must do so as the first step in assessing Madison's competency—and ensuring that if he is to be executed, he understands why.

We accordingly vacate the judgment of the state court and remand the case for further proceedings not inconsistent with this opinion.

It is so ordered.

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

JUSTICE ALITO, with whom JUSTICE THOMAS and JUSTICE GORSUCH join, dissenting.

What the Court has done in this case makes a mockery of our Rules.

Petitioner's counsel convinced the Court to stay his client's execution and to grant his petition for a writ of certiorari for the purpose of deciding a clear-cut constitu-

tional question: Does the Eighth Amendment prohibit the execution of a murderer who cannot recall committing the murder for which the death sentence was imposed? The petition strenuously argued that executing such a person is unconstitutional.

After persuading the Court to grant review of this question, counsel abruptly changed course. Perhaps because he concluded (correctly) that petitioner was unlikely to prevail on the question raised in the petition, he conceded that the argument advanced in his petition was wrong, and he switched to an entirely different argument, namely, that the state court had rejected petitioner's claim that he is incompetent to be executed because the court erroneously thought that dementia, as opposed to other mental conditions, cannot provide a basis for such a claim. See Brief for Petitioner 16.

This was not a question that the Court agreed to hear; indeed, there is no mention whatsoever of this argument in the petition—not even a hint. Nor is this question fairly included within those on which the Court granted review. On the contrary, it is an entirely discrete and independent question.

Counsel's tactics flagrantly flouted our Rules. Our Rules make it clear that we grant certiorari to decide the specific question or questions of law set out in a petition for certiorari. See this Court's Rule 14.1(a) ("Only the questions set out in the petition, or fairly included therein, will be considered by the Court"). Our whole certiorari system would be thrown into turmoil if we allowed counsel to obtain review of one question and then switch to an entirely different question after review is granted. In the past when counsel have done this, we have dismissed the writ as improvidently granted. See, *e. g.*, *Visa, Inc.* v. *Osborn*, 580 U. S. 993 (2016); *City and County of San Francisco* v. *Sheehan*, 575 U. S. 600 (2015). We should do that here.

Instead, the majority rewards counsel's trick. It vacates the judgment below because it is unsure whether the state

court committed the error claimed in petitioner's merits brief. But not only was there no trace of this argument in the petition; there is nothing in the record showing that the state court ever adopted the erroneous view that petitioner claims it took.

I

The question on which we granted review was an outgrowth of our *per curiam* decision in *Dunn* v. *Madison*, 583 U. S. 10 (2017), which concerned an Eleventh Circuit decision granting petitioner federal habeas relief. Prior to that decision, this Court had held in *Ford* v. *Wainwright*, 477 U. S. 399 (1986), that the Eighth Amendment prohibits the execution of a person who is "insane," and in *Panetti* v. *Quarterman*, 551 U. S. 930 (2007), the Court elaborated on this rule, explaining that a person cannot be executed if he lacks a rational understanding of the reason for the execution. The Eleventh Circuit interpreted those cases to mean that petitioner could not be executed because he did not remember killing his victim, Mobile, Alabama, police officer Julius Schulte.

We summarily reversed. Under the relevant provision of the federal habeas statute, 28 U. S. C. § 2254(d), which was enacted as part of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), petitioner could not obtain federal habeas relief unless the state court's rejection of his memory-loss claim represented an unreasonable application of federal law as clearly established at the time by decisions of this Court. We held that neither *Ford* nor *Panetti* clearly established that a person cannot be executed if he does not remember committing the crime for which the death sentence was imposed.

Our opinion stated, however, that it "express[ed] no view on the merits of the underlying question outside of the AEDPA context." *Dunn*, 583 U. S., at 14. And a concurring opinion authored by JUSTICE GINSBURG and joined by JUSTICES BREYER and SOTOMAYOR teed up this question for

review in a later case. *Ibid.* ("The issue whether a State may administer the death penalty to a person whose disability leaves him without memory of his commission of a capital offense is a substantial question not yet addressed by the Court. Appropriately presented, the issue would warrant full airing").

Taking this cue, petitioner then sought relief in state court based on his inability to remember his crime, and when that effort failed, he filed the petition at issue now.

II

The centerpiece of the petition and petitioner's eleventh-hour application for a stay of execution[1] was the argument that he could not constitutionally be executed because he did not remember killing Officer Schulte. The petition repeatedly noted petitioner's inability to remember his crime. See Pet. for Cert. i, iii, 1, 2, 8, 10, 11, 12, 18, 22, 23, 25, 26, 27, 28. And the petition was very clear about the question on which review was sought:

> "[T]his case presents this Court with the appropriate vehicle to consider the substantial question of whether the execution of a prisoner with no memory of the underlying offense is consistent with the evolving standards of decency inherent in this Court's Eighth Amendment jurisprudence." *Id.*, at 2.

This same point was made time and again:

- "[B]ecause [petitioner's] disability renders him unable to remember the underlying offense for which he is to be punished, his execution does not comport with the

[1] Petitioner sought and obtained a stay of execution based on this same argument. See Application for Stay of Execution 2, 6 (moving the Court to stay petitioner's execution so that it could address the "substantial" and "critical" question whether executing petitioner, "whose severe cognitive dysfunction leaves him without memory of his commission of the capital offense," would violate the Eighth Amendment).

evolving standards of decency required by this Court's Eighth Amendment jurisprudence." *Id.*, at 18.

- "[I]mposing death on a prisoner, who, like Mr. Madison, suffers from substantial memory deficits by virtue of multiple stroke and resulting vascular dementia serves no retributive or deterrent purpose." *Id.*, at 22.
- [E]xecuting an individual with no memory of the underlying offense serves no retributive purpose." *Ibid.*
- "[W]here the person being punished has no memory of the commission of the offense for which he is to be executed, the 'moral quality' of that punishment is lessened and unable to match outrage over the offense." *Id.*, at 22–23.
- "Mr. Madison's severe memory impairments as a result of vascular dementia render him incompetent to be executed under the Eight Amendment." *Id.*, at 25 (quotation altered).

In sum, the body of the petition makes it clear that review was sought on the question invited by the *Dunn* concurrence, and the thrust of the wording of the two questions was the same. They read as follows:

> "1. Consistent with the Eighth Amendment, and this Court's decisions in *Ford* and *Panetti*, may the State execute a prisoner whose mental disability leaves him without memory of his commission of the capital offense? See *Dunn* v. *Madison*, [583 U. S. 10, 14 (2017) (GINSBURG, J., joined by BREYER and SOTOMAYOR, JJ., concurring).]
>
> "2. Do evolving standards of decency and the Eighth Amendment's prohibition of cruel and unusual punishment bar the execution of a prisoner whose competency has been compromised by vascular dementia and multiple strokes causing severe cognitive dysfunction and a

> degenerative medical condition which prevents him from remembering the crime for which he was convicted or understanding the circumstances of his scheduled execution?" Pet. for Cert. iii.

With the exception of the final phrase in question two ("or understanding the circumstances of his scheduled execution"), both questions solely concern the effect of memory loss on an Eighth Amendment analysis. The final phrase in question two and certain passages in the petition, if read with an exceedingly generous eye, *might* be seen as a basis for considering whether the evidence in the state-court record shows that petitioner's dementia rendered him incapable of having a rational understanding of the reason for his execution. But that is the sort of factbound question on which we rarely grant review, see this Court's Rule 10, and it is questionable whether we did so here.

But whether or not the petition may be fairly read to present that factbound question, it is a travesty to read it as challenging the state-court order on the ground that the state court erroneously believed that dementia cannot provide a basis for a *Ford*/*Panetti* claim. There is no inkling of that argument in the petition. Although the petition described the state-court order at numerous places, the petition never claimed that the order was based on an impermissible distinction between dementia and other mental conditions. See, *e. g.*, Pet. for Cert. ii, 2–3, 16. And in fact, there is a point in the petition where such an interpretation of the state-court order would surely have been mentioned if the petition had intended to raise it as a ground for review. The petition noted that "courts have recognized dementia and attendant cognitive decline and memory impairment as a basis for a finding of incompetency to be executed," *id.*, at 25, but the petition did not follow that statement by claiming that the state court in this case took a contradictory position.

Because the petition did not raise—indeed, did not even hint at—the argument on which the Court now grants relief,

the Court's decision is insupportable.[2] It violates our Rule that "[o]nly the questions set out in the petition, or fairly included therein, will be considered by the Court." Rule 14.1(a).

III

Even if it were proper for us to consider whether the order below was based on an erroneous distinction between dementia and other mental conditions, there is little reason to think that it was. After a full evidentiary hearing in 2016, the state court rejected petitioner's *Ford*/*Panetti* claim based on a correct statement of the holding of those decisions. It found that petitioner "ha[d] not carried his burden [of showing] by a preponderance of the evidence . . . that he . . . does not rationally understand the punishment he is about to suffer and why he is about to suffer it." Order (Apr. 29, 2016), p. 10. The court's order went on to say that it "specifically [found] that Madison has a rationa[l] understanding, as required by *Panetti*, that he is going to be executed because of the murder he committed and a rationa[l] understanding that the State is seeking retribution and that he will die when he is executed." *Ibid.*

In concluding that the state court might have drawn a distinction between dementia and other mental conditions, the majority seizes upon the wording of the order issued after a subsequent hearing in 2018. *Ante*, at 280. In that order, the same judge wrote: "Defendant did not provide a substantial threshold showing of *insanity*, a requirement set out by the United States Supreme Court, sufficient to convince this Court to stay the execution." Order (Jan. 16, 2018) (emphasis added). The majority worries that the state-court judge might not have applied the same standard in 2018 as he had two years earlier and might have viewed "in-

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[2] The Court is unable to cite a single place in the petition that makes any reference to the argument that the state court failed to understand that dementia could satisfy the *Ford*/*Panetti* test.

sanity" as something narrower than the standard mandated by *Ford* and *Panetti*. This concern is unfounded.

Taken out of context, the term "insanity" might not be read to encompass dementia, but in context, it is apparent that the state court's use of that term was based on the way in which it was used in *Ford* and *Panetti*. The state court did not simply refer to "insanity." It referred to "insanity, a requirement set out by the United States Supreme Court." Thus, it followed the term "insanity" with an appositive, which is a word or phrase that renames the word or phrase that precedes it. In other words, what the state court clearly meant by "insanity" was what this Court termed insanity in *Ford* and *Panetti*. What was that?

In *Ford*, the Court held that the Eighth Amendment prohibits the execution of a person who is "insane," and in the portion of Justice Marshall's lead opinion that was joined by a plurality, Justice Marshall equated insanity with a mental condition that "prevents [a person] from comprehending the reasons for the penalty or its implications." 477 U. S., at 417. Justice Powell, who provided the fifth vote for the decision, took a similar position. See *id.*, at 422–423 (opinion concurring in part and concurring in judgment). In *Panetti*, which built on the holding in *Ford*, the Court used the term in a similar way. See 551 U. S., at 958–960. Accordingly, a defendant suffers from "insanity," as the term is used in *Ford* and *Panetti*, if the prisoner does not understand the reason for his execution.

Today's decision does not reject this interpretation of the state-court order; it says only that it is vacating and remanding because it is "at the least unsure" whether the state court used the term "'insanity'" in this way. *Ante*, at 280. The majority cites two reasons for its uncertainty, but both are weak.

First, the majority attributes to the state court an interpretation of the term "insanity" that was advanced by the State in this Court in its brief in opposition to the petition

for certiorari. *Ibid.* In that submission, the State argued that certiorari should be denied because petitioner had sought relief in state court under the wrong provision of state law, namely, Ala. Code § 15–16–23 (2011), which authorizes the suspension of the execution of an inmate who is "insane." The State argued that petitioner's memory loss did not render him "insane" within the meaning of this statute and that if he wished to argue that the Eighth Amendment bars the execution of an inmate who cannot remember his crime, he "should have filed a petition for post-conviction relief" under Alabama Rule of Criminal Procedure 32.4. Brief in Opposition 11–12.

The majority's argument based on the State's brief in opposition suffers from multiple defects. For one thing, nothing suggests that the state court rejected petitioner's application on the ground that he invoked the wrong provision of state law; the State's filing in the state court made no mention of the argument set out in its brief in opposition filed here. Moreover, if the state court had rejected petitioner's application on the ground that he moved under the wrong provision of state law, it is doubtful that we could review that decision, for then it would appear to rest on an adequate and independent state-law ground. And to top things off, the majority's argument distorts what the State's brief in opposition attempted to say about the term "insane." The State did not argue that a defendant who lacks a rational understanding of the reason for his execution due to dementia is not "insane" under Ala. Code § 15–16–23. Instead, the State's point was that a defendant is not "insane" in that sense merely because he cannot remember committing the crime for which he was convicted.

The majority's other proffered basis for doubt is that the State "repeatedly argued to the [state] court (over Madison's objection) that only prisoners suffering from delusional disorders could qualify as incompetent under *Panetti*." *Ante,* at 282. The majority, however, cites no place where the State

actually made such an argument. To be sure, the State, in contending that petitioner was not entitled to relief under *Ford* and *Panetti*, argued strenuously that he was not delusional. (The State made this argument because petitioner's counsel claimed that petitioner was in fact delusional and fell within *Ford* and *Panetti* for that reason.[3]) But arguing, as the State did, that petitioner was not entitled to relief because the claim that he was delusional was untrue is not the same as arguing that petitioner could be executed even if his dementia rendered him incapable of understanding the reason for his execution. The majority cites no place where the State made the latter argument in the state court.[4] And

[3] Petitioner's papers emphasized again and again that he suffers from delusions. See Pet. for Suspension in No. CC–85–1385.80 (C. C. Mobile Cty., Ala., Feb. 12, 2016), p. 1 ("Mr. Madison has long suffered from serious mental illness, marked by paranoid delusions and other disabilities"); *id.*, at 5 ("At Mr. Madison's trial, Dr. Barry Amyx established that Mr. Madison suffers from a delusional disorder that has existed since he was an adolescent"); *ibid.* ("This well-documented history of paranoia was one of the reasons Dr. Amyx concluded that Mr. Madison had a delusional disorder in a paranoid, really a persecutory type" (internal quotation marks omitted)); *ibid.* ("Dr. Amyx noted that Mr. Madison exhibited delusional thinking about . . . medication and believed that he was being used as a guinea pig in medical experiments"); *id.*, at 6 (emphasizing a "more recent observation" that "'Mr. Madison consistently presented with paranoid delusions'"); *id.*, at 8 ("Mr. Madison exhibited delusional and disoriented behavior in June 2015"); *id.*, at 14 ("decades of delusional thinking and psychotropic medications"); see also Pet. for Suspension in No. CC–85–1385.80 (C. C. Mobile Cty., Ala., Dec. 18, 2017), pp. 6–7 (detailing similar statements).

This line of argument fell apart when petitioner's own expert testified that he found no indication that petitioner was "[e]ither delusional or psychotic." Tr. 56 (Apr. 14, 2016).

[4] Unable to cite any place where the State made this argument to the state court, the Court claims that the State did so in the Eleventh Circuit. *Ante*, at 272–273, n. 1. But even if that were so, it is hard to see what that would have to do with the question whether the state court thought that dementia could not satisfy the *Ford*/*Panetti* test. And in any event, the Court does not fairly describe the State's argument in the Eleventh Circuit. The State's Eleventh Circuit brief argued that merely suffering

even if the State had made such an argument, what matters is the basis for the state court's decision, not what counsel for the State wrote or said.

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from a mental condition like dementia is not enough to render a prisoner incompetent to be executed; instead, the prisoner must also establish that he lacks a rational understanding of the reason for his execution. See Brief for Appellee in No. 16–12279 (CA11), pp. 37–38 (Brief for Appellee) ("The fairest reading of the state court's opinion is that it assumed that dementia and memory loss caused by strokes is a mental illness and went straight to the rational understanding question. Thus, it is not that the trial court refused to consider Madison's claims pertaining to dementia—Madison cannot point to any portion of the state court order that says this—it is that the trial court correctly noted that Madison failed to prove that any dementia interfered with Madison's ability to have a rational understanding of his execution, including the reasons therefor"); *id.*, at 27 ("The Supreme Court has not held that a petitioner can show incompetence without demonstrating a mental illness or that dementia and memory loss definitively preclude rational understanding"); *id.*, at 29 ("To the extent the state court followed the lead of the Supreme Court, this Court, and the ABA and required Madison to show that a mental illness prevented him from having a rational understanding of his punishment, doing so was not an unreasonable application of clearly established federal law").

It is true that the State's brief, in addressing the standard for granting federal habeas relief under 28 U. S. C. §2254(d), stated that this Court "ha[d] never held that dementia or memory loss is sufficient to show a lack of rational understanding," Brief for Appellee 29, but that was because a claim under §2254(d) must be based on a clearly established Supreme Court holding. See Recording of Oral Arg. in No. 16–12279 (CA11, June 23, 2016), at 32:37–33:30 (State rejecting a suggestion that *Panetti* holds "if you don't remember committing the crime at all, and it is clear based on the medical testimony that you don't remember committing this crime, then you don't have a rational understanding of the factual basis for the imposition of the death penalty"; "First of all, under AEDPA deference, I think that that is not the holding of *Panetti*. . . . I think under AEDPA deference, it's pretty clear that the holding of *Panetti* is very narrow. . . . I would say the holding in *Panetti* is that documented mental illness that results in a delusion has to be considered when talking about rational understanding"); *id.*, at 36:00–36:30 ("I think the Supreme Court has never held that not remembering something is equivalent to not having a rational understanding. I think that is just undeniably true. And if AEDPA deference applies, then I don't think the state court could have

I add one more comment regarding the majority's uncertainty about the basis for the state-court decision: Our decision two years ago in *Dunn* evinced no similar doubts. There, we said that the state court "held that, under this Court's decisions in *Ford* and *Panetti*, Madison was entitled to relief if he could show" that he lacks a rational understanding of the circumstances of his punishment. 583 U. S., at 12 (quotation altered). And we said that the state court "determined that Madison is competent to be executed because—notwithstanding his memory loss—he recognizes that he will be put to death as punishment for the murder he was found to have committed." *Id.*, at 13; see also *ibid.* (referring to the state court's "finding that Madison understands both that he was tried and imprisoned for murder and that Alabama will put him to death as punishment for that crime"). Why the majority cannot now see what it understood without any apparent difficulty two years ago is hard to grasp.

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been unreasonable in rejecting the view that memory is required"). The State did not argue either that dementia cannot satisfy *Ford* and *Panetti* or that the state court based its decision on that ground. On the contrary, Alabama wrote that "even if the trial court had determined that dementia and severe memory loss—or even total amnesia—are insufficient to meet the rational understanding test, that finding would not contradict clearly established federal law." Brief for Appellee 29; see also *id.*, at 30 ("Even assuming the state court held, as a matter of law, that amnesia is not sufficient to show a lack of rational understanding, that determination was not unreasonable in light of clearly established federal law").

The majority acknowledges that the State made this concededly correct habeas argument, but then oddly writes it off as an "additional" or alternative argument. *Ante*, at 272–273, n. 1. Yet, as the State's brief and oral argument illustrate, the State's core contention was that the state court did not unreasonably apply clearly established law under *Panetti*'s "very narrow" holding. (And as we later held in *Dunn*, the State was correct.) The majority simply cannot escape the inconvenient fact that the State never argued, as a non-AEDPA matter, that petitioner could be executed even if his dementia precluded a rational understanding.

For all these reasons, what the Court has done in this case cannot be defended, and therefore it is hard to escape thinking that the real reason for today's decision is doubt on the part of the majority regarding the correctness of the state court's factual finding on the question whether Madison has a rational understanding of the reason for his execution. There is no question that petitioner suffers from severe physical and mental problems, and the question whether he is capable of understanding the reason for his execution was vigorously litigated below. But if the Court thinks it is proper for us to reach that question and to reverse the state court's finding based on a cold record, it should own up to what it is doing.

* * *

Petitioner has abandoned the question on which he succeeded in persuading the Court to grant review, and it is highly improper for the Court to grant him relief on a ground not even hinted at in his petition. The writ should be dismissed as improvidently granted, and I therefore respectfully dissent.

Syllabus

FOURTH ESTATE PUBLIC BENEFIT CORP. *v.* WALL-STREET.COM, LLC, ET AL.

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

No. 17–571. Argued January 8, 2019—Decided March 4, 2019

Petitioner Fourth Estate Public Benefit Corporation (Fourth Estate), a news organization, licensed works to respondent Wall-Street.com, LLC (Wall-Street), a news website. Fourth Estate sued Wall-Street and its owner for copyright infringement of news articles that Wall-Street failed to remove from its website after canceling the parties' license agreement. Fourth Estate had filed applications to register the articles with the Copyright Office, but the Register of Copyrights had not acted on those applications. Title 17 U. S. C. § 411(a) states that "no civil action for infringement of the copyright in any United States work shall be instituted until . . . registration of the copyright claim has been made in accordance with this title." The District Court dismissed the complaint, and the Eleventh Circuit affirmed, holding that "registration . . . has [not] been made" under § 411(a) until the Copyright Office registers a copyright.

Held: Registration occurs, and a copyright claimant may commence an infringement suit, when the Copyright Office registers a copyright. Upon registration of the copyright, however, a copyright owner can recover for infringement that occurred both before and after registration. Pp. 300–309.

(a) Under the Copyright Act of 1976, as amended, a copyright author gains "exclusive rights" in her work immediately upon the work's creation. 17 U. S. C. § 106. A copyright owner may institute a civil action for infringement of those exclusive rights, § 501(b), but generally only after complying with § 411(a)'s requirement that "registration . . . has been made." Registration is thus akin to an administrative exhaustion requirement that the owner must satisfy before suing to enforce ownership rights. Pp. 300–302.

(b) In limited circumstances, copyright owners may file an infringement suit before undertaking registration. For example, a copyright owner who is preparing to distribute a work of a type vulnerable to predistribution infringement—*e. g.*, a movie or musical composition—may apply to the Copyright Office for preregistration. § 408(f)(2). A copyright owner may also sue for infringement of a live broadcast before "registration . . . has been made." § 411(c). Outside of statutory ex-

ceptions not applicable here, however, § 411(a) bars a copyright owner from suing for infringement until "registration . . . has been made." Fourth Estate advances the "application approach" to this provision, arguing that registration occurs when a copyright owner submits a proper application for registration. Wall-Street advocates the "registration approach," urging that registration occurs only when the Copyright Office grants registration of a copyright. The registration approach reflects the only satisfactory reading of § 411(a)'s text. Pp. 302–309.

(1) Read together, § 411(a)'s first two sentences focus on action by the Copyright Office—namely, its registration or refusal to register a copyright claim. If application alone sufficed to "ma[ke]" registration, § 411(a)'s second sentence—which permits a copyright claimant to file suit when the Register has refused her application—would be superfluous. Similarly, § 411(a)'s third sentence—which allows the Register to "become a party to the action with respect to the issue of registrability of the copyright claim"—would be negated if an infringement suit could be filed and resolved before the Register acted on an application. The registration approach reading of § 411(a) is supported by other provisions of the Copyright Act. In particular, § 410 confirms that application is discrete from, and precedes, registration, while § 408(f)'s preregistration option would have little utility if a completed application sufficed to make registration. Pp. 302–304.

(2) Fourth Estate primarily contends that the Copyright Act uses the phrases "make registration" and "registration has been made" to describe submissions by the copyright owner. Fourth Estate therefore insists that § 411(a)'s requirement that "registration . . . has been made in accordance with this title" most likely refers to a copyright owner's compliance with statutory requirements for registration applications. Fourth Estate points to other Copyright Act provisions that appear to use the phrase "make registration" or one of its variants to describe what a copyright claimant does. Fourth Estate acknowledges, however, that determining how the Copyright Act uses the word "registration" in a particular provision requires examining the "specific context" in which the term is used. The "specific context" of § 411(a) permits only one sensible reading: The phrase "registration . . . has been made" refers to the Copyright Office's act granting registration, not to the copyright claimant's request for registration.

Fourth Estate's contrary reading stems in part from its misapprehension of the significance of certain 1976 revisions to the Copyright Act. But in enacting § 411(a), Congress both reaffirmed the general rule that registration must precede an infringement suit and added an exception in that provision's second sentence to cover instances in which registra-

tion is refused. That exception would have no work to do if Congress intended the 1976 revisions to clarify that a copyright claimant may sue immediately upon applying for registration. Noteworthy, too, in years following the 1976 revisions, Congress resisted efforts to eliminate § 411(a), which contains the registration requirement.

Fourth Estate also argues that, because "registration is not a condition of copyright protection," § 408(a), § 411(a) should not bar a copyright claimant from enforcing that protection in court once she has applied for registration. But the Copyright Act safeguards copyright owners by vesting them with exclusive rights upon creation of their works and prohibiting infringement from that point forward. To recover for such infringement, copyright owners must simply apply for registration and await the Register's decision. Further, Congress has authorized preregistration infringement suits with respect to works vulnerable to predistribution infringement, and Fourth Estate's fear that a copyright owner might lose the ability to enforce her rights entirely is overstated. True, registration processing times have increased from one to two weeks in 1956 to many months today. Delays, in large part, are the result of Copyright Office staffing and budgetary shortages that Congress can alleviate, but courts cannot cure. Unfortunate as the current administrative lag may be, that factor does not allow this Court to revise § 411(a)'s congressionally composed text. Pp. 304–309.

856 F. 3d 1338, affirmed.

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

Aaron M. Panner argued the cause for petitioner. With him on the briefs were *Gregory G. Rapawy*, *Joel B. Rothman*, and *Jerold I. Schneider*.

Peter K. Stris argued the cause for respondents. With him on the brief were *Brendan S. Maher*, *Elizabeth Brannen*, *Rachana A. Pathak*, *Douglas D. Geyser*, and *Victor O'Connell*.

Jonathan Y. Ellis argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Francisco*, *Assistant Attorney General Hunt*, *Deputy Solicitor General Stewart*, *Mark R. Freeman*, and *Regan A. Smith*.*

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*Briefs of *amici curiae* urging reversal were filed for the American Bar Association by *Robert M. Carlson*, *Dale M. Cendali*, and *Joshua L. Simmons*; for Authors Guild, Inc., et al. by *Eleanor M. Lackman* and

JUSTICE GINSBURG delivered the opinion of the Court.

Impelling prompt registration of copyright claims, 17 U. S. C. § 411(a) states that "no civil action for infringement of the copyright in any United States work shall be instituted until . . . registration of the copyright claim has been made in accordance with this title." The question this case presents: Has "registration . . . been made in accordance with [Title 17]" as soon as the claimant delivers the required application, copies of the work, and fee to the Copyright Office; or has "registration . . . been made" only after the Copyright Office reviews and registers the copyright? We hold, in accord with the United States Court of Appeals for the Eleventh Circuit, that registration occurs, and a copyright claimant may commence an infringement suit, when the Copyright Office registers a copyright. Upon registration of the copyright, however, a copyright owner can recover for infringement that occurred both before and after registration.

Petitioner Fourth Estate Public Benefit Corporation (Fourth Estate) is a news organization producing online journalism. Fourth Estate licensed journalism works to respondent Wall-Street.com, LLC (Wall-Street), a news website. The license agreement required Wall-Street to remove from its website all content produced by Fourth Estate before canceling the agreement. Wall-Street canceled, but continued to display articles produced by Fourth Estate. Fourth Estate sued Wall-Street and its owner, Jerrold Burden, for copyright infringement. The complaint alleged that

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Cheryl L. Davis; for the Copyright Alliance by *J. Matthew Williams* and *Eric J. Schwartz*; for the International Trademark Association by *Lawrence K. Nodine*, *Noel M. Cook*, and *Jason P. Bloom*; and for the National Music Publishers' Association et al. by *Beth S. Brinkmann*, *Kevin F. King*, and *Jacqueline C. Charlesworth*.

Briefs of *amici curiae* urging affirmance were filed for Authors and Educators by *Peter Jaszi* and *Hillary Brill*; for Public Knowledge et al. by *Charles Duan* and *Harold Feld*; and for Washington Legal Foundation by *Cory L. Andrews* and *Corbin K. Barthold*.

Fourth Estate had filed "applications to register [the] articles [licensed to Wall-Street] with the Register of Copyrights." App. to Pet. for Cert. 18a.[1] Because the Register had not yet acted on Fourth Estate's applications,[2] the District Court, on Wall-Street and Burden's motion, dismissed the complaint, and the Eleventh Circuit affirmed. 856 F. 3d 1338 (2017). Thereafter, the Register of Copyrights refused registration of the articles Wall-Street had allegedly infringed.[3]

We granted Fourth Estate's petition for certiorari to resolve a division among U. S. Courts of Appeals on when registration occurs in accordance with § 411(a). 585 U. S. 1029 (2018). Compare, *e. g.*, 856 F. 3d, at 1341 (case below) (registration has been made under § 411(a) when the Register of Copyrights registers a copyright), with, *e. g.*, *Cosmetic Ideas, Inc.* v. *IAC/InteractiveCorp*, 606 F. 3d 612, 621 (CA9 2010) (registration has been made under § 411(a) when the copyright claimant's "complete application" for registration is received by the Copyright Office).

I

Under the Copyright Act of 1976, as amended, copyright protection attaches to "original works of authorship"—prominent among them, literary, musical, and dramatic works—"fixed in any tangible medium of expression." 17 U. S. C. § 102(a). An author gains "exclusive rights" in her

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[1] The Register of Copyrights is the "director of the Copyright Office of the Library of Congress" and is appointed by the Librarian of Congress. 17 U. S. C. § 701(a). The Copyright Act delegates to the Register "[a]ll administrative functions and duties under [Title 17]." *Ibid.*

[2] Consideration of Fourth Estate's filings was initially delayed because the check Fourth Estate sent in payment of the filing fee was rejected by Fourth Estate's bank as uncollectible. App. to Brief for United States as *Amicus Curiae* 1a.

[3] The merits of the Copyright Office's decision refusing registration are not at issue in this Court.

work immediately upon the work's creation, including rights of reproduction, distribution, and display. See § 106; *Eldred* v. *Ashcroft*, 537 U. S. 186, 195 (2003) ("[F]ederal copyright protection . . . run[s] from the work's creation."). The Copyright Act entitles a copyright owner to institute a civil action for infringement of those exclusive rights. § 501(b).

Before pursuing an infringement claim in court, however, a copyright claimant generally must comply with § 411(a)'s requirement that "registration of the copyright claim has been made." § 411(a). Therefore, although an owner's rights exist apart from registration, see § 408(a), registration is akin to an administrative exhaustion requirement that the owner must satisfy before suing to enforce ownership rights, see Tr. of Oral Arg. 35.

In limited circumstances, copyright owners may file an infringement suit before undertaking registration. If a copyright owner is preparing to distribute a work of a type vulnerable to predistribution infringement—notably, a movie or musical composition—the owner may apply for preregistration. § 408(f)(2); 37 CFR § 202.16(b)(1) (2018). The Copyright Office will "conduct a limited review" of the application and notify the claimant "[u]pon completion of the preregistration." § 202.16(c)(7), (c)(10). Once "preregistration . . . has been made," the copyright claimant may institute a suit for infringement. 17 U. S. C. § 411(a). Preregistration, however, serves only as "a preliminary step prior to a full registration." Preregistration of Certain Unpublished Copyright Claims, 70 Fed. Reg. 42286 (2005). An infringement suit brought in reliance on preregistration risks dismissal unless the copyright owner applies for registration promptly after the preregistered work's publication or infringement. § 408(f)(3)–(4). A copyright owner may also sue for infringement of a live broadcast before "registration . . . has been made," but faces dismissal of her suit if she fails to "make registration for the work" within three months of its first transmission. § 411(c). Even in these exceptional scenar-

ios, then, the copyright owner must eventually pursue registration in order to maintain a suit for infringement.

II

All parties agree that, outside of statutory exceptions not applicable here, § 411(a) bars a copyright owner from suing for infringement until "registration . . . has been made." Fourth Estate and Wall-Street dispute, however, whether "registration . . . has been made" under § 411(a) when a copyright owner submits the application, materials, and fee required for registration, or only when the Copyright Office grants registration. Fourth Estate advances the former view—the "application approach"—while Wall-Street urges the latter reading—the "registration approach." The registration approach, we conclude, reflects the only satisfactory reading of § 411(a)'s text. We therefore reject Fourth Estate's application approach.

A

Under § 411(a), "registration . . . has been made," and a copyright owner may sue for infringement, when the Copyright Office registers a copyright.[4] Section 411(a)'s first sentence provides that no civil infringement action "shall be instituted until preregistration or registration of the copyright claim has been made." The section's next sentence sets out an exception to this rule: When the required "deposit, application, and fee . . . have been delivered to the Copyright

[4] Section 411(a) provides, in principal part: "[N]o civil action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made in accordance with this title. In any case, however, where the deposit, application, and fee required for registration have been delivered to the Copyright Office in proper form and registration has been refused, the applicant is entitled to institute a civil action for infringement if notice thereof, with a copy of the complaint, is served on the Register of Copyrights. The Register may, at his or her option, become a party to the action with respect to the issue of registrability of the copyright claim . . . ."

Office in proper form and registration has been refused," the claimant "[may] institute a civil action, if notice thereof . . . is served on the Register." Read together, § 411(a)'s opening sentences focus not on the claimant's act of applying for registration, but on action by the Copyright Office—namely, its registration or refusal to register a copyright claim.

If application alone sufficed to "ma[ke]" registration, § 411(a)'s second sentence—allowing suit upon refusal of registration—would be superfluous. What utility would that allowance have if a copyright claimant could sue for infringement immediately after applying for registration without awaiting the Register's decision on her application? Proponents of the application approach urge that § 411(a)'s second sentence serves merely to require a copyright claimant to serve "notice [of an infringement suit] . . . on the Register." See Brief for Petitioner 29–32. This reading, however, requires the implausible assumption that Congress gave "registration" different meanings in consecutive, related sentences within a single statutory provision. In § 411(a)'s first sentence, "registration" would mean the claimant's act of filing an application, while in the section's second sentence, "registration" would entail the Register's review of an application. We resist this improbable construction. See, *e. g.*, *Mid-Con Freight Systems, Inc.* v. *Michigan Pub. Serv. Comm'n*, 545 U. S. 440, 448 (2005) (declining to read "the same words" in consecutive sentences as "refer[ring] to something totally different").

The third and final sentence of § 411(a) further persuades us that the provision requires action by the Register before a copyright claimant may sue for infringement. The sentence allows the Register to "become a party to the action with respect to the issue of registrability of the copyright claim." This allowance would be negated, and the court conducting an infringement suit would lack the benefit of the Register's assessment, if an infringement suit could be filed and resolved before the Register acted on an application.

Other provisions of the Copyright Act support our reading of "registration," as used in § 411(a), to mean action by the Register. Section 410 states that, "after examination," if the Register determines that "the material deposited constitutes copyrightable subject matter" and "other legal and formal requirements . . . [are] met, the Register shall register the claim and issue to the applicant a certificate of registration." § 410(a). But if the Register determines that the deposited material "does not constitute copyrightable subject matter or that the claim is invalid for any other reason, the Register shall refuse registration." § 410(b). Section 410 thus confirms that application is discrete from, and precedes, registration. Section 410(d), furthermore, provides that if the Copyright Office registers a claim, or if a court later determines that a refused claim was registrable, the "effective date of [the work's] copyright registration is the day on which" the copyright owner made a proper submission to the Copyright Office. There would be no need thus to specify the "effective date of a copyright registration" if submission of the required materials qualified as "registration."

Section 408(f)'s preregistration option, too, would have little utility if a completed application constituted registration. Preregistration, as noted *supra*, at 301–302, allows the author of a work vulnerable to predistribution infringement to enforce her exclusive rights in court before obtaining registration or refusal thereof. A copyright owner who fears prepublication infringement would have no reason to apply for preregistration, however, if she could instead simply complete an application for registration and immediately commence an infringement suit. Cf. *TRW Inc.* v. *Andrews*, 534 U. S. 19, 29 (2001) (rejecting an interpretation that "would in practical effect render [a provision] superfluous in all but the most unusual circumstances").

B

Challenging the Eleventh Circuit's judgment, Fourth Estate primarily contends that the Copyright Act uses "the

phrase 'make registration' and its passive-voice counterpart 'registration has been made'" to describe submissions by the copyright owner, rather than Copyright Office responses to those submissions. Brief for Petitioner 21. Section 411(a)'s requirement that "registration . . . has been made in accordance with this title," Fourth Estate insists, most likely refers to a copyright owner's compliance with the statutory specifications for registration applications. In support, Fourth Estate points to Copyright Act provisions that appear to use the phrase "make registration" or one of its variants to describe what a copyright claimant does. See *id.*, at 22–26 (citing 17 U. S. C. §§ 110, 205(c), 408(c)(3), 411(c), 412(2)). Furthermore, Fourth Estate urges that its reading reflects the reality that, eventually, the vast majority of applications are granted. See Brief for Petitioner 41.

Fourth Estate acknowledges, however, that the Copyright Act sometimes uses "registration" to refer to activity by the Copyright Office, not activity undertaken by a copyright claimant. See *id.*, at 27–28 (citing 17 U. S. C. § 708(a)). Fourth Estate thus agrees that, to determine how the statute uses the word "registration" in a particular prescription, one must "look to the specific context" in which the term is used. Brief for Petitioner 29. As explained *supra*, at 302–304, the "specific context" of § 411(a) permits only one sensible reading: The phrase "registration . . . has been made" refers to the Copyright Office's act granting registration, not to the copyright claimant's request for registration.

Fourth Estate's contrary reading of § 411(a) stems in part from its misapprehension of the significance of certain 1976 revisions to the Copyright Act. Before that year, § 411(a)'s precursor provided that "[n]o action or proceeding shall be maintained for infringement of copyright in any work until the provisions of this title with respect to the deposit of copies and registration of such work shall have been complied with." 17 U. S. C. § 13 (1970 ed.). Fourth Estate urges that this provision posed the very question we resolve today—

namely, whether a claimant's application alone effects registration. The Second Circuit addressed that question, Fourth Estate observes, in *Vacheron & Constantin-Le Coultre Watches, Inc.* v. *Benrus Watch Co.*, 260 F. 2d 637 (1958). Brief for Petitioner 32–34. In that case, in an opinion by Judge Learned Hand, the court held that a copyright owner who completed an application could not sue for infringement immediately upon the Copyright Office's refusal to register. *Vacheron*, 260 F. 3d, at 640–641. Instead, the owner first had to obtain a registration certificate by bringing a mandamus action against the Register. The Second Circuit dissenter would have treated the owner's application as sufficient to permit commencement of an action for infringement. *Id.*, at 645.

Fourth Estate sees Congress' 1976 revision of the registration requirement as an endorsement of the *Vacheron* dissenter's position. Brief for Petitioner 34–36. We disagree. The changes made in 1976 instead indicate Congress' agreement with Judge Hand that it is the Register's action that triggers a copyright owner's entitlement to sue. In enacting 17 U. S. C. § 411(a), Congress both reaffirmed the general rule that registration must precede an infringement suit, and added an exception in that provision's second sentence to cover instances in which registration is refused. See H. R. Rep. No. 94–1476, p. 157 (1976). That exception would have no work to do if, as Fourth Estate urges, Congress intended the 1976 revisions to clarify that a copyright claimant may sue immediately upon applying for registration. A copyright claimant would need no statutory authorization to sue after refusal of her application if she could institute suit as soon as she has filed the application.

Noteworthy, too, in years following the 1976 revisions, Congress resisted efforts to eliminate § 411(a) and the registration requirement embedded in it. In 1988, Congress removed foreign works from § 411(a)'s dominion in order to comply with the Berne Convention for the Protection of Lit-

erary and Artistic Works' bar on copyright formalities for such works. See § 9(b)(1), 102 Stat. 2859. Despite proposals to repeal § 411(a)'s registration requirement entirely, however, see S. Rep. No. 100–352, p. 36 (1988), Congress maintained the requirement for domestic works, see § 411(a). Subsequently, in 1993, Congress considered, but declined to adopt, a proposal to allow suit immediately upon submission of a registration application. See H. R. Rep. No. 103–338, p. 4 (1993). And in 2005, Congress made a preregistration option available for works vulnerable to predistribution infringement. See Artists' Rights and Theft Prevention Act of 2005, § 104, 119 Stat. 221. See also *supra*, at 301–302. Congress chose that course in face of calls to eliminate registration in cases of predistribution infringement. 70 Fed. Reg. 42286. Time and again, then, Congress has maintained registration as prerequisite to suit, and rejected proposals that would have eliminated registration or tied it to the copyright claimant's application instead of the Register's action.[5]

Fourth Estate additionally argues that, as "registration is not a condition of copyright protection," 17 U. S. C. § 408(a), § 411(a) should not be read to bar a copyright claimant from enforcing that protection in court once she has submitted a proper application for registration. Brief for Petitioner 37. But as explained *supra*, at 300–301, the Copyright Act safeguards copyright owners, irrespective of registration, by vesting them with exclusive rights upon creation of their works and prohibiting infringement from that point forward. If infringement occurs before a copyright owner applies for reg-

[5] Fourth Estate asserts that, if a copyright owner encounters a lengthy delay in the Copyright Office, she may be forced to file a mandamus action to compel the Register to rule on her application, the very problem exposed in *Vacheron & Constantin-Le Coultre Watches, Inc.* v. *Benrus Watch Co.*, 260 F. 2d 637 (CA2 1958), see *supra*, at 306. But Congress' answer to *Vacheron*, codified in § 411(a)'s second sentence, was to permit an infringement suit upon refusal of registration, not to eliminate Copyright Office action as the trigger for an infringement suit.

istration, that owner may eventually recover damages for the past infringement, as well as the infringer's profits. § 504. She must simply apply for registration and receive the Copyright Office's decision on her application before instituting suit. Once the Register grants or refuses registration, the copyright owner may also seek an injunction barring the infringer from continued violation of her exclusive rights and an order requiring the infringer to destroy infringing materials. §§ 502, 503(b).

Fourth Estate maintains, however, that if infringement occurs while the Copyright Office is reviewing a registration application, the registration approach will deprive the owner of her rights during the waiting period. Brief for Petitioner 41. See also 1 P. Goldstein, Copyright § 3.15, p. 3:154.2 (3d ed. 2018 Supp.) (finding application approach "the better rule"); 2 M. Nimmer & D. Nimmer, Copyright § 7.16[B][3][a], [b][ii] (2018) (infringement suit is conditioned on application, while prima facie presumption of validity depends on certificate of registration). The Copyright Act's explicit carveouts from § 411(a)'s general registration rule, however, show that Congress adverted to this concern. In the preregistration option, § 408(f), Congress provided that owners of works especially susceptible to prepublication infringement should be allowed to institute suit before the Register has granted or refused registration. See § 411(a). Congress made the same determination as to live broadcasts. § 411(c); see *supra*, at 301–302.[6] As to all other works, however, § 411(a)'s gen-

[6] Further, in addition to the Act's provisions for preregistration suit, the Copyright Office allows copyright claimants to seek expedited processing of a claim for an additional $800 fee. See U. S. Copyright Office, Special Handling: Circular No. 10, pp. 1–2 (2017). The Copyright Office grants requests for special handling in situations involving, *inter alia*, "[p]ending or prospective litigation," and "make[s] every attempt to examine the application . . . within five working days." Compendium of U. S. Copyright Practices § 623.2, 623.4 (3d ed. 2017).

eral rule requires owners to await action by the Register before filing suit for infringement.

Fourth Estate raises the specter that a copyright owner may lose the ability to enforce her rights if the Copyright Act's three-year statute of limitations runs out before the Copyright Office acts on her application for registration. Brief for Petitioner 41. Fourth Estate's fear is overstated, as the average processing time for registration applications is currently seven months, leaving ample time to sue after the Register's decision, even for infringement that began before submission of an application. See U. S. Copyright Office, Registration Processing Times (Oct. 2, 2018) (Registration Processing Times), https://www.copyright.gov/registration/docs/processing-times-faqs.pdf (as last visited Mar. 1, 2019).

True, the statutory scheme has not worked as Congress likely envisioned. Registration processing times have increased from one or two weeks in 1956 to many months today. See GAO, Improving Productivity in Copyright Registration 3 (GAO–AFMD–83–13, 1982); Registration Processing Times. Delays in Copyright Office processing of applications, it appears, are attributable, in large measure, to staffing and budgetary shortages that Congress can alleviate, but courts cannot cure. See 5 W. Patry, Copyright § 17:83 (2019). Unfortunate as the current administrative lag may be, that factor does not allow us to revise § 411(a)'s congressionally composed text.

* * *

For the reasons stated, we conclude that "registration . . . has been made" within the meaning of 17 U. S. C. § 411(a) not when an application for registration is filed, but when the Register has registered a copyright after examining a properly filed application. The judgment of the Court of Appeals for the Eleventh Circuit is accordingly

Affirmed.

Syllabus

BNSF RAILWAY CO. *v.* LOOS

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

No. 17–1042. Argued November 6, 2018—Decided March 4, 2019

Respondent Michael Loos sued petitioner BNSF Railway Company under the Federal Employers' Liability Act (FELA) for injuries he received while working at BNSF's railyard. A jury awarded him $126,212.78, ascribing $30,000 of that amount to wages lost during the time Loos was unable to work. BNSF asserted that the lost wages constituted "compensation" taxable under the Railroad Retirement Tax Act (RRTA) and asked to withhold $3,765 of the $30,000 to cover Loos's share of the RRTA taxes. The District Court and the Eighth Circuit rejected the requested offset, holding that an award of damages compensating an injured railroad worker for lost wages is not taxable under the RRTA.

Held: A railroad's payment to an employee for working time lost due to an on-the-job injury is taxable "compensation" under the RRTA. Pp. 313–325.

(a) In 1937, Congress created a self-sustaining retirement benefits system for railroad workers. The RRTA funds the program by imposing a payroll tax on both railroads and their employees, referring to the railroad's contribution as an "excise" tax, 26 U. S. C. § 3221, and the employee's share as an "income" tax, § 3201. The Railroad Retirement Act (RRA) entitles railroad workers to various benefits. Taxes under the RRTA and benefits under the RRA are measured by the employee's "compensation," which both statutes define as "any form of money remuneration paid to an individual for services rendered as an employee." § 3231(e)(1); 45 U. S. C. § 231(h)(1).

The statutory foundation of the railroad retirement system mirrors that of the Social Security system. The Federal Insurance Contributions Act (FICA) taxes employers and employees to fund benefits distributed pursuant to the Social Security Act (SSA). Tax and benefit amounts are determined by the worker's "wages," the Social Security equivalent to "compensation." Both the FICA and the SSA define "wages" employing language resembling the RRTA and the RRA definitions of "compensation." The term "wages" means "all remuneration" for "any service, of whatever nature, performed . . . by an employee." 26 U. S. C. § 3121(a)–(b) (FICA); see 42 U. S. C. §§ 409(a), 410(a) (SSA). Pp. 313–315.

(b) Given the textual similarity between the definitions of "compensation" and "wages," the decisions on the meaning of "wages" in *Social*

Syllabus

Security Bd. v. *Nierotko*, 327 U. S. 358, and *United States* v. *Quality Stores, Inc.*, 572 U. S. 141, inform this Court's comprehension of the RRTA term "compensation." In *Nierotko*, the Court held that "wages" embraced pay for active service as well as pay received for periods of absence from active service, 327 U. S., at 366, and concluded that backpay for time lost due to "the employer's wrong" counted as "wages," *id.*, at 364. In *Quality Stores*, the Court held that severance payments qualified as "wages" taxable under the FICA. 572 U. S., at 146–147. In line with these decisions, the Court holds that "compensation" under the RRTA encompasses not simply pay for active service but also pay for periods of absence from active service—provided that the remuneration in question stems from the "employer-employee relationship." *Nierotko*, 327 U. S., at 366.

Damages awarded under the FELA for lost wages fit comfortably within this definition. See *BNSF R. Co.* v. *Tyrrell*, 581 U. S. 402, 404. If a railroad negligently fails to maintain a safe railyard and a worker is injured as a result, the FELA requires the railroad to compensate the injured worker for working time lost due to the employer's wrongdoing. FELA damages for lost wages, like backpay, are "compensation" taxable under the RRTA. Pp. 315–317.

(c) The Eighth Circuit construed "compensation" for RRTA purposes to mean only pay for active service, but this reading cannot be reconciled with *Nierotko* and *Quality Stores*. In addition, the RRTA's pinpointed exclusions for certain types of payments for time lost signal that nonexcluded pay for time lost remains RRTA-taxable "compensation." Pp. 317–321.

(d) Loos contends that "compensation" does not include payments made to compensate for an injury. This reading, however, is at odds with *Nierotko*, which held that "wages" included backpay awarded to redress "the loss of wages" occasioned by "the employer's wrong." 327 U. S., at 364.

Loos also argues that the exclusion of personal injury damages from "gross income" for federal income tax purposes, see 26 U. S. C. § 104(a)(2), should carry over to the RRTA's tax on the "income" of railroad workers. The RRTA, however, uses the term "income" merely to distinguish the "income" tax on an employee from the matching "excise" tax on a railroad. Further, Congress specified not "gross income" but employee "compensation" as the tax base for RRTA taxes. Congress did not exclude personal injury damages from "compensation." Pp. 321–324.

865 F. 3d 1106, reversed and remanded.

Ginsburg, J., delivered the opinion of the Court, in which Roberts, C. J., and Breyer, Alito, Sotomayor, Kagan, and Kavanaugh, JJ.,

joined. GORSUCH, J., filed a dissenting opinion, in which THOMAS, J., joined, *post*, p. 325.

Lisa S. Blatt argued the cause for petitioner. With her on the briefs were *Charles G. Cole*, *Alice E. Loughran*, *William Brasher*, *Elisabeth S. Theodore*, and *R. Reeves Anderson*.

Rachel P. Kovner argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were *Solicitor General Francisco*, *Principal Deputy Assistant Attorney General Zuckerman*, *Deputy Solicitor General Stewart*, *Gilbert S. Rothenberg*, *Francesca Ugolini*, and *Marion E. M. Erickson*.

David C. Frederick argued the cause for respondent. With him on the brief were *Brendan J. Crimmins*, *David M. Burke*, *Michael A. Wolff*, *Jerome J. Schlichter*, *Nelson G. Wolff*, and *Michael F. Tello*.*

JUSTICE GINSBURG delivered the opinion of the Court.

Respondent Michael Loos was injured while working at petitioner BNSF Railway Company's railyard. Loos sued BNSF under the Federal Employers' Liability Act (FELA), 35 Stat. 65, as amended, 45 U. S. C. § 51 *et seq.*, and gained a $126,212.78 jury verdict. Of that amount the jury ascribed $30,000 to wages lost during the time Loos was unable to work. BNSF moved for an offset against the judgment. The lost wages awarded Loos, BNSF asserted, constituted "compensation" taxable under the Railroad Retirement Tax Act (RRTA), 26 U. S. C. § 3201 *et seq.* Therefore, BNSF urged, the railway was required to withhold a portion of the $30,000 attributable to lost wages to cover Loos's share of RRTA taxes, which came to $3,765. The District Court and the Court of Appeals for the Eighth Circuit rejected the re-

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**Daniel Saphire* filed a brief for the Association of American Railroads as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the American Association for Justice by *Jeffrey R. White* and *Elise Sanguinetti*; and for SMART et al. by *Robert P. Marcus*.

quested offset, holding that an award of damages compensating an injured railroad worker for lost wages is not taxable under the RRTA.

The question presented: Is a railroad's payment to an employee for working time lost due to an on-the-job injury taxable "compensation" under the RRTA, 26 U. S. C. § 3231(e)(1)? We granted review to resolve a division of opinion on the answer to that question. 584 U. S. 976 (2018). Compare *Hance* v. *Norfolk S. R. Co.*, 571 F. 3d 511, 523 (CA6 2009) ("compensation" includes pay for time lost); *Phillips* v. *Chicago Central & Pacific R. Co.*, 853 N. W. 2d 636, 650–651 (Iowa 2014) (agency reasonably interpreted "compensation" as including pay for time lost); *Heckman* v. *Burlington N. Santa Fe R. Co.*, 286 Neb. 453, 463, 837 N. W. 2d 532, 540 (2013) ("compensation" includes pay for time lost), with 865 F. 3d 1106, 1117–1118 (CA8 2017) (case below) ("compensation" does not include pay for time lost); *Mickey* v. *BNSF R. Co.*, 437 S. W. 3d 207, 218 (Mo. 2014) ("compensation" does not include FELA damages for lost wages). We now hold that an award compensating for lost wages is subject to taxation under the RRTA.

I

In 1937, Congress created a self-sustaining retirement benefits system for railroad workers. The system provides generous pensions as well as benefits "correspon[ding] . . . to those an employee would expect to receive were he covered by the Social Security Act." *Hisquierdo* v. *Hisquierdo*, 439 U. S. 572, 575 (1979).

Two statutes operate in concert to ensure that retired railroad workers receive their allotted pensions and benefits. The first, the RRTA, funds the program by imposing a payroll tax on both railroads and their employees. The RRTA refers to the railroad's contribution as an "excise" tax, 26 U. S. C. § 3221, and describes the employee's share as an "income" tax, § 3201. Congress assigned to the Internal Revenue Service (IRS) responsibility for collecting both taxes.

§§ 3501, 7801.[1] The second statute, the Railroad Retirement Act (RRA), 50 Stat. 307, as restated and amended, 45 U. S. C. § 231 *et seq.*, entitles railroad workers to various benefits and prescribes eligibility requirements. The RRA is administered by the Railroad Retirement Board. See § 231f(a).

Taxes under the RRTA and benefits under the RRA are measured by the employee's "compensation." 26 U. S. C. §§ 3201, 3221; 45 U. S. C. § 231b. The RRTA and RRA separately define "compensation," but both statutes state that the term means "any form of money remuneration paid to an individual for services rendered as an employee." 26 U. S. C. § 3231(e)(1); 45 U. S. C. § 231(h)(1). This language has remained basically unchanged since the RRTA's enactment in 1937. See Carriers Taxing Act of 1937 (1937 RRTA), § 1(e), 50 Stat. 436 (defining "compensation" as "any form of money remuneration earned by an individual for services rendered as an employee"). The RRTA excludes from "compensation" certain types of sick pay and disability pay. See 26 U. S. C. § 3231(e)(1), (4)(A).

The IRS's reading of the word "compensation" as it appears in the RRTA has remained constant. One year after the RRTA's adoption, the IRS stated that "compensation" is not limited to pay for active service but reaches, as well, pay for periods of absence. See 26 CFR § 410.5 (1938). This understanding has governed for more than eight decades. As restated in the current IRS regulations, "[t]he term *compensation* is not confined to amounts paid for active service, but includes amounts paid for an identifiable period during which the employee is absent from the active service of the employer." § 31.3231(e)–1(a)(3) (2017). In 1994, the IRS added, specifically, that "compensation" includes "pay for time lost." § 31.3231(e)–1(a)(4); see 59 Fed. Reg. 66188 (1994).

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[1] The railroad remits both taxes to the IRS. As to the income tax, the railroad deducts the amount owed by the employee from her earnings and then forwards that amount to the IRS. See Tr. of Oral Arg. 22–23. See also 26 U. S. C. § 3402(a)(1) (employers must "deduct and withhold" income taxes from earnings).

Congress created both the railroad retirement system and the Social Security system during the Great Depression primarily to ensure the financial security of members of the workforce when they reach old age. See *Wisconsin Central Ltd.* v. *United States*, 585 U. S. 274, 276 (2018); *Helvering* v. *Davis*, 301 U. S. 619, 641 (1937). Given the similarities in timing and purpose of the two programs, it is hardly surprising that their statutory foundations mirror each other. Regarding Social Security, the Federal Insurance Contributions Act (FICA), 26 U. S. C. § 3101 *et seq.*, taxes employers and employees to fund benefits, which are distributed pursuant to the Social Security Act (SSA), 49 Stat. 620, as amended, 42 U. S. C. § 301 *et seq.* Tax and benefit amounts are determined by the worker's "wages," the Social Security equivalent to "compensation." See *Davis*, 301 U. S., at 635–636. Both the FICA and the SSA define "wages" employing language resembling the RRTA and the RRA definitions of "compensation." "Wages" under the FICA and the SSA mean "all remuneration for employment," and "employment," in turn, means "any service, of whatever nature, performed . . . by an employee." 26 U. S. C. § 3121(a)–(b) (FICA); see 42 U. S. C. §§ 409(a), 410(a) (SSA). Reading these prescriptions together, the term "wages" encompasses "all remuneration" for "any service, of whatever nature, performed . . . by an employee." *Ibid.*

II

A

To determine whether RRTA-qualifying "compensation" includes an award of damages for lost wages, we begin with the statutory text.[2] The RRTA defines "compensation" as

[2] Before turning to the language of the RRTA, the dissent endeavors to unearth the reason why BNSF has pursued this case. The railroad's "gambit," the dissent surmises, is to increase pressure on injured workers to settle their claims. *Post*, at 327. Contrast with the dissent's conjecture, BNSF's entirely plausible account of a railroad's stake in this dispute. Because the RRA credits lost wages toward an employee's benefits,

"remuneration paid to an individual for services rendered as an employee." 26 U. S. C. § 3231(e)(1). This definition, as just noted, is materially indistinguishable from the FICA's definition of "wages" to include "remuneration" for "any service, of whatever nature, performed . . . by an employee." § 3121.

Given the textual similarity between the definitions of "compensation" for railroad retirement purposes and "wages" for Social Security purposes, our decisions on the meaning of "wages" in *Social Security Bd.* v. *Nierotko*, 327 U. S. 358 (1946), and *United States* v. *Quality Stores, Inc.*, 572 U. S. 141 (2014), inform our comprehension of the RRTA term "compensation." In *Nierotko*, the National Labor Relations Board found that an employee had been "wrongfully discharged for union activity" and awarded him backpay. 327 U. S., at 359. The Social Security Board refused to credit the backpay award in calculating the employee's benefits. *Id.*, at 365–366. In the Board's view, "wages" covered only pay for active service. *Ibid.* We disagreed. Emphasizing that the phrase "any service . . . performed" denotes "breadth of coverage," we held that "wages" means remuneration for "the entire employer-employee relationship"; in other words, "wages" embraced pay for active service plus pay received for periods of absence from active service. *Id.*, at 366. Backpay, we reasoned, counts as "wages" because it compensates for "the loss of wages which the employee suffered from the employer's wrong." *Id.*, at 364.

In *Quality Stores*, we again trained on the meaning of "wages," reiterating that "Congress chose to define wages . . . broadly." 572 U. S., at 146 (internal quotation marks omitted). Guided by *Nierotko*, *Quality Stores* held that severance payments qualified as "wages" taxable under the FICA. "[C]ommon sense," we observed, "dictates that em-

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see 45 U. S. C. § 231(h)(1), BNSF posits that immunizing those payments from RRTA taxes would expose the system to "a long-term risk of insolvency." Tr. of Oral Arg. 4; see Reply Brief for Petitioner 14.

ployees receive th[ose] payments 'for employment.'" 572 U. S., at 146. Severance payments, the Court spelled out, "are made to employees only," "are made in consideration for employment," and are calculated "according to the function and seniority of the [terminated] employee." *Id.*, at 146–147.

In line with *Nierotko*, *Quality Stores*, and the IRS's long held construction, we hold that "compensation" under the RRTA encompasses not simply pay for active service but, in addition, pay for periods of absence from active service—provided that the remuneration in question stems from the "employer-employee relationship." *Nierotko*, 327 U. S., at 366.

B

Damages awarded under the FELA for lost wages fit comfortably within this definition. The FELA "makes railroads liable in money damages to their employees for on-the-job injuries." *BNSF R. Co.* v. *Tyrrell*, 581 U. S. 402, 404 (2017); see 45 U. S. C. § 51. If a railroad negligently fails to maintain a safe railyard and a worker is injured as a result, the FELA requires the railroad to compensate the injured worker for, *inter alia*, working time lost due to the employer's wrongdoing. FELA damages for lost wages, then, are functionally equivalent to an award of backpay, which compensates an employee "for a period of time during which" the employee is "wrongfully separated from his job." *Nierotko*, 327 U. S., at 364. Just as *Nierotko* held that backpay falls within the definition of "wages," *ibid.*, we conclude that FELA damages for lost wages qualify as "compensation" and are therefore taxable under the RRTA.

III

A

The Eighth Circuit construed "compensation" for RRTA purposes to mean only pay for "services that an employee actually renders," in other words, pay for active service. Consequently, the court held that "compensation" within the

RRTA's compass did not reach pay for periods of absence. 865 F. 3d, at 1117. In so ruling, the Court of Appeals attempted to distinguish *Nierotko* and *Quality Stores*. The Social Security decisions, the court said, were inapposite because the FICA "taxes payment for 'employment,' " whereas the RRTA "tax[es] payment for 'services.' " 865 F. 3d, at 1117. As noted, however, *supra*, at 314–315, the FICA defines "employment" in language resembling the RRTA in all relevant respects. Compare 26 U. S. C. § 3121(b) (FICA) ("any service, of whatever nature, performed . . . by an employee") with § 3231(e)(1) (RRTA) ("services rendered as an employee"). Construing RRTA "compensation" as less embracive than "wages" covered by the FICA would introduce an unwarranted disparity between terms Congress appeared to regard as equivalents. The reasoning of *Nierotko* and *Quality Stores*, as we see it, resists the Eighth Circuit's swift writeoff.[3]

Nierotko and *Quality Stores* apart, we would in any event conclude that the RRTA term "compensation" covers pay for time lost. Restricting "compensation" to pay for active service, the Court of Appeals relied on statutory history and, in particular, the eventual deletion of two references to pay for time lost contained in early renditions of the RRTA. See also *post*, at 329–330 (presenting the Eighth Circuit's statutory history argument). To understand the Eighth Circuit's position, and why, in our judgment, that position does not withstand scrutiny, some context is in order.

On enactment of the RRTA in 1937, Congress made "compensation" taxable at the time it was earned and provided specific guidance on when pay for time lost should be "deemed earned." Congress instructed: "The term 'com-

[3] The dissent's reduction of *Nierotko*'s significance fares no better. *Nierotko*, the dissent urges, is distinguishable because it involved "a different factual context." *Post*, at 331. But as just explained, *supra*, at 317 and this page, the facts in *Nierotko* resemble those here in all material respects.

pensation' means any form of money remuneration *earned by* an individual for services rendered as an employee . . . , including remuneration paid for time lost as an employee, but [such] remuneration . . . *shall be deemed earned* in the month in which such time is lost." 1937 RRTA, § 1(e), 50 Stat. 436 (emphasis added). In 1946, Congress clarified that the phrase "pa[y] for time lost" meant payment for "an identifiable period of absence from the active service of the employer, including absence on account of personal injury." Act of July 31, 1946 (1946 Act), § 2, 60 Stat. 722.

Thus, originally, the RRTA stated that "compensation" included pay for time lost, and the language added in 1946 presupposed the same. In subsequent amendments, however, Congress removed the references to pay for time lost. First, in 1975, Congress made "compensation" taxable when paid rather than when earned. Congress simultaneously removed the 1937 language that both referred to pay for time lost and specified when such pay should be "deemed earned." So amended, the definitional sentence, in its current form, reads: "The term 'compensation' means any form of money remuneration *paid to* an individual for services rendered as an employee . . . ." Act of Aug. 9, 1975 (1975 Act), § 204, 89 Stat. 466 (emphasis added).

Second, in 1983, Congress shifted the wage base for RRTA taxes from monthly "compensation" to annual "compensation." See Railroad Retirement Solvency Act of 1983 (1983 Act), § 225, 97 Stat. 424–425. Because the "monthly wage bases for railroad retirement taxes [were being] changed to annual amounts," the House Report explained, the RRTA required "[s]everal technical and conforming amendments." H. R. Rep. No. 98–30, pt. 2, p. 29 (1983). In a section of the 1983 Act titled "Technical Amendments," Congress struck the subsection containing, among other provisions, the 1946 Act's clarification of pay for time lost. 1983 Act, § 225, 97 Stat. 424–425. In lieu of the deleted subsection, Congress

inserted detailed instructions concerning the new annual wage base.

As the Court of Appeals and the dissent see it, the 1975 and 1983 deletions show that "compensation" no longer includes pay for time lost. 865 F. 3d, at 1119; see *post*, at 329–330. We are not so sure. The 1975 Act left unaltered the language at issue here, "remuneration . . . for services rendered as an employee." That Act also left intact the 1946 Act's description of pay for time lost. Continuing after the 1975 Act, then, such pay remained RRTA-taxable "compensation." The 1983 Act, as billed by Congress, effected only "[t]echnical [a]mendments" relating to the change from monthly to annual computation of "compensation." Concerning the 1975 and 1983 alterations, the IRS concluded that Congress revealed no "inten[tion] to exclude payments for time lost from compensation." 59 Fed. Reg. 66188 (1994). We credit the IRS reading. It would be passing strange for Congress to restrict substantially what counts as "compensation" in a manner so oblique.

Moreover, the text of the RRTA continues to indicate that "compensation" encompasses pay for time lost. The RRTA excludes from "compensation" a limited subset of payments for time lost, notably certain types of sick pay and disability pay. See 26 U. S. C. § 3231(e)(1), (4). These enumerated exclusions would be entirely superfluous if, as the Court of Appeals held, the RRTA broadly excludes from "compensation" any and all pay received for time lost.

In justification of its confinement of RRTA-taxable receipts to pay for active service, the Court of Appeals also referred to the RRA. The RRA, like the RRTA as enacted in 1937, states that "compensation" "includ[es] remuneration paid for time lost as an employee" and specifies that such pay "shall be deemed earned in the month in which such time is lost." 45 U. S. C. § 231(h)(1). Pointing to the discrepancy between the RRA and the amended RRTA, which no longer contains the above-quoted language, the Court of Appeals

concluded that Congress intended the RRA, but not the RRTA, to include pay for time lost. Accord *post*, at 330. Although "[w]e usually 'presume differences in language . . . convey differences in meaning,'" *Wisconsin Central*, 585 U. S., at 279, Congress' failure to reconcile the RRA and the amended RRTA is inconsequential. As just explained, the RRTA's pinpointed exclusions from RRTA taxation signal that nonexcluded pay for time lost remains RRTA-taxable "compensation."

B

Instead of adopting lockstep the Court of Appeals' interpretation, Loos takes a different approach. In his view, echoed by the dissent, "remuneration . . . for services rendered" means the "package of benefits" an employer pays "to retain the employee." Brief for Respondent 37; *post*, at 327–328. He therefore agrees with BNSF that benefits like sick pay and vacation pay are taxable "compensation." He contends, however, that FELA damages for lost wages are of a different order. They are not part of an employee's "package of benefits," he observes, and therefore should not count as "compensation." Such damages, Loos urges, "compensate for an injury" rather than for services rendered. Brief for Respondent 20; *post*, at 327–328. Loos argues in the alternative that even if voluntary settlements qualify as "compensation," "involuntary payment[s]" in the form of damages do not. Brief for Respondent 33.

Our decision in *Nierotko* undermines Loos's argument that, unlike sick pay and vacation pay, payments "compensat-[ing] for an injury," Brief for Respondent 20, are not taxable under the RRTA. We held in *Nierotko* that an award of backpay compensating an employee for his wrongful discharge ranked as "wages" under the SSA. That was so, we explained, because the backpay there awarded to the employee redressed "the loss of wages" occasioned by "the employer's wrong." 327 U. S., at 364; see *supra*, at 316. Applying that reasoning here, there should be no dispositive

difference between a payment voluntarily made and one required by law.[4]

Nor does *United States* v. *Cleveland Indians Baseball Co.*, 532 U. S. 200 (2001), aid Loos's argument, repeated by the dissent. See *post*, at 331. Indeed, *Cleveland Indians* reasserted *Nierotko*'s holding that "backpay for a time in which the employee was not on the job" counts as pay for services, and therefore ranks as wages. 532 U. S., at 210. *Cleveland Indians* then took up a discrete, "secondary issue" *Nierotko* presented, one not in contention here, *i. e.*, whether for taxation purposes backpay is allocable to the tax period when paid rather than an earlier time-earned period. 532 U. S., at 211, 213–214, 219–220. Moreover, *Quality Stores*, which postdated *Cleveland Indians*, left no doubt that what qualifies under *Nierotko* as "wages" for benefit purposes also qualifies as such for taxation purposes. 572 U. S., at 146–147.

C

Loos presses a final reason why he should not owe RRTA taxes on his lost wages award. Loos argues, and the District Court held, that the RRTA's tax on employees does not apply to personal injury damages. He observes that the RRTA taxes "the *income* of each employee." 26 U. S. C. § 3201(a)–(b) (emphasis added). He then cites a provision of

[4] The dissent, building on Loos's argument, tenders an inapt analogy between passengers and employees. If BNSF were ordered to pay damages for lost wages to an injured passenger, the dissent asserts, one would not say the passenger had been compensated "for services rendered." There is no reason, the dissent concludes, to "reach a different result here simply because the victim of BNSF's negligence happened to be one of its own workers." *Post*, at 329. Under the RRTA, however, this distinction is of course critical. The passenger's damages for lost wages are not taxable under the RRTA, for she has no employment relationship with the railroad. In contrast, FELA damages for lost wages are taxable because they are paid only if the injured person previously "rendered [services] as an employee," 26 U. S. C. § 3231(e)(1), and, indeed, was working for the railroad when the injury occurred, see 45 U. S. C. § 51.

the Internal Revenue Code, 26 U. S. C. § 104(a)(2). This provision exempts "damages . . . received . . . on account of personal physical injuries" from federal income taxation by excluding such damages from "gross income." Loos urges that the exclusion of personal injury damages from "gross income" should carry over to the RRTA's tax on the "income" of railroad workers, § 3201(a)–(b).

The argument is unconvincing. As the Government points out, the District Court, echoed by Loos, conflated "the distinct concepts of 'gross income,' [a prime component of] the tax base on which income tax is collected, and 'compensation,' the separately defined category of payments that are taxable under the RRTA." Brief for United States as *Amicus Curiae* 15. Blending tax bases that Congress kept discrete, the District Court and Loos proffer a scheme in which employees pay no tax on damages compensating for personal injuries; railroads pay the full excise tax on such compensation; and employees receive full credit for the compensation in determining their retirement benefits. That scheme, however, is not plausibly attributable to Congress.

For federal income tax purposes, "gross income" means "all income" "[e]xcept as otherwise provided." 26 U. S. C. § 61; see §§ 1, 63 (imposing a tax on "taxable income," defined as "gross income minus . . . deductions"). Congress provided detailed prescriptions on the scope of "gross income," excluding from its reach numerous items, among them, personal injury damages. See §§ 101–140. Conspicuously absent from the RRTA, however, is any reference to "gross income." As employed in the RRTA, the word "income" merely distinguishes the tax on the employee, an "income . . . tax," § 3201, from the matching tax on the railroad, called an "excise tax." §§ 3201, 3221. See also 1937 RRTA, §§ 2–3 (establishing an "income tax on employees" and an "excise tax on employers"); S. Rep. No. 818, 75th Cong., 1st Sess., 5 (1937) (stating that the RRTA imposes an "income tax on

employees" and an "excise tax on employers"); H. R. Rep. No. 1071, 75th Cong., 1st Sess., 6 (1937) (same).

Congress, we reiterate, specified not "gross income" but employee "compensation" as the tax base for the RRTA's income and excise taxes. §§ 3201, 3221. Congress then excepted certain payments from the calculation of "compensation." See § 3231(e); *supra*, at 320. Congress adopted by cross-reference particular Internal Revenue Code exclusions from "gross income," thereby carving out those specified items from RRTA coverage. See § 3231(e)(5)–(6), (9)–(11). Tellingly, Congress did not adopt for RRTA purposes the exclusion of personal injury damages from federal income taxation set out in § 104(a)(2). We note, furthermore, that if RRTA taxes were based on "income" or "gross income" rather than "compensation," the RRTA tax base would sweep in *nonrailroad* income, including, for example, dividends, interest accruals, even lottery winnings. Shifting from "compensation" to "income" as the RRTA tax base would thus saddle railroad workers with *more* RRTA taxes.

Given the multiple flaws in Loos's last ditch argument, we conclude that § 104(a)(2) does not exempt FELA damages from the RRTA's income and excise taxes.

* * *

In harmony with this Court's decisions in *Nierotko* and *Quality Stores*, we hold that "compensation" for RRTA purposes includes an employer's payments to an employee for active service and for periods of absence from active service. It is immaterial whether the employer chooses to make the payment or is legally required to do so. Either way, the payment is remitted to the recipient because of his status as a service-rendering employee. See 26 U. S. C. § 3231(e)(1); 45 U. S. C. § 231(h)(1).

For the reasons stated, FELA damages for lost wages qualify as RRTA-taxable "compensation." The judgment of the Court of Appeals for the Eighth Circuit is accordingly

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

It is so ordered.

JUSTICE GORSUCH, with whom JUSTICE THOMAS joins, dissenting.

BNSF Railway's negligence caused one of its employees a serious injury. After a trial, a court ordered the company to pay damages. But instead of sending the full amount to the employee, BNSF asserted that it had to divert a portion to the Internal Revenue Service. Why? BNSF said the money represented taxable "compensation" for "services rendered as an employee." 26 U. S. C. § 3231(e)(1). Today, the Court agrees with the company. Respectfully, I do not. When an employee suffers a physical injury due to his employer's negligence and has to sue in court to recover damages, it seems more natural to me to describe the final judgment as compensation for his injury than for services (never) rendered.

The Court does not lay out the facts of the case, but they are relevant to my analysis and straightforward enough. Years ago, Michael Loos was working for BNSF in a train yard when he fell into a hidden drainage grate and injured his knee. He missed work for many months, and upon his return he had a series of absences, many of which he attributed to knee-injury flareups. When the company moved to fire him for allegedly violating its attendance policies, Mr. Loos sued. Among other things, Mr. Loos sought damages for BNSF's negligence in maintaining the train yard. He brought his claim under the Federal Employers' Liability Act (FELA), an analogue to traditional state-law tort suits that makes an interstate railroad "liable in damages to any person suffering injury while he is employed" by the railroad "for such injury . . . resulting in whole or in part from the [railroad's] negligence." 45 U. S. C. § 51. Ultimately, and again much like in any other tort suit, the jury awarded dam-

ages in three categories: $85,000 in pain and suffering, $11,212.78 in medical expenses, and $30,000 in lost wages—the final category representing the amount Mr. Loos was unable to earn because of the injury BNSF's negligence caused.

Then a strange thing happened. BNSF argued that the lost wages portion of Mr. Loos's judgment represented "compensation" to him "for services rendered as an employee" and was thus taxable income under the Railroad Retirement Tax Act (RRTA). 26 U. S. C. § 3201 *et seq.* In much the same way the Social Security Act taxes other citizens' incomes to fund their retirement benefits, the RRTA taxes railroad employees' earnings to pay for their public pensions. And BNSF took the view that, because Mr. Loos owed the IRS taxes on the lost wages portion of his judgment, it had to withhold an appropriate sum and redirect it to the government. The company took this position even though it meant BNSF would owe corresponding excise taxes. See 26 U. S. C. § 3221. It took this position, too, even though no one has identified for us a single case where the IRS has sought to collect RRTA taxes on a FELA judgment in the 80 years the two statutes have coexisted. The company even persisted in its view after, first, the district court and, then, the Eighth Circuit ruled that Mr. Loos's award wasn't subject to RRTA taxes. Even after all that, BNSF went to the trouble of seeking review in this Court to win the right to pay the IRS.

What's the reason for BNSF's tireless campaign? Is the company really moved by a selfless desire to protect a federal program from " 'a long-term risk of insolvency' "? *Ante*, at 315–316, n. 2. Several *amici* offer a more prosaic possibility. Under the rule BNSF seeks and wins today, RRTA taxes will be due on (but only on) the portion of a FELA settlement or judgment designated as lost wages. Taxes will not attach to other amounts attributed to, say, pain and suffering or medical costs. At trial, of course, a plaintiff's damages are what they are, and often juries will attribute a

significant portion of damages to lost wages. But with the help of the asymmetric tax treatment they secure today, railroads like BSNF can now sweeten their settlement offers while offering less money. Forgo trial and accept a lower settlement, they will tell injured workers, and in return we will designate a small fraction (maybe even none) of the payments as taxable lost wages. In this way, the Court's decision today may do precisely nothing to increase the government's tax collections or protect the solvency of any federal program. Instead, it may only mean that employees will pay a tax for going to trial—and railroads will succeed in buying cheaper settlements in the future at the bargain basement price of a few thousand dollars in excise taxes in one case today. See Brief for American Association for Justice as *Amicus Curiae* 34–36; Brief for SMART et al. as *Amici Curiae* 5–7.

Whatever the reason for BNSF's gambit, the problems with it start for me at the first step of the statutory interpretation analysis—with the text of the law itself. The RRTA taxes an employee's "compensation," which it defines as "money remuneration . . . for services rendered as an employee to one or more employers." 26 U. S. C. § 3231(e)(1). A "service" refers to "duty or labor . . . by one person . . . bound to submit his will to the direction and control of [another]." Black's Law Dictionary 1607 (3d ed. 1933). And "remuneration" means "a *quid pro quo*," "recompense" or "reward" for such services. *Id.*, at 1528. So the words "remuneration for services rendered" naturally cover things like an employee's salary or hourly wage. Nor do they stop there, as the Court correctly notes. Rather, and contrary to the court of appeals' view, those words also fairly encompass benefits like sick or disability pay. After all, an employer offers those benefits to attract and keep employees working on its behalf. In that way, these benefits form part of the "*quid pro quo*" (compensation) the employer pays to secure the "duty or labor" (services) the employee renders. Cf.

United States v. *Quality Stores, Inc.*, 572 U. S. 141, 146 (2014).

But damages for negligence are different. No one would describe a dangerous fall or the wrenching of a knee as a "service rendered" to the party who negligently caused the accident. BNSF hardly directed Mr. Loos to fall or offered to pay him for doing so. In fact, BNSF didn't even pay Mr. Loos voluntarily; he had to wrest a judgment from the railroad at the end of a legal battle. So Mr. Loos's FELA judgment seems to me, as it did to every judge in the proceedings below, unconnected to any service Mr. Loos rendered to BNSF. Instead of being "compensation" for "services rendered as an employee," it seems more natural to say that the negligence damages BNSF paid are "compensation" to Mr. Loos for his injury. That's exactly how we usually understand tort damages—as "compensation" for an "injury" caused by "the unlawful act or omission or negligence of another." Black's Law Dictionary 314 (2d ed. 1910). And that's exactly how FELA describes the damages it provides—stating that it renders a railroad "liable" not for services rendered but for any "injury" caused by the defendant's "negligence." 45 U. S. C. § 51; see also *New York Central R. Co.* v. *Winfield*, 244 U. S. 147, 164 (1917) (Brandeis, J., dissenting) (FELA liability is "a penalty for wrong doing," a "remedy" that "mak[es] the wrongdoer indemnify him whom he has wronged").

Of course, BNSF isn't without a reply. Time and again it highlights the fact that the district court measured the lost wages portion of Mr. Loos's award by reference to what he could have earned but for his injury. But if BNSF's negligence had injured a passenger on a train instead of an employee in a train yard, a jury could have measured the passenger's tort damages in exactly the same way, taking account of the wages she could have earned from her own employer but for the railroad's negligence. *Vicksburg & Meridian R. Co.* v. *Putnam*, 118 U. S. 545, 554 (1886). In

those circumstances, I doubt any of us would say the passenger's damages award represented compensation for "services rendered" to her employer rather than compensation for her injury. And I don't see why we would reach a different result here simply because the victim of BNSF's negligence happened to be one of its own workers. Of course, as the Court points out, *ante*, at 322, n. 4, FELA suits may be brought only by railroad employees against their employers. But in cases like ours a FELA suit simply serves in the interstate railroad industry as a federalized substitute for a traditional state negligence tort claim of the sort that could be brought by *anyone* the railroad injured, employee or not. Inescapably, "the basis of liability under [FELA] is and remains negligence." *Wilkerson* v. *McCarthy*, 336 U. S. 53, 69 (1949) (Douglas, J., concurring).

Looking beyond the statute's text to its history only compounds BNSF's problems. To be clear, the statutory history I have in mind here isn't the sort of unenacted legislative history that often is neither truly legislative (having failed to survive bicameralism and presentment) nor truly historical (consisting of advocacy aimed at winning in future litigation what couldn't be won in past statutes). Instead, I mean here the record of *enacted* changes Congress made to the relevant statutory text over time, the sort of textual evidence everyone agrees can sometimes shed light on meaning. See *United States* v. *Wong Kim Ark*, 169 U. S. 649, 653–654 (1898).

The RRTA's statutory history is long and instructive. Beginning in 1937, the statute defined taxable "compensation" to include remuneration "for services rendered," but with the further instruction that this *included* compensation "for time lost." Carriers Taxing Act of 1937, § 1(e), 50 Stat. 436. Courts applying the RRTA's sister statute, the Railroad Retirement Act (RRA), understood this language to capture settlement payments for personal injury claims that would not otherwise qualify as "remuneration . . . for services ren-

dered." See, *e. g.*, *Jacques* v. *Railroad Retirement Bd.*, 736 F. 2d 34, 39–40 (CA2 1984); *Grant* v. *Railroad Retirement Bd.*, 173 F. 2d 385, 386–387 (CA10 1949). Congress itself seemed to agree, explaining in 1946 that remuneration for "time lost" includes payments made "with respect to an . . . absence on account of personal injury." § 3(f), 60 Stat. 725. But then Congress reversed field. In 1975, it removed payments "for time lost" from the RRTA's definition of "compensation." § 204, 89 Stat. 466. And in 1983, Congress overwrote the last remaining reference to payments "for time lost" in a nearby section. § 225, 97 Stat. 424–426. To my mind, Congress's decision to remove the *only* language that could have fairly captured the damages here cannot be easily ignored.

Yet BNSF would have us do exactly that. On its account, the RRTA's discussions about compensation for time lost and personal injuries only ever served to illustrate what has qualified all along as remuneration for "services rendered." So, on its view, when Congress first added and then removed language about time lost and personal injuries, it quite literally wasted its time because none of its additions and subtractions altered the statute's meaning. Put another way, BNSF asks us to read back into the law words (time lost, personal injury) that Congress deliberately removed on the assumption they were never really needed in the first place. As I see it, that is less " 'a construction of a statute [than] an enlargement of it by the court, so that what was omitted, [BNSF] presum[es] by inadvertence, may be included within its scope. To supply omissions [like that] transcends the judicial function.' " *West Virginia Univ. Hospitals, Inc.* v. *Casey*, 499 U. S. 83, 101 (1991) (quoting *Iselin* v. *United States*, 270 U. S. 245, 251 (1926) (Brandeis, J.)).

Looking beyond the text and history of this statute to compare it with others confirms the conclusion. Where the RRTA directs the taxation of railroad employee income to fund retirement benefits, the RRA controls the calculation of

those benefits. And, unlike the RRTA, that statute continues to include "pay for time lost" in the definition of "compensation" it uses to calculate benefits. 45 U. S. C. § 231(h)(1). Normally, when Congress chooses to exclude terms in one statute while introducing or retaining them in another closely related law, we give effect to rather than pass a blind eye over the difference. Nor is there any question that Congress knows exactly how to tax a favorable tort judgment when it wants. See, *e. g.*, 26 U. S. C. § 104(a)(2) (punitive damages are not deductible). Its failure to offer any comparably clear command here should, once more, tell us something.

With so much in the statute's text, history, and surroundings now pointing for Mr. Loos, BNSF is left to lean heavily on case law. The company says we must rule its way primarily because of *Social Security Bd.* v. *Nierotko*, 327 U. S. 358 (1946). But I do not see anything in that case dictating a victory for BNSF. *Nierotko* concerned a different statute, a different legal claim, and a different factual context. There, the plaintiff brought a wrongful termination claim before the National Labor Relations Board, claiming that his employer fired him in retaliation for union activity. The NLRB ordered the employee reinstated to his former job and paid as if he had never left. Under those circumstances, this Court held that for purposes of calculating the plaintiff's Social Security Act benefits, his "wages" should include his backpay award, allocated to the period when he would have been working but for the employer's misconduct. Since then, however, the Court has suggested that at least one of *Nierotko*'s holdings was likely motivated more by a policy concern with protecting the employee's full retirement to Social Security benefits than by a careful reading of the Social Security Act. See *United States* v. *Cleveland Indians Baseball Co.*, 532 U. S. 200, 212–213 (2001); *id.*, at 220–221 (Scalia, J., concurring in judgment). Besides, in this case we're simply not faced with a wrongful termination claim, an

award of backpay, or the interpretation of the Social Security Act—let alone reason to worry that ruling for Mr. Loos would inequitably shortchange an employee. So whatever light *Nierotko* might continue to shed on the question it faced, and whatever superficial similarities one might point to here, that decision simply doesn't dictate an answer to the question whether a tort victim's damages for a physical injury qualify as "compensation for services rendered" under the RRTA.

By this point BNSF is left with only one argument, which it treats as no more than a last resort: *Chevron* deference. In the past, the briefs and oral argument in this case likely would have centered on whether we should defer to the IRS's administrative interpretation of the RRTA. After all, the IRS (at least today) agrees with BNSF's interpretation that "compensation . . . for services rendered" includes damages for personal injuries. And the *Chevron* doctrine, if it retains any force, would seem to allow BNSF to parlay any statutory ambiguity into a colorable argument for judicial deference to the IRS's view, regardless of the Court's best independent understanding of the law. See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). Of course, any *Chevron* analysis here would be complicated by the government's change of heart. For if *Nierotko* is as relevant as BNSF contends, then it must also be relevant that, back when *Nierotko* was decided, the IRS took the view that the term "wages" in the Social Security Act did *not* include backpay awards for wrongful termination. See 327 U. S., at 366–367. And if "wages" don't include backpay awards for wrongful terminations, it's hard to see how "compensation . . . for services rendered" might include damages for an act of negligence. Still, even with the complications that follow from executive agencies' penchant for changing their views about the law's meaning almost as often as they change administrations, a plea for

deference surely would have enjoyed pride of place in BNSF's submission not long ago.

But nothing like that happened here. BNSF devoted scarcely any of its briefing to *Chevron*. At oral argument, BNSF's lawyer didn't even mention the case until the final seconds—and even then "hate[d] to cite" it. Tr. of Oral Arg. 58. No doubt, BNSF proceeded this way well aware of the mounting criticism of *Chevron* deference. See, *e. g.*, *Pereira* v. *Sessions*, 585 U. S. 198, 221 (2018) (Kennedy, J., concurring). And no doubt, too, this is all to the good. Instead of throwing up our hands and letting an interested party—the federal government's executive branch, no less—dictate an inferior interpretation of the law that may be more the product of politics than a scrupulous reading of the statute, the Court today buckles down to its job of saying what the law is in light of its text, its context, and our precedent. Though I may disagree with the result the Court reaches, my colleagues rightly afford the parties before us an independent judicial interpretation of the law. They deserve no less.

Syllabus

RIMINI STREET, INC., ET AL. *v.* ORACLE USA, INC., ET AL.

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

No. 17–1625. Argued January 14, 2019—Decided March 4, 2019

A jury awarded Oracle damages after finding that Rimini Street had infringed various Oracle copyrights. After judgment, the District Court also awarded Oracle fees and costs, including $12.8 million for litigation expenses such as expert witnesses, e-discovery, and jury consulting. In affirming the $12.8 million award, the Ninth Circuit acknowledged that it covered expenses not included within the six categories of costs that the general federal statute authorizing district courts to award costs, 28 U. S. C. §§ 1821 and 1920, provides may be awarded against a losing party. The court nonetheless held that the award was appropriate because the Copyright Act gives federal district courts discretion to award "full costs" to a party in copyright litigation, 17 U. S. C. § 505.

Held: The term "full costs" in § 505 of the Copyright Act means the costs specified in the general costs statute codified at §§ 1821 and 1920. Pp. 338–346.

(a) Sections 1821 and 1920 define what the term "costs" encompasses in subject-specific federal statutes such as § 505. Congress may authorize awards of expenses beyond the six categories specified in the general costs statute, but courts may not award litigation expenses that are not specified in §§ 1821 and 1920 absent explicit authority. This Court's precedents have consistently adhered to that approach. See *Crawford Fitting Co.* v. *J. T. Gibbons, Inc.*, 482 U. S. 437; *West Virginia Univ. Hospitals, Inc.* v. *Casey*, 499 U. S. 83; *Arlington Central School Dist. Bd. of Ed.* v. *Murphy*, 548 U. S. 291. The Copyright Act does not explicitly authorize the award of litigation expenses beyond the six categories specified in §§ 1821 and 1920, which do not authorize an award for expenses such as expert witness fees, e-discovery expenses, and jury consultant fees. Pp. 338–341.

(b) Oracle's counterarguments are not persuasive. First, Oracle argues that the word "full" authorizes courts to award expenses beyond the costs specified in §§ 1821 and 1920. The term "full" is an adjective that means the complete measure of the noun it modifies. It does not, therefore, alter the meaning of the word "costs" in § 505. Rather, "full costs" are all the "costs" otherwise available under the relevant law.

Syllabus

Second, Oracle maintains that the term "full costs" in the Copyright Act is a historical term of art that encompasses more than the "costs" listed in §§ 1821 and 1920. Oracle argues that Congress imported the meaning of the term "full costs" from the English copyright statutes into the Copyright Act in 1831. It contends that the 1831 meaning of "full costs" allows the transfer of all expenses of litigation, beyond those specified in any costs schedule, and overrides anything that Congress enacted in the Fee Act of 1853 or any subsequent costs statute. Courts need not, however, undertake extensive historical excavation to determine the meaning of costs statutes. See *Crawford Fitting Co.*, 482 U. S., at 445. In any event, Oracle has not shown that the phrase "full costs" had an established meaning in English or American law that covered more than the full amount of the costs listed in the applicable costs schedule. Case law since 1831 also refutes Oracle's historical argument.

Third, Oracle advances a variety of surplusage arguments. According to Oracle, after Congress made the costs award discretionary in 1976, district courts could award any amount of costs up to 100 percent, and so Rimini's reading of the word "full" now adds nothing to "costs." Because Congress would not have intended "full" to be surplusage, Oracle contends, Congress must have employed the term "full" to mean expenses beyond the costs specified in §§ 1821 and 1920. But even if the term "full" lacked any continuing significance after 1976, the meaning of "costs" did not change. Oracle's interpretation would also create its own redundancy problem by rendering the second sentence of § 505—which covers attorney's fees—largely redundant because § 505's first sentence presumably would already cover those fees. Finally, Oracle's argument, even if correct, overstates the significance of statutory surplusage and redundancy. See, *e. g.*, *Marx* v. *General Revenue Corp.*, 568 U. S. 371, 385. Pp. 341–346.

879 F. 3d 948, reversed in part and remanded.

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

Mark A. Perry argued the cause for petitioners. With him on the briefs were *Jeremy M. Christiansen*, *Blaine H. Evanson*, and *Joseph A. Gorman*.

Allon Kedem argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Solicitor General Francisco*, *Assistant Attorney General*

Hunt, *Deputy Solicitor General Stewart*, *Charles W. Scarborough*, *Megan Barbero*, *Casen B. Ross*, *Regan A. Smith*, and *Kevin R. Amer.*

Paul D. Clement argued the cause for respondents. With him on the brief were *Erin E. Murphy*, *Matthew D. Rowen*, *William A. Isaacson*, *David B. Salmons*, *Dale M. Cendali*, and *Joshua L. Simmons*.*

JUSTICE KAVANAUGH delivered the opinion of the Court.

The Copyright Act gives federal district courts discretion to award "full costs" to a party in copyright litigation. 17 U. S. C. § 505. In the general statute governing awards of costs, Congress has specified six categories of litigation expenses that qualify as "costs." See 28 U. S. C. §§ 1821, 1920. The question presented in this case is whether the Copyright Act's reference to "full costs" authorizes a court to award litigation expenses beyond the six categories of "costs" specified by Congress in the general costs statute. The statutory text and our precedents establish that the answer is no. The term "full" is a term of quantity or amount; it does not expand the categories or kinds of expenses that may be awarded as "costs" under the general costs statute. In copyright cases, § 505's authorization for the award of "full costs" therefore covers only the six categories specified in

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*Briefs of *amici curiae* urging reversal were filed for Scholars of Corpus Linguistics by *Gene C. Schaerr*, *Erik S. Jaffe*, and *Michael T. Worley*; and for Patrick T. Gillen by *Joshua C. McDaniel*, *Barry R. Levy*, and *Eric S. Boorstin*.

Briefs of *amici curiae* urging affirmance were filed for BSA|The Software Alliance by *Andrew J. Pincus*, *Paul W. Hughes*, and *Matthew A. Waring*; for Copyright Alliance by *Eleanor M. Lackman*; for the National Music Publishers' Association et al. by *Beth S. Brinkmann* and *Jacqueline C. Charlesworth*; for Scholars of Linguistics by *Stephen M. Nickelsburg*; for Steven Baicker-McKee by *Robert S. Friedman* and *Daniel L. Brown*; and for Ralph Oman by *Melissa Arbus Sherry* and *Sarang Vijay Damle*.

Stefan Mentzer and *Sheldon H. Klein* filed a brief for the American Intellectual Property Law Association as *amicus curiae*.

the general costs statute, codified at §§ 1821 and 1920. We reverse in relevant part the judgment of the U. S. Court of Appeals for the Ninth Circuit, and we remand the case for further proceedings consistent with this opinion.

I

Oracle develops and licenses software programs that manage data and operations for businesses and non-profit organizations. Oracle also offers its customers software maintenance services.

Rimini Street sells third-party software maintenance services to Oracle customers. In doing so, Rimini competes with Oracle's software maintenance services.

Oracle sued Rimini and its CEO in Federal District Court in Nevada, asserting claims under the Copyright Act and various other federal and state laws. Oracle alleged that Rimini, in the course of providing software support services to Oracle customers, copied Oracle's software without licensing it.

A jury found that Rimini had infringed various Oracle copyrights and that both Rimini and its CEO had violated California and Nevada computer access statutes. The jury awarded Oracle $35.6 million in damages for copyright infringement and $14.4 million in damages for violations of the state computer access statutes. After judgment, the District Court ordered the defendants to pay Oracle an additional $28.5 million in attorney's fees and $4.95 million in costs; the Court of Appeals reduced the latter award to $3.4 million. The District Court also ordered the defendants to pay Oracle $12.8 million for litigation expenses such as expert witnesses, e-discovery, and jury consulting.

That $12.8 million award is the subject of the dispute in this case. As relevant here, the U. S. Court of Appeals for the Ninth Circuit affirmed the District Court's $12.8 million award. The Court of Appeals recognized that the general federal statute authorizing district courts to award costs, 28

U. S. C. §§ 1821 and 1920, lists only six categories of costs that may be awarded against the losing party. And the Court of Appeals acknowledged that the $12.8 million award covered expenses not included within those six categories. But the Court of Appeals, relying on Circuit precedent, held that the District Court's $12.8 million award for additional expenses was still appropriate because § 505 permits the award of "full costs," a term that the Ninth Circuit said was not confined to the six categories identified in §§ 1821 and 1920. 879 F. 3d 948, 965–966 (2018).

We granted certiorari to resolve disagreement in the Courts of Appeals over whether the term "full costs" in § 505 authorizes awards of expenses other than those costs identified in §§ 1821 and 1920. 585 U. S. 1058 (2018). Compare 879 F. 3d, at 965–966; *Twentieth Century Fox Film Corp.* v. *Entertainment Distributing*, 429 F. 3d 869 (CA9 2005), with *Artisan Contractors Assn. of Am., Inc.* v. *Frontier Ins. Co.*, 275 F. 3d 1038 (CA11 2001); *Pinkham* v. *Camex, Inc.*, 84 F. 3d 292 (CA8 1996).

II

A

Congress has enacted more than 200 subject-specific federal statutes that explicitly authorize the award of costs to prevailing parties in litigation. The Copyright Act is one of those statutes. That Act provides that a district court in a copyright case "in its discretion may allow the recovery of full costs by or against any party other than the United States or an officer thereof." 17 U. S. C. § 505.

In the general "costs" statute, codified at §§ 1821 and 1920 of Title 28, Congress has specified six categories of litigation expenses that a federal court may award as "costs,"[1] and

[1] The six categories that a federal court may award as costs are:

"(1) Fees of the clerk and marshal;

"(2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;

"(3) Fees and disbursements for printing and witnesses;

Congress has detailed how to calculate the amount of certain costs. Sections 1821 and 1920 in essence define what the term "costs" encompasses in the subject-specific federal statutes that provide for an award of costs.

Sections 1821 and 1920 create a default rule and establish a clear baseline against which Congress may legislate. Consistent with that default rule, some federal statutes simply refer to "costs." In those cases, federal courts are limited to awarding the costs specified in §§ 1821 and 1920. If, for particular kinds of cases, Congress wants to authorize awards of expenses beyond the six categories specified in the general costs statute, Congress may do so. For example, some federal statutes go beyond §§ 1821 and 1920 to expressly provide for the award of expert witness fees or attorney's fees. See *West Virginia Univ. Hospitals, Inc.* v. *Casey*, 499 U. S. 83, 89, n. 4 (1991). Indeed, the Copyright Act expressly provides for awards of attorney's fees as well as costs. 17 U. S. C. § 505. And the same Congress that enacted amendments to the Copyright Act in 1976 enacted several other statutes that expressly authorized awards of expert witness fees. See *Casey*, 499 U. S., at 88. But absent such express authority, courts may not award litigation expenses that are not specified in §§ 1821 and 1920.

Our precedents have consistently adhered to that approach. Three cases illustrate the point.

In *Crawford Fitting Co.* v. *J. T. Gibbons, Inc.*, the question was whether courts could award expert witness fees under Rule 54(d) of the Federal Rules of Civil Procedure. Rule

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"(4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;

"(5) Docket fees under section 1923 of this title;

"(6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title." 28 U. S. C. § 1920.

In addition, § 1821 provides particular reimbursement rates for witnesses' "[p]er diem and mileage" expenses.

54(d) authorizes an award of "costs" but does not expressly refer to expert witness fees. 482 U. S. 437, 441 (1987). In defining what expenses qualify as "costs," §§ 1821 and 1920 likewise do not include expert witness fees. We therefore held that the prevailing party could not obtain expert witness fees: When "a prevailing party seeks reimbursement for fees paid to its own expert witnesses, a federal court is bound by the limit of § 1821(b), absent contract or explicit statutory authority to the contrary." *Id.*, at 439.

In *Casey*, we interpreted 42 U. S. C. § 1988, the federal statute authorizing an award of "costs" in civil rights litigation. We described *Crawford Fitting* as holding that §§ 1821 and 1920 "define the full extent of a federal court's power to shift litigation costs absent express statutory authority to go further." 499 U. S., at 86. In accord with *Crawford Fitting*, we concluded that § 1988 does not authorize awards of expert witness fees because § 1988 supplies no " 'explicit statutory authority' " to award expert witness fees. 499 U. S., at 87 (quoting *Crawford Fitting*, 482 U. S., at 439).

In *Arlington Central School Dist. Bd. of Ed.* v. *Murphy*, we considered the Individuals with Disabilities Education Act, which authorized an award of costs. The question was whether that Act's reference to "costs" encompassed expert witness fees. We again explained that "costs" is " 'a term of art that generally does not include expert fees.' " 548 U. S. 291, 297 (2006); see also *Taniguchi* v. *Kan Pacific Saipan, Ltd.*, 566 U. S. 560, 573 (2012). We stated: "[N]o statute will be construed as authorizing the taxation of witness fees as costs unless the statute 'refer[s] explicitly to witness fees.' " *Murphy*, 548 U. S., at 301 (quoting *Crawford Fitting*, 482 U. S., at 445).

Our cases, in sum, establish a clear rule: A statute awarding "costs" will not be construed as authorizing an award of litigation expenses beyond the six categories listed in §§ 1821 and 1920, absent an explicit statutory instruction to that ef-

fect. See *Murphy*, 548 U. S., at 301 (requiring "'explici[t]'" authority); *Casey*, 499 U. S., at 86 (requiring "'explicit'" authority); *Crawford Fitting*, 482 U. S., at 439 (requiring "explicit statutory authority").

Here, the Copyright Act does not explicitly authorize the award of litigation expenses beyond the six categories specified in §§ 1821 and 1920. And §§ 1821 and 1920 in turn do not authorize an award for expenses such as expert witness fees, e-discovery expenses, and jury consultant fees, which were expenses encompassed by the District Court's $12.8 million award to Oracle here. Rimini argues that the $12.8 million award therefore cannot stand.

B

To sustain its $12.8 million award, Oracle advances three substantial arguments. But we ultimately do not find those arguments persuasive.

First, although Oracle concedes that it would lose this case if the Copyright Act referred only to "costs," Oracle stresses that the Copyright Act uses the word "full" before "costs." Oracle argues that the word "full" authorizes courts to award expenses beyond the costs specified in §§ 1821 and 1920. We disagree. "Full" is a term of quantity or amount. It is an adjective that means the complete measure of the noun it modifies. See American Heritage Dictionary 709 (5th ed. 2011); Oxford English Dictionary 247 (2d ed. 1989). As we said earlier this Term: "Adjectives modify nouns—they pick out a subset of a category that possesses a certain quality." *Weyerhaeuser Co.* v. *United States Fish and Wildlife Serv.*, 586 U. S. 9, 19 (2018).

The adjective "full" in § 505 therefore does not alter the meaning of the word "costs." Rather, "full costs" are all the "costs" otherwise available under law. The word "full" operates in the phrase "full costs" just as it operates in other common phrases: A "full moon" means the moon, not Mars.

A "full breakfast" means breakfast, not lunch. A "full season ticket plan" means tickets, not hot dogs. So too, the term "full costs" means *costs*, not other expenses.

The dispute here, therefore, turns on the meaning of the word "costs." And as we have explained, the term "costs" refers to the costs generally available under the federal costs statute—§§ 1821 and 1920. "Full costs" are all the costs generally available under that statute.

Second, Oracle maintains that the term "full costs" in the Copyright Act is a historical term of art that encompasses more than the "costs" listed in the relevant costs statute—here, §§ 1821 and 1920. We again disagree.

Some general background: From 1789 to 1853, federal courts awarded costs and fees according to the relevant state law of the forum State. See *Crawford Fitting*, 482 U. S., at 439–440; *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U. S. 240, 247–250 (1975). In 1853, Congress departed from that state-focused approach. That year, Congress passed and President Fillmore signed a comprehensive federal statute establishing a federal schedule for the award of costs in federal court. *Crawford Fitting*, 482 U. S., at 440; 10 Stat. 161. Known as the Fee Act of 1853, that 1853 statute has "carried forward to today" in §§ 1821 and 1920 "'without any apparent intent to change the controlling rules.'" *Crawford Fitting*, 482 U. S., at 440. As we have said, §§ 1821 and 1920 provide a comprehensive schedule of costs for proceedings in federal court.

Now some copyright law background: The term "full [c]osts" appeared in the first copyright statute in England, the Statute of Anne. 8 Anne c.19, § 8 (1710). In the United States, the Federal Copyright Act of 1831 borrowed the phrasing of English copyright law and used the same term, "full costs." Act of Feb. 3, 1831, § 12, 4 Stat. 438–439. That term has appeared in subsequent revisions of the Copyright Act, through the Act's most recent substantive alterations in 1976. See Act of July 8, 1870, § 108, 16 Stat. 215; Copyright

Act of 1909, § 40, 35 Stat. 1084; Copyright Act of 1976, § 505, 90 Stat. 2586.

Oracle argues that English copyright statutes awarding "full costs" allowed the transfer of all expenses of litigation, beyond what was specified in any costs schedule. According to Oracle, Congress necessarily imported that meaning of the term "full costs" into the Copyright Act in 1831. And according to Oracle, that 1831 meaning overrides anything that Congress enacted in any costs statute in 1853 or later.

To begin with, our decision in *Crawford Fitting* explained that courts should not undertake extensive historical excavation to determine the meaning of costs statutes. We said that §§ 1821 and 1920 apply regardless of when individual subject-specific costs statutes were enacted. 482 U. S., at 445. The *Crawford Fitting* principle eliminates the need for that kind of historical analysis and confirms that the Copyright Act's reference to "full costs" must be interpreted by reference to §§ 1821 and 1920.

In any event, Oracle's historical argument fails even on its own terms. Oracle has not persuasively demonstrated that as of 1831, the phrase "full costs" had an established meaning in English or American law that covered more than the full amount of the costs listed in the applicable costs schedule. On the contrary, the federal courts as of 1831 awarded costs in accord with the costs schedule of the relevant state law. See *id.*, at 439–440; *Alyeska Pipeline*, 421 U. S., at 250. And state laws at the time tended to use the term "full costs" to refer to, among other things, full cost awards as distinguished from the half, double, or treble cost awards that were also commonly available under state law at the time.[2] That usage accorded with the ordinary meaning of the term.

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[2] See, *e. g.*, 1 Laws of Pa., ch. DCXLV, pp. 371, 373 (1810) ("full costs" and "double costs"); 2 Rev. Stat. N. Y., pt. III, ch. X, Tit. 1, §§ 16, 25 (1846) ("full," "double," and "treble" costs); Rev. Stat. Mass., pt. III, Tit. VI, ch. 121, §§ 4, 7, 8, 11, 18 (1836) ("one quarter," "full," "double," and "treble" costs).

At the time, the word "full" conveyed the same meaning that it does today: "Complete; entire; not defective or partial." 1 N. Webster, An American Dictionary of the English Language 89 (1828); see also 1 S. Johnson, A Dictionary of the English Language 817 (1773) ("Complete, such as that nothing further is desired or wanted; Complete without abatement; at the utmost degree"). Full costs did not encompass expenses beyond those costs that otherwise could be awarded under the applicable state law.

The case law since 1831 also refutes Oracle's historical argument. If Oracle's account of the history were correct, federal courts starting in 1831 presumably would have interpreted the term "full costs" in the Copyright Act to allow awards of litigation expenses that were not ordinarily available as costs under the applicable costs schedule. But Rimini points out that none of the more than 800 available copyright decisions awarding costs from 1831 to 1976—that is, from the year the term "full costs" first appeared in the Copyright Act until the year that the Act was last significantly amended—awarded expenses other than those specified by the applicable state or federal law. Tr. of Oral Arg. 7. Oracle has not refuted Rimini's argument on that point. Oracle cites no § 505 cases where federal courts awarded expert witness fees or other litigation expenses of the kind at issue here until the Ninth Circuit's 2005 decision adopting the interpretation of § 505 that the Ninth Circuit followed in this case. See *Twentieth Century Fox*, 429 F. 3d 869.

In light of the commonly understood meaning of the term "full costs" as of 1831 and the case law since 1831, Oracle's historical argument falls short. The best interpretation is that the term "full costs" meant in 1831 what it means now: the full amount of the costs specified by the applicable costs schedule.

Third, Oracle advances a variety of surplusage arguments. Oracle contends, for example, that the word "full" would be unnecessary surplusage if Rimini's argument were correct.

We disagree. The award of costs in copyright cases was *mandatory* from 1831 to 1976. See § 40, 35 Stat. 1084; § 12, 4 Stat. 438–439. During that period, the term "full" fixed both a floor and a ceiling for the amount of "costs" that could be awarded. In other words, the term "full costs" required an award of 100 percent of the costs available under the applicable costs schedule.

Oracle says that even if that interpretation of "full costs" made sense before 1976, the meaning of the term "full costs" changed in 1976. That year, Congress amended the Copyright Act to make the award of costs discretionary rather than mandatory. See § 505, 90 Stat. 2586. According to Oracle, after Congress made the costs award discretionary, district courts could award any amount of costs up to 100 percent and so Rimini's reading of the word "full" now adds nothing to "costs." If we assume that Congress in 1976 did not intend "full" to be surplusage, Oracle argues that Congress must have employed the term "full" to mean expenses beyond the costs specified in §§ 1821 and 1920.

For several reasons, that argument does not persuade us.

To begin with, even if the term "full" lacked any continuing significance after 1976, the meaning of "costs" did not change. The term "costs" still means those costs specified in §§ 1821 and 1920. It makes little sense to think that Congress in 1976, when it made the award of full costs discretionary rather than mandatory, silently expanded the kinds of expenses that a court may otherwise award as costs in copyright suits.[3]

Moreover, Oracle's interpretation would create its own redundancy problem by rendering the second sentence of § 505 largely redundant. That second sentence provides: "Except

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[3] Rimini further suggests that "full" still has meaning after 1976 because the statute gives the district court discretion to award either full costs or no costs, unlike statutes that refer only to "costs," which allow courts to award any amount of costs up to full costs. In light of our disposition of the case, we need not and do not consider that argument.

as otherwise provided by this title, the court may also award a reasonable attorney's fee to the prevailing party as part of the costs." 17 U. S. C. § 505. If Oracle were right that "full costs" covers all of a party's litigation expenditures, then the first sentence of § 505 would presumably already cover attorney's fees and the second sentence would be largely unnecessary. In order to avoid some redundancy, Oracle's interpretation would create other redundancy.

Finally, even if Oracle is correct that the term "full" has become unnecessary or redundant as a result of the 1976 amendment, Oracle overstates the significance of statutory surplusage or redundancy. Redundancy is not a silver bullet. We have recognized that some "redundancy is 'hardly unusual' in statutes addressing costs." *Marx* v. *General Revenue Corp.*, 568 U. S. 371, 385 (2013). If one possible interpretation of a statute would cause some redundancy and another interpretation would avoid redundancy, that difference in the two interpretations can supply a clue as to the better interpretation of a statute. But only a clue. Sometimes the better overall reading of the statute contains some redundancy.

* * *

The Copyright Act authorizes federal district courts to award "full costs" to a party in copyright litigation. That term means the costs specified in the general costs statute, §§ 1821 and 1920. We reverse in relevant part the judgment of the Court of Appeals, and we remand the case for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

WASHINGTON STATE DEPARTMENT OF LICENSING *v.* COUGAR DEN, INC.

CERTIORARI TO THE SUPREME COURT OF WASHINGTON

No. 16–1498. Argued October 30, 2018—Decided March 19, 2019

The State of Washington taxes "motor vehicle fuel importer[s]" who bring large quantities of fuel into the State by "ground transportation." Wash. Rev. Code §§ 82.36.010(4), (12), (16). Respondent Cougar Den, Inc., a wholesale fuel importer owned by a member of the Yakama Nation, imports fuel from Oregon over Washington's public highways to the Yakama Reservation to sell to Yakama-owned retail gas stations located within the reservation. In 2013, the Washington State Department of Licensing assessed Cougar Den $3.6 million in taxes, penalties, and licensing fees for importing motor vehicle fuel into the State. Cougar Den appealed, arguing that the Washington tax, as applied to its activities, is pre-empted by an 1855 treaty between the United States and the Yakama Nation that, among other things, reserves the Yakamas' "right, in common with citizens of the United States, to travel upon all public highways," 12 Stat. 953. A Washington Superior Court held that the tax was pre-empted, and the Washington Supreme Court affirmed.

Held: The judgment is affirmed.

188 Wash. 2d 55, 392 P. 3d 1014, affirmed.

JUSTICE BREYER, joined by JUSTICE SOTOMAYOR and JUSTICE KAGAN, concluded that the 1855 treaty between the United States and the Yakama Nation pre-empts the State of Washington's fuel tax as applied to Cougar Den's importation of fuel by public highway. Pp. 353–367.

(a) The Washington statute at issue here taxes the importation of fuel by public highway. The Washington Supreme Court construed the statute that way in the decision below. That court wrote that the statute "taxes the importation of fuel, which is the transportation of fuel." 188 Wash. 2d 55, 69, 392 P. 3d 1014, 1020. It added that "travel on public highways is directly at issue because the tax [is] an importation tax." *Id.*, at 67, 392 P. 3d, at 1019. The incidence of a tax is a question of state law, *Oklahoma Tax Comm'n* v. *Chickasaw Nation*, 515 U. S. 450, 461, and this Court is bound by the Washington Supreme Court's interpretation of Washington law, *Johnson* v. *United States*, 559 U. S. 133, 138. Nor is there any reason to doubt that the Washington Supreme Court meant what it said when it interpreted the statute. In the statute's own words, Washington "impose[s] upon motor vehicle fuel

licensees," including "licensed importer[s]," a tax for "each gallon of motor vehicle fuel" that "enters into this state," but only "if . . . entry is" by means of "a railcar, trailer, truck, or other equipment suitable for ground transportation." Wash. Rev. Code §§ 82.36.010(4), 82.36.020(1), (2), 82.36.026(3). Thus, Cougar Den owed the tax because Cougar Den traveled with fuel by public highway. See App. 10a–26a; App. to Pet. for Cert. 55a. Pp. 353–359.

(b) The State of Washington's application of the tax to Cougar Den's importation of fuel is pre-empted by the Yakama Nation's reservation of "the right, in common with citizens of the United States, to travel upon all public highways." This conclusion rests upon three considerations taken together. First, this Court has considered this treaty four times previously; each time it has considered language very similar to the language now before the Court; and each time it has stressed that the language of the treaty should be understood as bearing the meaning that the Yakamas understood it to have in 1855. See *United States* v. *Winans*, 198 U. S. 371, 380–381; *Seufert Brothers Co.* v. *United States*, 249 U. S. 194, 196–198; *Tulee* v. *Washington*, 315 U. S. 681, 683–685; *Washington* v. *Washington State Commercial Passenger Fishing Vessel Assn.*, 443 U. S. 658, 677–678. Thus, although the words "in common with" on their face could be read to permit application to the Yakamas of general legislation (like the legislation at issue here) that applies to all citizens, this Court has refused to read "in common with" in this way because that is not what the Yakamas understood the words to mean in 1855. See *Winans*, 198 U. S., at 379, 381; *Seufert Brothers*, 249 U. S., at 198–199; *Tulee*, 315 U. S., at 684; *Fishing Vessel*, 443 U. S., at 679, 684–685. Second, the historical record adopted by the agency and the courts below indicates that the treaty negotiations and the United States' representatives' statements to the Yakamas would have led the Yakamas to understand that the treaty's protection of the right to travel on the public highways included the right to travel with goods for purposes of trade. Third, to impose a tax upon traveling with certain goods burdens that travel. And the right to travel on the public highways without such burdens is just what the treaty protects. Therefore, precedent tells the Court that the tax must be pre-empted. In *Tulee*, for example, the fishing right reserved by the Yakamas in the treaty was held to pre-empt the application to the Yakamas of a state law requiring fishermen to buy fishing licenses. 315 U. S., at 684. The Court concluded that "such exaction of fees as a prerequisite to the enjoyment of" a right reserved in the treaty "cannot be reconciled with a fair construction of the treaty." *Id.*, at 685. If the cost of a fishing license interferes with the right to fish, so must a tax imposed on travel with goods (here fuel) interfere with the right to travel. Pp. 359–367.

Syllabus

JUSTICE GORSUCH, joined by JUSTICE GINSBURG, concluded that the 1855 treaty guarantees tribal members the right to move their goods, including fuel, to and from market freely. When dealing with a tribal treaty, a court must "give effect to the terms as the Indians themselves would have understood them." *Minnesota* v. *Mille Lacs Band of Chippewa Indians*, 526 U. S. 172, 196. The Yakamas' understanding of the terms of the 1855 treaty can be found in a set of unchallenged factual findings in *Yakama Indian Nation* v. *Flores*, 955 F. Supp. 1229, which are binding here and sufficient to resolve this case. They provide "no evidence [suggesting] that the term 'in common with' placed Indians in the same category as non-Indians with respect to any tax or fee the latter must bear with respect to public roads." *Id.*, at 1247. Instead, they suggest that the Yakamas understood the treaty's right-to-travel provision to provide them "with the right to travel on all public highways without being subject to any licensing and permitting fees related to the exercise of that right while engaged in the transportation of tribal goods." *Id.*, at 1262. A wealth of historical evidence confirms this understanding. "Far-reaching travel was an intrinsic ingredient in virtually every aspect of Yakama culture," and travel for purposes of trade was so important to their "way of life that they could not have performed and functioned as a distinct culture" without it. *Id.*, at 1238. Everyone then understood that the treaty would protect the Yakamas' preexisting right to take goods to and from market freely throughout its traditional trading area. The State reads the treaty only as a promise to tribal members of the right to venture out of their reservation and use the public highways like everyone else. But the record shows that the consideration the Yakamas supplied—millions of acres desperately wanted by the United States to settle the Washington Territory—was worth far more than an abject promise they would not be made prisoners on their reservation. This Court's cases interpreting the treaty's neighboring and parallel right-to-fish provision further confirm this understanding. See, *e. g.*, *United States* v. *Winans*, 198 U. S. 371. Pp. 367–377.

BREYER, J., announced the judgment of the Court and delivered an opinion, in which SOTOMAYOR and KAGAN, JJ., joined. GORSUCH, J., filed an opinion concurring in the judgment, in which GINSBURG, J., joined, *post*, p. 367. ROBERTS, C. J., filed a dissenting opinion, in which THOMAS, ALITO, and KAVANAUGH, JJ., joined, *post*, p. 377. KAVANAUGH, J., filed a dissenting opinion, in which THOMAS, J., joined, *post*, p. 386.

Noah G. Purcell, Solicitor General of Washington, argued the cause for petitioner. With him on the briefs were *Rob-*

ert W. Ferguson, Attorney General of Washington, *Jay D. Geck* and *Anne E. Egeler*, Deputy Solicitors General, and *Fronda C. Woods*, Assistant Attorney General.

Ann O'Connell argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were *Solicitor General Francisco*, *Acting Assistant Attorney General Wood*, *Deputy Solicitor General Kneedler*, *Elizabeth Ann Peterson*, and *Rachel Heron*.

Adam G. Unikowsky argued the cause for respondent. With him on the brief were *Ian H. Gershengorn*, *Sam Hirsch*, *Mathew L. Harrington*, *Lance A. Pelletier*, and *Brendan V. Monahan*.*

JUSTICE BREYER announced the judgment of the Court and delivered an opinion, in which JUSTICE SOTOMAYOR and JUSTICE KAGAN join.

The State of Washington imposes a tax upon fuel importers who travel by public highway. The question before us is whether an 1855 treaty between the United States and

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*Briefs of *amici curiae* urging reversal were filed for the State of Idaho et al. by *Lawrence G. Wasden*, Attorney General of Idaho, and *Darrell G. Early* and *Steven W. Strack*, Deputy Attorneys General, by *Zachary W. Carter*, Corporation Counsel of New York City, and by the Attorneys General for their respective jurisdictions as follows: *Xavier Becerra* of California, *Derek Schmidt* of Kansas, *Jeffrey Martin Landry* of Louisiana, *Maura Healey* of Massachusetts, *Barbara D. Underwood* of New York, *Peter F. Kilmartin* of Rhode Island, *Marty J. Jackley* of South Dakota, *Herbert H. Slatery III* of Tennessee, *Ken Paxton* of Texas, *Brad D. Schimel* of Wisconsin, and *Peter K. Michael* of Wyoming; for Multistate Tax Commission et al. by *Helen Hecht*, *Sheldon Laskin*, *Gregory S. Matson*, and *Gale Garriott*; for Public Health Organizations by *Mark Greenwold* and *Dennis A. Henigan*; and for the Washington Oil Marketers Association et al. by *Philip A. Talmadge*.

Briefs of *amici curiae* urging affirmance were filed for the Confederated Tribes and Bands of the Yakama Nation by *Ethan Jones* and *Marcus Shirzad*; for the National Congress of American Indians by *Virginia A. Seitz* and *Kathleen M. Mueller*; for the Nez Perce Tribe et al. by *David J. Cummings* and *John T. Harrison*; and for Sacred Ground Legal Services by *Jack Warren Fiander*.

the Yakama Nation forbids the State of Washington to impose that tax upon fuel importers who are members of the Yakama Nation. We conclude that it does, and we affirm the Washington Supreme Court's similar decision.

I

A

A Washington statute applies to "motor vehicle fuel importer[s]" who bring large quantities of fuel into the State by "ground transportation" such as a "railcar, trailer, [or] truck." Wash. Rev. Code §§ 82.36.010(4), (12), (16) (2012). The statute requires each fuel importer to obtain a license, and it says that a fuel tax will be "levied and imposed upon motor vehicle fuel licensees" for "each gallon of motor vehicle fuel" that the licensee brings into the State. §§ 82.36.020(1), (2)(c). Licensed fuel importers who import fuel by ground transportation become liable to pay the tax as of the time the "fuel enters into this [S]tate." § 82.36.020(2)(c); see also §§ 82.38.020(4), (12), (15), (26), 82.38.030(1), (7)(c)(ii) (equivalent regulation of diesel fuel importers).

But *only* those licensed fuel importers who import fuel *by ground transportation* are liable to pay the tax. §§ 82.36.026(3), 82.36.020(2)(c). For example, if a licensed fuel importer brings fuel into the State by pipeline, that fuel importer need not pay the tax. §§ 82.36.026(3), 82.36.020(2)(c)(ii), 82.36.010(3). Similarly, if a licensed fuel importer brings fuel into the State by vessel, that fuel importer need not pay the tax. §§ 82.36.026(3), 82.36.020(2)(c)(ii), 82.36.010(3). Instead, in each of those instances, the next purchaser or possessor of the fuel will pay the tax. §§ 82.36.020(2)(a), (b), (d). The only licensed fuel importers who must pay *this* tax are the fuel importers who bring fuel into the State by means of ground transportation.

B

The relevant treaty provides for the purchase by the United States of Yakama land. See Treaty Between the

United States and the Yakama Nation of Indians, June 9, 1855, 12 Stat. 951. Under the treaty, the Yakamas granted to the United States approximately 10 million acres of land in what is now the State of Washington, *i. e.*, about one-fourth of the land that makes up the State today. Art. I, *id.*, at 951–952; see also Brief for Respondent 4, 9. In return for this land, the United States paid the Yakamas $200,000, made improvements to the remaining Yakama land, such as building a hospital and schools for the Yakamas to use, and agreed to respect the Yakamas' reservation of certain rights. Arts. III–V, 12 Stat. 952–953. Those reserved rights include "the right, in common with citizens of the United States, to travel upon all public highways," "the right of taking fish at all usual and accustomed places, in common with citizens of the Territory," and other rights, such as the right to hunt, to gather roots and berries, and to pasture cattle on open and unclaimed land. Art. III, *id.*, at 953.

C

Cougar Den, Inc., the respondent, is a wholesale fuel importer owned by a member of the Yakama Nation, incorporated under Yakama law, and designated by the Yakama Nation as its agent to obtain fuel for members of the Tribe. App. to Pet. for Cert. 63a–64a; App. 99a. Cougar Den buys fuel in Oregon, trucks the fuel over public highways to the Yakama Reservation in Washington, and then sells the fuel to Yakama-owned retail gas stations located within the reservation. App. to Pet. for Cert. 50a, 55a. Cougar Den believes that Washington's fuel import tax, as applied to Cougar Den's activities, is pre-empted by the treaty. App. 15a. In particular, Cougar Den believes that requiring it to pay the tax would infringe the Yakamas' reserved "right, in common with citizens of the United States, to travel upon all public highways." Art. III, 12 Stat. 953.

In December 2013, the Washington State Department of Licensing (Department), believing that the state tax was not

pre-empted by the treaty, assessed Cougar Den $3.6 million in taxes, penalties, and licensing fees. App. to Pet. for Cert. 65a; App. 10a. Cougar Den appealed the assessment to higher authorities within the state agency. App. 15a. An Administrative Law Judge agreed with Cougar Den that the tax was pre-empted. App. to Brief in Opposition 14a. The Department's director, however, disagreed and overturned the ALJ's order. App. to Pet. for Cert. 59a. A Washington Superior Court in turn disagreed with the director and held that the tax was pre-empted. *Id.*, at 34a. The director appealed to the Washington Supreme Court. 188 Wash. 2d 55, 58, 392 P. 3d 1014, 1015 (2017). And that court, agreeing with Cougar Den, upheld the Superior Court's determination of pre-emption. *Id.*, at 69, 392 P. 3d, at 1020.

The Department filed a petition for certiorari asking us to review the State Supreme Court's determination. And we agreed to do so.

II

A

The Washington statute at issue here taxes the importation of fuel by public highway. The Washington Supreme Court construed the statute that way in the decision below. That court wrote that the statute "taxes the importation of fuel, which is the transportation of fuel." *Ibid.* It added that "travel on public highways is directly at issue because the tax [is] an importation tax." *Id.*, at 67, 392 P. 3d, at 1019.

Nor is there any reason to doubt that the Washington Supreme Court means what it said when it interpreted the Washington statute. We read the statute the same way. In the statute's own words, Washington "impose[s] upon motor vehicle fuel licensees," including "licensed importer[s]," a tax for "each gallon of motor vehicle fuel" that "enters into this state," but *only* "if . . . entry is" by means of "a railcar, trailer, truck, or other equipment suitable for ground transportation." Wash. Rev. Code §§ 82.36.010(4),

82.36.020(1), (2), 82.36.026(3). As is true of most tax laws, the statute is long and complex, and it is easy to stumble over this technical language. But if you are able to walk slowly through its provisions, the statute is easily followed. We need take only five steps.

We start our journey at the beginning of the statute which first declares that "[t]here is hereby levied and imposed upon motor vehicle fuel licensees, other than motor vehicle fuel distributors, a tax at the rate . . . provided in [the statute] on each gallon of motor vehicle fuel." § 82.36.020(1). That is simple enough. Washington imposes a tax on a group of persons called "motor vehicle fuel licensees" for "each gallon of motor vehicle fuel."

Who are the "motor vehicle fuel licensees" that Washington taxes? We take a second step to find out. As the definitions section of the statute explains, the "motor vehicle fuel licensees" upon whom the tax is imposed are "person[s] holding a . . . motor vehicle fuel importer, motor vehicle fuel exporter, motor vehicle fuel blender, motor vehicle distributor, or international fuel tax agreement license." § 82.36.010(12). This, too, is easy to grasp. Not everyone who possesses motor vehicle fuel owes the tax. Instead, only motor vehicle fuel importers (and other similar movers and shakers within the motor vehicle fuel industry) who are licensed by the State to deal in fuel, must pay the tax.

But must each of these motor vehicle fuel licensees pay the tax, so that the fuel is taxed as it passes from blender, to importer, to exporter, and so on? We take a third step, and learn that the answer is "no." As the statute explains, "the tax shall be imposed at the time and place of the first taxable event and upon the first taxable person within this state." § 82.36.022. Reading that, we understand that only the first licensee who can be taxed, will be taxed.

So, we ask, who is the first taxable licensee? Who must actually pay this tax? We take a fourth step to find out. Logic tells us that the first licensee who can be taxed will

likely be the licensee who brings fuel into the State. But the statute tells us that a "licensed importer" is "liable for and [must] pay tax to the department" when "[m]otor vehicle fuel enters into this state *if* . . . [t]he entry is *not* by bulk transfer." §§ 82.36.020(2)(c), 82.36.026(3) (emphasis added). That is, a licensed importer can only be the first taxable licensee (and therefore the licensee that must pay the tax) if the importer brings fuel into the State by a method other than "bulk transfer."

But what is "bulk transfer"? What does it mean to say that licensed fuel importers need only pay the tax if they do not bring in fuel by "bulk transfer"? We take a fifth, and final, step to find out. "[B]ulk transfer," the definitions section explains, "means a transfer of motor vehicle fuel by pipeline or vessel," as opposed to "railcar, trailer, truck, or other equipment suitable for ground transportation." §§ 82.36.010(3), (4). So, we learn that if the licensed fuel importer brings fuel into the State by ground transportation, then the fuel importer owes the tax. But if the licensed fuel importer brings fuel into the State by pipeline or vessel, then the importer will not be the first taxable person to possess the fuel, and he will not owe the tax.

In sum, Washington taxes travel by ground transportation with fuel. That feature sets the Washington statute apart from other statutes with which we are more familiar. It is not a tax on possession or importation. A statute that taxes possession would ordinarily require all people who own a good to pay the tax. A good example of that would be a State's real estate property tax. That statute would require all homeowners to pay the tax, every year, regardless of the specifics of their situation. And a statute that taxes importation would ordinarily require all people who bring a good into the State to pay a tax. A good example of that would be a federal tax on newly manufactured cars. That statute would ordinarily require all people who bring a new car into the country to pay a tax. But Washington's statute is differ-

ent because it singles out ground transportation. That is, Washington does not just tax possession of fuel, or even importation of fuel, but instead taxes importation by ground transportation.

The facts of this case provide a good example of the tax in operation. Each of the assessment orders that the Department sent to Cougar Den explained that Cougar Den owed the tax because Cougar Den traveled by highway. See App. 10a–26a; App. to Pet. for Cert. 55a. As the director explained, Cougar Den owed the tax because Cougar Den had caused fuel to enter "into this [S]tate at the Washington-Oregon boundary on the Highway 97 bridge" by means of a "tank truck" destined for "the Yakama Reservation." *Ibid.* The director offers this explanation in addition to quoting the quantity of fuel that Cougar Den possessed because the element of travel by ground transportation is a necessary prerequisite to the imposition of the tax. Put another way, the State must prove that Cougar Den *traveled by highway* in order to apply its tax.

B

We are not convinced by the arguments raised to the contrary. The Department claims, and THE CHIEF JUSTICE agrees, that the state tax has little or nothing to do with the treaty because it is not a tax on *travel with fuel* but rather a tax on the *possession of fuel*. See Brief for Petitioner 26–28; *post*, at 380–381 (dissenting opinion).

We cannot accept that characterization of the tax, however, for the Washington Supreme Court has authoritatively held that the statute is a tax on travel. The Washington Supreme Court held that the Washington law at issue here "taxes the importation of fuel, which is the transportation of fuel." 188 Wash. 2d, at 69, 392 P. 3d, at 1020. It added that "travel on public highways is directly at issue because the tax [is] an importation tax." *Id.*, at 67, 392 P. 3d, at 1019. In so doing, the State Supreme Court heard, considered, and rejected the construction of the fuel tax that the Department

advances here. See *id.*, at 66–67, 392 P. 3d, at 1019 ("The Department argues, and the director agreed, that the taxes are assessed based on incidents of ownership or possession of fuel, and not incident to use of or travel on the roads or highways. . . . The Department's argument is unpersuasive. . . . Here, travel on public highways is directly at issue because the tax was an importation tax"). The incidence of a tax is a question of state law, *Oklahoma Tax Comm'n* v. *Chickasaw Nation*, 515 U. S. 450, 461 (1995), and this Court is bound by the Washington Supreme Court's interpretation of Washington law, *Johnson* v. *United States*, 559 U. S. 133, 138 (2010). We decline the Department's invitation to overstep the bounds of our authority and construe the tax to mean what the Washington Supreme Court has said it does not.

Nor would it make sense to construe the tax's incidence differently. The Washington Supreme Court's conclusion follows directly from its (and our) interpretation of how the tax operates. See *supra*, at 353–356. To be sure, it is generally true that fuel imported into the State by trucks driving the public highways *can also* be described as fuel that is *possessed for the first time* in the State. But to call the Washington statute a tax on "first possession" would give the law an overinclusive label. As explained at length above, there are several ways in which a company could be a "first possessor" of fuel without incurring the tax. See *supra*, at 354–355. For example, Cougar Den would not owe the tax had Cougar Den "first possessed" fuel by piping fuel from out of State into a Washington refinery. First possession is not taxed if the fuel is brought into the State by pipeline and bound for a refinery. §§ 82.36.026(3), 82.36.020(2)(c)(ii), 82.36.010(3). Similarly, Cougar Den would not owe the tax had Cougar Den "first possessed" fuel by bringing fuel into Washington through its waterways rather than its highways. First possession is not taxed if the fuel is brought into the State by vessel. §§ 82.36.026(3), 82.36.020(2)(c)(ii), 82.36.010(3). Thus, it seems rather clear that the tax cannot

accurately be described as a tax on the *first possession of fuel*.

But even if the contrary were true, the tax would still have the practical effect of burdening the Yakamas' travel. Here, the Yakamas' lone off-reservation act within the State is traveling along a public highway with fuel. The tax thus operates on the Yakamas exactly like a tax on transportation would: It falls upon them only because they happened to transport goods on a highway while en route to their reservation. And it is the practical effect of the state law that we have said makes the difference. We held, for instance, that the fishing rights reserved in the treaty pre-empted the State's enforcement of a trespass law against Yakama fishermen crossing private land to access the river. See, *e. g.*, *United States* v. *Winans*, 198 U. S. 371, 381 (1905). That was so even though the trespass law was not limited to those who trespass in order to fish but applied more broadly to any trespasser. Put another way, it mattered not that the tax was "on" trespassing rather than fishing because the tax operated upon the Yakamas when they were exercising their treaty-protected right. *Ibid.*; see also *Tulee* v. *Washington*, 315 U. S. 681, 685 (1942) (holding that the fishing rights reserved in the treaty pre-empted the State's application of a fishing licensing fee to a Yakama fisherman, even though the fee also applied to types of fishing not practiced by the Yakamas). And this approach makes sense. When the Yakamas bargained in the treaty to protect their right to travel, they could only have cared about preventing the State from burdening their exercise of that right. To the Yakamas, it is thus irrelevant whether the State's tax might apply to other activities beyond transportation. The only relevant question is whether the tax "act[ed] upon the Indians as a charge for exercising the very right their ancestors intended to reserve." *Id.*, at 685. And the State's tax here acted upon Cougar Den in exactly that way.

For the same reason, we are unpersuaded by the Department's insistence that it adopted this tax after a District Court, applying this Court's decision in *Chickasaw Nation*, barred the State from taxing the sale of fuel products on tribal land. See Brief for Petitioner 6–7; *Squaxin Island Tribe* v. *Stephens*, 400 F. Supp. 2d 1250, 1262 (WD Wash. 2005). Although a State "generally is free to amend its law to shift the tax's legal incidence," *Chickasaw Nation*, 515 U. S., at 460, it may not burden a treaty-protected right in the process, as the State has done here.

Thus, we must turn to the question whether this fuel tax, falling as it does upon members of the Tribe who travel on the public highways, violates the treaty.

III

A

In our view, the State of Washington's application of the fuel tax to Cougar Den's importation of fuel is pre-empted by the treaty's reservation to the Yakama Nation of "the right, in common with citizens of the United States, to travel upon all public highways." We rest this conclusion upon three considerations taken together.

First, this Court has considered this treaty four times previously; each time it has considered language very similar to the language before us; and each time it has stressed that the language of the treaty should be understood as bearing the meaning that the Yakamas understood it to have in 1855. See *Winans*, 198 U. S., at 380–381; *Seufert Brothers Co.* v. *United States*, 249 U. S. 194, 196–198 (1919); *Tulee*, 315 U. S., at 683–685; *Washington* v. *Washington State Commercial Passenger Fishing Vessel Assn.*, 443 U. S. 658, 677–678 (1979).

The treaty language at issue in each of the four cases is similar, though not identical, to the language before us. The cases focus upon language that guarantees to the Yakamas

"the right of taking fish at all usual and accustomed places, in common with citizens of the Territory." Art. III, para. 2, 12 Stat. 953. Here, the language guarantees to the Yakamas "the right, in common with citizens of the United States, to travel upon all public highways." Art. III, para. 1, *ibid.* The words "in common with" on their face could be read to permit application to the Yakamas of general legislation (like the legislation before us) that applies to all citizens, Yakama and non-Yakama alike. But this Court concluded the contrary because that is not what the Yakamas understood the words to mean in 1855. See *Winans*, 198 U. S., at 379, 381; *Seufert Brothers*, 249 U. S., at 198–199; *Tulee*, 315 U. S., at 684; *Fishing Vessel*, 443 U. S., at 679, 684–685.

The cases base their reasoning in part upon the fact that the treaty negotiations were conducted in, and the treaty was written in, languages that put the Yakamas at a significant disadvantage. See, *e. g.*, *Winans*, 198 U. S., at 380; *Seufert Brothers*, 249 U. S., at 198; *Fishing Vessel*, 443 U. S., at 667, n. 10. The parties negotiated the treaty in Chinook jargon, a trading language of about 300 words that no tribe used as a primary language. App. 65a; *Fishing Vessel*, 443 U. S., at 667, n. 10. The parties memorialized the treaty in English, a language that the Yakamas could neither read nor write. And many of the representations that the United States made about the treaty had no adequate translation in the Yakamas' own language. App. 68a–69a.

Thus, in the year 1905, in *Winans*, this Court wrote that, to interpret the treaty, courts must focus upon the historical context in which it was written and signed. 198 U. S., at 381; see also *Tulee*, 315 U. S., at 684 ("It is our responsibility to see that the terms of the treaty are carried out, so far as possible, in accordance with the meaning they were understood to have by the tribal representatives at the council"); cf. *Water Splash, Inc.* v. *Menon*, 581 U. S. 271, 280 (2017) (noting that, to ascertain the meaning of a treaty, courts "may look beyond the written words to the history of the

treaty, the negotiations, and the practical construction adopted by the parties" (internal quotation marks omitted)).

The Court added, in light of the Yakamas' understanding in respect to the reservation of fishing rights, the treaty words "in common with" do not limit the reservation's scope to a right against discrimination. *Winans*, 198 U. S., at 380–381. Instead, as we explained in *Tulee*, *Winans* held that "Article III [of the treaty] conferred upon the Yakimas continuing rights, *beyond those which other citizens may enjoy*, to fish at their 'usual and accustomed places' in the ceded area." *Tulee*, 315 U. S., at 684 (citing *Winans*, 198 U. S. 371; emphasis added). Also compare, *e. g.*, *Fishing Vessel*, 443 U. S., at 677, n. 22 ("Whatever opportunities the treaties assure Indians with respect to fish are admittedly *not 'equal' to*, *but are to some extent greater than*, those afforded other citizens" (emphasis added)), with *post*, at 389 (KAVANAUGH, J., dissenting) (citing this same footnote in *Fishing Vessel* as support for the argument that the treaty guarantees the Yakamas only a right against discrimination). Construing the treaty as giving the Yakamas only antidiscrimination rights, rights that any inhabitant of the territory would have, would amount to "an impotent outcome to negotiations and a convention, which seemed to promise more and give the word of the Nation for more." *Winans*, 198 U. S., at 380.

Second, the historical record adopted by the agency and the courts below indicates that the right to travel includes a right to travel with goods for sale or distribution. See App. to Pet. for Cert. 33a; App. 56a–74a. When the United States and the Yakamas negotiated the treaty, both sides emphasized that the Yakamas needed to protect their freedom to travel so that they could continue to fish, to hunt, to gather food, and to trade. App. 65a–66a. The Yakamas maintained fisheries on the Columbia River, following the salmon runs as the fish moved through Yakama territory. *Id.*, at 62a–63a. The Yakamas traveled to the nearby plains region to hunt buffalo. *Id.*, at 61a. They traveled to the moun-

tains to gather berries and roots. *Ibid.* The Yakamas' religion and culture also depended on certain goods, such as buffalo byproducts and shellfish, which they could often obtain only through trade. *Id.*, at 61a–62a. Indeed, the Yakamas formed part of a great trading network that stretched from the Indian tribes on the Northwest coast of North America to the plains tribes to the east. *Ibid.*

The United States' representatives at the treaty negotiations well understood these facts, including the importance of travel and trade to the Yakamas. *Id.*, at 63a. They repeatedly assured the Yakamas that under the treaty the Yakamas would be able to travel outside their reservation on the roads that the United States built. *Id.*, at 66a–67a; see also, *e. g.*, *id.*, at 66a ("'[W]e give you the privilege of traveling over roads'"). And the United States repeatedly assured the Yakamas that they could travel along the roads for trading purposes. *Id.*, at 65a–67a. Isaac Stevens, the Governor of the Washington Territory, told the Yakamas, for example, that, under the terms of the treaty, "You will be allowed to go on the roads, to take your things to market, your horses and cattle." App. to Brief for Confederated Tribes and Bands of the Yakama Nation as *Amicus Curiae* 68a (record of the treaty proceedings). He added that the Yakamas "will be allowed to go to the usual fishing places and fish in common with the whites, and to get roots and berries and to kill game on land not occupied by the whites; all this outside the Reservation." *Ibid.* Governor Stevens further urged the Yakamas to accept the United States' proposals for reservation boundaries in part because the proposal put the Yakama Reservation in close proximity to public highways that would facilitate trade. He said, "'You will be near the great road and can take your horses and your cattle down the river and to the [Puget] Sound to market.'" App. 66a. In a word, the treaty negotiations and the United States' representatives' statements to the Yakamas would have led the Yakamas to understand that the treaty's protec-

tion of the right to travel on the public highways included the right to travel with goods for purposes of trade. We consequently so construe the relevant treaty provision.

Third, to impose a tax upon traveling with certain goods burdens that travel. And the right to travel on the public highways without such burdens is, as we have said, just what the treaty protects. Therefore, our precedents tell us that the tax must be pre-empted. In *Tulee*, for example, we held that the fishing right reserved by the Yakamas in the treaty pre-empted the application to the Yakamas of a state law requiring fishermen to buy fishing licenses. 315 U. S., at 684. We concluded that "such exaction of fees as a prerequisite to the enjoyment of" a right reserved in the treaty "cannot be reconciled with a fair construction of the treaty." *Id.*, at 685. If the cost of a fishing license interferes with the right to fish, so must a tax imposed on travel with goods (here fuel) interfere with the right to travel.

We consequently conclude that Washington's fuel tax "acts upon the Indians as a charge for exercising the very right their ancestors intended to reserve." *Ibid.* Washington's fuel tax cannot lawfully be assessed against Cougar Den on the facts here. Treaties with federally recognized Indian tribes—like the treaty at issue here—constitute federal law that pre-empts conflicting state law as applied to off-reservation activity by Indians. Cf. *Mescalero Apache Tribe* v. *Jones*, 411 U. S. 145, 148–149 (1973).

B

Again, we are not convinced by the arguments raised to the contrary. THE CHIEF JUSTICE concedes that "the right to travel with goods is just an application of the Yakamas' right to travel." *Post*, at 378 (dissenting opinion); see also *ibid.* ("It ensures that the Yakamas enjoy the same privileges when they travel with goods as when they travel without them"). But he nevertheless insists that, because of the way in which the Washington statute taxes fuel, the statute

does not interfere with the right to travel reserved by the Yakamas in the treaty. *Post*, at 379–380.

First, THE CHIEF JUSTICE finds it significant that "[t]he tax is calculated per gallon of fuel; not, like a toll, per vehicle or distance traveled." *Post*, at 379; see also *ibid.* ("The tax before us does not resemble a blockade or a toll"). But that argument fails on its own terms. A toll on highway travel is no less a toll when the toll varies based on the number of axles on a vehicle traveling the highway, or on the number of people traveling in the vehicle. We cannot, therefore, see why the number of gallons of fuel that the vehicle carries should make all the difference. Put another way, the fact that a tax on travel varies based on the features of that travel does not mean that the tax is not a tax on travel.

Second, THE CHIEF JUSTICE argues that it "makes no sense," for example, to hold that "a tax on certain luxury goods" that is assessed the first time the goods are possessed in Washington cannot apply to a Yakama member "who buys" a mink coat "over the state line in Portland and then drives back to the reservation," but the tax can apply to a Yakama member who "buys a mink coat at an off-reservation store in Washington." *Post*, at 380. The short, conclusive answer to this argument is that there is a treaty that forbids taxing Yakama travel on highways with goods (*e. g.*, fuel, or even furs) for market; and there is no treaty that forbids taxing Yakama off-reservation purchases of goods. Indeed, if our precedents supported THE CHIEF JUSTICE's rule, then our fishing rights cases would have turned on whether Washington also taxed fish purchased in the grocery store. Cf., *e. g.*, *Tulee*, 315 U. S., at 682, n. 1 (holding that the fishing right reserved by the Yakamas in the treaty pre-empted the application to the Yakamas of a state law which prohibited "'catch[ing] . . . fish for food'" without having purchased a license). But in those cases, we did not look to whether fish were taxed elsewhere in Washington. That is because the treaty does not protect the Yakamas from state sales

taxes imposed on the off-reservation sale of goods. Instead, the treaty protects the Yakamas' right to travel the public highways without paying state taxes on that activity, much like the treaty protects the Yakamas' right to fish without paying state taxes on that activity.

Third, THE CHIEF JUSTICE argues that only a law that "punished or charged the Yakamas" for an "integral feature" of a treaty right could be pre-empted by the treaty. *Post*, at 382. But that is true of the Washington statute at issue here. The treaty protects the right to travel with goods, see *supra*, at 359–363, and the Washington statute taxes travel with goods, see *supra*, at 353–356. Therefore, the statute charges the Yakamas for an "integral feature" of a treaty right. But even if the statute indirectly burdened a treaty right, under our precedents, the statute would still be pre-empted. One of the Washington statutes at issue in *Winans* was not a fishing regulation, but instead a trespassing statute. That trespassing statute indirectly burdened the right to fish by preventing the Yakamas from crossing privately owned land so that the Yakamas could reach their traditional fishing places and camp on that private property during the fishing season. See 198 U. S., at 380–381. It cannot be true that a law prohibiting trespassing imposed a burden on the right to fish that is "integral" enough to be pre-empted by the treaty, while a law taxing goods carried to the reservation on the public highway imposes a burden on the right to travel that is too attenuated to be pre-empted by the treaty.

C

Although we hold that the treaty protects the right to travel on the public highway with goods, we do not say or imply that the treaty grants protection to carry any and all goods. Nor do we hold that the treaty deprives the State of the power to regulate, say, when necessary for conservation. To the contrary, we stated in *Tulee* that, although the treaty "forecloses the [S]tate from charging the Indians a fee

of the kind in question here," the State retained the "power to impose on Indians, equally with others, such restrictions of a purely regulatory nature . . . as are necessary for the conservation of fish." 315 U. S., at 684. Indeed, it was crucial to our decision in *Tulee* that, although the licensing fees at issue were "regulatory as well as revenue producing," "their regulatory purpose could be accomplished otherwise," and "the imposition of license fees [was] not indispensable to the effectiveness of a state conservation program." *Id.*, at 685. See also *Puyallup Tribe* v. *Department of Game of Wash.*, 391 U. S. 392, 402, n. 14 (1968) ("As to a 'regulation' concerning the time and manner of fishing outside the reservation (as opposed to a 'tax'), we said that the power of the State was to be measured by whether it was 'necessary for the conservation of fish' " (quoting *Tulee*, 315 U. S., at 684)).

Nor do we hold that the treaty deprives the State of the power to regulate to prevent danger to health or safety occasioned by a tribe member's exercise of treaty rights. The record of the treaty negotiations may not support the contention that the Yakamas expected to use the roads entirely unconstrained by laws related to health or safety. See App. to Brief for Confederated Tribes and Bands of the Yakama Nation as *Amicus Curiae* 20a–21a, 31a–32a. Governor Stevens explained, at length, the United States' awareness of crimes committed by United States citizens who settled amongst the Yakamas, and the United States' intention to enact laws that would restrain both the United States citizens and the Yakamas alike for the safety of both groups. See *id.*, at 31a.

Nor do we here interpret the treaty as barring the State from collecting revenue through sales or use taxes (applied outside the reservation). Unlike the tax at issue here, which applies explicitly to transport by "railcar, trailer, truck, or other equipment suitable for ground transportation," see *supra*, at 355, a sales or use tax normally applies irrespective of transport or its means. Here, however, we

deal with a tax applicable simply to importation by ground transportation. Moreover, it is a tax designed to secure revenue that, as far as the record shows here, the State might obtain in other ways.

IV

To summarize, our holding rests upon three propositions: First, a state law that burdens a treaty-protected right is pre-empted by the treaty. See *supra*, at 363–367. Second, the treaty protects the Yakamas' right to travel on the public highway with goods for sale. See *supra*, at 359–363. Third, the Washington statute at issue here taxes the Yakamas for traveling with fuel by public highway. See *supra*, at 353–359. For these three reasons, Washington's fuel tax cannot lawfully be assessed against Cougar Den on the facts here. Therefore, the judgment of the Supreme Court of Washington is affirmed.

It is so ordered.

JUSTICE GORSUCH, with whom JUSTICE GINSBURG joins, concurring in the judgment.

The Yakamas have lived in the Pacific Northwest for centuries. In 1855, the United States sought and won a treaty in which the Tribe agreed to surrender 10 million acres, land that today makes up nearly a quarter of the State of Washington. In return, the Yakamas received a reservation and various promises, including a guarantee that they would enjoy "the right, in common with citizens of the United States, to travel upon all public highways." Treaty Between the United States and the Yakama Nation of Indians, Art. III, June 9, 1855, 12 Stat. 953. Today, the parties offer dueling interpretations of this language. The State argues that it merely allows the Yakamas to travel on public highways like everyone else. And because everyone else importing gasoline from out of State by highway must pay a tax on that good, so must tribal members. Meanwhile, the Tribe submits that the treaty guarantees tribal members the right to move their goods to and from market freely. So

that tribal members may bring goods, including gasoline, from an out-of-state market to sell on the reservation without incurring taxes along the way.

Our job here is a modest one. We are charged with adopting the interpretation most consistent with the treaty's original meaning. *Eastern Airlines, Inc.* v. *Floyd*, 499 U. S. 530, 534–535 (1991). When we're dealing with a tribal treaty, too, we must "give effect to the terms as the Indians themselves would have understood them." *Minnesota* v. *Mille Lacs Band of Chippewa Indians*, 526 U. S. 172, 196 (1999). After all, the United States drew up this contract, and we normally construe any ambiguities against the drafter who enjoys the power of the pen. Nor is there any question that the government employed that power to its advantage in this case. During the negotiations "English words were translated into Chinook jargon . . . although that was not the primary language" of the Tribe. *Yakama Indian Nation* v. *Flores*, 955 F. Supp. 1229, 1243 (ED Wash. 1997). After the parties reached agreement, the U. S. negotiators wrote the treaty in English—a language that the Yakamas couldn't read or write. And like many such treaties, this one was by all accounts more nearly imposed on the Tribe than a product of its free choice.

When it comes to the Yakamas' understanding of the treaty's terms in 1855, we have the benefit of a set of unchallenged factual findings. The findings come from a separate case involving the Yakamas' challenge to certain restrictions on their logging operations. *Id.*, at 1231. The state Superior Court relied on these factual findings in this case and held Washington collaterally estopped from challenging them. Because the State did not challenge the Superior Court's estoppel ruling either in the Washington Supreme Court or here, these findings are binding on us as well.

They also tell us all we need to know to resolve this case. To some modern ears, the right to travel in common with others might seem merely a right to use the roads subject to

the same taxes and regulations as everyone else. *Post*, at 386–388 (KAVANAUGH, J., dissenting). But that is not how the Yakamas understood the treaty's terms. To the Yakamas, the phrase " 'in common with' . . . implie[d] that the Indian and non-Indian use [would] be joint but [did] not imply that the Indian use [would] be in any way restricted." *Yakama Indian Nation*, 955 F. Supp., at 1265. In fact, "[i]n the Yakama language, the term 'in common with' . . . suggest[ed] public use or general use without restriction." *Ibid.* So "[t]he most the Indians would have understood . . . of the term[s] 'in common with' and 'public' was that they would share the use of the road with whites." *Ibid.* Significantly, there is "no evidence [to] sugges[t] that the term 'in common with' placed Indians in the same category as non-Indians with respect to any tax or fee the latter must bear with respect to public roads." *Id.*, at 1247. Instead, the evidence suggests that the Yakamas understood the right-to-travel provision to provide them "with the right to travel on all public highways without being subject to any licensing and permitting fees related to the exercise of that right while engaged in the transportation of tribal goods." *Id.*, at 1262.

Applying these factual findings to our case requires a ruling for the Yakamas. As the Washington Supreme Court recognized, the treaty's terms permit regulations that allow the Yakamas and non-Indians to share the road in common and travel along it safely together. But they do not permit encumbrances on the ability of tribal members to bring their goods to and from market. And by everyone's admission, the state tax at issue here isn't about facilitating peaceful coexistence of tribal members and non-Indians on the public highways. It is about taxing a good as it passes to and from market—exactly what the treaty forbids.

A wealth of historical evidence confirms this understanding. The *Yakama Indian Nation* decision supplies an admirably rich account of the history, but it is enough to recount just some of the most salient details. "Prior to and at the

time the treaty was negotiated," the Yakamas "engaged in a system of trade and exchange with other plateau tribes" and tribes "of the Northwest coast and plains of Montana and Wyoming." *Ibid.* This system came with no restrictions; the Yakamas enjoyed "free and open access to trade networks in order to maintain their system of trade and exchange." *Id.*, at 1263. They traveled to Oregon and maybe even to California to trade "fir trees, lava rocks, horses, and various species of salmon." *Id.*, at 1262–1263. This extensive travel "was necessary to obtain goods that were otherwise unavailable to [the Yakamas] but important for sustenance and religious purposes." *Id.*, at 1262. Indeed, "far-reaching travel was an intrinsic ingredient in virtually every aspect of Yakama culture." *Id.*, at 1238. Travel for purposes of trade was so important to the "Yakamas' way of life that they could not have performed and functioned as a distinct culture . . . without extensive travel." *Ibid.* (internal quotation marks omitted).

Everyone understood that the treaty would protect the Yakamas' preexisting right to take goods to and from market freely throughout their traditional trading area. "At the treaty negotiations, a primary concern of the Indians was that they have freedom to move about to . . . trade." *Id.*, at 1264. Isaac Stevens, the Governor of the Washington Territory, specifically promised the Yakamas that they would "'be allowed to go on the roads to take [their] things to market.'" *Id.*, at 1244 (emphasis deleted). Governor Stevens called this the "'same libert[y]'" to travel with goods free of restriction "'outside the reservation'" that the Tribe would enjoy within the new reservation's boundaries. *Ibid.* Indeed, the U. S. representatives' "statements regarding the Yakama's use of the public highways to take their goods to market clearly and without ambiguity promised the Yakamas the use of public highways without restriction for future trading endeavors." *Id.*, at 1265. Before the treaty, then, the Yakamas traveled extensively without paying taxes to

bring goods to and from market, and the record suggests that the Yakamas would have understood the treaty to preserve that liberty.

None of this can come as much of a surprise. As the State reads the treaty, it promises tribal members only the right to venture out of their reservation and use the public highways like everyone else. But the record shows that the consideration the Yakamas supplied was worth far more than an abject promise they would not be made prisoners on their reservation. In fact, the millions of acres the Tribe ceded were a prize the United States desperately wanted. U. S. treaty negotiators were "under tremendous pressure to quickly negotiate treaties with eastern Washington tribes, because lands occupied by those tribes were important in settling the Washington territory." *Id.*, at 1240. Settlers were flooding into the Pacific Northwest and building homesteads without any assurance of lawful title. The government needed "to obtain title to Indian lands" to place these settlements on a more lawful footing. *Ibid.* The government itself also wanted to build "wagon and military roads through Yakama lands to provide access to the settlements on the west side of the Cascades." *Ibid.* So "obtaining Indian lands east of the Cascades became a central objective" for the government's own needs. *Id.*, at 1241. The Yakamas knew all this and could see the writing on the wall: One way or another, their land would be taken. If they managed to extract from the negotiations the simple right to take their goods freely to and from market on the public highways, it was a price the United States was more than willing to pay. By any fair measure, it was a bargain-basement deal.

Our cases interpreting the treaty's neighboring and parallel right-to-fish provision further confirm this understanding. The treaty "secure[s] . . . the right of taking fish at all usual and accustomed places, *in common with* citizens of the Territory." Art. III, 12 Stat. 953 (emphasis added).

Initially, some suggested this guaranteed tribal members only the right to fish according to the same regulations and subject to the same fees as non-Indians. But long ago this Court refused to impose such an "impotent" construction on the treaty. *United States* v. *Winans*, 198 U. S. 371, 380 (1905). Instead, the Court held that the treaty language prohibited state officials from imposing many nondiscriminatory fees and regulations on tribal members. While such laws "may be both convenient and, in [their] general impact, fair," this Court observed, they act "upon the Indians as a charge for exercising the very right their ancestors intended to reserve." *Tulee* v. *Washington*, 315 U. S. 681, 685 (1942). Interpreting the same treaty right in *Winans*, we held that, despite arguments otherwise, "the phrase '*in common with* citizens of the Territory'" confers "upon the Yak[a]mas continuing rights, *beyond those which other citizens may enjoy*, to fish at their 'usual and accustomed places.'" *Tulee*, 315 U. S., at 684 (citing *Winans*, 198 U. S., at 371; emphasis added). Today, we simply recognize that the same language should yield the same result.

With its primary argument now having failed, the State encourages us to labor through a series of backups. It begins by pointing out that the treaty speaks of allowing the Tribe "free access" from local roads to the public highways, but indicates that tribal members are to use those highways "in common with" non-Indians. On the State's account, these different linguistic formulations must be given different meanings. And the difference the State proposes? No surprise: It encourages us to read the former language as allowing goods to be moved tax-free along local roads to the highways but the latter language as authorizing taxes on the Yakamas' goods once they arrive there. See also *post*, at 388 (KAVANAUGH, J., dissenting).

The trouble is that nothing in the record supports this interpretation. Uncontested factual findings reflect the Yaka-

mas' understanding that the treaty would allow them to use the highways to bring goods to and from market freely. These findings bind us under the doctrine of collateral estoppel, and no one has proposed any lawful basis for ignoring them. Nor, for that matter, has anyone even tried to offer a reason why the Tribe might have bargained for the right to move its goods freely only part of the way to market. Our job in this case is to interpret the treaty as the Yakamas originally understood it in 1855—not in light of new lawyerly glosses conjured up for litigation a continent away and more than 150 years after the fact.

If that alternative won't work, the State offers another. It admits that the Yakamas personally may have a right to travel the highways free of most restrictions on their movement. See also *post*, at 379 (ROBERTS, C. J., dissenting) (acknowledging that the treaty prohibits the State from "charg[ing] . . . a toll" on Yakamas traveling on the highway). But, the State continues, the law at issue here doesn't offend that right. It doesn't, we are told, because the "object" of the State's tax isn't *travel* but the *possession* of fuel; the fact that the State happens to assess its tax when fuel is possessed on a public highway rather than someplace else is neither here nor there. And just look, we are told, at the anomalies that might arise if we ruled otherwise. A tribal member who buys a "mink coat" in a Washington store would have to pay the State's sales tax, but a tribal member who purchases the same coat at market in Oregon could not be taxed for possessing it on the highway when reentering Washington. See *post*, at 378–383.

This argument suffers from much the same problem as its predecessors. Now, at least, the State may acknowledge that the Yakamas personally have a right to travel free of most restrictions. But the State still fails to give full effect to the treaty's terms and the Yakamas' original understanding of them. After all and as we've seen, the treaty doesn't just guarantee tribal members the right to *travel* on the

highways free of most restrictions on their movement; it also guarantees tribal members the right to *move goods* freely to and from market using those highways. And it's impossible to *transport* goods without *possessing* them. So a tax that falls on the Yakamas' possession of goods as they travel to and from market on the highway violates the treaty just as much as a tax on travel alone would.

Consider the alternative. If the State could save the tax here simply by labeling it a fee on the "possession" of a good, the State might just as easily revive the fishing license fee *Tulee* struck down simply by calling it a fee on the "possession" of fish. That, of course, would be ridiculous. The Yakamas' right to fish includes the right to *possess* the fish they catch—just like their right to *move* goods on the highways embraces the right to *possess* them there. Nor does the State's reply solve the problem. It accepts, as it must, that possessing fish is "integral" to the right to fish. *Post*, at 382–383, n. 2 (ROBERTS, C. J., dissenting). But it stands pat on its assertion that the treaty protects nothing more than a personal right to travel, ignoring all of the facts and binding findings before us establishing that the treaty *also* guarantees a right to move (and so possess) goods freely as they travel to and from market. *Ibid.*

What about the supposed "mink coat" anomaly? Under the terms of the treaty before us, it's true that a Yakama who buys a mink coat (or perhaps some more likely item) at an off-reservation store in Washington will have to pay sales tax because the treaty is silent there. And it is also true that a Yakama who buys the same coat right over the state line, pays any taxes due at market there, and then drives back to the reservation using the public highways is entitled to move that good tax-free from market back to the reservation. But that is hardly anomalous—*that* is the treaty right the Yakamas reserved. And it's easy to see why. Imagine the Yakama Reservation reached the Washington/Oregon state line (as it did before the 1855 Treaty). In that case,

Washington would have no basis to tax the Yakamas' transportation of goods from Oregon (whether they might be fuel, mink coats, or anything else), as all of the Yakamas' conduct would take place outside of the State or on the reservation. The only question here is whether the result changes because the Tribe must now use Washington's highways to make the trek home. And the answer is no. The Tribe bargained for a right to travel with goods off reservation just as it could on reservation and just as it had for centuries. If the State and federal governments do not like that result, they are free to bargain for more, but they do not get to rewrite the existing bargain in this Court.

Alternatively yet, the State warns us about the dire consequences of a ruling against it. Highway speed limits, reckless driving laws, and much more, the State tells us, will be at risk if we rule for the Tribe. See also *post*, at 383–386 (ROBERTS, C. J., dissenting). But notice. Once you acknowledge (as the State and primary dissent just have) that the Yakamas *themselves* enjoy a right to travel free of at least some nondiscriminatory state regulations, this "problem" inevitably arises. It inevitably arises, too, once you concede that the Yakamas enjoy a right to travel freely at least on local roads. See *post*, at 388 (KAVANAUGH, J., dissenting). Whether you read the treaty to afford the Yakamas the further right to bring goods to and from market is beside the point.

It turns out, too, that the State's parade of horribles isn't really all that horrible. While the treaty supplies the Yakamas with special rights to travel with goods to and from market, we have seen already that its "in common with" language *also* indicates that tribal members knew they would have to "share the use of the road with whites" and accept regulations designed to allow the two groups' safe coexistence. *Yakama Indian Nation*, 955 F. Supp., at 1265. Indeed, the Yakamas *expected* laws designed to "protec[t]" their ability to travel safely alongside non-Indians on the

highways. See App. to Brief for Confederated Tribes and Bands of the Yakama Nation as *Amicus Curiae* 21a, 31a. Maybe, too, that expectation goes some way toward explaining why the State's hypothetical parade of horribles has yet to take its first step in the real world. No one before us has identified a single challenge to a state highway speed limit, reckless driving law, or other critical highway safety regulation in the entire life of the Yakama treaty.

Retreating now, the State suggests that the real problem isn't so much about the Yakamas themselves traveling freely as it is with their goods doing so. We are told we should worry, for example, about limiting Washington's ability to regulate the transportation of diseased apples from Oregon. See also *post*, at 386 (ROBERTS, C. J., dissenting). But if bad apples prove to be a public menace, Oregon and its localities may regulate them when they are grown or picked at the orchard. Oregon, its localities, and maybe even the federal government may regulate the bad apples when they arrive at market for sale in Oregon. The Tribe and again, perhaps, the federal government may regulate the bad apples when they arrive on the reservation. And if the bad apples somehow pose a threat to safe travel on the highways, even Washington may regulate them as they make their way from Oregon to the reservation—just as the State may require tribal members to abide nondiscriminatory regulations governing the safe transportation of flammable cargo as they drive their gas trucks from Oregon to the reservation along public highways. The only thing that Washington may not do is reverse the promise the United States made to the Yakamas in 1855 by imposing a tax or toll on tribal members or their goods as they pass to and from market.

Finally, some worry that, if we recognize the potential permissibility of state highway safety laws, we might wind up impairing the interests of "tribal members across the country." *Post*, at 385 (ROBERTS, C. J., dissenting). But our decision today is based on unchallenged factual findings about

how the Yakamas themselves understood this treaty in light of the negotiations that produced it. And the Tribe itself has expressly acknowledged that its treaty, while extending real and valuable rights to tribal members, does not preclude laws that merely facilitate the safe use of the roads by Indians and non-Indians alike. Nor does anything we say here necessarily apply to other tribes and other treaties; each must be taken on its own terms. In the end, then, the only true threat to tribal interests today would come from replacing the meaningful right the Yakamas thought they had reserved with the trivial promise the State suggests.

Really, this case just tells an old and familiar story. The State of Washington includes millions of acres that the Yakamas ceded to the United States under significant pressure. In return, the government supplied a handful of modest promises. The State is now dissatisfied with the consequences of one of those promises. It is a new day, and now it wants more. But today and to its credit, the Court holds the parties to the terms of their deal. It is the least we can do.

CHIEF JUSTICE ROBERTS, with whom JUSTICE THOMAS, JUSTICE ALITO, and JUSTICE KAVANAUGH join, dissenting.

In the 1855 treaty in which the Yakamas surrendered most of their lands to the United States, the Tribe sought to protect its way of life by reserving, among other rights, "the right, in common with citizens of the United States, to travel upon all public highways." Treaty Between the United States and the Yakama Nation of Indians, Art. III, June 9, 1855, 12 Stat. 953. Cougar Den, a Yakama corporation that uses public highways to truck gas into Washington, contends that the treaty exempts it from Washington's fuel tax, which the State assesses upon the importation of fuel into the State. The plurality agrees, concluding that Washington cannot impose the tax on Cougar Den because doing so would "have the practical effect of burdening" Cougar Den's exer-

cise of its right to travel on the highways. *Ante*, at 358. The concurrence reaches the same result, reasoning that, because the Yakamas' right to travel includes the right to travel with goods, the State cannot tax or regulate the Yakamas' goods on the highways. *Ante*, at 372–374 (GORSUCH, J., concurring in judgment).

But the mere fact that a state law has an effect on the Yakamas *while* they are exercising a treaty right does not establish that the law impermissibly burdens the right itself. And the right to travel with goods is just an application of the Yakamas' right to travel. It ensures that the Yakamas enjoy the same privileges when they travel with goods as when they travel without them. It is not an additional right to possess whatever goods they wish on the highway, immune from regulation and taxation. Under our precedents, a state law violates a treaty right only if the law imposes liability upon the Yakamas "for exercising the very right their ancestors intended to reserve." *Tulee* v. *Washington*, 315 U. S. 681, 685 (1942). Because Washington is taxing Cougar Den for possessing fuel, not for traveling on the highways, the State's method of administering its fuel tax is consistent with the treaty. I respectfully dissent from the contrary conclusion of the plurality and concurrence.[1]

We have held on three prior occasions that a nondiscriminatory state law violated a right the Yakamas reserved in the 1855 treaty. All three cases involved the "right of taking fish at all usual and accustomed places, in common with citizens of the Territory." Art. III, 12 Stat. 953. In *United States* v. *Winans*, 198 U. S. 371 (1905), and later again in

[1] There is something of an optical illusion in this case that may subtly distort analysis. It comes from the fact that the tax here happens to be on motor fuel. There is no claim, however, that the tax inhibits the treaty right to travel because of the link between motor fuel and highway travel. The question presented must be analyzed as if the tax were imposed on goods of any sort.

Seufert Brothers Co. v. *United States*, 249 U. S. 194 (1919), we held that state trespass law could not be used to prevent tribe members from reaching a historic fishing site. And in *Tulee* v. *Washington*, we held that Washington could not punish a Yakama member for fishing without a license. We concluded that the license law was preempted because the required fee "act[ed] upon the Indians as a charge for exercising the very right their ancestors intended to reserve"—the right to fish. 315 U. S., at 685.

These three cases found a violation of the treaty when the challenged action—application of trespass law and enforcement of a license requirement—actually blocked the Yakamas from fishing at traditional locations. Applying the reasoning of those decisions to the Yakamas' right to travel, it follows that a State could not bar Yakama members from traveling on a public highway, or charge them a toll to do so.

Nothing of the sort is at issue here. The tax before us does not resemble a blockade or a toll. It is a tax on a product imported into the State, not a tax on highway travel. The statute says as much: "There is hereby levied and imposed . . . a tax . . . *on each gallon of motor vehicle fuel*." Wash. Rev. Code § 82.36.020(1) (2012) (emphasis added). It is difficult to imagine how the legislature could more clearly identify the object of the tax. The tax is calculated per gallon of fuel; not, like a toll, per vehicle or distance traveled. It is imposed on the owner of the fuel, not the driver or owner of the vehicle—separate entities in this case. And it is imposed at the same rate on fuel that enters the State by methods other than a public highway—whether private road, rail, barge, or pipeline. §§ 82.36.010(4), 020(1), (2). Had Cougar Den filled up its trucks at a refinery or pipeline terminal in Washington, rather than trucking fuel in from Oregon, there would be no dispute that it was subject to the exact same tax. See §§ 82.36.020(2)(a), (b)(ii). Washington is taxing the fuel that Cougar Den imports, not Cougar Den's

travel on the highway; it is not charging the Yakamas "for exercising the very right their ancestors intended to reserve." *Tulee*, 315 U. S., at 685.

It makes no difference that Washington happens to impose that charge when Cougar Den's drivers cross into Washington on a public highway. The time and place of the imposition of the tax does not change what is taxed, and thus what activity—possession of goods or travel—is burdened. Say Washington imposes a tax on certain luxury goods, assessed upon first possession of the goods by a retail customer. A Yakama member who buys a mink coat at an off-reservation store in Washington will pay the tax. Yet, as the plurality acknowledges, under its view a tribal member who buys the same coat right over the state line in Portland and then drives back to the reservation will owe no tax—all because of a reserved right to travel on the public highways. *Ante*, at 364. That makes no sense. The tax charges individuals for possessing expensive furs. It in no way burdens highway travel.

The plurality devotes five pages to planting trees in hopes of obscuring the forest: to delving into irrelevancies about how the tax is assessed or collected, instead of the substance of what is taxed. However assessed or collected, the tax on 10,000 gallons of fuel is the same whether the tanker carrying it travels three miles in Washington or three hundred. The tax varies only with the amount of fuel. Why? Because the tax is on fuel, not travel. If two tankers travel 200 miles together from the same starting point to the same destination—one empty, one full of fuel—the full tanker will pay the fuel tax, the empty tanker will pay nothing. Their travel has been identical, but only the full one pays tax. Why? Because the tax is on fuel, not travel. The tax is on the owner of the fuel, not the owner of the vehicle. Why? You get the point.

The plurality responds that, even though the tax is calculated per gallon of fuel, it remains a tax on travel because it

taxes a "feature" of travel. *Ante*, at 364. It is of course true that tanker trucks can be seen from time to time on the highways, but that hardly makes them a regular "feature" of travel, like the plurality's examples of axles or passengers. And we know that Washington is not taxing the gas insofar as it is a feature of Cougar Den's travel, because Washington imposes the exact same tax on gas that is not in transit on the highways.

Rather than grappling with the substance of the tax, the plurality fixates on variations in the time and place of its assessment. The plurality thinks it significant that Washington does not impose the tax at the moment of entry on fuel that enters the State by pipeline or by a barge bound for a refinery, but instead when a tanker truck withdraws the fuel from the refinery or pipeline terminal. This may demonstrate that the tax is not on *first* possession of fuel in the State, as the plurality stresses, but it hardly demonstrates that the tax is not on possession of fuel *at all*. Regardless of how fuel enters the State, someone will eventually pay a per-gallon charge for possessing it. Washington simply assesses the fuel tax in each case upon the wholesaler. See 188 Wash. 2d 55, 60, 392 P. 3d 1014, 1016 (2017). This variation does not indicate, as the plurality suggests, that the fuel tax is somehow *targeted* at highway travel.

The plurality also says that it is bound by the Washington Supreme Court's references to the tax as an "importation tax" and tax on "the importation of fuel," *ante*, at 356 (quoting 188 Wash. 2d, at 67, 69, 392 P. 3d, at 1019, 1020), but these two references to the point at which the tax is *assessed* are not authoritative constructions of the *object* of the tax. The state court did not reject Washington's argument that this is a tax on fuel; instead, like the plurality today, it ignored that argument and concluded that the tax was invalid simply because Washington imposed it while Cougar Den was traveling on the highway. In any event, the state court more

often referred to the tax as a "tax on fuels" or "fuel tax[ ]." *Id.*, at 58–61, 392 P. 3d, at 1015–1016.

After the five pages arguing that a tax expressly labeled as on "motor vehicle fuel" is actually a tax on something else, the plurality concludes . . . it doesn't matter. As the plurality puts it at page nine of its opinion, "even if" the tax is on fuel and not travel, it is preempted because it has "the practical effect of burdening" the Yakamas' right to travel on the highways. The plurality's rule—that States may not enforce general legislation that has an effect on the Yakamas while they are traveling—has no basis in our precedents, which invalidated laws that punished or charged the Yakamas simply for exercising their reserved rights. The plurality is, of course, correct that the trespass law in *Winans* did not target fishing, but it effectively made illegal the very act of fishing at a traditional location. Here, it is the possession of commercial quantities of fuel that exposes the Yakamas to liability, not travel itself or any integral feature of travel.

The concurrence reaches the same result as the plurality, but on different grounds. Rather than holding that the treaty preempts any law that burdens the Yakamas while traveling on the highways, the concurrence reasons that the fuel tax is preempted because it regulates the possession of goods, and the Yakamas' right to travel includes the right to travel with goods. *Ante*, at 373–374. But the right to travel with goods is just an application of the right to travel. It means the Yakamas enjoy the same privileges whether they travel with goods or without. It does not provide the Yakamas with an additional right to carry any and all goods on the highways, tax free, in any manner they wish.[2] The con-

[2] The plurality simply assumes that the right to travel with goods is an additional, substantive right when it reasons that the fuel tax is preempted because it taxes an "integral feature" of travel with goods. *Ante*, at 365. The concurrence makes the same assumption when it compares the fuel tax to a tax on " 'possession' of fish." *Ante*, at 374. That tax would be preempted because "taking possession of fish" is just another way of

currence purports to find this additional right in the record of the treaty negotiations, but the record shows only that the Yakamas wanted to ensure they could continue to travel to the places where they traded. They did not, and did not intend to, insulate the goods they carried from all regulation and taxation.

Nothing in the text of the treaty, the historical record, or our precedents supports the conclusion that the right "to travel upon all public highways" transforms the Yakamas' vehicles into mobile reservations, immunizing their contents from any state interference. Before it reaches the reservation, the fuel in Cougar Den's tanker trucks is always susceptible to state regulation—it does not pass in and out of state authority with every exit off or entry onto the road.

Recognizing the potentially broad sweep of its new rule, the plurality cautions that it does not intend to deprive the State of the power to regulate when necessary "to prevent danger to health or safety occasioned by a tribe member's exercise of treaty rights." *Ante*, at 366. This escape hatch ensures, the plurality suggests, that the treaty will not preempt essential regulations that burden highway travel. *Ante*, at 359. I am not so confident.

First, by its own terms, the plurality's health and safety exception is limited to laws that regulate dangers "occasioned by" a Yakama's travel. That would seem to allow speed limits and other rules of the road. But a law against possession of drugs or illegal firearms—the dangers of which have nothing to do with travel—does not address a health or safety risk "occasioned by" highway driving. I do not see how, under the plurality's rule or the concurrence's, a Washington police officer could burden a Yakama's travel by pulling him over on suspicion of carrying such contraband on the highway.

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describing the act of fishing. But possession of a tanker full of fuel is not an integral feature of travel, which is the relevant activity protected by the treaty.

But the more fundamental problem is that this Court has never recognized a health and safety exception to reserved treaty rights, and the plurality today mentions the exception only in passing. Importantly, our precedents—all of which concern hunting and fishing rights—acknowledge the authority of the States to regulate Indians' exercise of their reserved rights only in the interest of *conservation*. See *Tulee*, 315 U. S., at 684 ("[T]he treaty leaves the state with power to impose on Indians, equally with others, such restrictions . . . as are necessary for the conservation of fish . . . ."); see also *Minnesota* v. *Mille Lacs Band of Chippewa Indians*, 526 U. S. 172, 205 (1999) ("We have repeatedly reaffirmed state authority to impose reasonable and necessary nondiscriminatory regulations on Indian hunting, fishing, and gathering rights in the interest of conservation."); *Confederated Tribes of Colville Reservation* v. *Anderson*, 903 F. Supp. 2d 1187, 1197 (ED Wash. 2011) ("Notably absent from the binding Supreme Court and Ninth Circuit cases dealing with state regulation of 'in common' usufructuary rights is any reference to a state's exercise of its public-safety police power."). Indeed, this Court had previously assured the Yakamas that "treaty fishermen are *immune from all regulation save that required for conservation*." *Washington* v. *Washington State Commercial Passenger Fishing Vessel Assn.*, 443 U. S. 658, 682 (1979) (emphasis added). Adapted to the travel right, the conservation exception would presumably protect regulations that preserve the subject of the Yakamas' right by maintaining safe and orderly travel on the highways. But many regulations that burden highway travel (such as emissions standards, noise restrictions, or the plurality's hypothetical ban on the importation of plutonium) do not fit that description.

The need for the health and safety exception, of course, follows from the overly expansive interpretation of the treaty right adopted by the plurality and concurrence. Today's decision digs such a deep hole that the future promises

a lot of backing and filling. Perhaps there are good reasons to revisit our long-held understanding of reserved treaty rights as the plurality does, and adopt a broad health and safety exception to deal with the inevitable fallout. Hard to say, because no party or *amicus* has addressed the question.

The plurality's response to this important issue is the following, portentous sentence: "The record of the treaty negotiations may not support the contention that the Yakamas expected to use the roads entirely unconstrained by laws related to health or safety." *Ante*, at 366. A lot of weight on two words, "may not." The plurality cites assurances from the territorial Governor of Washington that the United States would make laws to prevent "bad white men" from harming the Yakamas, and that the United States expected the Yakamas to exercise similar restraint in return. App. to Brief for Confederated Tribes and Bands of the Yakama Nation as *Amicus Curiae* 31a; *ante*, at 366. What this has to do with health and safety regulations affecting the highways (or fishing or hunting) is not clear.

In the meantime, do not assume today's decision is good news for tribal members across the country. Application of state safety regulations, for example, could prevent Indians from hunting and fishing in their traditional or preferred manner, or in particular "usual and accustomed places." I fear that, by creating the need for this untested exception, the unwarranted expansion of the Yakamas' right to travel may undermine rights that the Yakamas and other tribes really did reserve.

The concurrence does not mention the plurality's possible health and safety exception, but observes that the Yakamas expected to follow laws that "facilitate the safe use of the roads by Indians and non-Indians alike." *Ante*, at 377. The State is therefore wrong, the concurrence says, to contend that a decision exempting Cougar Den's fuel from taxation would call into question speed limits and reckless driving laws. But that is not the State's principal argument. The State acknowledges that laws facilitating safe travel on the

highways would fall within the long-recognized conservation exception. See Tr. of Oral Arg. 12–13. The problem is that today's ruling for Cougar Den preempts the enforcement of any regulation of *goods* on the highway that does not concern *travel* safety—such as a prohibition on the possession of potentially contaminated apples taken from a quarantined area (a matter of vital concern in Washington). See *id.*, at 13; Brief for Petitioner 44.

The concurrence says not to worry, the apples could be regulated and inspected where they are grown, or when they arrive at a market. Or, if the Yakamas are taking the apples back to the reservation, perhaps the Federal Government or the Tribe itself could address the problem there. *Ante*, at 376. What the concurrence does not say is that the State could regulate the contraband apples on the highway. And there is no reason offered why other contraband should be treated any differently.

Surely the concurrence does not mean to suggest that the parties to the 1855 treaty intended to confer on the Tribe the right to travel with illegal goods, free of any regulation. But if that is not the logical consequence of the decision today, the plurality and the concurrence should explain why. It is the least they should do.

I respectfully dissent.

JUSTICE KAVANAUGH, with whom JUSTICE THOMAS joins, dissenting.

The text of the 1855 treaty between the United States and the Yakama Tribe affords the Tribe a "right, in common with citizens of the United States, to travel upon all public highways." Treaty Between the United States and the Yakama Nation of Indians, Art. III, June 9, 1855, 12 Stat. 953. The treaty's "in common with" language means what it says. The treaty recognizes tribal members' right to travel on off-reservation public highways on equal terms with other U. S. citizens. Under the text of the treaty, the tribal members,

like other U. S. citizens, therefore still remain subject to *nondiscriminatory* state highway regulations—that is, to regulations that apply equally to tribal members and other U. S. citizens. See *Mescalero Apache Tribe* v. *Jones*, 411 U. S. 145, 148–149 (1973). That includes, for example, speed limits, truck restrictions, and reckless driving laws.

The Washington law at issue here imposes a nondiscriminatory fuel tax. THE CHIEF JUSTICE concludes that the fuel tax is not a highway regulation and, for that reason, he says that the fuel tax does not infringe the Tribe's treaty right to travel on the public highways. I agree with THE CHIEF JUSTICE and join his dissent.

Even if the fuel tax is a highway regulation, it is a *nondiscriminatory* highway regulation. For that reason as well, the fuel tax does not infringe the Tribe's treaty right to travel on the public highways on equal terms with other U. S. citizens.

The plurality, as well as the concurrence in the judgment, suggests that the treaty, if construed that way, would not have been important to the Yakamas. For that reason, the plurality and the concurrence would not adhere to that textual meaning and would interpret "in common with" other U. S. citizens to mean, in essence, "exempt from regulations that apply to" other U. S. citizens.

I respectfully disagree with that analysis. The treaty right to travel on the public highways "in common with"—that is, on equal terms with—other U. S. citizens was important to the Yakama tribal members at the time the treaty was signed. That is because, as of 1855, States and the Federal Government sometimes required tribal members to seek permission before leaving their reservations or even prohibited tribal members from leaving their reservations altogether. See, *e. g.*, Treaty Between the United States of America and the Utah Indians, Art. VII, Dec. 30, 1849, 9 Stat 985; Mo. Rev. Stat., ch. 80, § 10 (1845). The Yakamas needed to travel to sell their goods and trade for other goods.

As a result, those kinds of laws would have devastated the Yakamas' way of life. Importantly, the terms of the 1855 treaty made crystal clear that those kinds of travel restrictions could not be imposed on the Yakamas.

In particular, the treaty afforded Yakama tribal members two relevant rights. First was "free access" on roads from the reservation to "the nearest public highway." Art. III, 12 Stat. 953. Second was a right to travel "in common with" other U. S. citizens on "all public highways." *Ibid.* The right to free access from the reservation to public highways, combined with the right to travel off reservation on public highways, facilitated the Yakama tribal members' extensive trading network.

In determining the meaning of the "in common with" language, we must recognize that the treaty used different language in defining (1) the right to "free access," which applies only on roads connecting the reservation to the off-reservation public highways, and (2) the right to travel "in common with" other U. S. citizens, which applies on those off-reservation public highways. The approach of the plurality and the concurrence would collapse that distinction between the "free access" and "in common with" language and thereby depart from the text of the treaty. I would stick with the text. The treaty's "in common with" language—both at the time the treaty was signed and now—means what it says: the right for Yakama tribal members to travel on public highways on equal terms with other U. S. citizens.

To be sure, the treaty as negotiated and written may not have turned out to be a particularly good deal for the Yakamas. As a matter of separation of powers, however, courts are bound by the text of the treaty. See *Oregon Dept. of Fish and Wildlife* v. *Klamath Tribe*, 473 U. S. 753, 774 (1985). It is for Congress and the President, not the courts, to update a law and provide additional compensation or benefits to tribes beyond those provided by an old law. And since 1855, and especially since 1968, Congress has in fact

taken many steps to assist tribes through a variety of significant legislative measures. In short, lament about the terms of the treaty negotiated by the Federal Government and the Tribe in 1855 does not support the Judiciary (as opposed to Congress and the President) rewriting the law in 2019.

What about precedent? It is true that some of our older precedents interpreted similar "in common with" treaty language regarding fishing rights to grant tribal members an exemption from certain fishing regulations, even when the fishing regulations were nondiscriminatory. But as we explained in the most recent of those fishing cases, those nondiscriminatory fishing regulations had the effect of preventing the Tribes from catching a fair share of the fish in the relevant area. In other words, the fishing regulations at issue were discriminatory in effect even though nondiscriminatory on their face. See *Washington* v. *Washington State Commercial Passenger Fishing Vessel Assn.*, 443 U. S. 658, 676, n. 22 (1979).

That rationale for departing from the treaty text in the narrow context of the fishing cases does not apply in the highway context. Facially nondiscriminatory highway regulations—such as speed limits, truck restrictions, and reckless driving laws—are also nondiscriminatory in effect, as relevant here. They do not deprive tribal members of use of the public highways or deprive tribal members of a fair share of the public highways.

Washington's facially nondiscriminatory fuel tax is likewise nondiscriminatory in effect. The Washington fuel tax therefore does not violate the key principle articulated in the fishing cases. I would adhere to the text of the treaty and hold that the tribal members, like other citizens of the State of Washington, are subject to the nondiscriminatory fuel tax.

The Court (via the plurality opinion and the concurrence) disagrees. The Court relies on the fishing cases and fashions a new right for Yakama tribal members to disregard

even nondiscriminatory highway regulations, such as the Washington fuel tax and perhaps also Washington's similarly structured cigarette tax. The Court's newly created right will allow Yakama businesses not to pay state taxes that must be paid by other competing businesses, including by businesses run by members of the many other tribes in the State of Washington. As a result, the State of Washington (along with other States) stands to lose millions of dollars annually in tax revenue, which will necessarily mean fewer services or increased taxes for other citizens and tribes in the State.

In addition, the Court's newly created right—if applied across the board—would seem to afford Yakama tribal members an exemption from all manner of highway regulations, ranging from speed limits to truck restrictions to reckless driving laws. No doubt because of those negative real-world consequences, the Court simultaneously fashions a new health and safety exception.* But neither the right nor the exception comes from the text of the treaty. As THE CHIEF JUSTICE explains, the Court's "need for the health and safety exception, of course, follows from the overly expansive interpretation of the treaty right adopted by the plurality and concurrence." *Ante*, at 384.

I share THE CHIEF JUSTICE's concern that the Court's new right for tribal members to disregard even nondiscriminatory highway regulations and the Court's new exception to that right for health and safety regulations could generate significant uncertainty and unnecessary litigation for States and tribes. THE CHIEF JUSTICE says it well: The Court "digs such a deep hole that the future promises a lot of backing and filling." *Ante*, at 384–385.

Instead of judicially creating a new atextual right for tribal members to disregard nondiscriminatory highway regulations and then backfilling by judicially creating a new

*I understand both the plurality opinion and the concurrence to approve of a health and safety exception.

atextual exception to that right for health and safety regulations, I would adhere to the text of the treaty and leave it to Congress, if it chooses, to provide additional benefits for the Yakamas. In my respectful view, even when we interpret any ambiguities in the treaty in favor of the Tribe, the treaty phrase "in common with" cannot properly be read to exempt tribal members from nondiscriminatory highway regulations.

In sum, under the treaty, Washington's nondiscriminatory fuel tax may be imposed on Yakama tribal members just as it may be imposed on other citizens and tribes in the State of Washington. I respectfully dissent.

Syllabus

NIELSEN, SECRETARY OF HOMELAND SECURITY, ET AL. *v.* PREAP ET AL.

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

No. 16–1363. Argued October 10, 2018—Decided March 19, 2019*

Federal immigration law empowers the Secretary of Homeland Security to arrest and hold a deportable alien pending a removal decision, and generally gives the Secretary the discretion either to detain the alien or to release him on bond or parole. 8 U. S. C. § 1226(a). Another provision, § 1226(c)—enacted out of "concer[n] that deportable criminal aliens who are not detained continue to engage in crime and fail to appear for their removal hearings," *Demore* v. *Kim*, 538 U. S. 510, 513—sets out four categories of aliens who are inadmissible or deportable for bearing certain links to terrorism or for committing specified crimes. Section 1226(c)(1) directs the Secretary to arrest any such criminal alien "when the alien is released" from jail, and § 1226(c)(2) forbids the Secretary to release any "alien described in paragraph (1)" pending a determination on removal (with one exception not relevant here).

Respondents, two classes of aliens detained under § 1226(c)(2), allege that because they were not immediately detained by immigration officials after their release from criminal custody, they are not aliens "described in paragraph (1)," even though all of them fall into at least one of the four categories covered by §§ 1226(c)(1)(A)–(D). Because the Government must rely on § 1226(a) for their detention, respondents argue, they are entitled to bond hearings to determine if they should be released pending a decision on their status. The District Courts ruled for respondents, and the Ninth Circuit affirmed.

Held: The judgments are reversed, and the cases are remanded.

831 F. 3d 1193 and 667 Fed. Appx. 966, reversed and remanded.

JUSTICE ALITO delivered the opinion of the Court with respect to Parts I, III–A, III–B–1, and IV, concluding that the Ninth Circuit's interpretation of § 1226(c) is contrary to the plain text and structure of the statute. Pp. 404–410, 414–420.

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*Together with *Wilcox, Acting Field Office Director, Immigration and Customs Enforcement, et al.* v. *Khoury et al.* (see this Court's Rule 12.4), also on certiorari to the same court.

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(a) The statute's text does not support the argument that because respondents were not arrested immediately after their release, they are not "described in" § 1226(c)(1). Since an adverb cannot modify a noun, § 1226(c)(1)'s adverbial clause "when . . . released" does not modify the noun "alien," which is modified instead by the adjectival clauses appearing in subparagraphs (A)–(D). Respondents contend that an adverb can "describe" a person even though it cannot modify the noun used to denote that person, but this Court's interpretation is not dependent on a rule of grammar. The grammar merely complements what is conclusive here: the meaning of "described" as it appears in § 1226(c)(2)—namely, "to communicate verbally . . . an account of salient identifying features," Webster's Third New International Dictionary 610. That is the relevant definition since the indisputable job of the "descri[ption] in paragraph (1)" is to "identif[y]" for the Secretary which aliens she must arrest immediately "when [they are] released." Yet the "when . . . released" clause could not possibly describe aliens in that sense. If it did, the directive given to the Secretary in § 1226(c)(1) would be incoherent. Moreover, Congress's use of the definite article in "when the alien is released" indicates that the scope of the word "alien" "has been previously specified in context." Merriam-Webster's Collegiate Dictionary 1294. For that noun to have been previously specified, its scope must have been settled by the time the "when . . . released" clause appears at the end of paragraph (1). Thus, the class of people to whom "the alien" refers must be fixed by the predicate offenses identified in subparagraphs (A)–(D). Pp. 404–408.

(b) Subsections (a) and (c) do not establish separate sources of arrest and release authority; subsection (c) is a limit on the authority conferred by subsection (a). Accordingly, all the relevant detainees will have been arrested by authority that springs from subsection (a), and that fact alone will not spare them from subsection (c)(2)'s prohibition on release. The text of § 1226 itself contemplates that aliens arrested under subsection (a) may face mandatory detention under subsection (c). If § 1226(c)'s detention mandate applied only to those arrested pursuant to subsection (c)(1), there would have been no need for subsection (a)'s sentence on the release of aliens to include the words "[e]xcept as provided in subsection (c)." It is also telling that subsection (c)(2) does not limit mandatory detention to those arrested "pursuant to" subsection (c)(1) or "under authority created by" subsection (c)(1), but to anyone so much as "described in" subsection (c)(1). Pp. 408–410.

(c) This reading of § 1226(c) does not flout the interpretative canon against surplusage. The "when . . . released" clause still functions to clarify when the duty to arrest is triggered and to exhort the Secretary

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to act quickly. Nor does this reading have the incongruous result of forbidding the release of a set of aliens whom there is no duty to arrest in the first place. Finally, the canon of constitutional avoidance does not apply where there is no ambiguity. See *Warger* v. *Shauers*, 574 U. S. 40, 50. Pp. 414–420.

JUSTICE ALITO, joined by THE CHIEF JUSTICE and JUSTICE KAVANAUGH, concluded in Parts II and III–B–2:

(a) This Court has jurisdiction to hear these cases. The limitation on review in § 1226(e) applies only to "discretionary" decisions about the "application" of § 1226 to particular cases. It does not block lawsuits over "the extent of the Government's detention authority under the 'statutory framework' as a whole." *Jennings* v. *Rodriguez*, 583 U. S. 281, 295–296. For reasons stated in *Jennings*, "§ 1252(b)(9) does not present a jurisdictional bar." *Id.*, at 295. Whether the District Court in the *Preap* case had jurisdiction under § 1252(f)(1) to grant injunctive relief is irrelevant because the court had jurisdiction to entertain the plaintiffs' request for declaratory relief. And the fact that by the time of class certification the named plaintiffs had obtained either cancellation of removal or bond hearings did not make these cases moot. At least one named plaintiff in both cases could have been returned to detention and then denied a subsequent bond hearing. Even if that had not been so, these cases would not be moot because the harms alleged are transitory enough to elude review. *County of Riverside* v. *McLaughlin*, 500 U. S. 44, 52. Pp. 401–404.

(b) Even assuming that § 1226(c)(1) requires immediate arrest, the result below would be wrong, because a statutory rule that officials " 'shall' act within a specified time" does not by itself "preclud[e] action later," *Barnhart* v. *Peabody Coal Co.*, 537 U. S. 149, 158. This principle for interpreting time limits on statutory mandates was a fixture of the legal backdrop when Congress enacted § 1226(c). Cf. *Woodford* v. *Garceau*, 538 U. S. 202, 209. Pp. 410–414.

JUSTICE THOMAS, joined by JUSTICE GORSUCH, concluded that three statutory provisions—8 U. S. C. §§ 1252(b)(9), 1226(e), and 1252(f)(1)—limit judicial review in these cases and it is unlikely that the District Courts had Article III jurisdiction to certify the classes. Pp. 422–427.

ALITO, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, III–A, III–B–1, and IV, in which ROBERTS, C. J., and THOMAS, GORSUCH, and KAVANAUGH, JJ., joined, and an opinion with respect to Parts II and III–B–2, in which ROBERTS, C. J.,

and KAVANAUGH, J., joined. KAVANAUGH, J., filed a concurring opinion, *post*, p. 420. THOMAS, J., filed an opinion concurring in part and concurring in the judgment, in which GORSUCH, J., joined, *post*, p. 422. BREYER, J., filed a dissenting opinion, in which GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined, *post*, p. 427.

Zachary D. Tripp argued the cause for petitioners. With him on the briefs were *Solicitor General Francisco*, *Acting Assistant Attorney General Readler*, *Deputy Solicitor General Kneedler*, and *Troy D. Liggett.*

Cecillia Wang argued the cause for respondents. With her on the brief were *Michael K. T. Tan*, *Judy Rabinovitz*, *Omar C. Jadwat*, *David D. Cole*, *Lucas Guttentag*, *Matt Adams*, *Robert Pauw*, *Devin T. Theriot-Orr*, *Vasudha Talla*, *Anoop Prasad*, and *Jenny Zhao.*†

JUSTICE ALITO announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, III–A, III–B–1, and IV, and an opinion with respect to Parts II and III–B–2, in which THE CHIEF JUSTICE and JUSTICE KAVANAUGH join.

Aliens who are arrested because they are believed to be deportable may generally apply for release on bond or parole while the question of their removal is being decided. These aliens may secure their release by proving to the satisfaction

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†Briefs of *amici curiae* urging reversal were filed for the Criminal Justice Legal Foundation by *Kent S. Scheidegger* and *Kymberlee C. Stapleton*; for Immigration Reform Law Institute by *Christopher J. Hajec*; and for Rep. Andy Biggs et al. by *Richard A. Samp.*

Briefs of *amici curiae* urging affirmance were filed for Advancement Project et al. by *Alina Das*; for Constitutional and Immigration Law Professors by *Mark C. Fleming*; for Former INS and DHS General Counsels by *Matthew E. Price*; for Members of Congress by *Jayashri Srikantiah*, *Jennifer L. Stark*, and *Ward A. Penfold*; and for the National Immigrant Justice Center by *Elaine J. Goldenberg* and *Charles G. Roth.*

Anton Metlitsky and *Deanna M. Rice* filed a brief for Administrative and Immigration Law Professors as *amici curiae.*

of a Department of Homeland Security officer or an immigration judge that they would not endanger others and would not flee if released from custody.

Congress has decided, however, that this procedure is too risky in some instances. Congress therefore adopted a special rule for aliens who have committed certain dangerous crimes and those who have connections to terrorism. Under a statutory provision enacted in 1996, 110 Stat. 3009–585, 8 U. S. C. § 1226(c), these aliens must be arrested "when [they are] released" from custody on criminal charges and (with one narrow exception not involved in these cases) must be detained without a bond hearing until the question of their removal is resolved.

In these cases, the United States Court of Appeals for the Ninth Circuit held that this mandatory-detention requirement applies only if a covered alien is arrested by immigration officials as soon as he is released from jail. If the alien evades arrest for some short period of time—according to respondents, even 24 hours is too long—the mandatory-detention requirement is inapplicable, and the alien must have an opportunity to apply for release on bond or parole. Four other Circuits have rejected this interpretation of the statute, and we agree that the Ninth Circuit's interpretation is wrong. We therefore reverse the judgments below and remand for further proceedings.

I

A

Under federal immigration law, aliens present in this country may be removed if they fall "within one or more . . . classes of deportable aliens." 8 U. S. C. § 1227(a). In these cases, we focus on two provisions governing the arrest, detention, and release of aliens who are believed to be subject to removal.

The first provision, § 1226(a),[1] applies to most such aliens, and it sets out the general rule regarding their arrest and detention pending a decision on removal. Section 1226(a) contains two sentences, one dealing with taking an alien into custody and one dealing with detention. The first sentence empowers the Secretary of Homeland Security[2] to arrest and hold an alien "pending a decision on whether the alien is to be removed from the United States." The second sentence *generally* gives the Secretary the discretion either to detain the alien or to release him on bond or parole. If the alien is detained, he may seek review of his detention by an officer at the Department of Homeland Security and then by an immigration judge (both exercising power delegated by the Secretary), see 8 CFR §§ 236.1(c)(8) and (d)(1), 1003.19, 1236.1(d)(1) (2018); and the alien may secure his release if he

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[1] This provision states:

"(a) Arrest, detention, and release

"On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—

"(1) may continue to detain the arrested alien; and

"(2) may release the alien on—

"(A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

"(B) conditional parole; but

"(3) may not provide the alien with work authorization (including an 'employment authorized' endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization."

[2] We replace "Attorney General" with "Secretary" because Congress has empowered the Secretary to enforce the Immigration and Nationality Act, 8 U. S. C. § 1101 *et seq.*, though the Attorney General retains the authority to administer removal proceedings and decide relevant questions of law. See, *e. g.*, 6 U. S. C. §§ 202(3), 251, 271(b), 542 note, 557; 8 U. S. C. §§ 1103(a)(1) and (g), 1551 note.

can convince the officer or immigration judge that he poses no flight risk and no danger to the community. See §§ 1003.19(a), 1236.1(d); *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006). But while 8 U. S. C. § 1226(a) generally permits an alien to seek release in this way, that provision's sentence on release states that all this is subject to an exception that is set out in § 1226(c).

Section 1226(c) was enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and it sprang from a "concer[n] that deportable criminal aliens who are not detained continue to engage in crime and fail to appear for their removal hearings in large numbers." *Demore* v. *Kim*, 538 U. S. 510, 513 (2003). To address this problem, Congress mandated that aliens who were thought to pose a heightened risk be arrested and detained without a chance to apply for release on bond or parole.

Section 1226(c) consists of two paragraphs, one on the decision to take an alien into "[c]ustody" and another on the alien's subsequent "[r]elease."[3] The first paragraph (on custody) sets out four categories of covered aliens, namely, those who are inadmissible or deportable on specified grounds. It then provides that the Secretary must take any alien falling into one of these categories "into custody" "when the alien is released" from criminal custody.

The second paragraph (on release from immigration custody) states that "an alien described in paragraph (1)" may be released "only if [the Secretary] decides" that release is "necessary to provide protection" for witnesses or others cooperating with a criminal investigation, or their relatives or associates. That exception is not implicated in the present cases.

The categories of predicates for mandatory detention identified in subparagraphs (A)–(D) generally involve the commission of crimes. As will become relevant to our anal-

[3] The full text of § 1226(c) is set out *infra*, at 404–405.

ysis, however, some who satisfy subparagraph (D)—*e. g.*, close relatives of terrorists and those who are thought likely to engage in terrorist activity, see 8 U. S. C. § 1182(a)(3)(B)(i)(IX)—may never have been charged with any crime in this country.[4] Still, since the vast majority of mandatory-detention cases do involve convictions, we follow the heading of subsection (c), as well as our cases and the courts below, in referring to aliens who satisfy subparagraphs (A)–(D) collectively as "criminal aliens."

The Board of Immigration Appeals has held that subsection (c)(2), which requires the detention of aliens "described in" subsection (c)(1), applies to all aliens who fall within subparagraphs (A)–(D), whether or not they were arrested immediately "when [they were] released" from criminal custody. *Matter of Rojas*, 23 I. & N. Dec. 117 (2001) (en banc).

B

Respondents in the two cases before us are aliens who were detained under § 1226(c)(2)'s mandatory-detention requirement—and thus denied a bond hearing—pending a decision on their removal. See *Preap* v. *Johnson*, 831 F. 3d 1193 (CA9 2016); *Khoury* v. *Asher*, 667 Fed. Appx. 966 (CA9 2016). Though all respondents had been convicted of criminal offenses covered in §§ 1226(c)(1)(A)–(D), none were arrested by immigration officials immediately after their release from criminal custody. Indeed, some were not arrested until several years later.

Respondent Mony Preap, the lead plaintiff in the case that bears his name, is a lawful permanent resident with two drug convictions that qualify him for mandatory detention under

[4] Nevertheless, such cases appear to be rare. See *Straker* v. *Jones*, 986 F. Supp. 2d 345, 357, n. 8 (SDNY 2013) (citing *Gomez* v. *Napolitano*, 2012 U. S. App. LEXIS 27076 (CA2, June 5, 2012)). But see *Alafyouny* v. *Chertoff*, 2006 WL 1581959, *3, *24 (ND Tex., May 19, 2006) (an alien was subject to mandatory detention based on a determination that the alien had solicited funds for a terrorist group).

§ 1226(c). Though he was released from criminal custody in 2006, immigration officials did not detain him until 2013, when he was released from jail after an arrest for another offense. His co-plaintiffs Juan Lozano Magdaleno and Eduardo Vega Padilla were taken into immigration detention, respectively, 5 and 11 years after their release from custody for a § 1226(c) predicate offense. Preap, Magdaleno, and Padilla filed habeas petitions and a class-action complaint alleging that because they were not arrested "immediately" after release from criminal custody, they are exempt from mandatory detention under § 1226(c) and are entitled to a bond hearing to determine if they should be released pending a decision on their status.

Although the named plaintiffs in *Preap* were not taken into custody on immigration grounds until years after their release from criminal custody, the District Court certified a broad class comprising all aliens in California "'who are or will be subjected to mandatory detention under 8 U. S. C. section 1226(c) and who were not or will not have been taken into custody by the government *immediately* upon their release from criminal custody for a [s]ection 1226(c)(1) offense.'" 831 F. 3d, at 1198 (emphasis added). The District Court granted a preliminary injunction against the mandatory detention of the members of this class, holding that criminal aliens are exempt from mandatory detention under § 1226(c) (and are thus entitled to a bond hearing) unless they are arrested "'when [they are] released,' and no later." *Preap* v. *Johnson*, 303 F. R. D. 566, 577 (ND Cal. 2014) (quoting 8 U. S. C. § 1226(c)(1)). The Court of Appeals for the Ninth Circuit affirmed.

Khoury, the other case now before us, involves habeas petitions and a class-action complaint filed in the Western District of Washington. The District Court certified a class comprising all aliens in that district "who were subjected to mandatory detention under 8 U. S. C. § 1226(c) even though they were not detained immediately upon their release from

criminal custody." 667 Fed. Appx., at 967. The District Court granted summary judgment for respondents, and the Ninth Circuit again affirmed, citing its decision on the same day in *Preap*.

Because *Preap* and *Khoury* created a split with four other Courts of Appeals, we granted certiorari to review the Ninth Circuit's ruling that criminal aliens who are not arrested immediately upon release are thereby exempt from mandatory detention under § 1226(c). 583 U. S. 1179 (2018). We now reverse.

II

Before addressing the merits of the Court of Appeals' interpretation, we resolve four questions regarding our jurisdiction to hear these cases.

The first potential hurdle concerns § 1226(e), which states:

> "The [Secretary's] *discretionary judgment* regarding the *application* of [§ 1226] shall not be subject to review. No court may set aside any action or decision by the [Secretary] under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole." (Emphasis added.)

As we have held, this limitation applies only to "discretionary" decisions about the "application" of § 1226 to particular cases. It does not block lawsuits over "the extent of the Government's detention authority under the 'statutory framework' as a whole." *Jennings* v. *Rodriguez*, 583 U. S. 281, 295–296 (2018) (quoting *Demore*, 538 U. S., at 517). And the general extent of the Government's authority under § 1226(c) is precisely the issue here. Respondents' argument is not that the Government exercised its statutory authority in an unreasonable fashion. Instead, they dispute the extent of the statutory authority that the Government claims. Because this claim of authority does not constitute a mere "discretionary" "application" of the relevant statute, our review is not barred by § 1226(e).

Nor are we stripped of jurisdiction by § 1252(b)(9), which provides:

> "Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter [including §§ 1225 and 1226] shall be available only in judicial review of a final order under this section." (Emphasis added.)

As in *Jennings*, respondents here "are not asking for review of an order of removal; they are not challenging the decision to detain them in the first place or to seek removal [as opposed to the decision to deny them bond hearings]; and they are not even challenging any part of the process by which their removability will be determined. Under these circumstances," we held in *Jennings*, see 583 U. S., at 294–295, "§ 1252(b)(9) does not present a jurisdictional bar."

The Government raised a third concern before the District Court in *Preap*: that under 8 U. S. C. § 1252(f)(1), that court lacked jurisdiction to enter the requested injunction. As § 1252(f)(1) cautions:

> "Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of [§§ 1221–1232] other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated."

Did the *Preap* court overstep this limit by granting injunctive relief for a class of aliens that includes some who have not yet faced—but merely "will face"—mandatory detention? The District Court said no, but we need not decide. Whether the *Preap* court had jurisdiction to enter such an injunction is irrelevant because the District Court had jurisdiction to entertain the plaintiffs' request for declaratory re-

lief, and for independent reasons given below, we are ordering the dissolution of the injunction that the District Court ordered.

Finally, and again before the *Preap* District Court, the Government raised a fourth potential snag: mootness. Class actions are "[n]ormally . . . moot if no named class representative with an unexpired claim remain[s] at the time of class certification." *United States* v. *Sanchez-Gomez*, 584 U. S. 381, 386 (2018). But that general norm is no hurdle here.

The suggestion of mootness in these cases was based on the fact that by the time of class certification the named plaintiffs had obtained either cancellation of removal or bond hearings. See 831 F. 3d, at 1197–1198; *Khoury* v. *Asher*, 3 F. Supp. 3d 877, 879–880 (WD Wash. 2014). But those developments did not make the cases moot because at least one named plaintiff in both cases had obtained release on bond, as opposed to cancellation of removal, and that release had been granted following a preliminary injunction in a separate case. Unless that preliminary injunction was made permanent and was not disturbed on appeal, these individuals faced the threat of re-arrest and mandatory detention. And indeed, we later ordered that that injunction be dissolved. See *Jennings*, 583 U. S., at 314. Thus, in both cases, there was at least one named plaintiff with a live claim when the class was certified.

Even if that had not been so, these cases would not be moot because the fact that a class "was not certified until after the named plaintiffs' claims had become moot does not deprive us of jurisdiction" when, as in these cases, the harms alleged are transitory enough to elude review. *County of Riverside* v. *McLaughlin*, 500 U. S. 44, 52 (1991) (affirming jurisdiction over a class action challenging a county's failure to provide "prompt" determinations of probable cause for those subjected to warrantless arrest and detention). Respondents claim that they would be harmed by detention

without a hearing pending a decision on their removal. Because this type of injury ends as soon as the decision on removal is made, it is transitory. So the fact that the named plaintiffs obtained some relief before class certification does not moot their claims.

III

Having assured ourselves of our jurisdiction, we turn to the merits. Respondents contend that they are not properly subject to § 1226(c)'s mandatory-detention scheme, but instead are entitled to the bond hearings available to those held under the general arrest and release authority provided in § 1226(a). Respondents' primary textual argument turns on the interaction of paragraphs (1) and (2) of § 1226(c). Recall that those paragraphs govern, respectively, the "[c]ustody" and "[r]elease" of criminal aliens guilty of a predicate offense. Paragraph (1) directs the Secretary to arrest any such alien "when the alien is released," and paragraph (2) forbids the Secretary to release any "alien described in paragraph (1)" pending a determination on removal (with one exception not relevant here). Because the parties' arguments about the meaning of § 1226(c) require close attention to the statute's terms and structure, we reproduce the provision in full below. But only the portions of the statute that we have highlighted are directly relevant to respondents' argument. Section 1226(c) provides:

> "(c) Detention of criminal aliens
>
> "(1) Custody
>
> "*The [Secretary] shall take into custody any alien who—*
>
> "(A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,
>
> "(B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,

"(C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence[d] to a term of imprisonment of at least 1 year, or

"(D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title,

"*when the alien is released*, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

"(2) Release

"The [Secretary] may release an alien described in paragraph (1) only if the [Secretary] decides pursuant to section 3521 of title 18 that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the [Secretary] that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien." (Emphasis added.)

Respondents argue that they are not subject to mandatory detention because they are not "described in" § 1226(c)(1), even though they (and all the other members of the classes they represent) fall into at least one of the categories of aliens covered by subparagraphs (A)–(D) of that provision. An alien covered by these subparagraphs is not "described in" § 1226(c)(1), respondents contend, unless the alien was also arrested "when [he or she was] released" from crimi-

nal custody. Indeed, respondents insist that the alien must have been arrested *immediately* after release. Since they and the other class members were not arrested immediately, respondents conclude, they are not "described in" § 1226(c)(1). So to detain them, the Government must rely not on § 1226(c) but on the general provisions of § 1226(a). And thus, like others detained under § 1226(a), they are owed bond hearings in which they can earn their release by proving that they pose no flight risk and no danger to others—or so they claim. But neither the statute's text nor its structure supports this argument. In fact, both cut the other way.

A

First, respondents' position runs aground on the plain text of § 1226(c). Respondents are right that only an alien "described in paragraph (1)" faces mandatory detention, but they are wrong about which aliens are "described in" paragraph (1).

Paragraph (1) provides that the Secretary "shall take" into custody any "alien" having certain characteristics and that the Secretary must do this "when the alien is released" from criminal custody. The critical parts of the provision consist of a verb ("shall take"), an adverbial clause ("when . . . released"), a noun ("alien"), and a series of adjectival clauses ("who . . . is inadmissible," "who . . . is deportable," etc.). As an initial matter, no one can deny that the adjectival clauses modify (and in that sense "describ[e]") the noun "alien" or that the adverbial clause "when . . . released" modifies the verb "shall take." And since an adverb cannot modify a noun, the "when released" clause cannot modify "alien." Again, what modifies (and in that sense "describe[s]") the noun "alien" are the adjectival clauses that appear in subparagraphs (A)–(D).

Respondents and the dissent contend that this grammatical point is not the end of the matter—that an adverb can "describe" a person even though it cannot modify the noun

used to denote that person. See *post*, at 431–432 (opinion of BREYER, J.). But our interpretation is not dependent on a rule of grammar. The preliminary point about grammar merely complements what is critical, and indeed conclusive, in these cases: the particular meaning of the term "described" as it appears in § 1226(c)(2). As we noted in *Luna Torres* v. *Lynch*, 578 U. S. 452, 459 (2016), the term "'describe' takes on different meanings in different contexts." A leading definition of the term is "to communicate verbally . . . an account of salient *identifying* features," Webster's Third New International Dictionary 610 (1976), and that is clearly the meaning of the term used in the phrase "an alien *described* in paragraph (1)." (Emphasis added.) This is clear from the fact that the indisputable job of the "descri[ption] in paragraph (1)" is to "identif[y]" for the Secretary—to list the "salient . . . features" by which she can pick out—which aliens she must arrest immediately "when [they are] released."

And here is the crucial point: The "when . . . released" clause could not possibly describe aliens in that sense; it plays no role in identifying for the Secretary *which* aliens she must immediately arrest. If it did, the directive in § 1226(c)(1) would be nonsense. It would be ridiculous to read paragraph (1) as saying: "The Secretary must arrest, upon their release from jail, a particular subset of criminal aliens. Which ones? Only those who are arrested upon their release from jail." Since it is the Secretary's action that *determines* who is arrested upon release, "being arrested upon release" cannot be one of her criteria in figuring out whom to arrest. So it cannot "describe"—it cannot give the Secretary an "identifying featur[e]" of—the relevant class of aliens. On any other reading of paragraph (1), the command that paragraph (1) gives the Secretary would be downright incoherent.

Our reading is confirmed by Congress's use of the definite article in "when the alien is released." Because "[w]ords are

to be given the meaning that proper grammar and usage would assign them," A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 140 (2012), the "rules of grammar govern" statutory interpretation "unless they contradict legislative intent or purpose," *ibid.* (citing *Costello* v. *INS*, 376 U. S. 120, 122–126 (1964)). Here grammar and usage establish that "the" is "a function word . . . indicat[ing] that a following noun or noun equivalent is definite or has been previously specified by context." Merriam-Webster's Collegiate Dictionary 1294 (11th ed. 2005). See also *Work* v. *United States ex rel. McAlester-Edwards Co.*, 262 U. S. 200, 208 (1923) (Congress's "use of the definite article [in a reference to 'the appraisement' means an appraisement specifically provided for"). For "the alien"—in the clause "when the alien is released"—to have been previously specified, its scope must have been settled by the time the "when . . . released" clause appears at the tail end of paragraph (1).

For these reasons, we hold that the scope of "the alien" is fixed by the predicate offenses identified in subparagraphs (A)–(D).[5] And since only those subparagraphs settle who is "described in paragraph (1)," anyone who fits *their* description falls under paragraph (2)'s detention mandate—even if (as with respondents) the Secretary did not arrest them immediately "when" they were "released."

B

In reaching the contrary conclusion, the Ninth Circuit thought that the very structure of § 1226 favors respondents' reading. In particular, the Ninth Circuit reasoned, each subsection's arrest and release provisions must work together. Thus, aliens must be arrested under the general arrest authority in subsection (a) in order to get a bond hearing

[5] For this reason, it is irrelevant that (as the dissent notes, see *post*, at 433–434) paragraph (2) applies to aliens described in "paragraph (1)" and not "subparagraphs (A)–(D)." These two phrases denote the same category, so nothing can be gleaned from Congress's choice of one over the other.

under subsection (a)'s release provision. And in order to face mandatory detention under subsection (c), criminal aliens must have been arrested under subsection (c). But since subsection (c) authorizes only immediate arrest, the argument continues, those arrested later fall under subsection (a), not (c). Accordingly, the court concluded, those arrested well after release escape subsection (c)'s detention mandate. See 831 F. 3d, at 1201–1203. But this argument misreads the structure of § 1226; and in any event, the Ninth Circuit's conclusion would not follow even if we granted all its premises about statutory structure.

1

Although the Ninth Circuit viewed subsections (a) and (c) as establishing separate sources of arrest and release authority, in fact subsection (c) is simply a limit on the authority conferred by subsection (a).

Recall that subsection (a) has two sentences that provide the Secretary with general discretion over the arrest and release of aliens, respectively. We read each of subsection (c)'s two provisions—paragraph (1) on arrest and paragraph (2) on release—as modifying its counterpart sentence in subsection (a). In particular, subsection (a) creates authority for *anyone's* arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions—while subsection (c)'s job is to *subtract* some of that discretion when it comes to the arrest and release of criminal aliens. Thus, subsection (c)(1) limits subsection (a)'s first sentence by curbing the discretion to arrest: The Secretary *must* arrest those aliens guilty of a predicate offense. And subsection (c)(2) limits subsection (a)'s second sentence by cutting back the Secretary's discretion over the decision to release: The Secretary may *not* release aliens "described in" subsection (c)(1)—that is, those guilty of a predicate offense. Accordingly, all the relevant detainees will have been arrested by authority that springs from subsection (a), and so, contrary

to the Court of Appeals' view, that fact alone will not spare them from subsection (c)(2)'s prohibition on release. This reading comports with the Government's practice of applying to the arrests of all criminal aliens certain procedural requirements, such as the need for a warrant, that appear only in subsection (a). See Tr. of Oral Arg. 13–14.

The text of § 1226 itself contemplates that aliens arrested under subsection (a) may face mandatory detention under subsection (c). The second sentence in subsection (a)—which generally authorizes the Secretary to *release* an alien pending removal proceedings—features an exception "as provided in subsection (c)." But if the Court of Appeals were right that subsection (c)(2)'s prohibition on release applies only to those arrested pursuant to subsection (c)(1), there would have been no need to specify that such aliens are exempt from subsection *(a)*'s release provision. This shows that it is possible for those arrested under subsection (a) to face mandatory detention under subsection (c). We draw a similar inference from the fact that subsection (c)(2), for its part, does not limit mandatory detention to those arrested "pursuant to" subsection (c)(1) or "under authority created by" subsection (c)(1)—but to anyone so much as "described in" subsection (c)(1). This choice of words marks a contrast with Congress's reference—in the immediately preceding subsection—to actions by the Secretary that are "authorized under" subsection (a). See § 1226(b). Cf. 18 U. S. C. § 3262(b) (referring to "a person *arrested under* subsection (a)" (emphasis added)). These textual cues indicate that even if an alien was not arrested under authority bestowed by subsection (c)(1), he may face mandatory detention under subsection (c)(2).

2

But even if the Court of Appeals were right to reject this reading, the result below would be wrong. To see why, assume with the Court of Appeals that only someone arrested

under authority created by § 1226(c)(1)—rather than the more general § 1226(a)—may be detained without a bond hearing. And assume that subsection (c)(1) requires *immediate* arrest. Even then, the Secretary's failure to abide by this time limit would not cut off her power to arrest under subsection (c)(1). That is so because, as we have held time and again, an official's crucial duties are better carried out late than never. See *Sylvain* v. *Attorney Gen. of U. S.*, 714 F. 3d 150, 158 (CA3 2013) (collecting cases). Or more precisely, a statutory rule that officials "'shall' act within a specified time" does not by itself "preclud[e] action later." *Barnhart* v. *Peabody Coal Co.*, 537 U. S. 149, 158 (2003).

Especially relevant here is our decision in *United States* v. *Montalvo-Murillo*, 495 U. S. 711 (1990). There we held that "a provision that a detention hearing '"shall be held immediately upon the [detainee's] first appearance before the judicial officer"' did not bar detention after a tardy hearing." *Barnhart*, 537 U. S., at 159 (quoting *Montalvo-Murillo*, 495 U. S., at 714). In that case, we refused to "bestow upon the defendant a windfall" and "visit upon the Government and the citizens a severe penalty by mandating release of possibly dangerous defendants every time some deviation from the [statutory] strictures . . . occur[red]." *Id.*, at 720. Instead, we gave effect to the principle that "'if a statute does not specify a consequence for noncompliance with statutory timing provisions, the federal courts will not in the ordinary course impose their own coercive sanction.'" *Barnhart*, 537 U. S., at 159 (quoting *United States* v. *James Daniel Good Real Property*, 510 U. S. 43, 63 (1993)).

This principle for interpreting time limits on statutory mandates was a fixture of the legal backdrop when Congress enacted § 1226(c). Cf. *Woodford* v. *Garceau*, 538 U. S. 202, 209 (2003) (relying on the "legal backdrop" against which "Congress legislated" to clarify what Congress enacted). Indeed, we have held of a statute enacted just four years

before § 1226(c) that because of our case law at the time—never since abrogated—Congress was "presumably aware that we do not readily infer congressional intent to limit an agency's power to get a mandatory job done merely from a specification to act by a certain time." *Barnhart*, 537 U. S., at 160 (relying on *Brock* v. *Pierce County*, 476 U. S. 253 (1986)). Here this principle entails that even if subsection (c)(1) were the sole source of authority to arrest aliens without granting them hearings, that authority would not evaporate just because officials had transgressed subsection (c)(1)'s command to arrest aliens immediately "when . . . released."

Respondents object that the rule invoked in *Montalvo-Murillo* and related cases does not apply here. In those cases, respondents argue, the governmental authority at issue would have disappeared entirely if time limits were enforced—whereas here the Secretary could still arrest aliens well after their release under the general language in § 1226(a).

But the whole premise of respondents' argument is that if the Secretary could no longer act under § 1226(c), she *would* lose a specific power—the power to arrest and detain criminal aliens without a bond hearing. If that is so, then as in other cases, accepting respondents' deadline-based argument would be inconsistent with "the design and function of the statute." *Montalvo-Murillo*, 495 U. S., at 719. From Congress's perspective, after all, it is irrelevant that the Secretary could go on detaining criminal aliens subject to a bond hearing. Congress enacted mandatory detention precisely out of concern that such individualized hearings could not be trusted to reveal which "deportable criminal aliens who are not detained" might "continue to engage in crime [or] fail to appear for their removal hearings." *Demore*, 538 U. S., at 513. And having thus required the Secretary to impose mandatory detention without bond hearings immediately, for safety's sake, Congress could not have meant for judges to "enforce" this duty in case of delay by—of all things—

forbidding its execution. Cf. *Montalvo-Murillo*, 495 U. S., at 720 ("The end of exacting compliance with the letter" of the Bail Reform Act's requirement that a defendant receive a hearing immediately upon his first appearance before a judicial officer "cannot justify the means of exposing the public to an increased likelihood of violent crime by persons on bail, an evil the statute aims to prevent").

Especially hard to swallow is respondents' insistence that for an alien to be subject to mandatory detention under § 1226(c), the alien must be arrested on the day he walks out of jail (though respondents allow that it need not be at the jailhouse door—the "parking lot" or "bus stop" would do). Tr. of Oral Arg. 44. "Assessing the situation in realistic and practical terms, it is inevitable that" respondents' unsparing deadline will often be missed for reasons beyond the Federal Government's control. *Montalvo-Murillo*, 495 U. S., at 720. Cf. *Regions Hospital* v. *Shalala*, 522 U. S. 448, 459, n. 3 (1998) ("The Secretary's failure to meet the deadline, a not uncommon occurrence when heavy loads are thrust on administrators, does not mean that [she] lacked power to act beyond it"). To give just one example, state and local officials sometimes rebuff the Government's request that they give notice when a criminal alien will be released. Indeed, over a span of less than three years (from January 2014 to September 2016), the Government recorded "a total of 21,205 declined [requests] in 567 counties in 48 states including the District of Columbia." ICE, Fiscal Year 2016 ICE Enf. and Removal Operations Rep. 9. Nor was such local resistance unheard of when Congress enacted the language of § 1226(c) in 1996. See S. Rep. No. 104–48, p. 28 (1995). Under these circumstances, it is hard to believe that Congress made the Secretary's mandatory-detention authority vanish at the stroke of midnight after an alien's release.

In short, the import of our case law is clear: Even if subsection (c) were the only font of authority to detain aliens without bond hearings, we could not read its "when . . . re-

leased" clause to defeat officials' duty to impose such mandatory detention when it comes to aliens who are arrested well after their release.

IV

Respondents protest that reading § 1226(c) in the manner set forth here would render key language superfluous, lead to anomalies, and violate the canon of constitutional avoidance. We answer these objections in turn.

A

According to respondents, the Government's reading of § 1226(c) flouts the interpretive canon against surplusage—the idea that "every word and every provision is to be given effect [and that n]one should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence." Scalia, Reading Law, at 174. See *Kungys* v. *United States*, 485 U. S. 759, 778 (1988) (plurality opinion of Scalia, J.) (citing the "cardinal rule of statutory interpretation that no provision should be construed to be entirely redundant"). Respondents' surplusage argument has two focal points.

First, respondents claim that if they face mandatory detention even though they were arrested well after their release, then "when . . . released" adds nothing to paragraph (1). In fact, however, it still has work to do. For one thing, it clarifies when the duty to arrest is triggered: upon release from criminal custody, not before such release or after the completion of noncustodial portions of a criminal sentence (such as a term of "parole, supervised release, or probation," as the paragraph goes on to emphasize). Thus, paragraph (1) does not permit the Secretary to cut short an alien's state prison sentence in order to usher him more easily right into immigration detention—much as another provision prevents officials from actually removing an alien from the country "until the alien is released from imprisonment." 8 U. S. C. § 1231(a)(4)(A). And from the other end, as paragraph (1)'s

language makes clear, the Secretary need not wait for the sentencing court's supervision over the alien to expire.

The "when . . . released" clause also serves another purpose: exhorting the Secretary to act quickly. And this point answers respondents' second surplusage claim: that the "Transition Period Custody Rules" enacted along with § 1226(c) would have been superfluous if § 1226(c) did not call for immediate arrests, since those rules authorized delays in § 1226(c)'s implementation while the Government expanded its capacities. See *Matter of Garvin-Noble*, 21 I. & N. Dec. 672, 675 (BIA 1997). This argument again confuses what the Secretary is obligated to do with the consequences that follow if the Secretary fails (for whatever reason) to fulfill that obligation. The transition rules delayed the onset of the Secretary's obligation to begin making arrests as soon as covered aliens were released from criminal custody, and in that sense they were not superfluous.[6] This is so even though, had the transition rules not been adopted, the Secretary's failure to make an arrest immediately upon a covered alien's release would not have exempted the alien from mandatory detention under § 1226(c).

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[6] The dissent asks *why* Congress would have felt the need to provide for a delay if it thought that either way, the Secretary would get to deny a hearing to aliens arrested well after release. *Post*, at 436; see also *post*, at 439. The answer is that Congress does not draft legislation *in the expectation* that the Executive will blow through the deadlines it sets. That is why Congress specifies any deadlines for executive duties at all; and here it explains why Congress furthermore provided that the deadline it set for this particular duty (to arrest criminal aliens *upon their release*) would not take effect right away.

In fact, if the dissent's argument from the transition rules were sound—*i. e.*, if textual evidence that Congress *expects* the Executive to meet a deadline (once it officially takes effect) were proof that Congress wanted the deadline *enforced by courts*—then every case involving an express statutory deadline would be one in which Congress intended for courts to enforce the deadline. But this would include, by definition, all of the loss-of-authority cases we discussed above, see Part III–B–2, *supra*—a long line of precedent that the dissent does not question.

B

The Court of Appeals objected that the Government's reading of § 1226(c) would have the bizarre result that some aliens whom the Secretary need not arrest at all must nonetheless be detained without a hearing if they *are* arrested. 831 F. 3d, at 1201–1203. This rather complicated argument, as we understand it, proceeds as follows. Paragraph (2) requires the detention of aliens "described in paragraph (1)." While most of the aliens described there have been convicted of a criminal offense, this need not be true of aliens captured by subparagraph (D) in particular—which covers, for example, aliens who are close relatives of terrorists and those who are believed likely to commit a terrorist act. See § 1182(a)(3)(B)(i)(IX). But if, as the Government maintains, *any* alien who falls under subparagraphs (A)–(D) is thereby ineligible for release from immigration custody, then the Secretary would be forbidden to release even these aliens who were never convicted or perhaps even charged with a crime, once she arrested them. Yet she would be free not to arrest them to begin with (or so the Court of Appeals assumed), since she is obligated to arrest aliens "when . . . released," and there was no prior custody for *these* aliens to be "released" *from*. Therefore, the court concluded, the Government's position has the absurd implication that aliens who were never charged with a crime need not be arrested pending a removal determination, but if they *are* arrested, they must be detained and cannot be released on bond or parole.

We agree that it would be very strange for Congress to forbid the release of aliens who need not be arrested in the first place, but the fact is that the Government's reading (and ours) does not have that incongruous result. The real anomalies here would flow instead from the Court of Appeals' interpretation.

To begin with the latter point: Under the Court of Appeals' reading, the mandatory-detention scheme would be gentler on terrorists than it is on garden-variety offenders.

To see why, recall first that subparagraphs (A)–(C) cover aliens who are inadmissible or deportable based on the commission of certain criminal offenses, and there is no dispute that the statute authorizes their mandatory detention when they are released from criminal custody. And the crimes covered by these subparagraphs include, for example, any drug offense by an adult punishable by more than one year of imprisonment, see §§ 1182(a)(2), 1226(c)(1)(A), as well as a variety of tax offenses, see §§ 1226(c)(1)(B), 1227(a)(2)(A)(iii); *Kawashima* v. *Holder*, 565 U. S. 478 (2012). But notice that aliens who fall within subparagraph (D), by contrast, may never have been arrested on criminal charges—which according to the court below would exempt them from mandatory detention. Yet this subparagraph covers the very sort of aliens for which Congress was most likely to have wanted to require mandatory detention—including those who are representatives of a terrorist group and those whom the Government has reasonable grounds to believe are likely to engage in terrorist activities. See §§ 1182(a)(3)(B)(i)(III), (IV), 1226(c)(1)(D).[7] Thus, by the Court of Appeals' logic, Congress chose to spare terrorist aliens from the rigors of mandatory detention—a mercy withheld from almost all drug offenders and tax cheats. See Brief for National Immigrant Justice Center as *Amicus Curiae* 7–8. *That* result would be incongruous.

Along similar lines, note that one § 1226(c)(1) predicate reaches aliens who necessarily escape conviction: those "for whom immunity from criminal jurisdiction was exercised." § 1182(a)(2)(E)(ii). See § 1226(c)(1)(A). And other predicates sweep in aliens whom there is no reason to expect po-

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[7] In *Alafyouny*, 2006 WL 1581959, for example, an alien subject to mandatory detention had not been charged with any crime. Rather, in a hearing to consider his application for adjustment of status, an Immigration Judge found that the alien had engaged in terrorism-related activity identified in § 1182(a)(3)(B)(iv)(IV)(cc), which qualified him for mandatory detention under § 1226(c)(1)(D). *Id.*, at *3, *24.

lice (as opposed to immigration officials) will have reason to arrest: *e. g.*, the "spouse or child of an alien" who recently engaged in terrorist activity. § 1182(a)(3)(B)(i)(IX); see § 1226(c)(1)(D). It would be pointless for Congress to have covered such aliens in subsections (c)(1)(A)–(D) if subsection (c)'s mandates applied only to those emerging from jail.

Thus, contrary to the Court of Appeals' interpretation of the "when released" clause as limiting the class of aliens subject to mandatory detention, we read subsection (c)(1) to specify the timing of arrest ("when the alien is released") only for the vast majority of cases: those involving criminal aliens who were once in criminal custody. The paragraph simply does not speak to the timeline for arresting the few who had no stint in jail. (And why should it? Presumably they—unlike those serving time—are to be detained as they come across the Government's radar and any relevant evidentiary standards are satisfied.[8])

In short, we read the "when released" directive to apply when there is a release. In other situations, it is simply not relevant. It follows that both of subsection (c)'s mandates—for arrest and for release—apply to any alien linked with a predicate offense identified in subparagraphs (A)–(D), regardless of exactly when or even whether the alien was released from criminal custody.

C

Finally, respondents perch their reading of § 1226(c)—unsteadily, as it turns out—on the canon of constitutional avoidance. This canon provides that "[w]hen 'a serious doubt' is raised about the constitutionality of an act of Congress, '. . . this Court will first ascertain whether a construction of the statute is fairly possible by which the question

[8] See n. 7, *supra*. Detainees who deny that they satisfy any § 1226(c) predicate may challenge their mandatory detention in a *Joseph* hearing. See *Matter of Joseph*, 22 I. & N. Dec. 799 (BIA 1999). See also *Jennings* v. *Rodriguez*, 583 U. S. 281, 289, n. 1 (2018).

may be avoided.'" *Jennings*, 583 U. S., at 296 (quoting *Crowell* v. *Benson*, 285 U. S. 22, 62 (1932)).

Respondents say we should be uneasy about endorsing any reading of § 1226(c) that would mandate arrest and detention years after aliens' release from criminal custody—when many aliens will have developed strong ties to the country and a good chance of being allowed to stay if given a hearing. At that point, respondents argue, mandatory detention may be insufficiently linked to public benefits like protecting others against crime and ensuring that aliens will appear at their removal proceedings. In respondents' view, detention in that scenario would raise constitutional doubts under *Zadvydas* v. *Davis*, 533 U. S. 678 (2001), which held that detention violates due process absent "adequate procedural protections" or "special justification[s]" sufficient to outweigh one's "'constitutionally protected interest in avoiding physical restraint,'" *id.*, at 690 (quoting *Kansas* v. *Hendricks*, 521 U. S. 346, 356 (1997)). Thus, respondents urge, we should adopt a reading of § 1226(c)—their reading—that avoids this result.

The trouble with this argument is that constitutional avoidance "'comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction.'" *Jennings*, 583 U. S., at 296. The canon "has no application" absent "ambiguity." *Warger* v. *Shauers*, 574 U. S. 40, 50 (2014) (internal quotation marks omitted). See also *Zadvydas*, 533 U. S., at 696 ("Despite this constitutional problem, if Congress has made its intent in the statute clear, we must give effect to that intent" (internal quotation marks omitted)). Here the text of § 1226 cuts clearly against respondents' position, see Part III, *supra*, making constitutional avoidance irrelevant.

We emphasize that respondents' arguments here have all been statutory. Even their constitutional concerns are offered as just another pillar in an argument for their preferred reading of the language of § 1226(c)—an idle pillar

here because the statute is clear. While respondents might have raised a head-on constitutional challenge to § 1226(c), they did not. Our decision today on the meaning of that statutory provision does not foreclose as-applied challenges—that is, constitutional challenges to applications of the statute as we have now read it.

* * *

The judgments of the Court of Appeals for the Ninth Circuit are reversed, and the cases are remanded for further proceedings.

It is so ordered.

JUSTICE KAVANAUGH, concurring.

I write separately to emphasize the narrowness of the issue before us and, in particular, to emphasize what this case is *not* about.

This case is not about whether a noncitizen may be *removed* from the United States on the basis of criminal offenses. Under longstanding federal statutes, the Executive Branch may remove noncitizens from the United States when the noncitizens have been convicted of certain crimes, even when the crimes were committed many years ago.

This case is also not about whether a noncitizen may be *detained* during removal proceedings or before removal. Congress has expressly authorized the Executive Branch to detain noncitizens during their removal proceedings and before removal. 8 U. S. C. §§ 1226(a), (c), and 1231(a).

This case is also not about *how long* a noncitizen may be detained during removal proceedings or before removal. We have addressed that question in cases such as *Zadvydas* v. *Davis*, 533 U. S. 678 (2001), *Clark* v. *Martinez*, 543 U. S. 371 (2005), and *Jennings* v. *Rodriguez*, 583 U. S. 281 (2018).

This case is also not about whether Congress may *mandate* that the Executive Branch detain noncitizens during removal proceedings or before removal, as opposed to merely

giving the Executive Branch discretion to detain. It is undisputed that Congress may mandate that the Executive Branch detain certain noncitizens during removal proceedings or before removal. Congress has in fact mandated detention of certain noncitizens who have been in criminal custody and who, upon their release, would pose a danger to the community or risk of flight. As relevant here, Congress has mandated detention "when" such noncitizens are "released" from criminal custody. 8 U. S. C. § 1226(c)(1).

The sole question before us is narrow: whether, under § 1226, the Executive Branch's mandatory duty to detain a particular noncitizen when the noncitizen is released from criminal custody remains mandatory if the Executive Branch fails to *immediately* detain the noncitizen when the noncitizen is released from criminal custody—for example, if the Executive Branch fails to immediately detain the noncitizen because of resource constraints or because the Executive Branch cannot immediately locate and apprehend the individual in question. No constitutional issue is presented. The issue before us is entirely statutory and requires our interpretation of the strict 1996 illegal-immigration law passed by Congress and signed by President Clinton. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 110 Stat. 3009–546.

It would be odd, in my view, if the Act (1) mandated detention of particular noncitizens because the noncitizens posed such a serious risk of danger or flight that they *must* be detained during their removal proceedings, but (2) nonetheless allowed the noncitizens to remain free during their removal proceedings if the Executive Branch failed to *immediately* detain them upon their release from criminal custody. Not surprisingly, the Act does not require such an odd result. On the contrary, the relevant text of the Act is relatively straightforward, as the Court explains. Interpreting that text, the Court correctly holds that the Executive Branch's detention of the particular noncitizens here remained manda-

tory even though the Executive Branch did not immediately detain them. I agree with the Court's careful statutory analysis, and I join the Court's opinion in full.

JUSTICE THOMAS, with whom JUSTICE GORSUCH joins, concurring in part and concurring in the judgment.

I continue to believe that no court has jurisdiction to decide questions concerning the detention of aliens before final orders of removal have been entered. See *Jennings* v. *Rodriguez*, 583 U. S. 281, 314–323 (2018) (THOMAS, J., concurring in part and concurring in judgment). By my count, Congress has erected at least three barriers to our review of the merits, and I also question whether Article III jurisdiction existed at the time of class certification. Nonetheless, because the Court has held that we have jurisdiction in cases like these, and because I largely agree with the Court's resolution of the merits, I join all but Parts II and III–B–2 of the Court's opinion.

I

Respondents consist of two classes of aliens who committed criminal offenses that require the Secretary of Homeland Security to detain them without a bond hearing under 8 U. S. C. § 1226(c), but who were not detained immediately upon release from criminal custody. Respondents argued that, by failing to immediately detain them, the Secretary lost the authority to deny them a bond hearing when they were rearrested.

The first class action was brought in the Northern District of California and has three class representatives. One of the plaintiffs, Mony Preap, received cancellation of removal and was not in immigration custody at the time of certification. The other two, Eduardo Vega Padilla and Juan Lozano Magdaleno, had received bond hearings as required by a Ninth Circuit decision, *Rodriguez* v. *Robbins*, 715 F. 3d 1127, 1138 (2013); Padilla had been released, while Magdaleno was denied release. The District Court certified a class of all

aliens in California who are or will be subjected to mandatory detention under § 1226(c) and who were not or will not have been taken into custody by the Government immediately upon their release from criminal custody for a § 1226(c)(1) offense. The court issued a preliminary injunction requiring the Government to provide all class members with bond hearings under § 1226(a).

The second class action was brought in the Western District of Washington and also has three class representatives: Bassam Yusuf Khoury and Alvin Rodriguez Moya, who had been released on bond before class certification after their *Rodriguez* hearings, and Pablo Carrera Zavala, who was released before class certification because the Department of Homeland Security determined that he had not committed a predicate § 1226(c)(1) offense. The District Court certified a class of all aliens in its judicial district who were not detained immediately upon their release from criminal custody but were subjected to mandatory detention under § 1226(c). The court entered a declaratory judgment barring the Government from subjecting class members to detention under § 1226(c) unless it took the alien into custody immediately upon release.

II

At least three statutory provisions limit judicial review here, and I am skeptical whether the District Courts had Article III jurisdiction to certify the classes.

A

First, § 1252(b)(9) bars judicial review of "all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States," except for review of "a final order" or other circumstances not present here. These cases raise questions of law or fact arising from removal proceedings—"[d]etention is necessarily a part of [the] deportation procedure"

that culminates in the removal of the alien, *Carlson* v. *Landon*, 342 U. S. 524, 538 (1952)—and they do not come to us on review of final orders of removal. Thus, for the reasons I set forth in *Jennings*, *supra*, at 314–323, no court has jurisdiction over these class actions.

B

Second, § 1226(e) provides that "[n]o court may set aside any action or decision by the [Secretary] under this section regarding the detention or release of any alien or the grant, revocation, or *denial of bond* or parole." (Emphasis added.) This provision "unequivocally deprives federal courts of jurisdiction to set aside 'any action or decision' by the [Secretary]" regarding detention, discretionary or otherwise. *Demore* v. *Kim*, 538 U. S. 510, 533 (2003) (O'Connor, J., concurring in part and concurring in judgment); see *Jennings*, *supra*, at 323, n. 6. The plurality once again reads this language as permitting judicial review for challenges to the "statutory framework as a whole." *Ante*, at 401 (internal quotation marks omitted). But the text of the statute contains no such exception. Accordingly, I continue to think that no court has jurisdiction over these kinds of actions.

C

Third, § 1252(f)(1) deprives district courts of "jurisdiction or authority to enjoin or restrain the operation of [§§ 1221–1232] other than with respect to the application of such provisions to an individual alien against whom proceedings under [§§ 1221–1232] have been initiated." The text of § 1252(f)(1) explicitly prohibits the classwide injunctive relief ordered by the Northern District of California in this instance, given that the class includes future, yet-to-be detained aliens against whom proceedings have not been initiated. See *Reno* v. *American-Arab Anti-Discrimination Comm.*, 525 U. S. 471, 481 (1999) (explaining that § 1252(f)(1) "prohibits federal courts from granting classwide injunctive

relief against the operation of §§ 1221–1231"). The District Court relied on *Rodriguez* v. *Hayes*, 591 F. 3d 1105 (CA9 2010), which held that this provision does not affect authority to enjoin alleged violations of the specified statutes because those claims do not "seek to enjoin the operation of the immigration detention statutes, but to enjoin conduct . . . not authorized by the statutes." *Id.*, at 1120. This reasoning is circular and unpersuasive. Many claims seeking to enjoin or restrain the operation of the relevant statutes will allege that the Executive's action does not comply with the statutory grant of authority, but the text clearly bars jurisdiction to enter an injunction "[r]egardless of the nature of the action or claim." Although the plurality avoids deciding whether § 1252(f)(1) prevented the District Court's injunction here, *ante*, at 402, I would hold that it did.

D

Finally, I harbor two concerns about whether the class actions were moot at the time of certification. First, as the plurality recognizes, class actions are ordinarily "moot if no named class representative with an unexpired claim remain[s] at the time of class certification." *United States* v. *Sanchez-Gomez*, 584 U. S. 381, 386 (2018); *ante*, at 403. At the time of class certification, all six of the named plaintiffs had received bond hearings or cancellation of removal. As I understand the plaintiffs' arguments, that was the full relief that they sought: "individualized bond hearings where they may attempt to prove that their release would not create a risk of flight or a danger to the public." Motion for Class Certification in *Preap* v. *Beers*, No. 4:13–cv–5754 (ND Cal.), Doc. 8, p. 8; see Complaint for Injunctive and Declaratory Relief in *Preap*, *supra*, Doc. 1, p. 3 (seeking "immediate individualized bond hearings"); First Amended Class Action Complaint in *Khoury* v. *Asher*, No. 2:13–cv–1367 (WD Wash.), Doc. 19, p. 13 (requesting relief of "individualized bond hearings to all Plaintiffs"). The plurality concludes that

some of the named plaintiffs still faced the threat of rearrest and mandatory detention at the time of class certification because the bond hearings that they received were provided as part of a preliminary injunction in a separate case that was later dissolved. But whether the plaintiffs actually faced that threat has not been addressed by the parties, and I question whether this future contingency was sufficiently imminent to support Article III jurisdiction.

If the threat of rearrest and mandatory detention was too speculative to support jurisdiction, I disagree with the plurality that our jurisdiction would be saved by our precedent on transitory claims. *Ante*, at 403–404. We have held that a court has Article III jurisdiction to certify a class action when the named plaintiffs' claims have become moot if the claim is "so inherently transitory that the trial court will not have even enough time to rule on a motion for class certification before the proposed representative's individual interest expires." *United States Parole Comm'n* v. *Geraghty*, 445 U. S. 388, 399 (1980). The "inherently transitory" exception is measured from the time that the complaint is filed to the court's ruling on the motion for class certification. See *Genesis HealthCare Corp.* v. *Symczyk*, 569 U. S. 66, 75–77 (2013). In other words, the named plaintiff's standing in a class action need not exist throughout the lifecycle of the entire lawsuit. Here, Members of the Court have recognized that aliens are held, on average, for one year, and sometimes longer. See *Jennings*, 583 U. S., at 328 (BREYER, J., dissenting) (noting that detention for aliens is "often lengthy," sometimes lasting years). I am not persuaded that the plaintiffs' claims are so "inherently transitory" as to preclude a ruling on class certification, especially since both District Courts certified the classes here within a year of the filing of the complaints. Cf. *County of Riverside* v. *McLaughlin*, 500 U. S. 44, 47, 52 (1991) (finding jurisdiction over a class action that challenged a county's failure to provide

"prompt" probable-cause hearings within the 48-hour window for arraignments, as required by state law).

* * *

Because three statutes deprive courts of jurisdiction over respondents' claims, I would have vacated the judgments below and remanded with instructions to dismiss the cases for lack of jurisdiction. But because the Court has held otherwise and I agree with the Court's disposition of the merits, I concur in all but Parts II and III–B–2 of its opinion.

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

A provision of the Immigration and Nationality Act, 8 U. S. C. § 1226(c), focuses upon potentially deportable noncitizens who have committed certain offenses or have ties to terrorism. It requires the Secretary of Homeland Security to take those aliens into custody "when . . . released" from prison and to hold them *without a bail hearing* until Government authorities decide whether to deport them. The question is whether this provision limits the class of persons in the "no-bail-hearing" category to only those aliens who were taken into custody "when . . . released" from prison, or whether it also places in that "no-bail-hearing" category those aliens who were taken into custody years or decades after their release from prison.

The critical statutory language is contained in paragraph (2) of this provision. That paragraph says (with one exception not relevant here) that "an alien described in paragraph (1)" must be held without a bail hearing. Here we must decide what these words mean. Do the words "an alien described in paragraph (1)" refer only to those aliens whom the Secretary, following paragraph (1)'s instructions, has "take[n] into custody . . . when the alien is released" from, say, state or federal prison? Or do these words refer in-

stead to *all* aliens who have *ever* committed one of the offenses listed in paragraph (1), regardless of when these aliens were "released" from prison?

For present purposes, I accept the Court's holding in *Jennings* v. *Rodriguez*, 583 U. S. 281 (2018), that paragraph (2) forbids bail hearings for aliens "described in paragraph (1)." But see *id.*, at 326–327 (BREYER, J., dissenting) (interpreting paragraph (2) as not forbidding bail hearings, as the Constitution likely requires them); *id.*, at 312 (majority opinion) (declining to reach constitutional question). Here, however, the Court goes much further. The majority concludes that paragraph (2) forbids bail hearings for aliens regardless of whether they are taken into custody "when . . . released" from prison. Under the majority's view, the statute for bids bail hearings even for aliens whom the Secretary has detained years or decades after their release from prison.

The language of the statute will not bear the broad interpretation the majority now adopts. Rather, the ordinary meaning of the statute's language, the statute's structure, and relevant canons of interpretation all argue convincingly to the contrary. I respectfully dissent.

I

A

The relevant statute, 8 U. S. C. § 1226, is entitled "Apprehension and detention of aliens." See Appendix A, *infra*. Its first subsection, subsection (a), is entitled "Arrest, detention, and release." Subsection (a) sets forth the background rule. It gives the Secretary of Homeland Security (formerly the Attorney General) the authority to "arres[t] and detai[n]" an "alien . . . pending a decision on whether the alien is to be removed from the United States." § 1226(a). See *ante*, at 397, n. 2. It adds that the Secretary "may release the alien" on "bond" or "conditional parole." § 1226(a)(2). Federal regulations provide that a person detained under this sub-

section must receive a bail hearing. 8 CFR §§ 236.1(d)(1), 1236.1(d)(1) (2018). With respect to release, however, subsection (a) adds the words "[e]xcept as provided in subsection (c)." 8 U. S. C. § 1226(a).

The subsection containing the exception to which (a) refers—namely, subsection (c)—is entitled "Detention of criminal aliens." It consists of two paragraphs.

Paragraph (1), entitled "Custody," says that the Secretary "shall take into custody any alien who" is "inadmissible" or "deportable" (by reason of having committed certain offenses or having ties to terrorism) "*when the alien is released*," presumably from local, state, or federal criminal custody. § 1226(c)(1) (emphasis added). Because the relevant offenses are listed in four subparagraphs headed by the letters "A," "B," "C," and "D," I shall refer to the relevant aliens as "ABCD" aliens. Thus, for present purposes, paragraph (1) says that the Secretary "shall take into custody any" ABCD alien "when the alien is released" from criminal custody.

Paragraph (2), entitled "Release," says that the Secretary "may release *an alien described in paragraph (1)* only if" the alien falls within a special category—not relevant here—related to witness protection. § 1226(c)(2) (emphasis added). We held last Term in *Jennings* that paragraph (2) forbids a bail hearing for "an alien described in paragraph (1)" unless the witness protection exception applies. 583 U. S., at 303–306 (majority opinion).

Here we focus on the meaning of a key phrase in paragraph (2): "an alien described in paragraph (1)." This is the phrase that identifies the aliens to whom paragraph (2) (and its "no-bail-hearing" requirement) applies. Does paragraph (1) "describ[e]" *all* ABCD aliens, even those whom the Secretary has "take[n] into custody" many years after their release from prison? Or does it "describ[e]" only those aliens whom the Secretary has "take[n] into custody . . . when the alien [was] released" from prison?

B

The issue may sound technical. But it is extremely important. That is because the Government's reading of the statute—namely, that paragraph (2) forbids bail hearings for all ABCD aliens regardless of whether they were detained "when . . . released" from criminal custody—would significantly expand the Secretary's authority to deny bail hearings. Under the Government's view, the aliens subject to detention without a bail hearing may have been released from criminal custody years earlier, and may have established families and put down roots in a community. These aliens may then be detained for months, sometimes years, without the possibility of release; they may have been convicted of only minor crimes—for example, minor drug offenses, or crimes of "moral turpitude" such as illegally downloading music or possessing stolen bus transfers; and they sometimes may be innocent spouses or children of a suspect person. Moreover, for a high percentage of them, it will turn out after months of custody that they will not be removed from the country because they are eligible by statute to receive a form of relief from removal such as cancellation of removal. These are not mere hypotheticals. See Appendix B, *infra*. Thus, in terms of potential consequences and basic American legal traditions, see *infra*, at 437–438, the question before us is not a "narrow" one, *ante*, at 421 (KAVANAUGH, J., concurring).

Why would Congress have granted the Secretary such broad authority to deny bail hearings, especially when doing so would run contrary to basic American and common-law traditions? See *Jennings*, *supra*, at 332–334 (BREYER, J., dissenting). The answer is that Congress did not do so. Ordinary tools of statutory interpretation demonstrate that the authority Congress granted to the Secretary is far more limited.

II

The statute's language, its structure, and relevant canons of interpretation make clear that the Secretary cannot hold

an alien without a bail hearing unless the alien is "take[n] into custody . . . when the alien is released" from criminal custody. § 1226(c)(1).

A

Consider the statute's language. Paragraph (1) of subsection (c) provides that the Secretary "shall take into custody" any ABCD alien—that is, any alien who is "inadmissible" or "deportable" under the subparagraphs labeled "A," "B," "C," and "D"—"when the alien is released" from, say, state or federal prison. *Ibid.* Paragraph (2), meanwhile, generally forbids a bail hearing for "an alien described in paragraph (1)." § 1226(c)(2).

The key phrase in paragraph (2) is "an alien *described* in paragraph (1)." As a matter of ordinary meaning and usage, the words "take into custody . . . when the alien is released" in paragraph (1) form part of the *description* of the "alien": An "alien described in paragraph (1)" is an ABCD alien whom the Secretary has "take[n] into custody . . . when the alien is released" from prison.

The majority emphasizes a grammatical point—namely, that ordinarily only adjectives or adjectival phrases "modify" nouns. *Ante*, at 406. But the statute does not use the word "modify." It uses the word "described." While the word "describe" will in some contexts refer only to the words that directly "modify" a noun, normally it has a broader meaning. Compare American Heritage Dictionary 490 (5th ed. 2011) (to "describe" is to "convey an idea or impression of") and Webster's Third New International Dictionary 610 (1986) (to "describe" is to "convey an image or notion of") with P. Peters, The Cambridge Guide to English Usage 355 (2004) (defining a "modifie[r]" as a word that "qualifies" a noun).

The common rules of grammar make the broad scope of the word "described" obvious. They demonstrate that a noun often is "described" by more than just the adjectives that modify it. Consider the following sentence: "The well-behaved child was taken by a generous couple to see *Hamil-*

ton." That sentence, written in the passive voice, describes the "child" not only as "well-behaved" but also as someone "taken by a generous couple to see *Hamilton*." The description of the child would not differ were we to write the sentence in the active voice: "The generous couple took the well-behaved child to see *Hamilton*." The action taken by the "generous couple" ("took . . . to see *Hamilton*") still "describes" the "child," even though these words do not "modify" the word "child." That is because a person who has been subjected to an action can be described by that action no less than by an adjective. See Peters, *supra*, at 386 (describing such a person as someone "affected by the action"); B. Garner, The Chicago Guide to Grammar, Usage, and Punctuation 452 (2016) (describing such a person as someone who "is acted on by or receives the action"); see also R. Huddleston & G. Pullum, The Cambridge Grammar of the English Language 1436 (2002) (noting the "large-scale overlap" between adjectives and certain verb forms).

An example illustrates how these principles apply to the statute at issue here. Imagine the following cookbook recipe. Instruction (1) says: "(1) Remove the Angus steak from the grill when the steak is cooked to 120 degrees Fahrenheit." Instruction (4) says: "(4) Let the steak described in Instruction (1) rest for ten minutes and then serve it." What would we say of a chef who grilled an Angus steak to 185 degrees Fahrenheit, served it, and then appealed to these instructions—particularly the word "described" in Instruction (4)—as a justification? That he was not a good cook? That he had an odd sense of humor? Or simply that he did not understand the instructions? The chef would have no good textual defense: The steak "described in Instruction (1)" is not just an "Angus" steak, but an "Angus" steak that must be "remove[d] . . . when the steak is cooked to 120 degrees Fahrenheit." By the same logic, the alien in paragraph (1) is "described" not only by the four clauses—A, B, C, and D—that directly modify the word "alien," but *also* by

the verb ("shall take") and that verb's modifier ("when the alien is released").

The majority argues that "the crucial point" is that the phrase "when the alien is released" plays "no role in identifying for the Secretary *which* aliens she must immediately arrest." *Ante*, at 407. That may be so. But why is that a "crucial point" in the majority's favor? After all, in the example above, the words "[r]emove . . . from the grill when the steak is cooked to 120 degrees Fahrenheit" do not tell our chef what kind of steak to cook in the first place. (The word "Angus" does that.) Even so, those words still "describe" the steak that must be served in Instruction (4). Why? Because by the time our chef gets to Instruction (4), the recipe contemplates that the action in Instruction (1) has been completed. At that point, the "steak described in Instruction (1)" is a steak that has been cooked in the manner mandated by Instruction (1).

The same is true of the two paragraphs before us. The key word "described" appears not in paragraph (1), but in paragraph (2). Paragraph (2) refers back to the entirety of paragraph (1). And because paragraph (2) is the *release* provision, it contemplates that the action mandated by paragraph (1)—namely, detention—has already occurred. Thus, the function of the phrase "an alien described in paragraph (1)" is not to describe who must be detained, but instead to describe who must be denied bail.

In short, the language demonstrates that an alien is "described in paragraph (1)"—and therefore subject to paragraph (2)'s bar on bail hearings—only if the alien is "take[n] into custody . . . when the alien is released."

B

The statute's structure and context support this reading of the phrase "an alien described in paragraph (1)."

First, "Congress often drafts statutes with hierarchical schemes—section, subsection, paragraph, and on down the line." *NLRB* v. *SW General, Inc.*, 580 U. S. 288, 300 (2017).

Congress employed that structure "to make precise cross-references" throughout the immigration code. *Ibid.* As relevant here, in a different detention provision enacted alongside the provision at issue here, Congress said that the Government "may release the alien only if the alien is an alien described in subparagraph (A)(ii) or (A)(iii)." Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), § 303(b)(3)(B), 110 Stat. 3009–587. Yet Congress did not make such a precise cross-reference in paragraph (2): It did not refer to "an alien described in subparagraphs (A)–(D) of paragraph (1)," as it could have—and would have—done had it intended the majority's narrow interpretation. Instead, it referred to aliens "described" in *the entirety* of paragraph (1).

We usually "presume differences in language like this convey differences in meaning." *Henson* v. *Santander Consumer USA Inc.*, 582 U. S. 79, 86 (2017). The cross-reference to all of paragraph (1) reinforces that "an alien described in paragraph (1)" is not just an ABCD alien, but an ABCD alien whom (in the words of paragraph (1)) the Secretary "take[s] into custody . . . when the alien is released" from criminal confinement.

Second, consider the structural similarity between subsections (a) and (c). See Appendix A, *infra*. The first sentence of subsection (a) sets forth a detention rule: An "alien may be arrested and detained" pending a decision on the alien's removal. 8 U. S. C. § 1226(a). And the second sentence sets forth a release rule that allows for release on bond and parole. *Ibid.* Subsection (c) has a parallel structure. The first sentence (namely, paragraph (1)) says that the Secretary must "take into custody" a subset of those aliens "when the alien is released" from criminal custody. § 1226(c)(1). And the second sentence (namely, paragraph (2)) sets forth the rule that "an alien described in paragraph (1)" generally may not be released. § 1226(c)(2).

It is obvious that the second sentence of (a) applies only to those aliens who are detained following the rule in (a)'s first sentence. Parallel structure suggests that the same is true in (c): The second sentence of (c) applies only to those detained following the rule in (c)'s first sentence. Subsection (a)'s reference to (c) strengthens this structural inference: Subsection (a) says that its release rule applies "[e]xcept as provided in subsection (c)"—that is, except as provided in the *whole* of subsection (c), not simply paragraph (2) or the few lines the majority picks from (c)'s text.

Thus, the release rule in each subsection (the second sentence) applies only if the Secretary complies with the detention rule in that subsection (the first sentence). In light of "the parallel structures of these provisions," it would "flou[t] the text" to find that an alien is subject to (c)'s release rule, which forbids release, without also finding that the alien was detained in accordance with (c)'s detention rule, which requires the alien to be detained "when . . . released." *Chan* v. *Korean Air Lines, Ltd.*, 490 U. S. 122, 132 (1989).

The majority responds that subsections (a) and (c) do not "establis[h] separate sources of arrest and release authority," and that (c) is merely "a limit" on the authority granted by (a). *Ante*, at 409. But even if (c) were treated as a "limit" on the authority granted by (a), the parallel structure of the statute would still point to the same conclusion: The Secretary must comply with the limit on detention in the first sentence of (c) in order to invoke the rule on release in the second sentence of (c).

Third, Congress' enactment of a special "transition" statute strengthens the point. When Congress enacted subsection (c), it recognized that there might be "insufficient detention space" and "personnel" to carry out subsection (c)'s requirements. IIRIRA, § 303(b)(2), 110 Stat. 3009–586. It therefore authorized the Government to delay implementa-

tion of subsection (c)—initially for one year, then for a second year. *Ibid.*

If the majority were correct that the "when . . . released" provision does not set a time limit on the Secretary's authority to deny bail hearings, then a special transition statute delaying implementation for one year would have been unnecessary. To avoid overcrowding, the Government simply could have delayed arresting aliens for 1, 2, 5, or 10 years, as the majority believes it can do, and then deny them bail hearings. What need for a 1-year transition period? The majority responds that the transition statute still served a purpose: to "dela[y] the onset of the Secretary's obligation to begin making arrests." *Ante*, at 415. But that just raises the question: Why would Congress have needed to "dela[y] the onset of the Secretary's obligation" if it thought that the Secretary could detain aliens without a bail hearing after a year-long delay? The majority offers no good answer. The transition statute therefore strongly suggests that Congress viewed the "when . . . released" provision as a constraint on the Secretary's authority to deny a bail hearing.

The transition statute also supports this conclusion in another respect: It demonstrates that Congress anticipated that subsection (c) would apply only to aliens "released" from state or federal prison. As noted, clauses A, B, C, and D in paragraph (1) cover some aliens who have never been in criminal custody. *Supra*, at 430. Even the majority acknowledges that it would be bizarre if these aliens could be detained without a bail hearing. *Ante*, at 416. The transition statute confirms as much: It indicates that "the provisions of [subsection (c)] shall apply to *individuals released* after" the transition period concludes. IIRIRA, § 303(b)(2), 110 Stat. 3009–586 (emphasis added). From this it follows that Congress saw paragraph (2) as forbidding bail hearings only for aliens who have been "released." That, however, can be true only if the "when . . . released" provision limits the class of aliens subject to paragraph (2)'s "no-bail-hearing" require-

ment. The majority's contrary reading, under which paragraph (2) applies "regardless of . . . whether the alien was released from criminal custody," *ante*, at 418, conflicts with how Congress itself described the scope of subsection (c) when it enacted the statute.

C

Even if statutory text and structure were not enough to resolve these cases, the Government's reading would fail for another reason. A well-established canon of statutory interpretation provides that, "if fairly possible," a statute must be construed "so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score." *United States* v. *Jin Fuey Moy*, 241 U. S. 394, 401 (1916). See *Edward J. DeBartolo Corp.* v. *Florida Gulf Coast Building & Constr. Trades Council*, 485 U. S. 568, 575 (1988) (using word "serious" instead of "grave"). The Government's reading of the statute, which the majority adopts, construes the statute in a way that creates serious constitutional problems. That reading would give the Secretary authority to arrest and detain aliens years after they have committed a minor crime and then hold them without a bail hearing for months or years. This possibility is not simply theoretical. See Appendix B, *infra*.

In *Jennings*, I explained why I believe the practice of indefinite detention without a bail hearing likely deprives a "person" of his or her "liberty . . . without due process of law." U. S. Const., Amdt. 5. See 583 U. S., at 330 (dissenting opinion). This practice runs counter to "those settled usages and modes of proceeding existing in the common and statute law of England, before the emigration of" the Founders' "ancestors." *Murray's Lessee* v. *Hoboken Land & Improvement Co.*, 18 How. 272, 277 (1856). It runs counter to practices well established at the time of the American Revolution. *Jennings*, *supra*, at 333–334. And it runs counter to common sense: Why would the law grant a bail hearing to

a person accused of murder but deny it to a person who many years before committed a crime perhaps no greater than possessing a stolen bus transfer? See Appendix B, *infra*.

I explained much of the constitutional problem in my dissent in *Jennings*. Rather than repeat what I wrote there, I refer the reader to that opinion. See *Jennings*, *supra*, at 326. I add only the obvious point that a bail hearing does not mean release on bail. It simply permits the person held to demonstrate that, if released, he will neither run away nor pose a threat. It is especially anomalous to take this opportunity away from an alien who committed a crime many years before and has since reformed, living productively in a community.

The majority's reading also creates other anomalies. As I have said, by permitting the Secretary to hold aliens without a bail hearing even if they were not detained "when . . . released," the majority's reading would allow the Secretary to hold indefinitely without bail those who have never been to prison and who received only a fine or probation as punishment. *Supra*, at 430, 436–437. See, *e. g.*, § 1226(c)(1)(A) (incorporating § 1182(a)(2), which covers controlled substance offenses for which the maximum penalty exceeds one year); Brief for Advancement Project et al. as *Amici Curiae* 19, 24, 29 (describing examples). That fact simply aggravates the constitutional problem.

III

Although the Court of Appeals correctly concluded that paragraph (2)'s prohibition on release applies only to an alien whom the Secretary "take[s] into custody . . . when the alien is released" from criminal custody, it also held that the phrase "when the alien is released" means that the Secretary must grant a bail hearing to any alien who is not " 'immediately detained' when released from criminal custody." *Preap* v. *Johnson*, 831 F. 3d 1193, 1207 (CA9 2016). I disagree with the Court of Appeals as to the meaning of the phrase "when the alien is released."

A

As an initial matter, the phrase "when the alien is released" imposes an enforceable statutory deadline. I cannot agree with JUSTICE ALITO, who writes for a plurality of the Court on this point, that our cases holding certain statutory deadlines unenforceable are applicable here. *Ante*, at 411–412. See, *e. g.*, *Barnhart* v. *Peabody Coal Co.*, 537 U. S. 149, 152 (2003) (holding that the Government's untimeliness did not bar it from taking action beyond the statutory deadline); *United States* v. *Montalvo-Murillo*, 495 U. S. 711, 713–714 (1990) (holding that a provision requiring a detention hearing to "'be held immediately'" did not bar detention in the event of a late hearing); *Brock* v. *Pierce County*, 476 U. S. 253, 266 (1986) (holding that the Government's failure to observe a 120-day statutory deadline did not deprive it of authority under the statute).

I disagree with the plurality on this point because our case law makes clear that a statutory deadline against the Government must be enforced at least in contexts where "other part[s]" of the relevant statutes indicate that the time limit must be enforced, *Montalvo-Murillo*, *supra*, at 717; see also *Barnhart*, *supra*, at 161, 163; *Dolan* v. *United States*, 560 U. S. 605, 613 (2010); where the statute "'specif[ies] a consequence for noncompliance'" with the time limit, *Barnhart*, *supra*, at 159 (quoting *United States* v. *James Daniel Good Real Property*, 510 U. S. 43, 63 (1993)); or where the harms caused by the Government's delay are likely to be serious, see *Dolan*, *supra*, at 615–616; *Montalvo-Murillo*, *supra*, at 719–720.

Here, the special transition statute Congress enacted alongside subsection (c) makes clear that Congress expected that the mandate that an alien be detained "when . . . released" would be enforceable. Congress neither wished for nor expected the Secretary to detain aliens more than a year after their release from criminal custody. IIRIRA, §303(b)(2), 110 Stat. 3009–586. Why else would Congress

have enacted a statute permitting the Government, due to "insufficient detention space and Immigration and Naturalization Service personnel," to delay implementation of the entirety of subsection (c) for one year? *Ibid.* As I have said, had Congress read the phrase "when the alien is released" as the plurality now reads it, the Government could have delayed implementation for as long as it liked without the need for any transition statute. *Supra*, at 435–436. The transition statute demonstrates that Congress viewed the phrase "when the alien is released" as imposing a deadline. Based on the transition statute, the Secretary may not delay detention under subsection (c) for longer than one year.

Moreover, the statute does "'specify a consequence'" for the Secretary's failure to detain an alien "when the alien is released." *Barnhart*, *supra*, at 159 (quoting *James Daniel Good*, *supra*, at 63). In that case, subsection (c) will not apply, and the Secretary must fall back on subsection (a), the default detention and release provision. Critically, subsection (a) does not guarantee release. Rather, it leaves much to the Government's judgment: By regulation, aliens who are subject to subsection (a)'s default detention and release rules will simply receive a hearing at which they can attempt to demonstrate that, if released, they will not pose a risk of flight or a threat to the community. 8 CFR §§236.1(d)(1), 1236.1(d)(1).

Finally, I have already mentioned the many harms that could befall aliens whom the Secretary does not detain "when . . . released." They range from long periods of detention, to detention years or even decades after the alien's release from criminal custody, to the risk of splitting up families that are long established in a community. *Supra*, at 430. Thus, unlike some of our prior cases, the harm from a missed deadline hardly can be described as "insignificant." *Montalvo-Murillo*, *supra*, at 719.

The plurality objects that "Congress could not have meant for judges to 'enforce'" the mandatory detention require-

ment "in case of delay by—of all things—forbidding its execution." *Ante*, at 412–413. But treating the "when the alien is released" clause as an enforceable limit does not prohibit the Secretary from detaining the aliens that subsection (c) requires her to detain. Rather, the Secretary's failure to comply with the "when the alien is released" clause carries only one consequence: The Secretary cannot deny a bail hearing.

B

So what does the phrase "when the alien is released" mean? The word "when" can, but does not always, mean "[a]t the time that," American Heritage Dictionary, at 1971, or "just after the moment that," Webster's Third New International Dictionary, at 2602. But the word only "[s]ometimes impl[ies] suddenness." 20 Oxford English Dictionary 209 (2d ed. 1989). It often admits of at least some temporal delay. A child who is told to "mow the lawn, please, when you get home from school" likely does not have to mow the lawn the second she comes into the house. She can do a few other things first.

Mindful of "the greater immigration-related expertise of the Executive Branch" and "the serious administrative needs and concerns inherent in the necessarily extensive [Government] efforts to enforce this complex statute," I would interpret the word "when" in the same manner as we interpreted other parts of this statute in *Zadvydas* v. *Davis*, 533 U. S. 678, 700 (2001). The words "when the alien is released" require the Secretary to detain aliens under subsection (c) within a reasonable time after their release from criminal custody—presumptively no more than six months. If the Secretary does not do so, she must grant a bail hearing. This presumptive 6-month limit is consistent with how long the Government can detain certain aliens while they are awaiting removal from the country. *Id.*, at 682, 701 (interpreting a different provision, § 1231(a)(6)). To insist upon similar treatment in this context would give the Government

sufficient time to detain aliens following their release from local, state, or federal criminal custody. It would also ensure that the Government does not fall outside the 1-year maximum dictated by the transition statute. See *supra*, at 435–436, 439–440.

IV

To reiterate: The question before us is not "narrow." *Ante*, at 421 (KAVANAUGH, J., concurring). See *supra*, at 430. That is because we cannot interpret the words of this specific statute without also considering basic promises that America's legal system has long made to all persons. In deciphering the intent of the Congress that wrote this statute, we must decide—in the face of what is, at worst, linguistic ambiguity—whether Congress intended that persons who have long since paid their debt to society would be deprived of their liberty for months or years without the possibility of bail. We cannot decide that question without bearing in mind basic American legal values: the Government's duty not to deprive any "person" of "liberty" without "due process of law," U. S. Const., Amdt. 5; the Nation's original commitment to protect the "unalienable" right to "Liberty," Declaration of Independence 92; and, less abstractly and more directly, the longstanding right of virtually all persons to receive a bail hearing.

I would have thought that Congress meant to adhere to these values and did not intend to allow the Government to apprehend persons years after their release from prison and hold them indefinitely without a bail hearing. In my view, the Court should interpret the words of this statute to reflect Congress' likely intent, an intent that is consistent with our basic values. To speak more technically, I believe that aliens are subject to paragraph (2)'s bar on release only if they are detained "when . . . released" from criminal custody. To speak less technically, I fear that the Court's contrary interpretation will work serious harm to the principles for which American law has long stood.

For these reasons, with respect, I dissent.

APPENDIXES

A

8 U. S. C. § 1226. "Apprehension and detention of aliens

"(a) Arrest, detention, and release

"On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—

"(1) may continue to detain the arrested alien; and

"(2) may release the alien on—

"(A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

"(B) conditional parole;

. . . . .

"(c) Detention of criminal aliens

"(1) Custody

"The Attorney General *shall take into custody* any alien who—

"(A) is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title,

"(B) is deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D) of this title,

"(C) is deportable under section 1227(a)(2)(A)(i) of this title on the basis of an offense for which the alien has been sentence[d] to a term of imprisonment of at least 1 year, or

"(D) is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title,

"*when the alien is released*, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense.

"(2) Release

"The Attorney General may release *an alien described in paragraph (1)* only if the Attorney General decides pursuant to section 3521 of title 18 that release of the alien from custody is necessary to provide protection to a witness, a potential witness, a person cooperating with an investigation into major criminal activity, or an immediate family member or close associate of a witness, potential witness, or person cooperating with such an investigation, and the alien satisfies the Attorney General that the alien will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding. A decision relating to such release shall take place in accordance with a procedure that considers the severity of the offense committed by the alien." (Emphasis added.)

B

The following citations support the claims made *supra*, at 430, regarding the breadth of the Government's reading of the statute. I do not intend to suggest that these citations provide a complete description of the many aliens who are detained without a bail hearing under 8 U. S. C. § 1226(c). See *Jennings* v. *Rodriguez*, 583 U. S. 281, 328 (2018) (BREYER, J., dissenting) (indicating that thousands of aliens are eligible to be detained under subsection (c), that many are held for six months or longer, and that "[n]early 40% of those who have served criminal sentences receive relief from removal"); *Preap* v. *Johnson*, 831 F. 3d 1193, 1197 (CA9 2016) (noting that one respondent was detained 11 years after his release from prison); Brief for Advancement Project et al. as *Amici Curiae* 12 (presenting data from a recent lawsuit in Massachusetts indicating that more than one in five aliens detained under subsection (c) were taken into custody more than five years after their release from prison); § 1226(c)(1)(A) (referencing § 1182(a)(2), which includes aliens who have committed federal or state controlled substance offenses for which the maximum term of imprisonment exceeds one year); § 1226(c)(1)(C) (referencing § 1227(a)(2)(A)(i), which ap-

plies to aliens convicted of certain crimes "involving moral turpitude"); *Hashish* v. *Gonzales*, 442 F. 3d 572, 576 (CA7 2006) (illegally downloading music is a crime of "moral turpitude"); *Michel* v. *INS*, 206 F. 3d 253, 261 (CA2 2000) (possessing stolen bus transfers is a crime of "moral turpitude"); § 1226(c)(1)(D) (referencing § 1182(a)(3)(B), which covers the "spouse or child" of certain aliens engaged in terrorist activity); § 1229b (identifying the requirements for obtaining cancellation of removal).

Syllabus

AIR & LIQUID SYSTEMS CORP. ET AL. *v.* DEVRIES, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF DEVRIES, DECEASED, ET AL.

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

No. 17–1104. Argued October 10, 2018—Decided March 19, 2019

Petitioners produced equipment for three Navy ships. The equipment required asbestos insulation or asbestos parts to function as intended, but the manufacturers did not always incorporate the asbestos into their products. Instead, the manufacturers delivered much of the equipment to the Navy without asbestos, and the Navy later added the asbestos to the equipment. Two Navy veterans, Kenneth McAfee and John DeVries, were exposed to asbestos on the ships and developed cancer. They and their wives sued the manufacturers, alleging that the asbestos exposure caused the cancer and contending that the manufacturers were negligent in failing to warn about the dangers of asbestos in the integrated products. Raising the "bare-metal defense," the manufacturers argued that they should not be liable for harms caused by later-added third-party parts. The District Court granted summary judgment to the manufacturers, but the Third Circuit, adopting a foreseeability approach, vacated and remanded.

Held: In the maritime tort context, a product manufacturer has a duty to warn when its product requires incorporation of a part, the manufacturer knows or has reason to know that the integrated product is likely to be dangerous for its intended uses, and the manufacturer has no reason to believe that the product's users will realize that danger. Pp. 451–458.

(a) Tort law imposes a duty to exercise reasonable care on those whose conduct presents a risk of harm to others. That includes a duty to warn when the manufacturer "knows or has reason to know" that its product "is or is likely to be dangerous for the use for which it is supplied" and "has no reason to believe" that the product's users will realize that danger. 2 Restatement (Second) of Torts § 388. Three approaches have emerged on how to apply that "duty to warn" principle when a manufacturer's product requires later incorporation of a dangerous part in order for the integrated product to function as intended. The first—the foreseeability rule—provides that a manufacturer may be liable when it was foreseeable that its product would be used with

another product or part, even if the manufacturer's product did not require use or incorporation of that other product or part. The second—the bare-metal defense—provides that if a manufacturer did not itself make, sell, or distribute the part or incorporate the part into the product, the manufacturer is not liable for harm caused by the integrated product—even if the product required incorporation of the part and the manufacturer knew that the integrated product was likely to be dangerous for its intended uses. A third approach, falling between those two, imposes on the manufacturer a duty to warn when its product requires incorporation of a part and the manufacturer knows or has reason to know that the integrated product is likely to be dangerous for its intended uses.

The third approach is most appropriate for this maritime context. The foreseeability rule would sweep too broadly, imposing a difficult and costly burden on manufacturers, while simultaneously overwarning users. The bare-metal defense ultimately goes too far in the other direction. After all, a manufacturer that supplies a product that is dangerous in and of itself and a manufacturer that supplies a product that requires incorporation of a part that the manufacturer knows or has reason to know is likely to make the integrated product dangerous for its intended uses both "kno[w] or ha[ve] reason to know" that the product "is or is likely to be dangerous for the use for which it is supplied." And in the latter case, the product manufacturer will often be in a better position than the parts manufacturer to warn of the danger, because the product manufacturer knows the nature of the ultimate integrated product. Requiring a warning in these circumstances will not impose a significant burden on manufacturers, who already have a duty to warn of the dangers of their own products. Nor will it result in substantial uncertainty about when product manufacturers must provide warnings, because the rule requires a manufacturer to warn only when its product *requires* a part in order for the integrated product to function as intended. And this Court is unaware of any substantial overwarning problems in those jurisdictions that have adopted the approach taken here. Requiring the product manufacturer to warn when its product requires incorporation of a part that makes the integrated product dangerous for its intended uses is especially appropriate in the context of maritime law, which has always recognized a "'special solicitude for the welfare'" of sailors. *American Export Lines, Inc.* v. *Alvez*, 446 U. S. 274, 285. Pp. 451–457.

(b) The maritime tort rule adopted here encompasses all of the following circumstances, so long as the manufacturer knows or has reason to know that the integrated product is likely to be dangerous for its in-

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tended uses, and the manufacturer has no reason to believe that the product's users will realize that danger: (i) a manufacturer directs that the part be incorporated; (ii) a manufacturer itself makes the product with a part that the manufacturer knows will require replacement with a similar part; or (iii) a product would be useless without the part. P. 457.

873 F. 3d 232, affirmed.

KAVANAUGH, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. GORSUCH, J., filed a dissenting opinion, in which THOMAS and ALITO, JJ., joined, *post*, p. 458.

Shay Dvoretzky argued the cause for petitioners. With him on the briefs were *Jeffrey R. Johnson*, *Benjamin M. Flowers*, *Christopher G. Conley*, *Brady L. Green*, *Christopher J. Keale*, *Afigo I. Okpewho-Fadahunsi*, and *John J. Hare*. *Carter G. Phillips*, *Paul J. Zidlicky*, *William R. Levi*, *Timothy E. Kapshandy*, and *Tobias S. Loss-Eaton* filed briefs for General Electric as respondent under this Court's Rule 12.6 in support of petitioners.

Thomas C. Goldstein argued the cause for respondents. On the brief were *Richard P. Myers*, *Robert E. Paul*, *Alan I. Reich*, *Denyse F. Clancy*, *Jonathan Ruckdeschel*, and *William W. C. Harty*.*

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*Briefs of *amici curiae* urging reversal were filed for the Chamber of Commerce of the United States of America et al. by *Jeffrey S. Bucholtz*, *Justin A. Torres*, and *Peter Tolsdorf*; for the Coalition for Litigation Justice, Inc., et al. by *Mark A. Behrens*, *Christopher E. Appel*, *Karen R. Harned*, and *Elizabeth Milito*; and for the Product Liability Advisory Council, Inc., by *James M. Beck*.

Briefs of *amici curiae* urging affirmance were filed for the American Association for Justice by *Jeffrey R. White* and *Elise Sanguinetti*; for Multiple Veterans Organizations by *Christian Hartley*; for Port Ministries International by Mic*hael F. Sturley* and *Charles S. Siegel*; and for Evelyn Hutchins et al. by *Alan Kellman*, *Lisa Shirley*, and *Charles W. Branham III*.

Nevin M. Gewertz and *Richard A. Epstein*, *pro se*, filed a brief for Richard A. Epstein et al. as *amicus curiae*.

JUSTICE KAVANAUGH delivered the opinion of the Court.

In maritime tort cases, we act as a common-law court, subject to any controlling statutes enacted by Congress. See *Exxon Shipping Co.* v. *Baker*, 554 U. S. 471, 507–508 (2008). This maritime tort case raises a question about the scope of a manufacturer's duty to warn. The manufacturers here produced equipment such as pumps, blowers, and turbines for three Navy ships. The equipment required asbestos insulation or asbestos parts in order to function as intended. When used on the ships, the equipment released asbestos fibers into the air. Two Navy veterans who were exposed to asbestos on the ships developed cancer and later died. The veterans' families sued the equipment manufacturers, claiming that the manufacturers were negligent in failing to warn of the dangers of asbestos.

The plaintiffs contend that a manufacturer has a duty to warn when the manufacturer's product requires incorporation of a part (here, asbestos) that the manufacturer knows is likely to make the integrated product dangerous for its intended uses. The manufacturers respond that they had no duty to warn because they did not themselves incorporate the asbestos into their equipment; rather, the Navy added the asbestos to the equipment after the equipment was already on board the ships.

We agree with the plaintiffs. In the maritime tort context, a product manufacturer has a duty to warn when (i) its product requires incorporation of a part, (ii) the manufacturer knows or has reason to know that the integrated product is likely to be dangerous for its intended uses, and (iii) the manufacturer has no reason to believe that the product's users will realize that danger. The District Court did not apply that test when granting summary judgment to the defendant manufacturers. Although we do not agree with all of the reasoning of the U. S. Court of Appeals for the Third Circuit, we affirm its judgment requiring the District Court

to reconsider its prior grants of summary judgment to the defendant manufacturers.

I

Kenneth McAfee served in the U. S. Navy for more than 20 years. As relevant here, McAfee worked on the U. S. S. *Wanamassa* from 1977 to 1980 and then on the U. S. S. *Commodore* from 1982 to 1986. John DeVries served in the U. S. Navy from 1957 to 1960. He worked on the U. S. S. *Turner*.

Those ships were outfitted with equipment such as pumps, blowers, and turbines. That equipment required asbestos insulation or asbestos parts in order to function as intended. When used as intended, that equipment can cause the release of asbestos fibers into the air. If inhaled or ingested, those fibers may cause various illnesses.

Five businesses—Air and Liquid Systems, CBS, Foster Wheeler, Ingersoll Rand, and General Electric—produced some of the equipment that was used on the ships. Although the equipment required asbestos insulation or asbestos parts in order to function as intended, those businesses did not always incorporate the asbestos into their products. Instead, the businesses delivered much of the equipment to the Navy without asbestos. The equipment was delivered in a condition known as "bare-metal." In those situations, the Navy later added the asbestos to the equipment.[1]

McAfee and DeVries allege that their exposure to the asbestos caused them to develop cancer. They and their wives sued the equipment manufacturers in Pennsylvania state court. (McAfee and DeVries later died during the course of the ongoing litigation.) The plaintiffs did not sue the Navy because they apparently believed the Navy was immune. See *Feres* v. *United States*, 340 U. S. 135 (1950). The plaintiffs also could not recover much from the manufacturers of

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[1] Sometimes, the equipment manufacturers themselves added the asbestos to the equipment. Even in those situations, however, the Navy later replaced the asbestos parts with third-party asbestos parts.

the asbestos insulation and asbestos parts because those manufacturers had gone bankrupt. As to the manufacturers of the equipment—such as the pumps, blowers, and turbines—the plaintiffs claimed that those manufacturers negligently failed to warn them of the dangers of asbestos in the integrated products. If the manufacturers had provided warnings, the workers on the ships presumably could have worn respiratory masks and thereby avoided the danger.

Invoking federal maritime jurisdiction, the manufacturers removed the cases to federal court. The manufacturers then moved for summary judgment on the ground that manufacturers should not be liable for harms caused by later-added third-party parts. That defense is known as the "bare-metal defense."

The District Court granted the manufacturers' motions for summary judgment. The U. S. Court of Appeals for the Third Circuit vacated and remanded. *In re Asbestos Prods. Liability Litigation*, 873 F. 3d 232, 241 (2017). The Third Circuit held that "a manufacturer of a bare-metal product may be held liable for a plaintiff's injuries suffered from later-added asbestos-containing materials" if the manufacturer could foresee that the product would be used with the later-added asbestos-containing materials. *Id.*, at 240.

We granted certiorari to resolve a disagreement among the Courts of Appeals about the validity of the bare-metal defense under maritime law. 584 U. S. 976 (2018). Compare 873 F. 3d 232 (case below), with *Lindstrom* v. *A-C Prod. Liability Trust*, 424 F. 3d 488 (CA6 2005).

II

Article III of the Constitution grants the federal courts jurisdiction over maritime cases. Under 28 U. S. C. § 1333, the federal courts have "original jurisdiction, exclusive of the courts of the States, of . . . [a]ny civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled."

When a federal court decides a maritime case, it acts as a federal "common law court," much as state courts do in state common-law cases. *Exxon Shipping Co.*, 554 U. S., at 507. Subject to direction from Congress, the federal courts fashion federal maritime law. See *id.*, at 508, n. 21; *Miles* v. *Apex Marine Corp.*, 498 U. S. 19, 27 (1990); *United States* v. *Reliable Transfer Co.*, 421 U. S. 397, 409 (1975); *Detroit Trust Co.* v. *The Thomas Barlum*, 293 U. S. 21, 42–44 (1934). In formulating federal maritime law, the federal courts may examine, among other sources, judicial opinions, legislation, treatises, and scholarly writings. See *Exxon Co., U. S. A.* v. *Sofec, Inc.*, 517 U. S. 830, 839 (1996); *East River S. S. Corp.* v. *Transamerica Delaval Inc.*, 476 U. S. 858, 864 (1986).

This is a maritime tort case. The plaintiffs allege that the defendant equipment manufacturers were negligent in failing to warn about the dangers of asbestos. "The general maritime law has recognized the tort of negligence for more than a century . . . ." *Norfolk Shipbuilding & Drydock Corp.* v. *Garris*, 532 U. S. 811, 820 (2001); see also *Kermarec* v. *Compagnie Generale Transatlantique*, 358 U. S. 625, 631–632 (1959). Maritime law has likewise recognized common-law principles of products liability for decades. See *East River S. S. Corp.*, 476 U. S., at 865.

In this negligence case, we must decide whether a manufacturer has a duty to warn when the manufacturer's product requires later incorporation of a dangerous part—here, asbestos—in order for the integrated product to function as intended.

We start with basic tort-law principles. Tort law imposes "a duty to exercise reasonable care" on those whose conduct presents a risk of harm to others. 1 Restatement (Third) of Torts: Liability for Physical and Emotional Harm § 7, p. 77 (2005). For the manufacturer of a product, the general duty of care includes a duty to warn when the manufacturer "knows or has reason to know" that its product "is or is likely to be dangerous for the use for which it is supplied" and the

manufacturer "has no reason to believe" that the product's users will realize that danger. 2 Restatement (Second) of Torts § 388, p. 301 (1963–1964).

In tort cases, the federal and state courts have not reached consensus on how to apply that general tort-law "duty to warn" principle when the manufacturer's product requires later incorporation of a dangerous part in order for the integrated product to function as intended. Three approaches have emerged.

The first approach is the more plaintiff-friendly foreseeability rule that the Third Circuit adopted in this case: A manufacturer may be liable when it was foreseeable that the manufacturer's product would be used with another product or part, even if the manufacturer's product did not require use or incorporation of that other product or part. See, *e. g.*, 873 F. 3d, at 240; *Kochera* v. *Foster Wheeler, LLC*, 2015 WL 5584749, *4 (SD Ill., Sept. 23, 2015); *Chicano* v. *General Elec. Co.*, 2004 WL 2250990, *9 (ED Pa., Oct. 5, 2004); *McKenzie* v. *A. W. Chesterson Co.*, 277 Ore. App. 728, 749–750, 373 P. 3d 150, 162 (2016).

The second approach is the more defendant-friendly bare-metal defense that the manufacturers urge here: If a manufacturer did not itself make, sell, or distribute the part or incorporate the part into the product, the manufacturer is not liable for harm caused by the integrated product—even if the product required incorporation of the part and the manufacturer knew that the integrated product was likely to be dangerous for its intended uses. See, *e. g.*, *Lindstrom*, 424 F. 3d, at 492, 495–497; *Evans* v. *CBS Corp.*, 230 F. Supp. 3d 397, 403–405 (Del. 2017); *Cabasug* v. *Crane Co.*, 989 F. Supp. 2d 1027, 1041 (Haw. 2013).

The third approach falls between those two approaches. Under the third approach, foreseeability that the product may be used with another product or part that is likely to be dangerous is not enough to trigger a duty to warn. But a manufacturer does have a duty to warn when its product

requires incorporation of a part and the manufacturer knows or has reason to know that the integrated product is likely to be dangerous for its intended uses. Under that approach, the manufacturer may be liable even when the manufacturer does not itself incorporate the required part into the product. See, *e. g.*, *Quirin* v. *Lorillard Tobacco Co.*, 17 F. Supp. 3d 760, 769–770 (ND Ill. 2014); *In re New York City Asbestos Litigation*, 27 N. Y. 3d 765, 793–794, 59 N. E. 3d 458, 474 (2016); *May* v. *Air & Liquid Systems Corp.*, 446 Md. 1, 29, 129 A. 3d 984, 1000 (2015).

We conclude that the third approach is the most appropriate for this maritime tort context.

To begin, we agree with the manufacturers that a rule of mere foreseeability would sweep too broadly. See generally 1 Restatement (Third) of Torts: Liability for Physical and Emotional Harm § 7, Comment *j*, at 82; 2 Restatement (Second) of Torts § 395, Comment *j*, at 330. Many products can foreseeably be used in numerous ways with numerous other products and parts. Requiring a product manufacturer to imagine and warn about all of those possible uses—with massive liability looming for failure to correctly predict how its product might be used with other products or parts—would impose a difficult and costly burden on manufacturers, while simultaneously overwarning users. In light of that uncertainty and unfairness, we reject the foreseeability approach for this maritime context.

That said, we agree with the plaintiffs that the bare-metal defense ultimately goes too far in the other direction. In urging the bare-metal defense, the manufacturers contend that a business generally has "no duty" to "control the conduct of a third person as to prevent him from causing physical harm to another." *Id.*, § 315, at 122. That is true, but it is also beside the point here. After all, when a manufacturer's product is dangerous in and of itself, the manufacturer "knows or has reason to know" that the product "is or is likely to be dangerous for the use for which it is supplied."

Id., § 388, at 301. The same holds true, we conclude, when the manufacturer's product requires incorporation of a part that the manufacturer knows or has reason to know is likely to make the integrated product dangerous for its intended uses. As a matter of maritime tort law, we find no persuasive reason to distinguish those two similar situations for purposes of a manufacturer's duty to warn. See Restatement (Third) of Torts: Products Liability § 2, Comment *i*, p. 30 (1997) ("[W]arnings also may be needed to inform users and consumers of nonobvious and not generally known risks that unavoidably inhere in using or consuming the product").

Importantly, the product manufacturer will often be in a better position than the parts manufacturer to warn of the danger from the integrated product. See generally G. Calabresi, The Costs of Accidents 311–318 (1970). The product manufacturer knows the nature of the ultimate integrated product and is typically more aware of the risks associated with that integrated product. By contrast, a parts manufacturer may be aware only that its part could conceivably be used in any number of ways in any number of products. A parts manufacturer may not always be aware that its part will be used in a way that poses a risk of danger.[2]

To be sure, as the manufacturers correctly point out, issuing a warning costs time and money. But the burden usually is not significant. Manufacturers already have a duty to warn of the dangers of their own products. That duty typically imposes a light burden on manufacturers. See, *e. g.*, *Davis* v. *Wyeth Labs., Inc.*, 399 F. 2d 121, 131 (CA9 1968); *Butler* v. *L. Sonneborn Sons, Inc.*, 296 F. 2d 623, 625–626 (CA2 1961); *Ross Labs.* v. *Thies*, 725 P. 2d 1076, 1079 (Alaska 1986); *Moran* v. *Faberge, Inc.*, 273 Md. 538, 543–544, 332 A. 2d 11, 15 (1975). Requiring a manufacturer to also warn when the manufacturer knows or has reason to know that a required later-added part is likely to make the inte-

[2] We do not rule out the possibility that, in certain circumstances, the parts manufacturer may also have a duty to warn.

grated product dangerous for its intended uses should not meaningfully add to that burden.

The manufacturers also contend that requiring a warning even when they have not themselves incorporated the part into the product will lead to uncertainty about when product manufacturers must provide warnings. But the manufacturers have not pointed to any substantial confusion in those jurisdictions that have adopted this approach. And the rule that we adopt here is tightly cabined. The rule does not require that manufacturers warn in cases of mere foreseeability. The rule requires that manufacturers warn only when their product *requires* a part in order for the integrated product to function as intended.

The manufacturers further assert that requiring a warning in these circumstances will lead to excessive warning of consumers. Again, however, we are not aware of substantial overwarning problems in those jurisdictions that have adopted this approach. And because the rule we adopt here applies only in certain narrow circumstances, it will not require a plethora of new warnings.

Requiring the product manufacturer to warn when its product requires incorporation of a part that makes the integrated product dangerous for its intended uses—and not just when the manufacturer itself incorporates the part into the product—is especially appropriate in the maritime context. Maritime law has always recognized a "special solicitude for the welfare" of those who undertake to "venture upon hazardous and unpredictable sea voyages." *American Export Lines, Inc.* v. *Alvez*, 446 U. S. 274, 285 (1980) (internal quotation marks omitted). The plaintiffs in this case are the families of veterans who served in the U. S. Navy. Maritime law's longstanding solicitude for sailors reinforces our decision to require a warning in these circumstances. See *Yamaha Motor Corp., U. S. A.* v. *Calhoun*, 516 U. S. 199, 213 (1996); *Miles*, 498 U. S., at 36; *Moragne* v. *States Marine Lines, Inc.*, 398 U. S. 375, 387 (1970).

For those reasons, we conclude as follows: In the maritime tort context, a product manufacturer has a duty to warn when (i) its product requires incorporation of a part, (ii) the manufacturer knows or has reason to know that the integrated product is likely to be dangerous for its intended uses, and (iii) the manufacturer has no reason to believe that the product's users will realize that danger. We do not purport to define the proper tort rule outside of the maritime context.

One final point for clarity: Courts have determined that this rule applies in certain related situations, including when: (i) a manufacturer directs that the part be incorporated, see, *e. g.*, *Bell* v. *Foster Wheeler Energy Corp.*, 2016 WL 5780104, *6–*7 (ED La., Oct. 4, 2016); (ii) a manufacturer itself makes the product with a part that the manufacturer knows will require replacement with a similar part, see, *e. g.*, *Chesher* v. *3M Co.*, 234 F. Supp. 3d 693, 713–714 (SC 2017); *Quirin*, 17 F. Supp. 3d, at 769–770; *May*, 446 Md., at 29, 129 A. 3d, at 1000; or (iii) a product would be useless without the part, see, *e. g.*, *In re New York City Asbestos Litigation*, 27 N. Y. 3d, at 793–794, 59 N. E. 3d, at 474. In all of those situations, courts have said that the product in effect requires the part in order for the integrated product to function as intended. We agree. The maritime tort rule we adopt today therefore encompasses those situations, so long as the manufacturer knows or has reason to know that the integrated product is likely to be dangerous for its intended uses, and the manufacturer has no reason to believe that the product's users will realize that danger.

* * *

In the maritime tort context, we hold that a product manufacturer has a duty to warn when (i) its product requires incorporation of a part, (ii) the manufacturer knows or has reason to know that the integrated product is likely to be dangerous for its intended uses, and (iii) the manufacturer has no reason to believe that the product's users will realize

that danger. The District Court should evaluate the evidence under that rule. Although we do not agree with all of the reasoning of the Third Circuit, we affirm its judgment requiring the District Court to reconsider its prior grants of summary judgment to the defendant manufacturers.

It is so ordered.

JUSTICE GORSUCH, with whom JUSTICE THOMAS and JUSTICE ALITO join, dissenting.

Decades ago, many of the defendants before us sold "bare metal" products to the Navy. Things like the turbines used to propel its ships. Did these manufacturers have to warn users about the dangers of asbestos that *someone else* later chose to add to or wrap around their products as insulation?

Start with a couple of things we can all agree on. First, everyone accepts that, under traditional tort principles, the manufacturers who actually supplied the later-added asbestos had to warn about its known dangers. Second, everyone agrees that the court of appeals erred when it came to analyzing the duties of the bare metal defendants. The court of appeals held that the bare metal manufacturers had a duty to warn because they could have "foreseen" the possibility that others would later use asbestos in conjunction with their products. Today, the Court rightly rejects this "foreseeability" standard, succinctly explaining that "[r]equiring a product manufacturer to imagine and warn about all of those possible uses—with massive liability looming for failure to correctly predict how its product might be used with other products or parts—would impose a difficult and costly burden on manufacturers, while simultaneously overwarning users." *Ante*, at 454.

Our disagreement arises only in what comes next. Immediately after rejecting the court of appeals' approach, the Court proceeds to devise its own way of holding the bare metal manufacturers responsible for later-added asbestos. In the Court's judgment, the bare metal defendants had a

duty to warn about the dangers of asbestos introduced by others so long as they (i) produced a product that "require[d] incorporation of" asbestos, (ii) "kn[ew] or ha[d] reason to know" that the "integrated product" would be dangerous, and (iii) had "no reason to believe" that users would realize that danger. *Ante*, at 457. The Court's new three-part standard surely represents an improvement over the court of appeals' unadorned "foreseeability" offering. But, respectfully, it seems to me to suffer from many of the same defects the Court itself has identified.

In the first place, neither of these standards enjoys meaningful roots in the common law. The common law has long taught that a manufacturer has no "duty to warn or instruct about another manufacturer's products, though those products might be used in connection with the manufacturer's own products." *Firestone Steel Prods. Co.* v. *Barajas*, 927 S. W. 2d 608, 616 (Tex. 1996). Instead, "the manufacturer's duty is restricted to warnings based on the characteristics of *the manufacturer's own product*." *Powell* v. *Standard Brands Paint Co.*, 166 Cal. App. 3d 357, 364, 212 Cal. Rptr. 395, 398 (1985).[1] It doesn't matter, either, whether a manu-

[1] See also, *e. g.*, *Dreyer* v. *Exel Industries, S. A.*, 326 Fed. Appx. 353, 357–358 (CA6 2009); *Barnes* v. *Kerr Corp.*, 418 F. 3d 583, 590 (CA6 2005); *Reynolds* v. *Bridgestone/Firestone, Inc.*, 989 F. 2d 465, 472 (CA11 1993); *Baughman* v. *General Motors Corp.*, 780 F. 2d 1131, 1133 (CA4 1986); *In re Deep Vein Thrombosis*, 356 F. Supp. 2d 1055, 1068 (ND Cal. 2005); *Acoba* v. *General Tire, Inc.*, 92 Haw. 1, 18, 986 P. 2d 288, 305 (1999); *Brown* v. *Drake-Willock Int'l, Ltd.*, 209 Mich. App. 136, 144–146, 530 N. W. 2d 510, 514–515 (1995); *Rastelli* v. *Goodyear Tire & Rubber Co.*, 79 N. Y. 2d 289, 297–298, 591 N. E. 2d 222, 225–226 (1992); *Walton* v. *Harnischfeger*, 796 S. W. 2d 225, 226 (Tex. App. 1990); *Toth* v. *Economy Forms Corp.*, 391 Pa. Super. 383, 388–389, 571 A. 2d 420, 423 (1990); *Mitchell* v. *Sky Climber, Inc.*, 396 Mass. 629, 631–632, 487 N. E. 2d 1374, 1376 (1986); *Johnson* v. *Jones-Blair Paint Co.*, 607 S. W. 2d 305, 306 (Tex. Civ. App. 1980); 63A Am. Jur. 2d, Products Liability §1027, p. 247 (2010); Behrens & Horn, Liability for Asbestos-Containing Connected or Replacement Parts Made by Third-Parties: Courts Are Properly Rejecting This Form of Guilt by Association, 37 Am. J. Trial Advocacy 489, 494–497 (2014).

facturer's product happens to be (or is designed to be) "integrated" with another's. Instead, it is black-letter law that the supplier of a product generally must warn about only those risks associated with the product itself, not those associated with the "products and systems into which [it later may be] integrated." Restatement (Third) of Torts: Products Liability § 5, Comment *b*, p. 132 (1997).[2]

More than that, the traditional common law rule still makes the most sense today. The manufacturer of a product is in the best position to understand and warn users about its risks; in the language of law and economics, those who make products are generally the least-cost avoiders of their risks. By placing the duty to warn on a product's manufacturer, we force it to internalize the full cost of any injuries caused by inadequate warnings—and in that way ensure it is fully incentivized to provide adequate warnings. By contrast, we dilute the incentive of a manufacturer to warn about the dangers of its products when we require other people to share the duty to warn and its corresponding costs. See S. Shavell, Economic Analysis of Accident Law 17 (1987); G. Calabresi, The Costs of Accidents 135, and n. 1 (1970); *Italia Societa per Azioni di Navigazione* v. *Oregon Stevedoring Co.*, 376 U. S. 315, 324 (1964).[3]

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[2] See, *e. g.*, *Cipollone* v. *Yale Indus. Prods., Inc.*, 202 F. 3d 376, 379 (CA1 2000); *Crossfield* v. *Quality Control Equip. Co.*, 1 F. 3d 701, 703–704 (CA8 1993); *Childress* v. *Gresen Mfg. Co.*, 888 F. 2d 45, 48–49 (CA6 1989); *Koonce* v. *Quaker Safety Prods. & Mfg. Co.*, 798 F. 2d 700, 715 (CA5 1986).

[3] See also Restatement (Third) of Torts: Products Liability § 5, Comment *a*, p. 131 (1997) ("If the component is not itself defective, it would be unjust and inefficient to impose liability solely on the ground" that others "utiliz[e] the component in a manner that renders the integrated product defective"); *Edwards* v. *Honeywell, Inc.*, 50 F. 3d 484, 490 (CA7 1995) (placing liability on a defendant who is not "in the best position to prevent a particular class of accidents" may "dilute the incentives of other potential defendants" who should be the first "line of defense"); *National Union Fire Ins. Co. of Pittsburgh* v. *Riggs Nat. Bank of Washington, D. C.*, 5 F. 3d 554, 557 (CADC 1993) (Silberman, J., concurring) ("Placing liability with the least-cost avoider increases the incentive for that party to adopt pre-

The traditional common law rule better accords, too, with consumer expectations. A home chef who buys a butcher's knife may expect to read warnings about the dangers of knives but not about the dangers of undercooked meat. Likewise, a purchaser of gasoline may expect to see warnings at the pump about its flammability but not about the dangers of recklessly driving a car. As the Court today recognizes, encouraging manufacturers to offer warnings about other people's products risks long, duplicative, fine print, and conflicting warnings that will leave consumers less sure about which to take seriously and more likely to disregard them all. In the words of the California Supreme Court, consumer welfare is not well "served by requiring manufacturers to warn about the dangerous propensities of products they do not design, make, or sell." *O'Neil* v. *Crane Co.*, 53 Cal. 4th 335, 343, 266 P. 3d 987, 991 (2012); see also *Cotton* v. *Buckeye Gas Prods. Co.*, 840 F. 2d 935, 938 (CADC 1988) ("The inclusion of each extra item dilutes the punch of every other item. Given short attention spans, items crowd each other out; they get lost in fine print").

The traditional tort rule bears yet another virtue: It is simple to apply. The traditional rule affords manufacturers fair notice of their legal duties, lets injured consumers know whom to sue, and ensures courts will treat like cases alike. By contrast, when liability depends on the application of opaque or multifactor standards like the one proposed below or the one announced today, "equality of treatment" becomes harder to ensure across cases; "predictability is destroyed" for innovators, investors, and consumers alike; and "judicial courage is impaired" as the ability (and temptation) to fit the law to the case, rather than the case to the law, grows. Scalia, The Rule of Law as a Law of Rules, 56 U. Chi. L. Rev. 1175, 1182 (1989).

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ventive measures" that will "have the greatest marginal effect on preventing the loss").

Just consider some of the uncertainties each part of the Court's new three-part test is sure to invite:

> (i) When does a customer's side-by-side use of two products qualify as "incorporation" of the products? Does hanging asbestos on the outside of a boiler count, or must asbestos be placed inside a product? And when is incorporation of a dangerous third-party product "required" as opposed to just optimal or preferred? What if a potential substitute existed, but it was less effective or more costly (surely alternatives to asbestos insulation have existed for a long time)? And what if the third-party product becomes less advantageous over time due to advancing technology (as asbestos did)? When does the defendant's duty to warn end?
>
> (ii) What will qualify as an "integrated product"? In the past, we've suggested that a "product" is whatever assemblage of parts is "placed in the stream of commerce by the manufacturer," and we've stressed the importance of maintaining the "distinction between the components added to a product by a manufacturer before the product's sale . . . and those items added" later by someone else. *Saratoga Fishing Co.* v. *J. M. Martinac & Co.*, 520 U. S. 875, 883–884 (1997). The Court's new standard blurs that distinction, but it is unclear how far it goes. The Court suggests a turbine and separately installed insulation may now qualify as a single "integrated product." But what about other parts connected to the turbine? Does even the propeller qualify as part of the final "integrated product" too, so that its manufacturer also bears a duty to warn about the dangers of asbestos hung around the turbine? For that matter, why isn't the entire ship an "integrated product," with a corresponding duty for all the manufacturers who contributed parts to warn about the dangers of all the other parts? And when exactly is a manufacturer supposed to "know or have reason to know" that

some supplement to its product has now made a resulting "integrated product" dangerous? How much cost and effort must manufacturers expend to discover and understand the risks associated with third-party products others may be "incorporating" with their products? (iii) If a defendant reasonably expects that the manufacturer of a third-party product will comply with its own duty to warn, is that sufficient "reason to believe" that users will "realize" the danger to absolve the defendant of responsibility? Or does a defendant have to assume that the third-party manufacturer will behave negligently in rendering its own warnings? Or that users won't bother to read the warnings others offer? And what if the defendants here understood that the Navy itself would warn sailors about the need for proper handling of asbestos—did they still have to provide their own warnings? [4]

Headscratchers like these are sure to enrich lawyers and entertain law students, but they also promise to leave everyone else wondering about their legal duties, rights, and liabilities.

Nor is this kind of uncertainty costless. Consider what might follow if the Court's standard were widely adopted in tort law. Would a company that sells smartphone cases have to warn about the risk of exposure to cell phone radiation? Would a car maker have to warn about the risks of improperly stored antifreeze? Would a manufacturer of flashlights have to warn about the risks associated with leaking batteries? Would a seller of hot dog buns have to warn about the health risks of consuming processed meat? Just the threat of litigation and liability would force many manufacturers of safe products to spend time and money educat-

[4] See App. 40 (affidavit of retired Rear Admiral Roger B. Horne stating that "the Navy chose to control and make personnel aware of the hazards of asbestos exposures through . . . military specifications and personnel training").

ing themselves and writing warnings about the dangers of other people's more dangerous products. All this would, as well, threaten to leave consumers worse off. After all, when we effectively require manufacturers of safe products to subsidize those who make more dangerous items, we promise to raise the price and restrict the output of socially productive products. Tort law is supposed to be about aligning liability with responsibility, not mandating a social insurance policy in which everyone must pay for everyone else's mistakes.

Finally and relatedly, the Court's new standard implicates the same sort of fair notice problem that the court of appeals' standard did. Decades ago, the bare metal defendants produced their lawful products and provided all the warnings the law required. Now, they are at risk of being held responsible retrospectively for failing to warn about other people's products. It is a duty they could not have anticipated then and one they cannot discharge now. They can only pay. Of course, that may be the point. In deviating from the traditional common law rule, the Court may be motivated by the unfortunate facts of this particular case, where the sailors' widows appear to have a limited prospect of recovery from the companies that supplied the asbestos (they've gone bankrupt) and from the Navy that allegedly directed the use of asbestos (it's likely immune under our precedents). *Ante*, at 450–451. The bare metal defendants may be among the only solvent potential defendants left. But how were they supposed to anticipate many decades ago the novel duty to warn placed on them today? People should be able to find the law in the books; they should not find the law coming upon them out of nowhere.

Still, there's a silver lining here. In announcing its new standard, the Court expressly states that it does "not purport to define the proper tort rule outside of the maritime context." *Ante*, at 457. Indeed, the Court acknowledges that it has created its new standard in part because of the "solicitude for sailors" that is a unique feature of our mari-

time jurisdiction. *Ante*, at 456. All of this means, of course, that nothing in today's opinion compels courts operating outside the maritime context to apply the test announced today. In other tort cases, courts remain free to use the more sensible and historically proven common law rule. And given that, "unlike state courts, we have little . . . experience in the development of new common-law rules of tort," *Saratoga*, 520 U. S., at 886 (Scalia, J., dissenting), that is a liberty they may be wise to exercise.[5]

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[5] As the Court notes, some of the defendants sold the Navy products that were not "bare metal" but contained asbestos at the time of sale. *Ante*, at 450, n. 1. We can all agree that those defendants had a duty to warn users about the known dangers of asbestos. And there's a colorable argument that their responsibility didn't end when the Navy, as part of routine upkeep, swapped out the original asbestos parts for replacements supplied by others. Under traditional tort principles, the seller of a defective, "unreasonably dangerous" product may be liable to an injured user if the product "is expected to and does reach the user . . . without substantial change in the condition in which it is sold." 2 Restatement (Second) of Torts § 402A(1)(b), pp. 347–348 (1963–1964). And replacing wornout parts every now and then with equivalently dangerous third-party parts may not qualify as a "substantial change" if the replacement part does "no more than perpetuate" problems latent in the original. *Sage* v. *Fairchild-Swearingen Corp.*, 70 N. Y. 2d 579, 584–587, 517 N. E. 2d 1304, 1306–1308 (1987); see, *e. g.*, *Whelan* v. *Armstrong Int'l Inc.*, 455 N. J. Super. 569, 597–598, 190 A. 3d 1090, 1106–1107 (App. Div. 2018). Of course, the defendants' original failure to warn might not be the legal cause of any harm if the use of the replacement part was unforeseeable, or if an intervening action severed the connection between the original sale and the injurious use. For example, if the replacement part itself posed the danger—or if, by the time the original part wore out, safer alternatives had become available. The Court's new standard, however, does not address these defendants separately, but focuses on the bare metal defendants.

Syllabus

OBDUSKEY *v.* McCARTHY & HOLTHUS LLP

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

No. 17–1307. Argued January 7, 2019—Decided March 20, 2019

Law firm McCarthy & Holthus LLP was hired to carry out a nonjudicial foreclosure on a Colorado home owned by petitioner Dennis Obduskey. McCarthy sent Obduskey correspondence related to the foreclosure. Obduskey responded with a letter invoking a federal Fair Debt Collection Practices Act (FDCPA or Act) provision, 15 U. S. C. § 1692g(b), which provides that if a consumer disputes the amount of a debt, a "debt collector" must "cease collection" until it "obtains verification of the debt" and mails a copy to the debtor. Instead, McCarthy initiated a nonjudicial foreclosure action. Obduskey sued, alleging that McCarthy failed to comply with the FDCPA's verification procedure. The District Court dismissed on the ground that McCarthy was not a "debt collector" within the meaning of the FDCPA, and the Tenth Circuit affirmed.

Held: A business engaged in no more than nonjudicial foreclosure proceedings is not a "debt collector" under the FDCPA, except for the limited purpose of § 1692f(6). Pp. 473–481.

(a) The FDCPA regulates "'debt collector[s].'" § 1692a(6). Relevant here, the definition of debt collector has two parts. The Act first sets out the primary definition of the term "debt collector": A "'debt collector,'" it says, is "any person . . . in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts." *Ibid.* The Act then sets forth the limited-purpose definition, which states that "[f]or the purpose of section 1692f(6) . . . [the] term [debt collector] also includes any person . . . in any business the principal purpose of which is the enforcement of security interests." It is undisputed that McCarthy is, by virtue of its role enforcing security interests, at least subject to the specific prohibitions contained in § 1692f(6). But only if McCarthy falls within the primary definition's scope do the Act's other provisions, including those at issue here, apply. Pp. 473–474.

(b) Three considerations lead to the conclusion that McCarthy is not subject to the Act's main coverage. *First*, and most decisive, is the text of the Act itself. The limited-purpose definition says that "*[f]or the purpose of section 1692f(6)*" a debt collector "*also* includes" a business, like McCarthy, "the principal purpose of which is the enforcement of security interests." § 1692a(6) (emphasis added). This phrase, particu-

larly the word "also," strongly suggests that security-interest enforcers do not fall within the scope of the primary definition. If they did, the limited-purpose definition would be superfluous. By contrast, under a reading that gives effect to every word of the limited-purpose definition, the FDCPA's debt-collector-related prohibitions (with the exception of § 1692f(6)) do not apply to those who, like McCarthy, are engaged in no more than security-interest enforcement. *Second*, Congress may well have chosen to treat security-interest enforcement differently from ordinary debt collection in order to avoid conflicts with state nonjudicial foreclosure schemes. *Third*, this Court's reading is supported by legislative history, which suggests that the Act's present language was the product of a compromise between competing versions of the bill, one which would have totally excluded security-interest enforcement from the Act, and another which would have treated it like ordinary debt collection. Pp. 474–477.

(c) Obduskey's counterarguments are unconvincing. *First*, he suggests that the limited-purpose definition is not superfluous because it was meant to cover "repo men"—a category of security-interest enforcers who he says would not otherwise fall within the primary definition of "debt collector." The limited-purpose definition, however, speaks broadly of "the enforcement of security interests," § 1692a(6), not "the enforcement of security interests *in personal property*." *Second*, Obduskey claims that the Act's venue provision, § 1692i(a), which covers legal actions brought by "debt collectors" to enforce interests in real property, only makes sense if those who enforce security interests in real property are debt collectors subject to all prohibitions and requirements that come with that designation. The venue provision, however, does nothing to alter the definition of a debt collector. *Third*, Obduskey argues that McCarthy engaged in *more* than security-interest enforcement by sending notices that any ordinary homeowner would understand as an attempt to collect a debt. Here, however, the notices sent by McCarthy were antecedent steps required under state law to enforce a security interest, and the Act's (partial) exclusion of "the enforcement of security interests" must also exclude the legal means required to do so. *Finally*, Obduskey fears that this Court's decision will permit creditors and their agents to engage in a host of abusive practices forbidden by the Act. But the Court must enforce the statute that Congress enacted, and Congress is free to expand the FDCPA's reach if it wishes. Pp. 477–481.

879 F. 3d 1216, affirmed.

BREYER, J., delivered the opinion for a unanimous Court. SOTOMAYOR, J., filed a concurring opinion, *post*, p. 481.

Daniel L. Geyser argued the cause and filed briefs for petitioner.

Kannon K. Shanmugam argued the cause for respondent. With him on the brief were *Masha G. Hansford*, *Joel S. Johnson*, *Thomas J. Holthus*, *Matthew E. Podmenik*, and *Holly R. Shilliday.*

Jonathan C. Bond argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Francisco*, *Deputy Solicitor General Wall*, *Steven Y. Bressler*, and *Nandan M. Joshi.**

JUSTICE BREYER delivered the opinion of the Court.

The Fair Debt Collection Practices Act regulates "'debt collector[s].'" 15 U. S. C. § 1692a(6); see 91 Stat. 874, 15 U. S. C. § 1692 *et seq.* A "'debt collector,'" the Act says, is "any person . . . in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts." § 1692a(6). This definition, however, goes on to say that "[f]or the purpose of section 1692f(6)" (a separate provision of the Act), "[the] term [debt collector] also includes any per-

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*Briefs of *amici curiae* urging reversal were filed for Members of Congress by *Elizabeth B. Wydra*, *Brianne J. Gorod*, and *Ashwin P. Phatak*; for NAACP Legal Defense & Educational Fund, Inc., by *Sherrilyn A. Ifill*, *Janai S. Nelson*, and *Samuel Spital*; and for the National Consumer Law Center by *Stuart Rossman.*

Briefs of *amici curiae* urging affirmance were filed for Colorado Mortgage Lenders Association by *Deanne R. Stodden* and *Elizabeth S. Marcus*; for the Commercial Law League of America by *Stephen W. Sather*; for Legal League 100 by *Michelle G. Gilbert*; for the Michigan Creditors Bar Association by *Kathleen H. Klaus* and *Jesse L. Roth*; for Mortgage Bankers Association et al. by *Andrew J. Pincus*, *Archis A. Parasharami*, *Daniel E. Jones*, *Matthew A. Waring*, *Thomas Pinder*, *Daryl Joseffer*, and *Kevin Carroll*; for National Creditors Bar Association by *Tomio B. Narita* and *Jeffrey A. Topor*; for United Trustees Association et al. by *Dean T. Kirby, Jr.*, *Martin T. McGuinn*, and *Michael R. Pfeifer*; and for USFN–America's Mortgage Banking Attorneys by *Richard P. Haber*, *Christopher J. Picard*, and *Robert J. Wichowski.*

son . . . in any business the principal purpose of which is the enforcement of security interests." *Ibid.*

The question before us concerns this last sentence. Does it mean that one principally involved in "the enforcement of security interests" is *not* a debt collector (except "[f]or the purpose of section 1692f(6)")? If so, numerous other provisions of the Act do not apply. Or does it simply reinforce the fact that those principally involved in the enforcement of security interests are subject to § 1692f(6) in addition to the Act's other provisions?

In our view, the last sentence does (with its § 1692f(6) exception) place those whose "principal purpose . . . is the enforcement of security interests" outside the scope of the primary "debt collector" definition, § 1692a(6), where the business is engaged in no more than the kind of security-interest enforcement at issue here—nonjudicial foreclosure proceedings.

I

A

When a person buys a home, he or she usually borrows money from a lending institution, such as a bank. The resulting debt is backed up by a "mortgage"—a security interest in the property designed to protect the creditor's investment. Restatement (Third) of Property: Mortgages § 1.1 (1996) (Restatement). (In some States, this security interest is known as a "deed of trust," though for present purposes the difference is immaterial. See generally *ibid.*) The loan likely requires the homeowner to make monthly payments. And if the homeowner defaults, the mortgage entitles the creditor to pursue foreclosure, which is "the process in which property securing a mortgage is sold to pay off the loan balance due." 2 B. Dunaway, Law of Distressed Real Estate § 15:1 (2018) (Dunaway).

Every State provides some form of *judicial* foreclosure: a legal action initiated by a creditor in which a court super-

vises sale of the property and distribution of the proceeds. *Id.*, § 16:1. These procedures offer various protections for homeowners, such as the right to notice and to protest the amount a creditor says is owed. *Id.*, §§ 16:17, 16:20; Restatement § 8.2. And in the event that the foreclosure sale does not yield the full amount due, a creditor pursuing a judicial foreclosure may sometimes obtain a deficiency judgment, that is, a judgment against the homeowner for the unpaid balance of a debt. J. Rao, T. Twomey, G. Walsh, & O. Williamson, National Consumer Law Center (NCLC), Foreclosures and Mortgage Servicing §§ 12.3.1–2 (5th ed. 2014).

About half the States also provide for what is known as *nonjudicial* foreclosure, where notice to the parties and sale of the property occur outside court supervision. 2 Dunaway § 17:1. Under Colorado's form of nonjudicial foreclosure, at issue here, a creditor (or more likely its agent) must first mail the homeowner certain preliminary information, including the telephone number for the Colorado foreclosure hotline. Colo. Rev. Stat. § 38–38–102.5(2) (2018). Thirty days later, the creditor may file a "notice of election and demand" with a state official called a "public trustee." § 38–38–101. The public trustee records this notice and mails a copy, alongside other materials, to the homeowner. §§ 38–38–102, 38–38–103. These materials give the homeowner information about the balance of the loan, the homeowner's right to cure the default, and the time and place of the foreclosure sale. §§ 38–38–101(4), 38–38–103. Assuming the debtor does not cure the default or declare bankruptcy, the creditor may then seek an order from a state court authorizing the sale. Colo. Rule Civ. Proc. 120 (2018); see Colo. Rev. Stat. § 38–38–105. (Given this measure of court involvement, Colorado's "nonjudicial" foreclosure process is something of a hybrid, though no party claims these features transform Colorado's nonjudicial scheme into a judicial one.) In court, the homeowner may contest the creditor's right to sell the property, and a hearing will be held to determine whether the sale should go forward. Colo. Rules Civ. Proc. 120(c), (d).

If the court gives its approval, the public trustee may then sell the property at a public auction, though a homeowner may avoid a sale altogether by curing the default up until noon on the day before. Colo. Rev. Stat. §§ 38–38–110, 38–38–104(VI)(b). If the sale goes forward and the house sells for more than the amount owed, any profits go first to lienholders and then to the homeowner. § 38–38–111. If the house sells for less than what is owed, the creditor cannot hold the homeowner liable for the balance due unless it files a separate action in court and obtains a deficiency judgment. See § 38–38–106(6); *Bank of America* v. *Kosovich*, 878 P. 2d 65, 66 (Colo. App. 1994). Other States likewise prevent creditors from obtaining deficiency judgments in nonjudicial foreclosure proceedings. Restatement § 8.2. And in some States, pursuing nonjudicial foreclosure bars or curtails a creditor's ability to obtain a deficiency judgment altogether. Rao, NCLC, Foreclosures and Mortgage Servicing § 12.3.2.

B

In 2007, petitioner Dennis Obduskey bought a home in Colorado with a $329,940 loan secured by the property. About two years later, Obduskey defaulted.

In 2014, Wells Fargo Bank, N. A., hired a law firm, McCarthy & Holthus LLP, the respondent here, to act as its agent in carrying out a nonjudicial foreclosure. According to the complaint, McCarthy first mailed Obduskey a letter that said it had been "instructed to commence foreclosure" against the property, disclosed the amount outstanding on the loan, and identified the creditor, Wells Fargo. App. 37–38; see *id.*, at 23. The letter purported to provide notice "[p]ursuant to, and in compliance with," both the Fair Debt Collection Practices Act (FDCPA or Act) and Colorado law. *Id.*, at 37. (The parties seem not to dispute that this and other correspondence from McCarthy was required under state law. Because that is a question of Colorado law not briefed by the parties before us nor passed on by the courts below, we proceed along

the same assumption.) Obduskey responded with a letter invoking § 1692g(b) of the FDCPA, which provides that if a consumer disputes the amount of a debt, a "debt collector" must "cease collection" until it "obtains verification of the debt" and mails a copy to the debtor.

Yet, Obduskey alleges, McCarthy neither ceased collecting on the debt nor provided verification. App. 22–23. Instead, the firm initiated a nonjudicial foreclosure action by filing a notice of election and demand with the county public trustee. *Ibid.*; see *id.*, at 39–41. The notice stated the amount due and advised that the public trustee would "sell [the] property for the purpose of paying the indebtedness." *Id.*, at 40.

Obduskey then filed a lawsuit in federal court alleging that the firm had violated the FDCPA by, among other things, failing to comply with the verification procedure. *Id.*, at 29. The District Court dismissed the suit on the ground that the law firm was not a "debt collector" within the meaning of the Act, so the relevant Act requirements did not apply. *Obduskey* v. *Wells Fargo*, 2016 WL 4091174, *3 (D Colo., July 19, 2016).

On appeal, the Court of Appeals for the Tenth Circuit affirmed the dismissal, concluding that the "mere act of enforcing a security interest through a non-judicial foreclosure proceeding does not fall under" the Act. *Obduskey* v. *Wells Fargo*, 879 F. 3d 1216, 1223 (2018).

Obduskey then petitioned for certiorari. In light of different views among the Circuits about application of the FDCPA to nonjudicial foreclosure proceedings, we granted the petition. Compare *ibid.* and *Vien-Phuong Thi Ho* v. *ReconTrust Co., NA*, 858 F. 3d 568, 573 (CA9 2016) (holding that an entity whose only role is the enforcement of security interests is not a debt collector under the Act), with *Kaymark* v. *Bank of America, N. A.*, 783 F. 3d 168, 179 (CA3 2015) (holding that such an entity is a debt collector for the purpose of all the Act's requirements), *Glazer* v. *Chase Home*

Finance LLC, 704 F. 3d 453, 461 (CA6 2013) (same), and *Wilson* v. *Draper & Goldberg, P. L. L. C.*, 443 F. 3d 373, 376 (CA4 2006) (same).

II

A

The FDCPA's definitional section, 15 U. S. C. § 1692a, defines a "debt" as

> "*any obligation* or alleged obligation of a consumer *to pay money* arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes." § 1692a(5) (emphasis added).

The Act then sets out the definition of the term "debt collector." § 1692a(6). The first sentence of the relevant paragraph, which we shall call the primary definition, says that the term "debt collector"

> "means any person . . . in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." *Ibid.*

The third sentence, however, provides what we shall call the limited-purpose definition:

> "For the purpose of section 1692f(6) [the] term [debt collector] also includes any person . . . in any business the principal purpose of which is the enforcement of security interests." *Ibid.*

The subsection to which the limited-purpose definition refers, § 1692f(6), prohibits a "debt collector" from

> "[t]aking or threatening to take any nonjudicial action to effect dispossession or disablement of property if—

> "(A) there is no present right to possession of the property . . . ;
>
> "(B) there is no present intention to take possession of the property; or
>
> "(C) the property is exempt by law from such dispossession or disablement."

The rest of the Act imposes myriad other requirements on debt collectors. For example, debt collectors may not use or threaten violence, or make repetitive annoying phone calls. § 1692d. Nor can debt collectors make false, deceptive, or misleading representations in connection with a debt, like misstating a debt's "character, amount, or legal status." § 1692e. And, as we have mentioned, if a consumer disputes the amount of a debt, a debt collector must "cease collection" until it "obtains verification of the debt" and mails a copy to the debtor. § 1692g(b).

No one here disputes that McCarthy is, by virtue of its role enforcing security interests, at least subject to the specific prohibitions contained in § 1692f(6). The question is whether *other* provisions of the Act apply. And they do if, but only if, McCarthy falls within the scope of the Act's primary definition of "debt collector."

B

Three considerations lead us to conclude that McCarthy is not subject to the main coverage of the Act.

First, and most decisive, is the text of the Act itself. As a preliminary matter, we concede that if the FDCPA contained *only* the primary definition, a business engaged in nonjudicial foreclosure proceedings would qualify as a debt collector for all purposes. We have explained that a home loan is an obligation to pay money, and the purpose of a mortgage is to secure that obligation. See *supra*, at 469. Foreclosure, in turn, is "the process in which property securing a mortgage is sold to pay off the loan balance due." 2 Dunaway § 15:1. In other words, foreclosure is a means of collect-

ing a debt. And a business pursuing nonjudicial foreclosures would, under the capacious language of the Act's primary definition, be one that "regularly collects or attempts to collect, directly or indirectly, debts." § 1692a(6).

It is true that, as McCarthy points out, nonjudicial foreclosure does not seek "a payment of money *from the debtor*" but rather from sale of the property itself. Brief for Respondent 17 (emphasis added). But nothing in the primary definition requires that payment on a debt come "from a debtor." The statute speaks simply of the "collection of any debts . . . owed or due." § 1692a(6). Moreover, the provision sweeps in both "direc[t]" and "indirec[t]" debt collection. *Ibid.* So, even if nonjudicial foreclosure were not a *direct* attempt to collect a debt, because it aims to collect on a consumer's obligation by way of enforcing a security interest, it would be an *indirect* attempt to collect a debt.

The Act does not, however, contain only the primary definition. And the limited-purpose definition poses a serious, indeed an insurmountable, obstacle to subjecting McCarthy to the main coverage of the Act. It says that *"[f]or the purpose of section 1692f(6)"* a debt collector "*also* includes" a business, like McCarthy, "the principal purpose of which is the enforcement of security interests." § 1692a(6) (emphasis added). This phrase, particularly the word "also," strongly suggests that one who does no more than enforce security interests does *not* fall within the scope of the general definition. Otherwise why add this sentence at all?

It is logically, but not practically, possible that Congress simply wanted to emphasize that the definition of "debt collector" includes those engaged in the enforcement of security interests. But why then would Congress have used the word "also"? And if security-interest enforcers are covered by the primary definition, why would Congress have needed to say anything special about § 1692f(6)? After all, § 1692f(6), just like all the provisions applicable to debt collectors, would have already applied to those who enforce se-

curity interests. The reference to § 1692f(6) would on this view be superfluous, and we "generally presum[e] that statutes do not contain surplusage." *Arlington Central School Dist. Bd. of Ed.* v. *Murphy*, 548 U. S. 291, 299, n. 1 (2006). By contrast, giving effect to every word of the limited-purpose definition narrows the primary definition, so that the debt-collector-related prohibitions of the FDCPA (with the exception of § 1692f(6)) do *not* apply to those who, like McCarthy, are engaged in no more than security-interest enforcement.

Second, we think Congress may well have chosen to treat security-interest enforcement differently from ordinary debt collection in order to avoid conflicts with state nonjudicial foreclosure schemes. As Colorado's law makes clear, *supra*, at 470–471, state nonjudicial foreclosure laws provide various protections designed to prevent sharp collection practices and to protect homeowners, see 2 Dunaway § 17:1. And some features of these laws are in tension with aspects of the Act. For example, the FDCPA broadly limits debt collectors from communicating with third parties "in connection with the collection of any debt." § 1692c(b). If this rule were applied to nonjudicial foreclosure proceedings, then advertising a foreclosure sale—an essential element of such schemes—might run afoul of the FDCPA. Given that a core purpose of publicizing a sale is to attract bidders, ensure that the sale price is fair, and thereby protect the borrower from further liability, the result would hardly benefit debtors. See 2 Dunaway § 17:4. To be sure, it may be possible to resolve these conflicts without great harm to either the Act or state foreclosure schemes. See *Heintz* v. *Jenkins*, 514 U. S. 291, 296–297 (1995) (observing that the FDCPA's protections may contain certain "implici[t] exception[s]"). But it is also possible, in light of the language it employed, that Congress wanted to avoid the risk of such conflicts altogether.

Third, for those of us who use legislative history to help interpret statutes, the history of the FDCPA supports our reading. When drafting the bill, Congress considered a version that would have subjected security-interest enforcers to the full coverage of the Act. That version defined a debt collector as "any person who engages in any business the principal purpose of which is the collection of any debt *or enforcement of security interests.*" S. 918, 95th Cong., 1st Sess., § 803(f) (1977) (emphasis added). A different version of the bill, however, would have totally excluded from the Act's coverage "any person who enforces or attempts to enforce a security interest in real or personal property." S. 1130, 95th Cong., 1st Sess., § 802(8)(E) (1977). Given these conflicting proposals, the Act's present language has all the earmarks of a compromise: The prohibitions contained in § 1692f(6) will cover security-interest enforcers, while the other "debt collector" provisions of the Act will not.

These considerations convince us that, but for § 1692f(6), those who engage in only nonjudicial foreclosure proceedings are not debt collectors within the meaning of the Act.

III

Obduskey makes several arguments to the contrary. But, on balance, we do not find them determinative.

First, Obduskey acknowledges that unless the limited-purpose definition is superfluous, it must make some kind of security-interest enforcer a "debt collector" who would not otherwise fall within the primary definition. Reply Brief 11–13. But, according to Obduskey, "repo men"—those who seize automobiles and other personal property in response to nonpayment—fit the bill. See Black's Law Dictionary 1493 (10th ed. 2014) (explaining that "repo" is short for "repossession," which means "retaking property; esp., a seller's retaking of goods sold on credit when the buyer has failed to pay for them"). This is so, he says, because repossession often

entails only "limited communication" with the debtor, as when the repo man sneaks up and "tows a car in the middle of the night." Brief for Petitioner 25–26, and n. 13. And because, according to Obduskey, the language of § 1692f(6), which forbids "[t]aking or threatening to take any nonjudicial action to effect *dispossession or disablement* of property," applies more naturally to the seizure of personal property than to nonjudicial foreclosure. (Emphasis added.)

But we do not see why that is so. The limited-purpose provision speaks broadly of "the enforcement of security interests," § 1692a(6), not "the enforcement of security interests *in personal property*"; if Congress meant to cover only the repo man, it could have said so. Moreover, Obduskey's theory fails to save the limited-purpose definition from superfluity. As we have just discussed, *supra*, at 474–475, if the Act contained only the primary definition, enforcement of a security interest would at least be an indirect collection of a debt. The same may well be true of repo activity, a form of security-interest enforcement, as the point of repossessing property that secures a debt is to collect some or all of the value of the defaulted debt. And while Obduskey argues that the language of § 1692f(6) fits more comfortably with repossession of personal property than nonjudicial foreclosure, we think it at least plausible that "threatening" to foreclose on a consumer's home without having legal entitlement to do so is the kind of "nonjudicial action" without "present right to possession" prohibited by that section. § 1692f(6)(A). (We need not, however, here decide precisely what conduct runs afoul of § 1692f(6).)

We are also unmoved by Obduskey's argument that repossession would not fall under the primary definition because it generally involves only limited communication with the debtor. For one thing, while some of the FDCPA's substantive protections apply where there has been a "communicat[ion]" with a consumer, see, *e. g.*, § 1692c, the primary definition of debt collector turns on the "collection of . . . debts,"

without express reference to communication, § 1692a(6). For another, while Obduskey imagines a silent repo man striking in the dead of night, state law often requires communication with a debtor during the repossession process, such as notifying a consumer of a sale. C. Carter, J. Sheldon, J. Van Alst, T. Twomey, & J. Battle, NCLC, Repossessions § 10.4 (9th ed. 2017).

Second, Obduskey points to the Act's venue provision, 15 U. S. C. § 1692i(a), which states that "[a]ny *debt collector* who brings any legal action on a debt against any consumer shall . . . in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district" where the "property is located." (Emphasis added.) This provision, he says, makes clear that a person who *judicially* enforces a real-property-related security interest is a debt collector; hence, a person who *nonjudicially* enforces such an interest must also be a debt collector. Indeed, he adds, this subsection "only makes sense" if those who enforce security interests in real property are debt collectors subject to all prohibitions and requirements that come with that designation. Brief for Petitioner 21.

This argument, however, makes too much of too little. To begin with, the venue section has no direct application in this case, for here we consider *nonjudicial* foreclosure. And whether those who judicially enforce mortgages fall within the scope of the primary definition is a question we can leave for another day. See 879 F. 3d, at 1221–1222 (noting that the availability of a deficiency judgment is a potentially relevant distinction between judicial and nonjudicial foreclosures).

More to the point, the venue provision does nothing to alter the definition of a debt collector. Rather, it applies whenever a "debt collector" brings a "legal action . . . to enforce an interest in real property." § 1692i(a)(1). In other words, the provision anticipates that a debt collector can bring a judicial action respecting real property, but it

nowhere says that an entity is a debt collector *because* it brings such an action. Obduskey suggests that under our interpretation this provision will capture a null set. We think not. A business that qualifies as a debt collector based on *other* activities (say, because it "regularly collects or attempts to collect" unsecured credit card debts, § 1692a(6)) would have to comply with the venue provision if it also filed "an action to enforce an interest in real property," § 1692i(a)(1). Here, however, the only basis alleged for concluding that McCarthy is a debt collector under the Act is its role in nonjudicial foreclosure proceedings.

Third, Obduskey argues that even if "simply enforcing a security interest" falls outside the primary definition, McCarthy engaged in *more* than security-interest enforcement by sending notices that any ordinary homeowner would understand as an attempt to collect a debt backed up by the threat of foreclosure. Brief for Petitioner 15–16; see Reply Brief 13. We do not doubt the gravity of a letter informing a homeowner that she may lose her home unless she pays her outstanding debts. But here we assume that the notices sent by McCarthy were antecedent steps required under state law to enforce a security interest. See *supra*, at 471–472. Indeed, every nonjudicial foreclosure scheme of which we are aware involves notices to the homeowner. See 2 Dunaway § 17:4 (describing state procedures concerning notice of sale). And because he who wills the ends must will the necessary means, we think the Act's (partial) exclusion of "the enforcement of security interests" must also exclude the legal means required to do so. This is not to suggest that pursuing nonjudicial foreclosure is a license to engage in abusive debt collection practices like repetitive nighttime phone calls; enforcing a security interest does not grant an actor blanket immunity from the Act. But given that we here confront only steps required by state law, we need not consider what *other* conduct (related to, but not required for, enforcement of a security interest) might transform a

security-interest enforcer into a debt collector subject to the main coverage of the Act.

Finally, Obduskey fears that our decision will open a loophole, permitting creditors and their agents to engage in a host of abusive practices forbidden by the Act. States, however, can and do guard against such practices, for example, by requiring notices, review by state officials such as the public trustee, and limited court supervision. See *supra*, at 470–471, 476. Congress may think these state protections adequate, or it may choose to expand the reach of the FDCPA. Regardless, for the reasons we have given, we believe that the statute exempts entities engaged in no more than the "enforcement of security interests" from the lion's share of its prohibitions. And we must enforce the statute that Congress enacted.

For these reasons, the judgment of the Court of Appeals is

Affirmed.

JUSTICE SOTOMAYOR, concurring.

I join the Court's opinion, which makes a coherent whole of a thorny section of statutory text. I write separately to make two observations: First, this is a close case, and today's opinion does not prevent Congress from clarifying this statute if we have gotten it wrong. Second, as the Court makes clear, "enforcing a security interest does not grant an actor blanket immunity from the" mandates of the Fair Debt Collection Practices Act (FDCPA), 15 U. S. C. §1692 *et seq.* *Ante*, at 480.

This case turns on two sentences that, put together, read in relevant part:

> "[1] The term 'debt collector' means any person . . . in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts . . . . [2] For the purpose of section 1692f(6) of this title, such term also

> includes any person . . . in any business the principal purpose of which is the enforcement of security interests." § 1692a(6).

As the Court recognizes, if the first sentence were the only text before us, nonjudicial foreclosure plainly would qualify as debt collection—after all, foreclosure itself "is a means of collecting a debt," *ante*, at 474–475, whether "directly or indirectly," § 1692a(6). That may be because a house can be sold—thus satisfying the debt with the proceeds—but it may also be because the initiation of a foreclosure itself sends a clear message: "[P]ay up or lose your house." Brief for Petitioner 17; see *Alaska Trustee, LLC* v. *Ambridge*, 372 P. 3d 207, 217–218 (Alaska 2016); *Glazer* v. *Chase Home Finance LLC*, 704 F. 3d 453, 461 (CA6 2013).

The problem for Obduskey's reading, as the Court explains, is the second sentence, which then becomes superfluous if all security-interest enforcement is already covered by sentence one. See *ante*, at 475–476. To be clear, there is a reasonable argument that the second sentence covers security-interest enforcers who are not already covered by the first sentence: Under this argument, those additional security-interest enforcers are "people who engage in the business of repossessing property, whose business does not primarily involve communicating with debtors in an effort to secure payment of debts," *Piper* v. *Portnoff Law Assoc., Ltd.*, 396 F. 3d 227, 236 (CA3 2005); see also *Alaska Trustee*, 372 P. 3d, at 219–220; *Glazer*, 704 F. 3d, at 463–464, such as "the repo man [who] sneaks up and 'tows a car in the middle of the night,' " *ante*, at 478. But, as the Court explains, that reading does not resolve the surplusage problem, because even such repossession agencies engage in a means of collecting debts "indirectly"—which means that they are similarly situated to entities pursuing nonjudicial foreclosures after all. See *ante*, at 477–479.

All the same, this is too close a case for me to feel certain that Congress recognized that this complex statute would be

interpreted the way that the Court does today. While States do regulate nonjudicial foreclosures, see *ante*, at 476, the extent and method of those protections can vary widely, and the FDCPA was enacted not only "to eliminate abusive debt collection practices" but also "to promote consistent State action to protect consumers against debt collection abuses," § 1692(e); see also § 1692n (pre-empting inconsistent state laws while exempting state consumer protections that are "greater than the protection provided by [the FDCPA]"). Today's opinion leaves Congress free to make clear that the FDCPA fully encompasses entities pursuing nonjudicial foreclosures and regulates security-interest enforcers like repossession agencies in only the more limited way addressed in § 1692f(6). That too would be consistent with the FDCPA's broad, consumer-protective purposes. See § 1692(e).

Separately, I note that the Court's opinion recognizes that the question before us involves "no more than the kind of security-interest enforcement at issue here," *ante*, at 469, which means an entity that takes "only steps required by state law," *ante*, at 480. The Court rightly notes, therefore, that nothing in today's opinion is "to suggest that pursuing nonjudicial foreclosure is a license to engage in abusive debt collection practices like repetitive nighttime phone calls; enforcing a security interest does not grant an actor blanket immunity from the Act." *Ibid.* Indeed, in addition to the unnecessary and abusive practices that the Court notes, I would see as a different case one in which the defendant went around frightening homeowners with the threat of foreclosure without showing any meaningful intention of ever actually following through. There would be a question, in such a case, whether such an entity was in fact a "business the principal purpose of which is the enforcement of security interests," see § 1692a(6), or whether it was simply using that label as a stalking horse for something else.

Because the Court rightly cabins its holding to the kinds of good-faith actions presented here and because we are bound to apply Congress' statutes as best we can understand them, I concur in the Court's opinion.

Syllabus

FRANK ET AL. *v.* GAOS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL.

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

No. 17–961. Argued October 31, 2018—Decided March 20, 2019

Three named plaintiffs (including Paloma Gaos) brought class action claims against Google for alleged violations of the Stored Communications Act, 18 U. S. C. § 2701 *et seq.* Over the course of litigation below, Google moved to dismiss for lack of standing three times. As relevant here, when the District Court held that Gaos had standing to assert an SCA claim, the District Court rested its conclusion on *Edwards* v. *First American Corp.*, 610 F. 3d 514—a Ninth Circuit decision reasoning that an Article III injury exists whenever a statute gives an individual a statutory cause of action and the plaintiff claims that the defendant violated the statute. *Gaos* v. *Google*, 2012 WL 1094646, *3. After a second amended complaint was filed, Google again moved to dismiss, challenging standing and noting that this Court had agreed to review the decision in *Edwards* on which the District Court previously relied. This Court eventually dismissed *Edwards* as improvidently granted, 567 U. S. 756 (*per curiam*), and Google then withdrew its argument that the plaintiffs lacked standing to assert SCA claims. On the merits, the parties ultimately negotiated a settlement agreement that would require Google to include certain disclosures on some of its webpages and would distribute more than $5 million to *cy pres* recipients, more than $2 million to class counsel, and no money to absent class members. The District Court granted preliminary certification of the class and preliminary approval of the settlement. Five class members, including petitioners Theodore Frank and Melissa Holyoak, objected to the settlement on several grounds. After a hearing, the District Court granted final approval of the settlement, and Frank and Holyoak appealed. While the appeal was pending in the Ninth Circuit, but prior to decision by that court, this Court issued *Spokeo, Inc.* v. *Robins*, 578 U. S. 330, in which the Court held that "Article III standing requires a concrete injury even in the context of a statutory violation." *Id.*, at 341. *Spokeo* rejected the premise, relied on in *Edwards*, that "a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right." 578 U. S., at 341. A divided panel of the Ninth Circuit affirmed the settlement, without addressing *Spokeo*. *In*

Syllabus

re Google Referrer Header Privacy Litigation, 869 F. 3d 737. This Court granted certiorari to review whether *cy pres* settlements satisfy the requirement that class settlements be "fair, reasonable, and adequate." Fed. Rule Civ. Proc. 23(e)(2). The Solicitor General filed a brief as *amicus curiae* urging the Court to vacate and remand the case for the lower courts to address whether any named plaintiff in the class action actually had standing in the District Court. After oral argument, the Court ordered supplemental briefing on the standing question.

Held: Because there remain substantial questions about whether any of the named plaintiffs has standing to sue in light of the Court's decision in *Spokeo*, the judgment of the Ninth Circuit is vacated, and the case remanded. The Court has an obligation to ensure that litigants have standing under Article III. See *DaimlerChrysler Corp.* v. *Cuno*, 547 U. S. 332, 340. That obligation extends to court approval of proposed class action settlements. In a class action, the "claims, issues, or defenses of a certified class—or a class proposed to be certified for purposes of settlement—may be settled, voluntarily dismissed, or compromised only with the court's approval." Fed. Rule Civ. Proc. 23(e). A court is powerless to approve a proposed class settlement if it lacks jurisdiction over the dispute, and federal courts lack jurisdiction if no named plaintiff has standing. *Simon* v. *Eastern Ky. Welfare Rights Organization*, 426 U. S. 26, 40, n. 20. Here, no court in this case has analyzed whether any named plaintiff has alleged SCA violations in the operative complaint that are sufficiently concrete and particularized to support standing. The supplemental briefs filed after oral argument raise a wide variety of legal and factual issues not addressed in the merits briefing before the Court or at oral argument. This is "a court of review, not of first view." *Cutter* v. *Wilkinson*, 544 U. S. 709, 718, n. 7. Resolution of the standing question should first take place in the District Court or the Ninth Circuit.

869 F. 3d 737, vacated and remanded.

Theodore H. Frank, *pro se*, argued the cause for petitioners. With him on the briefs were *Melissa Holyoak*, *pro se*, and *Anna St. John*.

Deputy Solicitor General Wall argued the cause for the United States as *amicus curiae* urging vacatur. With him on the brief were *Solicitor General Francisco*, *Acting Assistant Attorney General Readler*, *Charles W. Scarborough*, and *Katherine Twomey Allen*.

Andrew J. Pincus argued the cause for respondent Google LLC. On the brief were *Donald M. Falk*, *Edward D. John-*

Counsel

son, *Brian D. Netter*, and *Daniel E. Jones*. *Jeffrey A. Lamken* argued the cause for respondent Gaos et al. With him on the briefs were *Michael G. Pattillo, Jr.*, *James A. Barta*, *William J. Cooper*, *Kassra P. Nassiri*, and *Michael Aschenbrener*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Arizona et al. by *Mark Brnovich*, Attorney General of Arizona, and *Oramel H. Skinner*, and by the Attorneys General for their respective jurisdictions as follows: *Steve Marshall* of Alabama, *Jahna Lindemuth* of Alaska, *Leslie Rutledge* of Arkansas, *Cynthia Coffman* of Colorado, *Christopher M. Carr* of Georgia, *Lawrence G. Wasden* of Idaho, *Curtis T. Hill, Jr.*, of Indiana, *Jeff Landry* of Louisiana, *Bill Schuette* of Michigan, *Joshua D. Hawley* of Missouri, *Adam Paul Laxalt* of Nevada, *Wayne Stenehjem* of North Dakota, *Mike Hunter* of Oklahoma, *Peter F. Kilmartin* of Rhode Island, *Alan Wilson* of South Carolina, *Marty J. Jackley* of South Dakota, *Ken Paxton* of Texas, and *Peter K. Michael* of Wyoming; for the Cato Institute et al. by *Ilya Shapiro* and *Jeremy L. Kidd*; for the Center for Constitutional Jurisprudence et al. by *John C. Eastman* and *Anthony T. Caso*; for the Center for Individual Rights by *Michael E. Rosman*; for the Electronic Privacy Information Center by *Marc Rotenberg* and *Alan Butler*; for Lawyers for Civil Justice by *Alex Dahl*, *Mary Massaron*, and *Josephine DeLorenzo*; for the Manhattan Institute for Policy Research by *C. Thomas Ludden*; and for the New Jersey Civil Justice Institute by *Joseph Edward Feibelman*.

Briefs of *amici curiae* urging affirmance were filed for the State of Oregon et al. by *Ellen F. Rosenblum*, Attorney General of Oregon, *Benjamin Gutman*, Solicitor General, *Carson Whitehead*, Assistant Attorney General, and *Henry Kantor*, and by the Attorneys General for their respective States as follows: *Xavier Becerra* of California, *George Jepsen* of Connecticut, *Russell A. Suzuki* of Hawaii, *Lisa Madigan* of Illinois, *Brian E. Frosh* of Maryland, *Maura Healey* of Massachusetts, *Lori Swanson* of Minnesota, *Barbara D. Underwood* of New York, *Joshua H. Stein* of North Carolina, *Thomas J. Donovan, Jr.*, of Vermont, and *Robert W. Ferguson* of Washington; for the American Association for Justice by *Jeffrey R. White* and *Elise Sanguinetti*; for the Center for Democracy and Technology et al. by *Leslie M. Spencer*, *Lisa A. Hayes*, *Sophia Cope*, and *Sally Greenberg*; for the Center for Workplace Compliance by *Rae T. Vann* and *John R. Annand*; for the Civil Justice Research Initiative by *Gerson H. Smoger*, *Erwin Chemerinsky*, and *Anne Bloom*; for the Computer & Communications Industry Association et al. by *David H. Kramer* and *Brian M. Willen*; for the New York Bar Foundation et al. by *Christopher M. Mason*, *Sarah Erickson André*, *Daniel Deane*, and *Seth A. Horvath*; for

PER CURIAM.

Three named plaintiffs brought class action claims against Google for alleged violations of the Stored Communications Act. The parties negotiated a settlement agreement that would require Google to include certain disclosures on some of its webpages and would distribute more than $5 million to *cy pres* recipients, more than $2 million to class counsel, and no money to absent class members. We granted certiorari to review whether such *cy pres* settlements satisfy the requirement that class settlements be "fair, reasonable, and adequate." Fed. Rule Civ. Proc. 23(e)(2). Because there remain substantial questions about whether any of the named plaintiffs has standing to sue in light of our decision in *Spokeo, Inc.* v. *Robins*, 578 U. S. 330 (2016), we vacate the judgment of the Ninth Circuit and remand for further proceedings.

Google operates an Internet search engine. The search engine allows users to search for a word or phrase by typing a query into the Google website. Google returns a list of webpages that are relevant to the indicated term or phrase. The complaints alleged that when an Internet user conducted a Google search and clicked on a hyperlink to open one of the webpages listed on the search results page, Google transmitted information including the terms of the search to the server that hosted the selected webpage. This so-called referrer header told the server that the user arrived at

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Public Citizen, Inc., et al. by *Allison M. Zieve*, *Scott L. Nelson*, and *Adina H. Rosenbaum*; and for William B. Rubenstein by *Mr. Rubenstein*, *pro se*.

Briefs of *amici curiae* were filed for the American Bar Association by *Hilarie Bass*, *Rex S. Heinke*, and *Jessica Weisel*; for the Chamber of Commerce of the United States of America by *Ashley C. Parrish* and *Justin A. Torres*; for Law Professors by *Lori B. Andrews*; for Legal Aid Organizations by *Wilber H. Boies* and *M. Miller Baker*; for the National Consumer Law Center et al. by *Stuart Rossman* and *Michael Landis*; for Spectrum Settlement Recovery, LLC, by *Howard L. Yellen*, *Hugh C. D. Alexander*, *Eric L. Lewis*, and *James P. Davenport*; for Roy A. Katriel by *Mr. Katriel*, *pro se*; and for David Lowrey et al. by *Antigone G. Peyton*.

the webpage by searching for particular terms on Google's website.

Paloma Gaos challenged Google's use of referrer headers. She filed a complaint in Federal District Court on behalf of herself and a putative class of people who conducted a Google search and clicked on any of the resulting links within a certain time period. Gaos alleged that Google's transmission of users' search terms in referrer headers violated the Stored Communications Act, 18 U. S. C. § 2701 *et seq.* The SCA prohibits "a person or entity providing an electronic communication service to the public" from "knowingly divulg[ing] to any person or entity the contents of a communication while in electronic storage by that service." § 2702(a)(1). The Act also creates a private right of action that entitles any "person aggrieved by any violation" to "recover from the person or entity, other than the United States, which engaged in that violation such relief as may be appropriate." § 2707(a). Gaos also asserted several state law claims.

Google moved to dismiss for lack of standing three times. Its first attempt was successful. The District Court reasoned that although "a plaintiff may establish standing through allegations of violation of a statutory right," Gaos had "failed to plead facts sufficient to support a claim for violation of her statutory rights." *Gaos* v. *Google, Inc.*, 2011 WL 7295480, *3 (ND Cal., Apr. 7, 2011). In particular, the court faulted Gaos for failing to plead "that she clicked on a link from the Google search page." *Ibid.*

After Gaos filed an amended complaint, Google again moved to dismiss. That second attempt was partially successful. The District Court dismissed Gaos' state law claims, but denied the motion as to her SCA claims. The court reasoned that because the SCA created a right to be free from the unlawful disclosure of certain communications, and because Gaos alleged a violation of the SCA that was specific to her (*i. e.*, based on a search she conducted), Gaos alleged a concrete and particularized injury. *Gaos* v. *Google*

Inc., 2012 WL 1094646, *4 (ND Cal., Mar. 29, 2012). The court rested that conclusion on *Edwards* v. *First American Corp.*, 610 F. 3d 514 (2010)—a Ninth Circuit decision reasoning that an Article III injury exists whenever a statute gives an individual a statutory cause of action and the plaintiff claims that the defendant violated the statute. 2012 WL 1094646, *3.

After the District Court ruled on Google's second motion to dismiss, we granted certiorari in *Edwards* to address whether an alleged statutory violation alone can support standing. *First American Financial Corp.* v. *Edwards*, 564 U. S. 1018 (2011). In the meantime, Gaos and an additional named plaintiff filed a second amended complaint against Google. Google once again moved to dismiss. Google argued that the named plaintiffs did not have standing to bring their SCA claims because they had failed to allege facts establishing a cognizable injury. Google recognized that the District Court had previously relied on *Edwards* to find standing based on the alleged violation of a statutory right. But because this Court had agreed to review *Edwards*, Google explained that it would continue to challenge the District Court's conclusion. We eventually dismissed *Edwards* as improvidently granted, 567 U. S. 756 (2012) (*per curiam*), and Google then withdrew its argument that Gaos lacked standing for the SCA claims.

Gaos' putative class action was consolidated with a similar complaint, and the parties negotiated a classwide settlement. The terms of their agreement required Google to include certain disclosures about referrer headers on three of its webpages. Google could, however, continue its practice of transmitting users' search terms in referrer headers. Google also agreed to pay $8.5 million. None of those funds would be distributed to absent class members. Instead, most of the money would be distributed to six *cy pres* recipients. In the class action context, *cy pres* refers to the practice of distributing settlement funds not amenable to individ-

ual claims or meaningful pro rata distribution to nonprofit organizations whose work is determined to indirectly benefit class members. Black's Law Dictionary 470 (10th ed. 2014). In this case, the *cy pres* recipients were selected by class counsel and Google to "promote public awareness and education, and/or to support research, development, and initiatives, related to protecting privacy on the Internet." App. to Pet. for Cert. 84. The rest of the funds would be used for administrative costs and fees, given to the named plaintiffs in the form of incentive payments, and awarded to class counsel as attorney's fees.

The District Court granted preliminary certification of the class and preliminary approval of the settlement. Five class members, including petitioners Theodore Frank and Melissa Holyoak, objected to the settlement on several grounds. They complained that settlements providing only *cy pres* relief do not comply with the requirements of Rule 23(e), that *cy pres* relief was not justified in this case, and that conflicts of interest infected the selection of the *cy pres* recipients. After a hearing, the District Court granted final approval of the settlement.

Frank and Holyoak appealed. After briefing before the Ninth Circuit was complete, but prior to decision by that court, we issued our opinion in *Spokeo, Inc.* v. *Robins*, 578 U. S. 330 (2016). In *Spokeo*, we held that "Article III standing requires a concrete injury even in the context of a statutory violation." *Id.*, at 341. We rejected the premise, relied on in the decision then under review and in *Edwards*, that "a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right." 578 U. S., at 341; see also *id.*, at 336–337. Google notified the Ninth Circuit of our opinion.

A divided panel of the Ninth Circuit affirmed, without addressing *Spokeo*. *In re Google Referrer Header Privacy Litigation*, 869 F. 3d 737 (2017). We granted certiorari, 584

U. S. 958 (2018), to decide whether a class action settlement that provides a *cy pres* award but no direct relief to class members satisfies the requirement that a settlement binding class members be "fair, reasonable, and adequate." Fed. Rule Civ. Proc. 23(e)(2).

In briefing on the merits before this Court, the Solicitor General filed a brief as *amicus curiae* supporting neither party. He urged us to vacate and remand the case for the lower courts to address standing. The Government argued that there is a substantial open question about whether any named plaintiff in the class action actually had standing in the District Court. Because Google withdrew its standing challenge after we dismissed *Edwards* as improvidently granted, neither the District Court nor the Ninth Circuit ever opined on whether any named plaintiff sufficiently alleged standing in the operative complaint.

"We have an obligation to assure ourselves of litigants' standing under Article III." *DaimlerChrysler Corp.* v. *Cuno*, 547 U. S. 332, 340 (2006) (quoting *Friends of the Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 180 (2000); internal quotation marks omitted). That obligation extends to court approval of proposed class action settlements. In ordinary non-class litigation, parties are free to settle their disputes on their own terms, and plaintiffs may voluntarily dismiss their claims without a court order. Fed. Rule Civ. Proc. 41(a)(1)(A). By contrast, in a class action, the "claims, issues, or defenses of a certified class—or a class proposed to be certified for purposes of settlement—may be settled, voluntarily dismissed, or compromised only with the court's approval." Fed. Rule Civ. Proc. 23(e). A court is powerless to approve a proposed class settlement if it lacks jurisdiction over the dispute, and federal courts lack jurisdiction if no named plaintiff has standing. *Simon* v. *Eastern Ky. Welfare Rights Organization*, 426 U. S. 26, 40, n. 20 (1976).

When the District Court ruled on Google's second motion to dismiss, it relied on *Edwards* to hold that Gaos had standing to assert a claim under the SCA. Our decision in *Spokeo* abrogated the ruling in *Edwards* that the violation of a statutory right automatically satisfies the injury-in-fact requirement whenever a statute authorizes a person to sue to vindicate that right. 578 U. S., at 341; see *Edwards*, 610 F. 3d, at 517–518. Since that time, no court in this case has analyzed whether any named plaintiff has alleged SCA violations that are sufficiently concrete and particularized to support standing. After oral argument, we ordered supplemental briefing from the parties and Solicitor General to address that question.

After reviewing the supplemental briefs, we conclude that the case should be remanded for the courts below to address the plaintiffs' standing in light of *Spokeo*. The supplemental briefs filed in response to our order raise a wide variety of legal and factual issues not addressed in the merits briefing before us or at oral argument. We "are a court of review, not of first view." *Cutter* v. *Wilkinson*, 544 U. S. 709, 718, n. 7 (2005). Resolution of the standing question should take place in the District Court or the Ninth Circuit in the first instance. We therefore vacate and remand for further proceedings. Nothing in our opinion should be interpreted as expressing a view on any particular resolution of the standing question.

* * *

The judgment of the United States Court of Appeals for the Ninth Circuit is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, dissenting.

Respectfully, I would reach the merits and reverse. As I have previously explained, a plaintiff seeking to vindicate a

private right need only allege an invasion of that right to establish standing. *Spokeo, Inc.* v. *Robins*, 578 U. S. 330, 348 (2016) (concurring opinion). Here, the plaintiffs alleged violations of the Stored Communications Act, which creates a private right: It prohibits certain electronic service providers from "knowingly divulg[ing] . . . the contents of a communication" sent by a "'user,'" "subscriber," or "customer" of the service, except as provided in the Act. 18 U. S. C. §§ 2510(13), 2702(a)(1)–(2), (b); see § 2707(a) (providing a cause of action to persons aggrieved by violations of the Act). They also asserted violations of private rights under state law. By alleging the violation of "private dut[ies] owed personally" to them "'as individuals,'" *Spokeo*, *supra*, at 349, 344 (opinion of THOMAS, J.), the plaintiffs established standing. Whether their allegations state a plausible claim for relief under the Act or state law is a separate question on which I express no opinion.

As to the class-certification and class-settlement orders, I would reverse. The named plaintiffs here sought to simultaneously certify and settle a class action under Federal Rules of Civil Procedure 23(b)(3) and (e). Yet the settlement agreement provided members of the class no damages and no other form of meaningful relief.* Most of the settlement fund was devoted to *cy pres* payments to nonprofit organizations that are not parties to the litigation; the rest, to plaintiffs' lawyers, administrative costs, and incentive payments for the named plaintiffs. *Ante*, at 490–491. The District Court and the Court of Appeals approved this arrangement on the view that the *cy pres* payments provided an "indirect" benefit to the class. *In re Google Referrer Header Privacy*

*The settlement required that Google make additional disclosures on its website for the benefit of "future users." App. to Pet. for Cert. 50. But no party argues that these disclosures were valuable enough on their own to independently support the settlement.

Litigation, 87 F. Supp. 3d 1122, 1128–1129, 1137 (ND Cal. 2015); *In re Google Referrer Header Privacy Litigation*, 869 F. 3d 737, 741 (CA9 2017).

Whatever role *cy pres* may permissibly play in disposing of unclaimed or undistributable class funds, see *Klier* v. *Elf Atochem North Am., Inc.*, 658 F. 3d 468, 474–476 (CA5 2011); *id.*, at 480–482 (Jones, C. J., concurring), *cy pres* payments are not a form of relief to the absent class members and should not be treated as such (including when calculating attorney's fees). And the settlement agreement here provided no other form of meaningful relief to the class. This *cy pres*-only arrangement failed several requirements of Rule 23. First, the fact that class counsel and the named plaintiffs were willing to settle the class claims without obtaining any relief for the class—while securing significant benefits for themselves—strongly suggests that the interests of the class were not adequately represented. Fed. Rules Civ. Proc. 23(a)(4), (g)(4); see *Amchem Products, Inc.* v. *Windsor*, 521 U. S. 591, 619–620 (1997) (settlement terms can inform adequacy of representation). Second, the lack of any benefit for the class rendered the settlement unfair and unreasonable under Rule 23(e)(2). Further, I question whether a class action is "superior to other available methods for fairly and efficiently adjudicating the controversy" when it serves only as a vehicle through which to extinguish the absent class members' claims without providing them any relief. Fed. Rule Civ. Proc. 23(b)(3); see Rule 23(b)(3)(A) (courts must consider "the class members' interests in individually controlling the prosecution . . . of separate actions").

In short, because the class members here received no settlement fund, no meaningful injunctive relief, and no other benefit whatsoever in exchange for the settlement of their claims, I would hold that the class action should not have been certified, and the settlement should not have been approved.

Reporter's Note

The next page is purposely numbered 801. The numbers between 495 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 1, 2018, THROUGH
MARCH 25, 2019

OCTOBER 1, 2018

Affirmed for Absence of Quorum

No. 17–8910. JOHNSON *v.* UNITED STATES. C. A. Fed. 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 THOMAS, JUSTICE GINSBURG, JUSTICE BREYER, JUSTICE ALITO, JUSTICE SOTOMAYOR, and JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 708 Fed. Appx. 689.

Certiorari Granted—Vacated and Remanded

No. 17–8035. MANNERS *v.* UNITED STATES. C. A. 6th Cir.

No. 17–8244. RICHITELLI *v.* UNITED STATES. C. A. 11th Cir.;

No. 17–8349. PARRALES-GUZMAN *v.* UNITED STATES. C. A. 5th Cir. Reported below: 700 Fed. Appx. 382;

No. 17–8655. LUIS PINEDA *v.* SESSIONS, ATTORNEY GENERAL. C. A. 5th Cir. Reported below: 709 Fed. Appx. 315; and

No. 17–8876. BANNISTER *v.* UNITED STATES. C. A. 11th 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 *Sessions* v. *Dimaya*, 584 U. S. 148 (2018).

No. 17–8523. BRILEY *v.* UNITED STATES;

No. 17–8608. PEMBROOK *v.* UNITED STATES; and

No. 17–9235. CALHOUN *v.* UNITED STATES. C. A. 6th Cir. Reported below: 876 F. 3d 812. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judg-

ment vacated, and cases remanded for further consideration in light of *Sessions* v. *Dimaya*, 584 U. S. 148 (2018).

No. 17–8526. WARD *v.* UNITED STATES. Ct. App. D. C. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Class* v. *United States*, 583 U. S. 174 (2018). Reported below: 160 A. 3d 1174.

No. 17–9248. DIEZ *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Wilson* v. *Sellers*, 584 U. S. 122 (2018). Reported below: 717 Fed. Appx. 898.

No. 18–88. GRAMM *v.* DEERE & CO. C. A. Fed. Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *SAS Institute Inc.* v. *Iancu*, 584 U. S. 357 (2018). Reported below: 711 Fed. Appx. 650.

Certiorari Dismissed

No. 17–8926. HARPER *v.* 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. 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. 17–8958. HOLT *v.* BAKER ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). Reported below: 710 Fed. Appx. 422.

No. 17–8991. BURGESS *v.* ELLIOTT ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied,

and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). Reported below: 696 Fed. Appx. 125.

No. 17–9005. SHOVE *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. 17–9041. CIOTTA *v.* HOLLAND, 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. 17–9107. GRIGSBY *v.* UNITED STATES. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 715 Fed. Appx. 868.

No. 17–9110. GRAHAM *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE 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. 17–9175. FLUTE *v.* UNITED STATES ET AL. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 723 Fed. Appx. 599.

No. 17–9193. HALL *v.* CHANDLER, 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. 17–9239. BULLOCK *v.* UNITED STATES. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition.

No. 17–9255. FIGUEROA *v.* RAMIREZ, 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: 710 Fed. Appx. 165.

No. 17–9262. Mua et ux. *v.* California Casualty Indemnity Exchange et al. C. A. 4th Cir. Motion of petitioners for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 17–9263. Mua et ux. *v.* Maryland et al. C. A. 4th Cir. Motion of petitioners for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 700 Fed. Appx. 309.

No. 17–9264. Mua *v.* California Casualty Indemnity Exchange et al. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 17–9265. Mua et ux. *v.* California Casualty Indemnity Exchange. C. A. 4th Cir. Motion of petitioners for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 17–9266. Mua *v.* California Casualty Indemnity Exchange et al. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 17–9324. McNamara *v.* California. Ct. App. Cal., 2d App. Dist., Div. 2. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 17–9413. Lei Ke *v.* Fry et al. Super. Ct. Pa. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 174 A. 3d 75.

No. 17–9446. Rogers *v.* Beasley, 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. 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. 17–9501. SMITH *v.* CLINE, WARDEN, ET AL. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 17–9530. FLUTE *v.* UNITED STATES ET AL. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 723 Fed. Appx. 604.

No. 17–9538. HARPER *v.* CROW. 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. 18–5002. GRAY *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 18–5017. SELDEN *v.* KOVACHEVICH, JUDGE, UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari before judgment 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. 18–5030. WILLIAMS *v.* NORMAN, 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.

No. 18–5070. WILLIAMS *v.* MAYBERG, 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. 18–5101. REILLY *v.* DAVIS. Dist. Ct. App. Fla., 1st Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 240 So. 3d 642.

No. 18–5277. DAY *v.* OFFICE OF THE PRESIDENT. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 697 Fed. Appx. 17.

No. 18–5323. CALDWELL *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. 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. 18–5417. HARDY *v.* ADAMS 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. 18–5574. ACKER *v.* UNITED STATES 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 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*).

No. 18–5631. Jacob *v.* Frakes, 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. 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. 18–5820. Evans *v.* Delaware. Sup. Ct. Del. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 184 A. 3d 843.

Miscellaneous Orders

No. 18M1. Father *v.* Maine Department of Health and Human Services et al.; and

No. 18M8. Jason K. *v.* Maine Department of Health and Human Services et al. Motions for leave to file petitions for writs of certiorari under seal granted.

No. 18M2. Atwood *v.* Ryan, Director, Arizona Department of Corrections, et al.;

No. 18M3. Wright *v.* Thomas Nelson Community College et al.;

No. 18M4. Wagner et al. *v.* United States Trustee et al.;

No. 18M10. Oduok *v.* Carnes et al.;

No. 18M11. Charles *v.* McCain, Warden;

No. 18M12. Cynthia R. *v.* Children's Aid Society;

No. 18M15. York *v.* Social Security Administration;

No. 18M18. Black *v.* Larimer County, Colorado;

No. 18M19. Jones *v.* Sedita et al.;

No. 18M24. Montoya *v.* Wells Fargo Bank, N. A.;

No. 18M26. Spight *v.* United States;

No. 18M27. GARRETT *v.* BRENNAN, POSTMASTER GENERAL;
No. 18M28. BEST *v.* KIMBLE, WARDEN;
No. 18M30. PHILLIPS *v.* PHILLIPS;
No. 18M31. HENSON *v.* GRIEM;
No. 18M32. FEARING *v.* UNITED STATES TRUSTEE ET AL.;
No. 18M33. CHRONISTER *v.* SOUTH CAROLINA ET AL.;
No. 18M36. LARSON *v.* WALLACE ET AL.;
No. 18M37. CARLOS OCASIO *v.* MERIT SYSTEMS PROTECTION BOARD; and
No. 18M38. HOWARD *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 18M5. STEPHENS *v.* ALLIANT TECHSYSTEMS CORP. ET AL.; and
No. 18M6. BROWN *v.* WELLMAN 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. 18M7. MALNES *v.* CITY OF FLAGSTAFF, ARIZONA, ET AL.;
No. 18M13. HENDERSON *v.* VIP TAXI LLC ET AL.;
No. 18M29. ZAPATA *v.* PEO ET AL.; and
No. 18M35. JOSSIE *v.* CVS PHARMACY. Motions for leave to proceed as veterans denied.

No. 18M9. RODRIGUEZ *v.* UNITED STATES;
No. 18M16. THELEMAQUE *v.* UNITED STATES;
No. 18M20. MURRAY *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS;
No. 18M21. JONES *v.* UNITED STATES;
No. 18M22. LASCHKEWITSCH *v.* RELIASTAR LIFE INSURANCE CO.;
No. 18M23. M. E. D. *v.* NEW JERSEY; and
No. 18M34. MEDINA *v.* UNITED STATES. Motions for leave to file petitions for writs of certiorari with supplemental appendixes under seal granted.

No. 18M14. AQUINO-FLORENCIANI *v.* UNITED STATES; and
No. 18M17. SEALED APPELLEE *v.* UNITED STATES. Motions for leave to file petitions for writs of certiorari under seal with redacted copies for the public record granted.

No. 18M25. MORENO *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

JUSTICE GORSUCH took no part in the consideration or decision of this motion.

No. 16–1275. VIRGINIA URANIUM, INC., ET AL. *v.* WARREN ET AL. C. A. 4th Cir. [Certiorari granted, 584 U. S. 992.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 17–204. APPLE INC. *v.* PEPPER ET AL. C. A. 9th Cir. [Certiorari granted, 585 U. S. 1003.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 17–773. CULBERTSON *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 11th Cir. [Certiorari granted, 584 U. S. 992.] Motion of the Solicitor General for divided argument granted.

No. 17–949. STURGEON *v.* FROST, ALASKA REGIONAL DIRECTOR OF THE NATIONAL PARK SERVICE, ET AL. C. A. 9th Cir. [Certiorari granted, 585 U. S. 1002.] Motion of petitioner to dispense with printing joint appendix granted.

No. 17–961. FRANK ET AL. *v.* GAOS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL. C. A. 9th Cir. [Certiorari granted, 584 U. S. 958.] Joint motion of respondents for divided argument granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of former Professor Roy A. Katriel for leave to participate in oral argument as *amicus curiae* and for divided argument denied.

No. 17–1011. JAM ET AL. *v.* INTERNATIONAL FINANCE CORP. C. A. D. C. Cir. [Certiorari granted, 584 U. S. 992.] Motion of petitioners to dispense with printing joint appendix granted. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 17–1042. BNSF RAILWAY CO. *v.* LOOS. C. A. 8th Cir. [Certiorari granted, 584 U. S. 976.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 17–1175. POARCH BAND OF CREEK INDIANS ET AL. *v.* WILKES ET AL. Sup. Ct. Ala. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 17–1184. BIESTEK *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 6th Cir. [Certiorari granted, 585 U. S. 1015.] Motion of petitioner to dispense with printing joint appendix granted.

No. 17–1272. HENRY SCHEIN, INC., ET AL. *v.* ARCHER & WHITE SALES, INC. C. A. 5th Cir. [Certiorari granted, 585 U. S. 1015.] Motion of petitioners to file volume II of the joint appendix under seal granted.

No. 17–1498. ATLANTIC RICHFIELD CO. *v.* CHRISTIAN ET AL. Sup. Ct. Mont.;

No. 17–1678. HERNANDEZ ET AL. *v.* MESA. C. A. 5th Cir.;

No. 17–1686. RPX CORP. *v.* CHANBOND LLC. C. A. Fed. Cir.; and

No. 17–1712. THOLE ET AL. *v.* U. S. BANK N. A. ET AL. C. A. 8th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 17–1529. CLEARSTREAM BANKING S. A. *v.* PETERSON ET AL.;

No. 17–1530. BANCA UBAE, S. P. A. *v.* PETERSON ET AL.; and

No. 17–1534. BANK MARKAZI, AKA CENTRAL BANK OF IRAN *v.* PETERSON ET AL. C. A. 2d Cir. The Solicitor General is invited to file a brief in these cases expressing the views of the United States.

No. 17–8151. BUCKLEW *v.* PRECYTHE, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 8th Cir. [Certiorari granted, 584 U. S. 959.] Motion of petitioner to file volume III of the joint appendix under seal with redacted copy of transcript for public record granted.

No. 17–8555. ANDERSON *v.* VENTURE EXPRESS. C. A. 5th Cir.;

No. 17–8719. DE VERA *v.* UNITED AIRLINES, INC. C. A. 9th Cir.;

No. 17–9105. DEBEIKES *v.* HAWAIIAN AIRLINES, INC., ET AL. C. A. 9th Cir.;

No. 17–9226. GREEN *v.* HORRY COUNTY, SOUTH CAROLINA, ET AL. C. A. 4th Cir.;

No. 17–9295. JEANTY *v.* NEW YORK CITY DEPARTMENT OF FINANCE. C. A. 2d Cir.;

No. 17–9306. TRINH *v.* TRINH. Super. Ct. Pa.;
No. 17–9323. IN RE MICHAEL;
No. 18–5026. YATES *v.* WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT. C. A. 9th Cir.;
No. 18–5137. DANIEL *v.* BROOKLYN LAW SCHOOL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept.;
No. 18–5537. OPENGEYM *v.* HEARTLAND EMPLOYMENT SERVICES, LLC. C. A. 6th Cir.;
No. 18–5670. CAMPISE *v.* NEW YORK COMMISSIONER OF LABOR. App. Div., Sup. Ct. N. Y., 3d Jud. Dept.;
No. 18–5683. IN RE BRITTON-HARR; and
No. 18–5786. THOMAS *v.* UNITED STATES. C. A. 7th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until October 22, 2018, 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. 17–8689. GILLESPIE *v.* REVERSE MORTGAGE SOLUTIONS ET AL. Sup. Ct. Fla. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [585 U. S. 1013] denied.

No. 17–8794. IN RE SPENGLER. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [584 U. S. 1000] denied.

No. 17–1647. IN RE HENDERSON ET AL.;
No. 17–9023. IN RE KOSSIE;
No. 17–9366. IN RE MCCRARY;
No. 17–9384. IN RE JENKS;
No. 17–9468. IN RE YONAMINE;
No. 18–5128. IN RE FAIRCHILD-LITTLEFIELD;
No. 18–5176. IN RE EUGENE;
No. 18–5208. IN RE BARTUNEK;
No. 18–5472. IN RE HEDRICK;
No. 18–5492. IN RE COLSON;
No. 18–5577. IN RE BOYLEN;
No. 18–5580. IN RE KYE-EL;
No. 18–5603. IN RE KILMARTIN;
No. 18–5799. IN RE SMITHBACK; and
No. 18–5812. IN RE DECARO. Petitions for writs of habeas corpus denied.

No. 17–9269. IN RE RODGERS;
No. 18–5175. IN RE BROWN;
No. 18–5400. IN RE PENNINGTON-THURMAN; and
No. 18–5543. IN RE LEFFEBRE. Motions of petitioners for leave to proceed *in forma pauperis* denied, and petitions for writs of habeas corpus dismissed. See this Court's Rule 39.8.

No. 17–9447. IN RE ROGERS; and
No. 17–9480. IN RE WOODS. Motions of petitioners for leave to proceed *in forma pauperis* denied, and petitions for writs of habeas corpus dismissed. See this Court's Rule 39.8. As petitioners have repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioners unless the docketing fees required by Rule 38(a) are paid and the petitions are submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 17–1570. IN RE BIERI;
No. 17–1710. IN RE GILGENBACH ET UX.;
No. 17–8710. IN RE ARMSTRONG;
No. 17–8777. IN RE LEE;
No. 17–8871. IN RE PAYNE;
No. 17–8981. IN RE RUIZ-RIVERA;
No. 17–9073. IN RE BEY;
No. 17–9290. IN RE REDDEN;
No. 17–9355. IN RE WARDLAW;
No. 17–9465. IN RE MCCREE;
No. 18–123. IN RE CITIZENS FOR FAIR REPRESENTATION ET AL.;
No. 18–140. IN RE BUNDY;
No. 18–5025. IN RE WARDLAW;
No. 18–5064. IN RE STOKES;
No. 18–5236. IN RE ESCO;
No. 18–5262. IN RE MCLAUGHLIN;
No. 18–5265. IN RE LEE;
No. 18–5409. IN RE RILEY;
No. 18–5449. IN RE SMITH; and
No. 18–5579. IN RE COLE. Petitions for writs of mandamus denied.

No. 17–9443. IN RE ROGERS. 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. 18–5671. IN RE SIMPSON. 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. 17–1556. IN RE MCDONALD;
No. 17–1561. IN RE ELLIS ET AL.;
No. 17–1562. IN RE STANLEY;
No. 17–1563. IN RE FORD;
No. 17–1614. IN RE VOTER VERIFIED, INC.;
No. 17–1715. IN RE MCNEIL ET AL.;
No. 17–9240. IN RE SCHNEIDER;
No. 18–5740. IN RE CLARK; and
No. 18–5785. IN RE WINKLES. Petitions for writs of mandamus and/or prohibition denied.

No. 17–9201. IN RE ROSE. 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.

No. 18–5020. IN RE BROWN. 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. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition.

No. 17–1581. IN RE COULTER;
No. 17–8957. IN RE GAITOR; and
No. 18–5157. IN RE LUIS AREVALO. Petitions for writs of prohibition denied.

Certiorari Denied

No. 17–1140. STAMBLER *v.* MASTERCARD INTERNATIONAL INC. C. A. Fed. Cir. Certiorari denied. Reported below: 702 Fed. Appx. 985.

No. 17–1198. MARTINS BEACH 1, LLC, ET AL. *v.* SURFRIDER FOUNDATION. Ct. App. Cal., 1st App. Dist., Div. 5. Certiorari

denied. Reported below: 14 Cal. App. 5th 238, 221 Cal. Rptr. 3d 382.

No. 17–1222. Multnomah County, Oregon *v.* Updike et al. C. A. 9th Cir. Certiorari denied. Reported below: 870 F. 3d 939.

No. 17–1252. B/E Aerospace, Inc. *v.* C&D Zodiac, Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 709 Fed. Appx. 687.

No. 17–1283. Atlanta Medical Center, Inc., fka Tenet Healthsystem GB, Inc., et al. *v.* Care Improvement Plus South Central Insurance Co. C. A. 11th Cir. Certiorari denied. Reported below: 875 F. 3d 584.

No. 17–1286. National Mining Assn. *v.* Zinke, Secretary of the Interior, et al.; and

No. 17–1290. American Exploration & Mining Assn. *v.* Zinke, Secretary of the Interior, et al. C. A. 9th Cir. Certiorari denied. Reported below: 877 F. 3d 845.

No. 17–1316. Sportswear, Inc., dba Prep Sportswear *v.* Savannah College of Art & Design, Inc. C. A. 11th Cir. Certiorari denied. Reported below: 872 F. 3d 1256.

No. 17–1320. Garvin *v.* New York. Ct. App. N. Y. Certiorari denied. Reported below: 30 N. Y. 3d 174, 88 N. E. 3d 319.

No. 17–1332. Jang *v.* Boston Scientific Corp. et al. C. A. Fed. Cir. Certiorari denied. Reported below: 872 F. 3d 1275.

No. 17–1335. Consolidation Coal Co. *v.* Director, Office of Workers' Compensation Programs, Department of Labor, et al. C. A. 10th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 819.

No. 17–1343. Davis *v.* Mississippi. Sup. Ct. Miss. Certiorari denied.

No. 17–1349. Johnson *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 874 F. 3d 571.

No. 17–1376. Norfolk Southern Railway Co. *v.* Parsons. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2017 IL App (1st) 161384, 88 N. E. 3d 45.

No. 17–1383. Empire Distribution Inc. *v.* Twentieth Century Fox Television et al. C. A. 9th Cir. Certiorari denied. Reported below: 875 F. 3d 1192.

No. 17–1384. Droplets, Inc. *v.* Iancu, Director, United States Patent and Trademark Office. C. A. Fed. Cir. Certiorari denied. Reported below: 698 Fed. Appx. 612.

No. 17–1393. Pavan et al. *v.* Smith. Sup. Ct. Ark. Certiorari denied.

No. 17–1398. SWC, LLC, et al. *v.* Herr et al. C. A. 6th Cir. Certiorari denied. Reported below: 865 F. 3d 351.

No. 17–1408. Breckinridge Health, Inc., et al. *v.* Azar, Secretary of Health and Human Services. C. A. 6th Cir. Certiorari denied. Reported below: 869 F. 3d 422.

No. 17–1411. Aker Biomarine Antarctic AS et al. *v.* Nam Chuong Huynh et al. Ct. App. Wash. Certiorari denied. Reported below: 199 Wash. App. 1005.

No. 17–1419. Lummi Tribe of the Lummi Reservation et al. *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 870 F. 3d 1313.

No. 17–1432. County of Amador, California *v.* Department of the Interior et al. C. A. 9th Cir. Certiorari denied. Reported below: 872 F. 3d 1012.

No. 17–1442. Dimond Rigging Co., LLC, dba Absolute Rigging and Millwrights *v.* Ordos City Hawtai Autobody Co., Ltd., et al. C. A. 6th Cir. Certiorari denied. Reported below: 695 Fed. Appx. 864.

No. 17–1453. Community Health Systems, Inc., et al. *v.* New York City Employees' Retirement System et al. C. A. 6th Cir. Certiorari denied. Reported below: 877 F. 3d 687.

No. 17–1456. Kennedy *v.* Skadden Arps Slate Meagher & Flom LLP et al. C. A. 3d Cir. Certiorari denied. Reported below: 706 Fed. Appx. 94.

No. 17–1459. World Programming Ltd. *v.* SAS Institute, Inc. C. A. 4th Cir. Certiorari denied. Reported below: 874 F. 3d 370.

No. 17–1470. FIVE STAR SENIOR LIVING INC., FKA FIVE STAR QUALITY CARE, INC. *v.* LEFEVRE. C. A. 9th Cir. Certiorari denied. Reported below: 705 Fed. Appx. 622.

No. 17–1472. INDIANA *v.* BOWMAN ET AL. Ct. App. Ind. Certiorari denied. Reported below: 81 N. E. 3d 1127.

No. 17–1474. NASSAR *v.* NASSAR. C. A. 11th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 615.

No. 17–1476. CITY OF FORT WORTH, TEXAS, ET AL. *v.* DARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 880 F. 3d 722.

No. 17–1477. UNITED STATES EX REL. CHASE *v.* CHAPTERS HEALTH SYSTEM, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 783.

No. 17–1479. GENTRY *v.* THOMPSON, JUDGE, CIRCUIT COURT OF TENNESSEE, SUMNER COUNTY. C. A. 6th Cir. Certiorari denied.

No. 17–1480. XIU JIAN SUN *v.* POLLAK. C. A. 2d Cir. Certiorari denied.

No. 17–1485. MIRANDA-MONDRAGON *v.* NAUTILUS INSURANCE CO. C. A. 5th Cir. Certiorari denied. Reported below: 711 Fed. Appx. 214.

No. 17–1486. PINNAVARIA *v.* TROUT VALLEY ASSN. ET AL. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 17–1490. NEIDERMEYER *v.* CALDWELL. C. A. 9th Cir. Certiorari denied. Reported below: 718 Fed. Appx. 485.

No. 17–1497. AMERICAN TECHNICAL CERAMICS CORP. *v.* PRESIDIO COMPONENTS, INC.; and

No. 17–1649. PRESIDIO COMPONENTS, INC. *v.* AMERICAN TECHNICAL CERAMICS CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 875 F. 3d 1369.

No. 17–1503. JOHNSON *v.* STORIX, INC. C. A. 9th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 628.

No. 17–1505. TAVARES *v.* ENTERPRISE RENT-A-CAR-COMPANY OF RHODE ISLAND. C. A. 1st Cir. Certiorari denied.

No. 17–1507. ALPINE PCS, INC. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 878 F. 3d 1086.

No. 17–1508. MCCALL, AS ADMINISTRATOR OF THE ESTATE OF MCCALL *v.* MORANT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 594.

No. 17–1509. UNITED STATES EX REL. BARRICK *v.* PARKER-MIGLIORINI INTERNATIONAL, LLC, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 878 F. 3d 1224.

No. 17–1512. ZIMING SHEN *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 725 Fed. Appx. 7.

No. 17–1513. KEITHLY, EXECUTRIX OF THE ESTATE OF COOPER *v.* ROBERTS ET AL. Sup. Ct. Va. Certiorari denied.

No. 17–1514. LEE *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 17–1515. TAYLOR *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 303 Ga. 57, 810 S. E. 2d 113.

No. 17–1516. EVANS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 876 F. 3d 375.

No. 17–1517. OLYMPIC STEWARDSHIP FOUNDATION ET AL. *v.* STATE OF WASHINGTON ENVIRONMENTAL AND LAND USE HEARINGS OFFICE ET AL. Ct. App. Wash. Certiorari denied. Reported below: 199 Wash. App. 668, 399 P. 3d 562.

No. 17–1518. XIU JIAN SUN *v.* ASIELLO ET AL. C. A. 2d Cir. Certiorari denied.

No. 17–1522. XIU JIAN SUN *v.* SUPREME COURT OF NEW YORK, QUEENS COUNTY. C. A. 2d Cir. Certiorari denied.

No. 17–1528. ROSS *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 17–1533. LEED HR, LLC, ET AL. *v.* MITCHELL. Ct. App. Ky. Certiorari denied.

No. 17–1535. ASRARI *v.* DEPARTMENT OF HOMELAND SECURITY. C. A. Fed. Cir. Certiorari denied. Reported below: 710 Fed. Appx. 894.

No. 17–1536. MMA Consultants 1, Inc. *v.* Republic of Peru. C. A. 2d Cir. Certiorari denied. Reported below: 719 Fed. Appx. 47.

No. 17–1537. Morrison *v.* Quest Diagnostics Inc. et al. C. A. 9th Cir. Certiorari denied. Reported below: 698 Fed. Appx. 350.

No. 17–1538. Coulter *v.* Forrest et al. Super. Ct. Pa. Certiorari denied. Reported below: 175 A. 3d 361.

No. 17–1541. Sobel *v.* City of Rutland, Vermont. Sup. Ct. Vt. Certiorari denied.

No. 17–1543. Olivar et al. *v.* Public Service Employee Credit Union Long Term Disability Plan et al. Sup. Ct. Colo. Certiorari denied. Reported below: 428 P. 3d 208.

No. 17–1546. Stankevich *v.* Kaplan et al. C. A. D. C. Cir. Certiorari denied. Reported below: 707 Fed. Appx. 717.

No. 17–1547. Sauers *v.* Township of Lower Southampton, Pennsylvania. C. A. 3d Cir. Certiorari denied. Reported below: 722 Fed. Appx. 255.

No. 17–1548. Pennsylvania Higher Education Assistance, dba FedLoan Servicing *v.* Silver. C. A. 9th Cir. Certiorari denied. Reported below: 706 Fed. Appx. 369.

No. 17–1549. Morsy E. *v.* Commissioner, Connecticut Department of Children and Families. Sup. Ct. Conn. Certiorari denied. Reported below: 327 Conn. 506, 175 A. 3d 21.

No. 17–1550. Failon *v.* Compass Chemical International, LLC. C. A. 4th Cir. Certiorari denied. Reported below: 711 Fed. Appx. 141.

No. 17–1551. Stratton *v.* Virginia, dba Clemens, et al. C. A. 4th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 302.

No. 17–1552. Bruce *v.* Potomac Electric Power Co. Ct. App. D. C. Certiorari denied. Reported below: 162 A. 3d 177.

No. 17–1553. De La Cruz *v.* Kailer et al. Sup. Ct. Tex. Certiorari denied.

No. 17–1554. Bernstein *v.* Wells Fargo Bank, N. A., et al. C. A. 11th Cir. Certiorari denied. Reported below: 693 Fed. Appx. 848.

No. 17–1555. Ornstein *v.* Bank of America, N. A., et al. Ct. App. Ariz. Certiorari denied.

No. 17–1557. Tortora *v.* Alvarez. Super. Ct. N. J., App. Div. Certiorari denied.

No. 17–1560. Viggers *v.* Viggers. Ct. App. Mich. Certiorari denied.

No. 17–1564. Cornelio *v.* Connecticut et al. C. A. 2d Cir. Certiorari denied. Reported below: 708 Fed. Appx. 41.

No. 17–1565. Geragos & Geragos, APC *v.* First Solar, Inc. C. A. 9th Cir. Certiorari denied. Reported below: 711 Fed. Appx. 410.

No. 17–1569. Callwood, as Administratrix of the Estate of Illidge *v.* Jones et al. C. A. 11th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 552.

No. 17–1571. Marranca *v.* Loytsker. Super. Ct. N. J., App. Div. Certiorari denied.

No. 17–1574. Sands *v.* Menard et al. Sup. Ct. Wis. Certiorari denied. Reported below: 2017 WI 110, 379 Wis. 2d 1, 904 N. W. 2d 789.

No. 17–1576. Viggers *v.* Pacha et al. Ct. App. Mich. Certiorari denied.

No. 17–1578. Bacquie *v.* New York. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 154 App. Div. 3d 648, 62 N. Y. S. 3d 425.

No. 17–1580. Solomon *v.* Desert Healthcare District et al. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 17–1582. Benoit et ux. *v.* St. Charles Gaming Co., Inc. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 2017–101 (La. App. 3 Cir. 11/8/17), 230 So. 3d 997.

No. 17–1584. Bartelt *v.* Wisconsin. Sup. Ct. Wis. Certiorari denied. Reported below: 2018 WI 16, 379 Wis. 2d 588, 906 N. W. 2d 684.

No. 17–1587. BRINGMAN *v.* JOHNSON ET AL. C. A. 6th Cir. Certiorari denied.

No. 17–1588. GERRARD, AS TEMPORARY ADMINISTRATOR OF THE ESTATE OF WHITE *v.* WHITE, AS EXECUTOR OF THE ESTATE OF WHITE. Ct. App. Ga. Certiorari denied. Reported below: 342 Ga. App. XXV.

No. 17–1589. HICKERSON *v.* YAMAHA MOTOR CORP., U. S. A., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 882 F. 3d 476.

No. 17–1590. INTEGRATED TECHNOLOGICAL SYSTEMS, INC. *v.* FIRST INTERNET BANK OF INDIANA. C. A. Fed. Cir. Certiorari denied. Reported below: 712 Fed. Appx. 1007.

No. 17–1591. HOSKINS *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 696 Fed. Appx. 242.

No. 17–1595. GLORIOSO-BRANDT *v.* AZAR, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 792.

No. 17–1596. FRANCIS ET AL. *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 709 Fed. Appx. 403.

No. 17–1598. PEFFER ET VIR *v.* STEPHENS. C. A. 6th Cir. Certiorari denied. Reported below: 880 F. 3d 256.

No. 17–1599. OHIO EX REL. WALGATE ET AL. *v.* KASICH, GOVERNOR OF OHIO, ET AL. Ct. App. Ohio, 10th App. Dist., Franklin County. Certiorari denied. Reported below: 2017-Ohio-5528, 93 N. E. 3d 417.

No. 17–1600. TODD *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 17–1601. BARONE *v.* WELLS FARGO BANK, N. A. Sup. Ct. Fla. Certiorari denied.

No. 17–1603. KELLEY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 235 So. 3d 280.

No. 17–1605. KINNEY *v.* CLARK. Ct. App. Cal., 2d App. Dist., Div. 1. Certiorari denied.

No. 17–1608. HOLKESVIG *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 2018 ND 17, 906 N. W. 2d 84.

No. 17–1609. Best Auto Repair, Inc., et al. *v.* Universal Insurance Group et al. C. A. 1st Cir. Certiorari denied. Reported below: 875 F. 3d 733.

No. 17–1612. Hinds *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 17–1613. Wiest *v.* United States District Court for the Southern District of Ohio et al. C. A. 6th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 485.

No. 17–1615. MacPherson *v.* Commissioner of Internal Revenue. C. A. 9th Cir. Certiorari denied. Reported below: 702 Fed. Appx. 621.

No. 17–1617. Ace Partners, LLC, dba TC's Pawn Co. *v.* Town of East Hartford, Connecticut, et al. C. A. 2d Cir. Certiorari denied. Reported below: 883 F. 3d 190.

No. 17–1619. Morris *v.* Branch Banking & Trust Co. Sup. Ct. Tex. Certiorari denied.

No. 17–1620. E. B. *v.* Wicomico County Department of Social Services et al. Ct. App. Md. Certiorari denied. Reported below: 456 Md. 428, 174 A. 3d 372.

No. 17–1621. Anderson *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 17–1622. Dennis *v.* Sessions, Attorney General. C. A. 2d Cir. Certiorari denied. Reported below: 724 Fed. Appx. 34.

No. 17–1626. Assadian *v.* Parsi et al. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 17–1627. Lee, Warden *v.* Clinard. C. A. 6th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 552.

No. 17–1628. Myoungchul Shin et al. *v.* Uni-Caps, LLC, et al. C. A. 9th Cir. Certiorari denied. Reported below: 699 Fed. Appx. 681.

No. 17–1629. Yan Sui et al. *v.* Marshack. C. A. 9th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 642.

No. 17–1630. YAN SUI ET AL. *v.* MARSHACK ET AL. C. A. 9th Cir. Certiorari denied.

No. 17–1631. T. B. ET VIR *v.* P. M. ET UX. Sup. Ct. Iowa. Certiorari denied. Reported below: 907 N. W. 2d 522.

No. 17–1632. MCGUIRK *v.* SWISS RE FINANCIAL SERVICES CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 699 Fed. Appx. 55.

No. 17–1634. TEAMAH *v.* APPLIED MATERIALS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 343.

No. 17–1635. TRI-CITIES HOLDINGS LLC ET AL. *v.* TENNESSEE ADMINISTRATIVE PROCEDURES DIVISION ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 726 Fed. Appx. 298.

No. 17–1637. DOE *v.* HOLCOMB, GOVERNOR OF INDIANA, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 883 F. 3d 971.

No. 17–1639. STREAMBEND PROPERTIES II, LLC, ET AL. *v.* IVY TOWER MINNEAPOLIS, LLC, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 701 Fed. Appx. 544.

No. 17–1640. MIRA *v.* KINGSTON ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 715 Fed. Appx. 28.

No. 17–1642. HEREDIA *v.* WALMART STORES TEXAS, LLC. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 17–1643. NOLAN *v.* DEPARTMENT OF ENERGY. C. A. Fed. Cir. Certiorari denied.

No. 17–1644. XIU JIAN SUN *v.* CITY OF NEW YORK HUMAN RESOURCES ADMINISTRATION ET AL. C. A. 2d Cir. Certiorari denied.

No. 17–1645. BOMBARDIER RECREATIONAL PRODUCTS INC. ET AL. *v.* ARCTIC CAT INC. C. A. Fed. Cir. Certiorari denied. Reported below: 876 F. 3d 1350.

No. 17–1646. LYON *v.* CANADIAN NATIONAL RAILWAY CO. ET AL. C. A. 7th Cir. Certiorari denied.

No. 17–1648. GEO GROUP, INC. *v.* MENOCAL ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 882 F. 3d 905.

No. 17–1650. Town of Kearny, New Jersey *v.* New Jersey Sports and Exposition Authority. Super. Ct. N. J., App. Div. Certiorari denied.

No. 17–1651. Bates et ux. *v.* Village of Pentwater, Michigan. Ct. App. Mich. Certiorari denied.

No. 17–1652. Credit One Bank, N. A. *v.* Anderson. C. A. 2d Cir. Certiorari denied. Reported below: 884 F. 3d 382.

No. 17–1653. Town Center Flats, LLC *v.* ECP Commercial II LLC. C. A. 6th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 114.

No. 17–1658. Lyles *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 726 Fed. Appx. 953.

No. 17–1659. Vicks et ux. *v.* Ocwen Loan Servicing, LLC, et al. C. A. 4th Cir. Certiorari denied. Reported below: 704 Fed. Appx. 241.

No. 17–1661. Hartfield et al. *v.* Eighth Judicial District for Nevada, Clark County, et al. Sup. Ct. Nev. Certiorari denied. Reported below: 134 Nev. 40, 412 P. 3d 23.

No. 17–1662. Aspen Insurance (UK) Ltd. et al. *v.* Black & Veatch Corp. C. A. 10th Cir. Certiorari denied. Reported below: 882 F. 3d 952.

No. 17–1663. Checksfield *v.* Berg. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 148 App. Div. 3d 1376, 49 N. Y. S. 3d 205.

No. 17–1664. Gregory *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 711 Fed. Appx. 838.

No. 17–1665. Dixon *v.* East Coast Music Mall et al. App. Ct. Conn. Certiorari denied. Reported below: 178 Conn. App. 901, 171 A. 3d 1113.

No. 17–1666. Diveglia *v.* Pennsylvania Department of Transportation, Bureau of Driver Licensing. Commw. Ct. Pa. Certiorari denied. Reported below: 174 A. 3d 1212.

No. 17–1667. Creative Vision Resources, L. L. C. *v.* National Labor Relations Board. C. A. 5th Cir. Certiorari denied. Reported below: 882 F. 3d 510.

No. 17–1668. Nashville Downtown Platinum, LLC *v.* Metropolitan Development and Housing Agency. Ct. App. Tenn. Certiorari denied.

No. 17–1670. Oskoui *v.* Acosta, Secretary of Labor. C. A. 9th Cir. Certiorari denied. Reported below: 692 Fed. Appx. 908.

No. 17–1671. Midamines SPRL Ltd. et al. *v.* KBC Bank N. V. C. A. 2d Cir. Certiorari denied. Reported below: 719 Fed. Appx. 41.

No. 17–1674. Yufa *v.* TSI Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 730 Fed. Appx. 905.

No. 17–1675. McIntosh *v.* Estate of Turner, Deceased. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 17–1677. Bradley *v.* West Chester University of the Pennsylvania State System of Higher Education et al. C. A. 3d Cir. Certiorari denied. Reported below: 880 F. 3d 643.

No. 17–1680. Bustamante *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 703 Fed. Appx. 537.

No. 17–1681. Tanner-Brown et al. *v.* Zinke, Secretary of Interior, et al. C. A. D. C. Cir. Certiorari denied. Reported below: 709 Fed. Appx. 17.

No. 17–1682. Branum et al. *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 428.

No. 17–1683. Brooks *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 872 F. 3d 78.

No. 17–1684. France *v.* Patrick. Ct. App. Ga. Certiorari denied.

No. 17–1685. Mamakos et al. *v.* Town of Huntington, New York, et al. C. A. 2d Cir. Certiorari denied. Reported below: 715 Fed. Appx. 77.

No. 17–1687. Suhl *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 885 F. 3d 1106.

No. 17–1688. Ozark Materials River Rock, LLC *v.* Benham. C. A. 10th Cir. Certiorari denied. Reported below: 885 F. 3d 1267.

No. 17–1689. Persaud *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 715 Fed. Appx. 86.

No. 17–1690. Cooney *v.* Barry School of Law, aka Dwayne O. Andreas School of Law. C. A. 11th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 571.

No. 17–1691. Baylay *v.* Etihad Airways P. J. S. C. C. A. 7th Cir. Certiorari denied. Reported below: 881 F. 3d 1032.

No. 17–1694. Xiu Jian Sun *v.* Schneiderman, Attorney General of New York, et al. C. A. 2d Cir. Certiorari denied.

No. 17–1695. California State Teachers' Retirement System et al. *v.* Alvarez et al. Sup. Ct. Del. Certiorari denied. Reported below: 179 A. 3d 824.

No. 17–1696. Lewis *v.* Pennsylvania Higher Education Assistance Agency et al. C. A. 6th Cir. Certiorari denied.

No. 17–1697. Marshall *v.* Royal Caribbean Cruises Ltd. C. A. 11th Cir. Certiorari denied. Reported below: 706 Fed. Appx. 620.

No. 17–1706. Puiatti *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 234 So. 3d 551.

No. 17–1707. Nichia Corp. et al. *v.* Everlight Electronics Co., Ltd., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 719 Fed. Appx. 1008.

No. 17–1708. Smith *v.* Loudoun County Public Schools. C. A. 4th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 194.

No. 17–1709. Kendall *v.* Olsen et al. C. A. 10th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 970.

No. 17–1711. Hubbard *v.* Kaiser Foundation Health Plan Inc. et al. C. A. 9th Cir. Certiorari denied. Reported below: 692 Fed. Appx. 425.

No. 17–1714. Tavares *v.* Bridgeloan Investors, Inc. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 241 So. 3d 154.

No. 17–1716. HENRY ET AL. *v.* CASH BIZ, LP, ET AL. Sup. Ct. Tex. Certiorari denied. Reported below: 551 S. W. 3d 111.

No. 17–1718. DEUTSCH *v.* PHIL'S ICEHOUSE, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 361.

No. 17–7297. GONZALEZ GARIBAY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 698 Fed. Appx. 176.

No. 17–7335. YOUNG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 872 F. 3d 742.

No. 17–7476. JUNGWIRTH *v.* LEE. Ct. Civ. App. Ala. Certiorari denied. Reported below: 246 So. 3d 104.

No. 17–7613. HARPER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 875 F. 3d 329.

No. 17–7640. SAMS *v.* QUINN ET AL. C. A. 6th Cir. Certiorari denied.

No. 17–7703. OLDHAM *v.* UNITED STATES;
No. 17–8386. NORWOOD *v.* UNITED STATES; and
No. 17–8393. WALKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 702 Fed. Appx. 367.

No. 17–7732. BROWN *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 477 Mass. 805, 81 N. E. 3d 1173.

No. 17–7801. BAGI *v.* CITY OF PARMA, OHIO. C. A. 6th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 480.

No. 17–7873. BARINAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 865 F. 3d 99.

No. 17–7930. BOYER *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 863 F. 3d 428.

No. 17–7939. CASTILLO-MURION, AKA CHAIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 343.

No. 17–7970. ROBINSON *v.* UNITED STATES; and
No. 17–7989. MARTIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 872 F. 3d 760.

No. 17–7988. MATHURIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 868 F. 3d 921.

No. 17–8008. LEON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 948.

No. 17–8041. MONTEIRO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 871 F. 3d 99.

No. 17–8059. BEAVERS, AKA STOKES, AKA WEST *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–8073. COBO-COBO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 873 F. 3d 613.

No. 17–8170. HIMES *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 690 Fed. Appx. 640.

No. 17–8180. ROBERTSON *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 387.

No. 17–8198. JACOBY *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 642 Pa. 623, 170 A. 3d 1065.

No. 17–8202. TRUELOVE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 281.

No. 17–8224. NEWMILLER *v.* RAEMISCH, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 877 F. 3d 1178.

No. 17–8260. GRIFFIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–8270. HARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 878 F. 3d 111.

No. 17–8274. BRANDON *v.* WILSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 699 Fed. Appx. 283.

No. 17–8280. KING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–8292. VELASCO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 17–8298. PATTERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–8331. PABON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 871 F. 3d 164.

No. 17–8345. WARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 165.

No. 17–8352. MARTIN *v.* LIVING ESSENTIALS, LLC. C. A. 7th Cir. Certiorari denied.

No. 17–8365. DONAT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 17–8370. FLOWERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 492.

No. 17–8411. CHAPPELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 492.

No. 17–8413. VERWIEBE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 874 F. 3d 258.

No. 17–8418. MAXWELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 492.

No. 17–8421. HUTTON *v.* SHOOP, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 704 Fed. Appx. 584.

No. 17–8432. ALI *v.* ALLBAUGH, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 699 Fed. Appx. 824.

No. 17–8443. SANCHEZ MOLINAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 881 F. 3d 1064.

No. 17–8476. SCOTT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 877 F. 3d 42.

No. 17–8485. PANNULLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 709 Fed. Appx. 683.

No. 17–8524. ANTHONY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 280.

No. 17–8527. VEGA-ORTIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 822 F. 3d 1031.

No. 17–8543. PAYNE *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 17–8553. BLANKENSHIP *v.* PASTRANA, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 17–8567. SAMPLE *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 17–8576. JOHNSON *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 17–8587. ARJUNE *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 30 N. Y. 3d 347, 89 N. E. 3d 1207.

No. 17–8599. SHOCKLEY *v.* GRIFFITH, WARDEN. Sup. Ct. Mo. Certiorari denied.

No. 17–8616. HARNDEN *v.* MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. C. A. 6th Cir. Certiorari denied.

No. 17–8623. NICHOL *v.* COLORADO. Sup. Ct. Colo. Certiorari denied.

No. 17–8624. CELAYA-CARTAJENA, AKA ALBERTO ROJAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 673 Fed. Appx. 431.

No. 17–8629. HENRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 496.

No. 17–8632. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 880 F. 3d 226.

No. 17–8639. JAVIER VERGARA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 884 F. 3d 1309.

No. 17–8645. PRESTEGUI *v.* MADDEN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 17–8646. MEDINA *v.* JOHNSON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 17–8664. PADILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 817.

No. 17–8666. OWENS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2017–1258 (La. 11/13/17), 229 So. 3d 457.

No. 17–8668. ROTONDO *v.* GASPARINI. Ct. App. N. Y. Certiorari denied. Reported below: 30 N. Y. 3d 1082, 92 N. E. 3d 1239.

No. 17–8670. DINGLER *v.* MILESTONE MANAGEMENT ET AL. C. A. 5th Cir. Certiorari denied.

No. 17–8680. WILLIAMS *v.* MCCAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 17–8681. WALKER *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 17–8683. BARNETT *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied.

No. 17–8686. HUTTON *v.* SHOOP, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 17–8688. ASSA'AD-FALTAS *v.* CITY OF COLUMBIA, SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 420 S. C. 28, 800 S. E. 2d 782.

No. 17–8690. BELL *v.* KEETON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 17–8691. BARNETT *v.* SULLIVAN, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 17–8693. BOHANNAN *v.* GRIFFIN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 689 Fed. Appx. 377.

No. 17–8699. LOPEZ *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 134 Nev. 974, 412 P. 3d 14.

No. 17–8703. SOLIS-ALONZO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 863.

No. 17–8707. NOZISKA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 696 Fed. Appx. 253.

No. 17–8708. GRANT-FARLEY *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 17–8712. ALFRED *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 17–8716. BARNETT *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 698 Fed. Appx. 239.

No. 17–8717. LINDER *v.* HAVILAND, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 17–8718. BELL *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 17–8722. W. P. *v.* WEST VIRGINIA. Cir. Ct. Kanawha County, W. Va. Certiorari denied.

No. 17–8724. WHITFIELD *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 235 So. 3d 297.

No. 17–8725. VALDIVIA *v.* FRAUENHEIM, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 17–8730. PRICE *v.* OVERMYER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FOREST, ET AL. C. A. 3d Cir. Certiorari denied.

No. 17–8732. NAYLOR *v.* HARRELL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 697 Fed. Appx. 416.

No. 17–8733. CARNEY *v.* TEXAS. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 17–8737. MARKHAM *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 17–8748. WILLIAMS *v.* CLARK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 698 Fed. Appx. 555.

No. 17–8750. MILLS *v.* SESSIONS, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied.

No. 17–8751. PATTERSON *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 17–8753. KLEIN *v.* WILLIAMS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 631.

No. 17–8755. MAYES *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 17–8756. LAROSE *v.* MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 17–8761. BARGO *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 715 Fed. Appx. 17.

No. 17–8764. GUBANIC *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–8768. RODRIGUEZ *v.* RATLEDGE. C. A. 4th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 261.

No. 17–8770. EVANS *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 875 F. 3d 210.

No. 17–8773. DANIELS *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied.

No. 17–8778. SMITH *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 2018 WI 2, 379 Wis. 2d 86, 905 N. W. 2d 353.

No. 17–8779. DAWSON *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 17–8780. CAINES *v.* GASTELO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 17–8781. TAYLOR *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 17–8786. DEVEAUX *v.* CALDWELL, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 17–8789. CROWDER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 17–8793. RUSSELL *v.* BIELEFELD ET AL. C. A. 9th Cir. Certiorari denied.

No. 17–8795. QUIROZ *v.* MORAN ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 707 Fed. Appx. 1.

No. 17–8799. ZELEDON *v.* HATTON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 17–8808. KESSLER *v.* OVERMYER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FOREST. Sup. Ct. Pa. Certiorari denied.

No. 17–8810. INK, AKA IGNACIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 17–8812. NASEMAN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 17–8815. PEREZ *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 232 So. 3d 527.

No. 17–8816. ACKERMAN ET AL. *v.* BANK OF NEW YORK MELLON. Sup. Ct. Ohio. Certiorari denied. Reported below: 149 Ohio St. 3d 1416, 2017-Ohio-4038, 75 N. E. 3d 235.

No. 17–8817. COLLINS *v.* GEORGIA. Super. Ct. Athens-Clarke County, Ga. Certiorari denied.

No. 17–8820. STONE *v.* JOHNSON ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 713 Fed. Appx. 103.

No. 17–8822. DUBOIS *v.* MWV HEALTHCARE ASSN., INC., ET AL. C. A. 1st Cir. Certiorari denied.

No. 17–8824. CONNER *v.* METROPOLITAN LIFE INSURANCE CO. ET AL.; and CONNER *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. 6th Cir. Certiorari denied.

No. 17–8827. LACEY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2017 IL App (1st) 142352–U.

No. 17–8834. WALCK *v.* CORIZON HEALTH CARE SERVICES ET AL. C. A. 6th Cir. Certiorari denied.

No. 17–8839. THOMAS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 17–8841. MANTEPAN *v.* DEROSE ET AL. Sup. Ct. Fla. Certiorari denied.

No. 17–8842. JACKSON *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 301 Ga. 774, 804 S. E. 2d 73.

No. 17–8843. SMALL *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied.

No. 17–8845. EASON *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 696 Fed. Appx. 630.

No. 17–8846. RAMEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 880 F. 3d 447.

No. 17–8847. SATTERWHITE *v.* FRISCH'S RESTAURANT ET AL. Ct. App. Ohio, 10th App. Dist., Hamilton County. Certiorari denied.

No. 17–8849. HAMPTON *v.* STRAIGER ET AL. Ct. App. Ariz. Certiorari denied.

No. 17–8850. HUTSON *v.* GIURBINO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 17–8851. YOUNG *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 153 App. Div. 3d 1618, 61 N. Y. S. 3d 752.

No. 17–8856. SHANK *v.* CORIZON HEALTH SERVICES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 692 Fed. Appx. 414.

No. 17–8857. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 881 F. 3d 954.

No. 17–8865. GRAZZINI-RUCKI *v.* RUCKI. Ct. App. Minn. Certiorari denied.

No. 17–8867. CLOPTON *v.* MURPHY, JUDGE, DISTRICT COURT OF GRAYSON COUNTY, TEXAS. Sup. Ct. Tex. Certiorari denied.

No. 17–8869. JORDAN *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied.

No. 17–8870. KERSEY *v.* PRUDENTIAL INSURANCE COMPANY OF AMERICA. C. A. 1st Cir. Certiorari denied.

No. 17–8881. RODRIGUEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 711 Fed. Appx. 486.

No. 17–8883. SWINGTON *v.* CITY OF WATERLOO, IOWA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 698 Fed. Appx. 861.

No. 17–8887. FORTUNE *v.* HERRING. C. A. 4th Cir. Certiorari denied. Reported below: 680 Fed. Appx. 201.

No. 17–8888. HENRY *v.* CARUSO ET AL. C. A. 6th Cir. Certiorari denied.

No. 17–8892. MORRISON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 236 So. 3d 204.

No. 17–8894. WARNER *v.* MCLAUGHLIN. C. A. 1st Cir. Certiorari denied.

No. 17–8895. NYABWA *v.* CORRECTIONS CORPORATION OF AMERICA. C. A. 5th Cir. Certiorari denied. Reported below: 703 Fed. Appx. 357.

No. 17–8896. LEONARD *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 245 So. 3d 722.

No. 17–8900. CURRY *v.* KLEE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 271.

No. 17–8901. GROGGER *v.* GENOVESE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 17–8902. FERGUSON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 17–8903. HEATH *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied.

No. 17–8905. ISRAEL *v.* FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES ET AL. C. A. 11th Cir. Certiorari denied.

No. 17–8908. MARTINEZ *v.* ROBERTSON, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 17–8909. JARAMILLO *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 151 App. Div. 3d 1782, 53 N. Y. S. 3d 580.

No. 17–8911. JONES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 17–8913. STOKES ET AL. *v.* FIRST AMERICAN TITLE COMPANY OF MONTANA, INC., ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 389 Mont. 245, 406 P. 3d 439.

No. 17–8915. RAMIREZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 3. Certiorari denied.

No. 17–8916. SONIAT *v.* DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ET AL. C. A. 5th Cir. Certiorari denied.

No. 17–8917. GILBERT *v.* DANIELS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 725 Fed. Appx. 789.

No. 17–8918. FRANKLIN *v.* VALENZUELA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 17–8919. GARCIA *v.* PICKETT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 698 Fed. Appx. 521.

No. 17–8920. FUENTES *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 17–8922. DURAN *v.* MUSE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 833.

No. 17–8923. EVANS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 17–8924. MURRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 879 F. 3d 669.

No. 17–8927. HARRIS *v.* VIGIL ET AL. C. A. 11th Cir. Certiorari denied.

No. 17–8928. GARCIA *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 17–8930. HORTON *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 17–8931. HOWELL *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 17–8932. FLORES *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 17–8935. Campbell *v.* New York City Transit Authority, Adjudication Bureau. C. A. 2d Cir. Certiorari denied.

No. 17–8937. Ferguson-Cassidy *v.* City of Los Angeles, California, et al. C. A. 9th Cir. Certiorari denied. Reported below: 705 Fed. Appx. 611.

No. 17–8939. Terry *v.* New Jersey. Sup. Ct. N. J. Certiorari denied. Reported below: 232 N. J. 218, 179 A. 3d 378.

No. 17–8947. Peterson *v.* Burris et al. C. A. 6th Cir. Certiorari denied.

No. 17–8948. Powell *v.* Michigan. Ct. App. Mich. Certiorari denied.

No. 17–8949. Alexander *v.* Miller, Superintendent, Great Meadow Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 17–8953. Cruickshank *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 909.

No. 17–8956. Bonner *v.* Cumberland Regional High School District. Super. Ct. N. J., App. Div. Certiorari denied.

No. 17–8961. Harrington *v.* Winn, Warden. C. A. 6th Cir. Certiorari denied.

No. 17–8962. De Min Gu *v.* Federal Bureau of Investigation et al. C. A. 2d Cir. Certiorari denied.

No. 17–8963. Herbert *v.* CVS Pharmacy et al. C. A. 9th Cir. Certiorari denied. Reported below: 700 Fed. Appx. 698.

No. 17–8967. Merrick *v.* Brnovich, Attorney General of Arizona, et al. C. A. 9th Cir. Certiorari denied.

No. 17–8968. Moore *v.* Brewer, Warden. C. A. 6th Cir. Certiorari denied.

No. 17–8970. Blakeney *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 876 F. 3d 1126.

No. 17–8971. Bartlett *v.* Pineda, Judge, Superior Court of Arizona, Maricopa County, et al. Ct. App. Ariz. Certiorari denied.

No. 17–8972. BROWN *v.* CALIFORNIA (two judgments). Ct. App. Cal., 2d App. Dist., Div. 5. Certiorari denied.

No. 17–8973. JONES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2017 IL App (1st) 150821–U.

No. 17–8977. SLATER *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 432.

No. 17–8983. ANTONIO ALDANA *v.* SANTORO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 17–8989. BROWN *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 17–8990. BOSTIC *v.* DAVIS ET AL. C. A. 6th Cir. Certiorari denied.

No. 17–8994. AMANKRAH *v.* ANGLEA, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 688 Fed. Appx. 455.

No. 17–8997. TURRIETA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 875 F. 3d 1340.

No. 17–8998. LUNA-BARRAGAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 639.

No. 17–8999. REED *v.* HARTFORD SUPER 8 ET AL. C. A. 2d Cir. Certiorari denied.

No. 17–9002. ARGON *v.* CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION ET AL. C. A. 9th Cir. Certiorari denied.

No. 17–9004. STURGES *v.* CURTIN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 17–9007. BAILEY *v.* GARDNER ET AL. C. A. 4th Cir. Certiorari denied.

No. 17–9010. WIMBERLY *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied.

No. 17–9012. WINSTON *v.* BANK OF NOVA SCOTIA, DBA SCOTIA BANK. C. A. 3d Cir. Certiorari denied. Reported below: 722 Fed. Appx. 138.

No. 17–9014. Oxner *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 916.

No. 17–9015. Pittman *v.* Jones, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied. Reported below: 871 F. 3d 1231.

No. 17–9016. Prince *v.* Louisiana. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 2016–260 (La. App. 3 Cir. 2/1/17), 211 So. 3d 481.

No. 17–9018. Littlejohn *v.* Royal, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 875 F. 3d 548.

No. 17–9019. Johnson *v.* Mackie, Warden. C. A. 6th Cir. Certiorari denied.

No. 17–9022. Abdul-Salaam *v.* Pennsylvania. Sup. Ct. Pa. Certiorari denied. Reported below: 644 Pa. 149, 174 A. 3d 1049.

No. 17–9024. Jacobs *v.* Michigan. Ct. App. Mich. Certiorari denied.

No. 17–9025. Liddell *v.* New Jersey Department of Corrections. Super. Ct. N. J., App. Div. Certiorari denied.

No. 17–9027. Lacayo *v.* Tanner, Warden. C. A. 5th Cir. Certiorari denied.

No. 17–9030. Curry *v.* Clarke, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 699 Fed. Appx. 222.

No. 17–9031. Martin *v.* Wendy's International, Inc., et al. C. A. 7th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 590.

No. 17–9032. Maxberry *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 722 Fed. Appx. 997.

No. 17–9034. Taylor *v.* Jones, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 17–9035. Duma *v.* Washington Metropolitan Area Transit Authority. Ct. App. D. C. Certiorari denied. Reported below: 159 A. 3d 1220.

No. 17–9036. ROBINSON *v.* NEVADA SYSTEM OF HIGHER EDUCATION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 692 Fed. Appx. 377.

No. 17–9040. MEREDITH *v.* O'ROURKE, SECRETARY OF VETERANS AFFAIRS. C. A. 8th Cir. Certiorari denied. Reported below: 709 Fed. Appx. 392.

No. 17–9046. HAMMONDS *v.* DUNN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 841.

No. 17–9047. ALBERT *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 17–9048. PIRELA *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 710 Fed. Appx. 66.

No. 17–9051. SMITH *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2018 Ark. 37.

No. 17–9052. WHITE *v.* KNIGHT, SUPERINTENDENT, CORRECTIONAL INDUSTRIAL FACILITY. C. A. 7th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 260.

No. 17–9054. TOWBRIDGE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 17–9056. CONRAD *v.* MAYS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 17–9058. CARTER *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 711 Fed. Appx. 176.

No. 17–9060. BARNETT *v.* LAUREL COUNTY, KENTUCKY, ET AL. C. A. 6th Cir. Certiorari denied.

No. 17–9062. BELL *v.* U. S. BANK N. A. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 232 So. 3d 385.

No. 17–9063. BELL *v.* U. S. BANK N. A. ET AL. Sup. Ct. Fla. Certiorari denied.

No. 17–9064. BELL *v.* PLM L. P. ET AL. Sup. Ct. Fla. Certiorari denied.

No. 17–9069. DEGRATE *v.* HARRIS, CLERK, SUPREME COURT OF THE UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 707 Fed. Appx. 721.

No. 17–9071. BAILEY *v.* WHITE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 17–9072. QUINN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 17–9074. CHONG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 329.

No. 17–9075. RAMIREZ *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 303 Ga. 232, 811 S. E. 2d 416.

No. 17–9076. BROWN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 880 F. 3d 399.

No. 17–9077. CONDON *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 77 M. J. 244.

No. 17–9078. ARLOTTA *v.* BANK OF AMERICA, N. A., ET AL.; and ARLOTTA *v.* DIOCESE OF BUFFALO ET AL. C. A. 2d Cir. Certiorari denied.

No. 17–9079. RUIZ *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 185 A. 3d 718.

No. 17–9080. REYES-QUINTERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 708.

No. 17–9081. STINNETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 821.

No. 17–9084. UPTERGROVE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 705 Fed. Appx. 620.

No. 17–9085. WESTINE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 883 F. 3d 659.

No. 17–9087. MEMBRENO-AREVALO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 463.

No. 17–9088. SANCHEZ ROLON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 17–9089. HIRSCH *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 17–9090. GAGNON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–9091. HUMPHREYS *v.* WELLS FARGO BANK, N. A. Super. Ct. Pa. Certiorari denied. Reported below: 160 A. 3d 266.

No. 17–9092. HELTON *v.* PASH, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 17–9093. DAVIS *v.* YORK COUNTY BOARD OF SUPERVISORS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 182.

No. 17–9094. BARRIOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 713.

No. 17–9095. CRUZ DIAZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 330.

No. 17–9096. PARUM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 502.

No. 17–9098. MARTIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 325.

No. 17–9099. LONGORIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 327.

No. 17–9102. HORTON *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 17–9103. GLEASON *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 17–9104. CARMENATE-PALENCIA, AKA GIULIAN *v.* SESSIONS, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 17–9106. FRAZIER *v.* WARDEN. C. A. 9th Cir. Certiorari denied.

No. 17–9108. HURD *v.* LIZARRAGA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 17–9109. GARRINGER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 894.

No. 17–9111. GIRARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–9112. GUERRERO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 17–9113. HUDGINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 17–9114. HARDY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 262.

No. 17–9116. HOWARD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 17–9117. FRANKLIN *v.* HAWLEY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 879 F. 3d 307.

No. 17–9118. WILLIAMS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 5. Certiorari denied.

No. 17–9119. SHUE *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 133 Nev. 798, 407 P. 3d 332.

No. 17–9120. GLENEWINKEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 17–9121. HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 17–9122. GEREBIZZA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 302.

No. 17–9124. GJURAJ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 17–9125. LEWIS *v.* NOGAN, ADMINISTRATOR, EAST JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 17–9126. ARAMBUL-DURAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 352.

No. 17–9131. PINET-FUENTES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 888 F. 3d 557.

No. 17–9132. WALDROP *v.* DUNN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 711 Fed. Appx. 900.

No. 17–9133. VERDUZCO *v.* SPEARMAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 726 Fed. Appx. 579.

No. 17–9135. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 994.

No. 17–9136. TERRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 726 Fed. Appx. 939.

No. 17–9137. ALVAREZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 878 F. 3d 640.

No. 17–9138. HILL *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 17–9139. YUN *v.* DIAZ, ACTING SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 725 Fed. Appx. 511.

No. 17–9140. FRIE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 698 Fed. Appx. 209.

No. 17–9141. HAREN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–9142. HALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 687 Fed. Appx. 906.

No. 17–9143. HOLDER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 586 Fed. Appx. 82.

No. 17–9144. HONISH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 17–9145. MALOY *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied.

No. 17–9146. LEWIS *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 17–9147. GARCIA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 17–9148. Frazier *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 699 Fed. Appx. 249.

No. 17–9149. Green *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 17–9150. Fortson *v.* Eppinger, Warden. C. A. 6th Cir. Certiorari denied.

No. 17–9152. Luma *v.* Florida Department of Revenue. Sup. Ct. Fla. Certiorari denied.

No. 17–9153. Jones *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 231 So. 3d 374.

No. 17–9154. Bright *v.* Bryson, Commissioner, Georgia Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 17–9156. Turner *v.* Virginia. Sup. Ct. Va. Certiorari denied. Reported below: 295 Va. 104, 809 S. E. 2d 679.

No. 17–9157. Harris *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 715.

No. 17–9158. Baskin *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 878 F. 3d 1106.

No. 17–9160. Topilina, aka Pinchuk *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 689.

No. 17–9161. Bates *v.* Florida et al. Sup. Ct. Fla. Certiorari denied. Reported below: 238 So. 3d 98.

No. 17–9162. Perry *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 539.

No. 17–9163. Lopez-Cotto *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 884 F. 3d 1.

No. 17–9164. Pemberton *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 221.

No. 17–9165. Witherspoon *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 17–9166. Harris *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 712 Fed. Appx. 108.

No. 17–9167. KRYGER *v.* SOUTH DAKOTA. Sup. Ct. S. D. Certiorari denied. Reported below: 2018 S.D. 13, 907 N. W. 2d 800.

No. 17–9168. STUDHORSE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 883 F. 3d 1198.

No. 17–9172. RYAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 885 F. 3d 449.

No. 17–9173. SUGGS *v.* FLORIDA ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 234 So. 3d 546.

No. 17–9174. DABNEY *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 478 Mass. 839, 90 N. E. 3d 750.

No. 17–9176. HIGGINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 678 Fed. Appx. 147.

No. 17–9177. GOWADIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 17–9178. GARCIA-ESPARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 697 Fed. Appx. 426.

No. 17–9179. ABEL GRIMALDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 17–9180. FREDERICK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–9181. GENTILE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 911.

No. 17–9182. GONZALEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 17–9183. HODGE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 699 Fed. Appx. 254.

No. 17–9184. GARCIA *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 17–9185. GUADARRAMA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 17–9186. FALKENHORST *v.* HARRIS COUNTY CHILDREN'S PROTECTIVE SERVICES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 711 Fed. Appx. 228.

No. 17–9187. MURPHY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 689.

No. 17–9188. MEARS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 709 Fed. Appx. 241.

No. 17–9189. MILTIER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 882 F. 3d 81.

No. 17–9190. PALMER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 230.

No. 17–9191. MEAUX *v.* LOUISIANA. C. A. 5th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 380.

No. 17–9192. GROSE *v.* OUTLAW, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 17–9194. GARDNER *v.* NEW MEXICO. Sup. Ct. N. M. Certiorari denied.

No. 17–9195. HOOD *v.* DIAZ, ACTING SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 17–9196. KALABA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 727 Fed. Appx. 1.

No. 17–9197. JANATSCH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 806.

No. 17–9198. TAFOYA, AKA TAPIOA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 401.

No. 17–9199. BUSTAMANTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 965.

No. 17–9200. DASA *v.* CAIN, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 17–9202. SORENSEN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 17–9203. RAMOS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 632.

No. 17–9204. RHODES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 234 So. 3d 554.

No. 17–9205. ROSALES-AGUILAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 818 F. 3d 965.

No. 17–9206. SWEET *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 234 So. 3d 646.

No. 17–9207. DAVIS *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2018 Ark. 69, 539 S. W. 3d 565.

No. 17–9208. EVANS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 883 F. 3d 1154.

No. 17–9209. ALLBROOKS *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 256 N. C. App. 505, 808 S. E. 2d 168.

No. 17–9210. BUTTERCASE *v.* NEBRASKA. Ct. App. Neb. Certiorari denied. Reported below: 25 Neb. App. xi.

No. 17–9211. ZAITSEV *v.* KELLER. Ct. App. Wash. Certiorari denied. Reported below: 200 Wash. App. 1003.

No. 17–9212. WU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 824.

No. 17–9213. WILLIAMS *v.* KENT, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 17–9214. KRAWCZUK *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 873 F. 3d 1273.

No. 17–9215. MATHIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 17–9216. KENNEDY *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 2017 IL App (4th) 150372–U.

No. 17–9217. KEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 274.

No. 17–9219. ALEXANDER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 492.

No. 17–9220. HEIKKILA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 546.

No. 17–9222. FREE *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 200 Wash. App. 1055.

No. 17–9224. HUSBAND *v.* EBBERT, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 17–9225. FRANK *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 175 A. 3d 394.

No. 17–9227. GERAY *v.* MUNIZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 678 Fed. Appx. 607.

No. 17–9228. HAMILTON *v.* BRANNON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 17–9229. GLADDEN *v.* BARBER, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 692 Fed. Appx. 128.

No. 17–9230. FARRAR *v.* PETERS, DIRECTOR, OREGON DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 698 Fed. Appx. 363.

No. 17–9231. FORD *v.* DOE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 642.

No. 17–9232. FAWLEY *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 692 Fed. Appx. 736.

No. 17–9233. HENDRIX *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 17–9234. LEVINE *v.* STATE BAR OF GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 303 Ga. 284, 811 S. E. 2d 349.

No. 17–9236. CHANNON *v.* UNITED STATES; and
No. 17–9242. CHANNON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 881 F. 3d 806.

No. 17–9237. RICE *v.* MONTGOMERY, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 743.

No. 17–9241. SMITH *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied.

No. 17–9243. STEPHENS *v.* FLORIDA ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 238 So. 3d 94.

No. 17–9244. JOHNSON *v.* MITCHELL, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 704 Fed. Appx. 303.

No. 17–9245. CAMILO LOPEZ *v.* KEY, SUPERINTENDENT, AIRWAY HEIGHTS CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 17–9246. MARQUARDT *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 239 So. 3d 1251.

No. 17–9247. CASSIANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 881 F. 3d 314.

No. 17–9249. RAMNARAINE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 749.

No. 17–9250. FLOWERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 820.

No. 17–9251. KARBAN *v.* BRNOVICH, ATTORNEY GENERAL OF ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 17–9252. LUCERO *v.* TURCO ET AL. C. A. 1st Cir. Certiorari denied.

No. 17–9253. PIERRE *v.* ATTORNEY GRIEVANCE COMMITTEE FOR THE FIRST JUDICIAL DEPARTMENT. Ct. App. N. Y. Certiorari denied. Reported below: 31 N. Y. 3d 1043, 100 N. E. 3d 844.

No. 17–9254. FRATICELLI *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 170 A. 3d 1246.

No. 17–9256. GRIFFITH *v.* BLADES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 17–9257. FOLLANSBEE *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 17–9258. GARRETT *v.* PARAMO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 17–9260. COLEBROOK *v.* CIT BANK. C. A. 9th Cir. Certiorari denied. Reported below: 698 Fed. Appx. 529.

No. 17–9261. CROMARTIE *v.* ALABAMA STATE UNIVERSITY ET AL. Sup. Ct. Ala. Certiorari denied.

No. 17–9267. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 701.

No. 17–9268. SCHNEIDER *v.* WELKER. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 243 So. 3d 374.

No. 17–9270. STEELE *v.* CHEATHAM, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 17–9271. FRANK *v.* RACKLEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 17–9272. TIPPINS *v.* CARUSO ET AL. C. A. 6th Cir. Certiorari denied.

No. 17–9273. TIPPINS *v.* NWI–1, INC., ET AL. C. A. 6th Cir. Certiorari denied.

No. 17–9274. ANDERSON *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied.

No. 17–9275. ARIAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 804.

No. 17–9277. ZAPATA-OCHOA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 407.

No. 17–9278. CORTEZ-LUNA *v.* UNITED STATES; and
No. 17–9402. SERRATO-NAVARRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 394.

No. 17–9279. UDOH *v.* DOOLEY, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 17–9280. MORTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 419.

No. 17–9281. GRAY *v.* GILMORE, SUPERINTENDENT, CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 17–9282. GRABLE *v.* TURNER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 17–9283. IOANE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 17–9285. HARWELL *v.* SCHWEITZER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 17–9286. HARDEN *v.* BOWERSOX, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 17–9287. HOLLIS *v.* PFISTER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 17–9288. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–9289. RODGERS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 268 So. 3d 636.

No. 17–9291. SULLIVAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 946.

No. 17–9292. STYLES *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. 6th Cir. Certiorari denied.

No. 17–9293. SCOTT *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 17–9294. REDIC *v.* RACKLEY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 695 Fed. Appx. 236.

No. 17–9296. HASTINGS *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 17–9297. HAMILTON *v.* STRAHOTA, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 17–9298. GLOVER *v.* WOODS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 17–9299. GALVAN *v.* STEWART, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 705 Fed. Appx. 392.

No. 17–9300. HAWKINS *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 208.

No. 17–9301. FOUNTAIN *v.* RUPERT, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 17–9302. Howard *v.* Texas. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 527 S. W. 3d 348.

No. 17–9303. Geotcha *v.* Texas. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 17–9304. Fabricant *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 677 Fed. Appx. 408.

No. 17–9305. Wright *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 692 Fed. Appx. 873.

No. 17–9307. Kirkpatrick *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 357.

No. 17–9308. Johnson *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 1007.

No. 17–9309. Maxwell *v.* California. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 17–9311. Johnson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 699 Fed. Appx. 224.

No. 17–9312. Higley *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 726 Fed. Appx. 715.

No. 17–9313. McMahon *v.* Neven, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 17–9314. Miller *v.* Jones, Secretary, Florida Department of Corrections. Sup. Ct. Fla. Certiorari denied. Reported below: 237 So. 3d 921.

No. 17–9315. Aguilar *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 246.

No. 17–9316. Edwards *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 694 Fed. Appx. 770.

No. 17–9317. Hall *v.* City of Detroit, Michigan, et al. C. A. 6th Cir. Certiorari denied.

No. 17–9318. Inman *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 17–9319. GIVENS *v.* ALLEN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 17–9320. HYDE-EL *v.* POOLE. C. A. 4th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 203.

No. 17–9321. GUZMAN *v.* MADDEN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 17–9322. HAFFER *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied.

No. 17–9325. NELSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 17–9327. MALLORY *v.* SIMON & SCHUSTER, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 728 Fed. Appx. 132.

No. 17–9328. MALDONADO-ZELAYA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 424.

No. 17–9329. JEFFRIES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 235 So. 3d 283.

No. 17–9330. MELTON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 17–9331. CHASSON, AKA ALIAS, AKA HASON *v.* SESSIONS, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 17–9333. THYBERG *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 847.

No. 17–9334. SMITH *v.* MYRICK, SUPERINTENDENT, TWO RIVERS CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 17–9335. SMITH *v.* CAIN, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 17–9336. SHEFFIELD *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 438.

No. 17–9337. SUSALLA *v.* HARRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 17–9338. SCHNAGL *v.* MINNESOTA. Ct. App. Minn. Certiorari denied. Reported below: 907 N. W. 2d 188.

No. 17–9341. MCLAMB *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 880 F. 3d 685.

No. 17–9342. MEDINA-AVALOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 434.

No. 17–9343. JENKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 241.

No. 17–9344. ENGLAND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 798.

No. 17–9345. LASCHKEWITSCH *v.* TRANSAMERICA LIFE INSURANCE CO. C. A. 4th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 275.

No. 17–9346. WOODWARD *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 54 Kan. App. 2d xxxiii, 398 P. 3d 880.

No. 17–9347. ALDANA ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 878 F. 3d 877.

No. 17–9348. BOWLES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 235 So. 3d 292.

No. 17–9349. JOHNSON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 17–9350. THI HOUNG LE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 249.

No. 17–9351. TRIPLETT *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 2017 WY 148, 406 P. 3d 1257.

No. 17–9352. VIOLA *v.* BENNETT. C. A. 6th Cir. Certiorari denied.

No. 17–9354. WALKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–9356. WALSH *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 288 Ore. App. 278, 406 P. 3d 123.

No. 17–9357. DEASON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 17–9358. GRAVES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 877 F. 3d 494.

No. 17–9359. LUNA VALDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 17–9360. BOOKER *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 235 So. 3d 298.

No. 17–9361. BELL *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 235 So. 3d 287.

No. 17–9362. DOCKERY *v.* CLARK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 17–9363. MCFARLIN *v.* HARRIS, CLERK, SUPREME COURT OF THE UNITED STATES, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 354.

No. 17–9364. MOLINA *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 181 A. 3d 412.

No. 17–9365. OKOH *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 17–9367. NEWBERG *v.* PALMER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 726 Fed. Appx. 586.

No. 17–9368. RANDLE *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 17–9370. SANTAMARIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 464.

No. 17–9371. SIMS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 17–9372. CESAR RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 470.

No. 17–9373. REECE *v.* BASI ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 704 Fed. Appx. 685.

No. 17–9375. DILLBECK *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 234 So. 3d 558.

No. 17–9376. Duran *v.* Grounds, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 728.

No. 17–9380. Long *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 235 So. 3d 293.

No. 17–9381. Mayo *v.* Oppman et al. C. A. 3d Cir. Certiorari denied.

No. 17–9382. Lewis *v.* Jones, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 17–9383. Mitchell *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 17–9385. Mayhew *v.* Arizona. Ct. App. Ariz. Certiorari denied.

No. 17–9386. Bradley *v.* Jones, Secretary, Florida Department of Corrections. Sup. Ct. Fla. Certiorari denied. Reported below: 238 So. 3d 95.

No. 17–9387. Tappen *v.* Jones, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 630.

No. 17–9388. Towne *v.* Vermont. Sup. Ct. Vt. Certiorari denied. Reported below: 2018 VT 5, 206 Vt. 615, 182 A. 3d 1149.

No. 17–9389. Foster *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 235 So. 3d 290.

No. 17–9390. Martinez-Gonzalez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 407.

No. 17–9391. Jiyao Jiang *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 715 Fed. Appx. 91.

No. 17–9392. Grant *v.* White et al. C. A. 9th Cir. Certiorari denied. Reported below: 703 Fed. Appx. 523.

No. 17–9393. Gaspard et al. *v.* Drug Enforcement Administration Task Force et al. C. A. 9th Cir. Certiorari denied. Reported below: 698 Fed. Appx. 382.

No. 17–9394. Farooq *v.* Russell, Warden. C. A. 6th Cir. Certiorari denied.

No. 17–9395. Hines *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 17–9396. Houk *v.* Iowa. Ct. App. Iowa. Certiorari denied. Reported below: 898 N. W. 2d 202.

No. 17–9397. Horsley *v.* Jones, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 937.

No. 17–9398. Rock *v.* Executive Office Park of Durham Assn., Inc. Sup. Ct. N. C. Certiorari denied. Reported below: 370 N. C. 585, 809 S. E. 2d 602.

No. 17–9401. Quince *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 233 So. 3d 1017.

No. 17–9403. Roby *v.* Demoura, Superintendent, Massachusetts Correctional Institution at Concord. C. A. 1st Cir. Certiorari denied.

No. 17–9404. Burgett *v.* Porter et al. C. A. 8th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 271.

No. 17–9405. Ivory *v.* Hubbard. C. A. 8th Cir. Certiorari denied.

No. 17–9406. Ingram *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 17–9407. Isasi *v.* Annucci, Acting Commissioner, New York Department of Corrections and Community Supervision. C. A. 2d Cir. Certiorari denied.

No. 17–9408. Zografidis *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 729 Fed. Appx. 41.

No. 17–9409. Sutton *v.* Tennessee. Ct. Crim. App. Tenn. Certiorari denied.

No. 17–9410. Olivo Ramirez *v.* Hooks, Secretary, North Carolina Department of Public Safety. C. A. 4th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 179.

No. 17–9412. HANKISHIYEV *v.* ARUP LABORATORIES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 673.

No. 17–9414. COLTON *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA. C. A. 8th Cir. Certiorari denied.

No. 17–9415. ROBINSON *v.* SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE, AND PARDON SERVICES, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 706 Fed. Appx. 809.

No. 17–9416. KELLY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 17–9417. SEALED APPELLANT *v.* SEALED APPELLEE. C. A. 5th Cir. Certiorari denied.

No. 17–9418. BARTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 879 F. 3d 595.

No. 17–9419. PAIGE *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 17–9420. PORTER *v.* JOYNER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 709 Fed. Appx. 227.

No. 17–9421. OBEGINSKI *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 338 Ga. App. XXVII.

No. 17–9422. NUNN *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 17–9423. WOODS *v.* ARIZONA. C. A. 9th Cir. Certiorari denied.

No. 17–9424. MCBRIDE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 285.

No. 17–9425. MOORE *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 152 Ohio St. 3d 1419, 2018-Ohio-923, 93 N. E. 3d 1001.

No. 17–9426. MILLER *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 17–9427. CARTER *v.* SHERRILL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 698 Fed. Appx. 111.

No. 17–9428. JOHNSON *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 17–9429. MANZO-RIOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 773.

No. 17–9430. JACKSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 631.

No. 17–9431. LAWRENCE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 236 So. 3d 240.

No. 17–9432. JENKINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 17–9433. JUNOD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 17–9434. JAMES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 196.

No. 17–9435. DAVIS *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 235 So. 3d 301.

No. 17–9437. MORALES-VELEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 17–9438. WEST *v.* SESSIONS, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 17–9439. WINDOM *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 234 So. 3d 556.

No. 17–9440. LISTER *v.* MCGINLEY, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied.

No. 17–9441. LEON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 709 Fed. Appx. 673.

No. 17–9442. JUDY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 17–9444. STEPHENS ET AL. *v.* CITY OF ENGLEWOOD, NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 689 Fed. Appx. 710.

No. 17–9445. Suarez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 653.

No. 17–9448. Johnson *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied.

No. 17–9449. Cottrell *v.* South Carolina. Sup. Ct. S. C. Certiorari denied. Reported below: 421 S. C. 622, 809 S. E. 2d 423.

No. 17–9450. Patterson *v.* Asuncion, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 936.

No. 17–9451. Morel et al. *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 885 F. 3d 17.

No. 17–9452. Myhre *v.* Seventh-Day Adventist Church Reform Movement American Union International Missionary Society et al. C. A. 11th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 926.

No. 17–9453. Prillerman *v.* Huggins et al. C. A. 8th Cir. Certiorari denied.

No. 17–9454. Halper *v.* Colorado. Dist. Ct. Colo., Ouray County. Certiorari denied.

No. 17–9455. Bolanos *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 822.

No. 17–9456. Carroll *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 659.

No. 17–9457. Johnson *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 883.

No. 17–9459. Peters *v.* Satkiewicz et al. C. A. 7th Cir. Certiorari denied.

No. 17–9460. McKnight *v.* Bishop, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 151.

No. 17–9461. Bulovic *v.* Stop & Shop Supermarket Co., LLC, et al. C. A. 2d Cir. Certiorari denied. Reported below: 698 Fed. Appx. 21.

No. 17–9462. Crawford *v.* United States. C. A. 4th Cir. Certiorari denied.

No. 17–9463. ROJAS *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 240 So. 3d 701.

No. 17–9464. PETERSON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 2017 IL 120331, 106 N. E. 3d 944.

No. 17–9466. MOORE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2017 IL App (1st) 150240–U.

No. 17–9470. ILDEFONSO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 661.

No. 17–9471. GARCIA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 17–9472. FRANCO-DE LA CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 469.

No. 17–9473. ANTONIO GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 404.

No. 17–9475. HEATH *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 237 So. 3d 931.

No. 17–9476. ELGHANNAM *v.* EDUCATIONAL TESTING SERVICE. Ct. App. D. C. Certiorari denied. Reported below: 171 A. 3d 185.

No. 17–9477. GRANT *v.* ALPEROVICH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 703 Fed. Appx. 556.

No. 17–9478. FISHER *v.* MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 17–9479. WRIGHT *v.* MARTIN ET AL. C. A. 11th Cir. Certiorari denied.

No. 17–9481. WYATT *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 242 So. 3d 363.

No. 17–9482. WEEKS *v.* LEWIS, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 17–9483. GREGORY *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 342 Ga. App. 411, 803 S. E. 2d 367.

No. 17–9485. LEBLANC-SIMPSON *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied.

No. 17–9486. KIMBALL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 716.

No. 17–9487. RODRIGUEZ *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 92 Mass. App. 1115, 94 N. E. 3d 880.

No. 17–9488. BROWN *v.* ILLINOIS DEPARTMENT OF HUMAN SERVICES. C. A. 7th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 623.

No. 17–9489. LEBRON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 17–9491. MCKISSICK *v.* DEAL, GOVERNOR OF GEORGIA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 17–9492. CLARK *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 238 So. 3d 99.

No. 17–9493. DAMREN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 236 So. 3d 230.

No. 17–9494. CHRISTIAN *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 306.

No. 17–9495. BURKS *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 881 F. 3d 663.

No. 17–9496. PETERKA *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 237 So. 3d 903.

No. 17–9497. OCCHICONE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 235 So. 3d 299.

No. 17–9498. HARTLEY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 237 So. 3d 908.

No. 17–9499. ATWATER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 234 So. 3d 550.

No. 17–9500. SWINTON *v.* RACETTE, SUPERINTENDENT, GREAT MEADOWS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 17–9502. STEVENSON *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 235 Md. App. 749.

No. 17–9503. Rogers *v.* Liberty Bell Bank. C. A. 3d Cir. Certiorari denied. Reported below: 726 Fed. Appx. 147.

No. 17–9504. Ray *v.* McCollum, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 517.

No. 17–9505. Dotson *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 17–9506. Walker *v.* Howell, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 760.

No. 17–9507. Thompson *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 492.

No. 17–9508. Dove *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 17–9509. Estremera *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 17–9510. Walls *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 238 So. 3d 96.

No. 17–9511. Knapp *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 17–9512. Jones *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 729 Fed. Appx. 21.

No. 17–9513. Lykins *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 17–9514. Wagner *v.* Ford, Warden. C. A. 6th Cir. Certiorari denied.

No. 17–9515. Walton *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 17–9516. Taulbee *v.* Noble, Warden. C. A. 6th Cir. Certiorari denied.

No. 17–9517. DeNoma *v.* Kasich, Governor of Ohio, et al. C. A. 6th Cir. Certiorari denied.

No. 17–9518. Carpenter *v.* White et al. C. A. 7th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 553.

No. 17–9519. HARDIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 281.

No. 17–9520. PHILLIPS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 234 So. 3d 547.

No. 17–9521. HERRINGTON *v.* OHIO. Ct. App. Ohio, 8th App. Dist., Cuyahoga County. Certiorari denied.

No. 17–9522. HORTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 17–9523. BREKHUS *v.* CITY OF BISMARCK, NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 2018 ND 84, 908 N. W. 2d 715.

No. 17–9524. CRUMBLE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 878 Fed. Appx. 656.

No. 17–9525. WALL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 3 Cal. 5th 1048, 404 P. 3d 1209.

No. 17–9526. CRUZ *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 11th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 875.

No. 17–9527. JAVIER JASSO *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 729.

No. 17–9528. LOPEZ-FUENTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 341.

No. 17–9529. EDENSTROM *v.* THURSTON COUNTY, WASHINGTON, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 752.

No. 17–9531. HAYS *v.* SOTO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 17–9532. HUBBARD *v.* HAVILAND, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 17–9533. FOX *v.* TRIPP ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 787.

No. 17–9534. FLETCHER *v.* LENGERICH, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 702 Fed. Appx. 795.

No. 17–9536. KOKAL *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 237 So. 3d 907.

No. 17–9537. MARQUARD *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 234 So. 3d 560.

No. 17–9539. HOOD *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 17–9540. FARMER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 699 Fed. Appx. 218.

No. 17–9541. FRITZ *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 17–9542. GRIFFITH *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 17–9543. SOLIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 632.

No. 17–9544. REED *v.* FORD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 17–9545. STEIN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 237 So. 3d 919.

No. 17–9546. RALEIGH *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 239 So. 3d 1185.

No. 17–9547. CAUKIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 17–9548. WILLACY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 238 So. 3d 100.

No. 17–9550. TORRES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 17–9551. MCCLURE *v.* OREGON BOARD OF PAROLE AND POST-PRISON SUPERVISION. Ct. App. Ore. Certiorari denied. Reported below: 288 Ore. App. 702, 406 P. 3d 241.

No. 17–9552. MORRIS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 236 So. 3d 324.

No. 17–9553. MERRIWEATHER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 498.

No. 17–9554. NELSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 235 So. 3d 308.

No. 17–9555. MELTON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 236 So. 3d 234.

No. 17–9557. OROZCO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 504.

No. 17–9558. AVALOS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 17–9561. POLK *v.* HILL, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 700 Fed. Appx. 688.

No. 17–9562. TAYLOR *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 342 Ga. App. 814, 805 S. E. 2d 131.

No. 17–9563. INGRAM *v.* DIAZ, ACTING SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 17–9564. JACKSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 237 So. 3d 905.

No. 17–9565. CHATMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–9566. PINKNEY *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 876 F. 3d 1290.

No. 17–9567. BROWN *v.* DEL NORTE COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 17–9569. BRADFIELD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 698 Fed. Appx. 838.

No. 17–9570. DAVIS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 235 So. 3d 295.

No. 17–9571. CUEVAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 436.

No. 17–9573. HODGES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 236 So. 3d 241.

No. 17–9574. FLOWERS *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 907 N. W. 2d 901.

No. 17–9575. GONZALEZ *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 240 So. 3d 629.

No. 17–9576. PELLUM *v.* FISHER ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 233 Md. App. 755 and 762.

No. 17–9577. MCKINNEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 827.

No. 17–9578. MCCLINTON *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2018 Ark. 116, 542 S. W. 3d 859.

No. 17–9579. RUSSELL *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 299 Neb. 483, 908 N. W. 2d 669.

No. 17–9580. JOHNSON *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 17–9581. VELO-CANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 352.

No. 17–9582. CORKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–9583. WINTERS *v.* CINCINNATI INSURANCE CO. Ct. App. Utah. Certiorari denied.

No. 17–9584. SHAMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 17–9585. HATCHER *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 17–9586. ZENQUIS *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 17–9587. GAMBLE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 235 So. 3d 288.

No. 17–9588. FINNEY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 235 So. 3d 279.

No. 17–9590. FOX *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 17–9591. HARDY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 17–9592. MARTINEZ-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 358.

No. 17–9593. KNOX *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 883 F. 3d 1262.

No. 17–9594. KRASKEY *v.* GROSCHEN. Ct. App. Minn. Certiorari denied.

No. 17–9595. SHARNESE *v.* LOPEZ ET AL. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 18–1. C. G. *v.* DEBORAH HEART AND LUNG CENTER ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 18–3. OHLENDORF ET AL. *v.* LOCAL 876, UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION. C. A. 6th Cir. Certiorari denied. Reported below: 883 F. 3d 636.

No. 18–4. GIANCARLO ET AL. *v.* UBS FINANCIAL SERVICES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 725 Fed. Appx. 278.

No. 18–5. RILEY *v.* OHIO. Ct. App. Ohio, 4th App. Dist., Washington County. Certiorari denied. Reported below: 2017-Ohio-5819.

No. 18–6. MCNEIL *v.* MARSH ET AL. Ct. Civ. App. Okla. Certiorari denied.

No. 18–9. WASHINGTON *v.* AZAR, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 279.

No. 18–10. ANDERSON ET UX. *v.* RAINSDON, CHAPTER 7 TRUSTEE. C. A. 9th Cir. Certiorari denied.

No. 18–11. KAN-DI-KI, LLC, DBA DIAGNOSTIC LABORATORIES *v.* SORENSEN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 432.

No. 18–13. FRANCISCO MALDONADO *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 18–19. REPUBLIC OF KOREA'S DEFENSE ACQUISITION PROGRAM ADMINISTRATION ET AL. *v.* BAE SYSTEMS SOLUTION &

SERVICES, INC. C. A. 4th Cir. Certiorari denied. Reported below: 884 F. 3d 463.

No. 18–20. BANGIYEV *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 116.

No. 18–21. ALLERGAN SALES, LLC *v.* SANDOZ, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 717 Fed. Appx. 991.

No. 18–22. YOUNG SUNG LEE ET AL. *v.* GARVEY. C. A. 2d Cir. Certiorari denied. Reported below: 718 Fed. Appx. 11.

No. 18–23. STOLZ, DBA ROYCE INTERNATIONAL BROADCASTING CO. *v.* FEDERAL COMMUNICATIONS COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 882 F. 3d 234.

No. 18–24. HYLAND *v.* LIBERTY MUTUAL FIRE INSURANCE CO. C. A. 7th Cir. Certiorari denied. Reported below: 885 F. 3d 482.

No. 18–25. MANDEL *v.* THRASHER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 186.

No. 18–26. SCHAFLER *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH INC. C. A. 2d Cir. Certiorari denied. Reported below: 707 Fed. Appx. 751.

No. 18–27. ESTATE OF JACKSON ET AL. *v.* SCHRON. C. A. 11th Cir. Certiorari denied. Reported below: 873 F. 3d 1325.

No. 18–28. BALDING *v.* SUNBELT STEEL TEXAS, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 718 Fed. Appx. 742.

No. 18–30. BYRD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 697 Fed. Appx. 431.

No. 18–31. BECK *v.* NATIONSTAR MORTGAGE, LLC, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 700 Fed. Appx. 691.

No. 18–32. PHILADELPHIA TAXI ASSN., INC., ET AL. *v.* UBER TECHNOLOGIES, INC. C. A. 3d Cir. Certiorari denied. Reported below: 886 F. 3d 332.

No. 18–33. SUBWAY SANDWICH SHOPS, INC. *v.* RAHMANY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 752.

No. 18–34. San Martin *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 237 So. 3d 930.

No. 18–38. Erwin *v.* Department of the Army. C. A. Fed. Cir. Certiorari denied. Reported below: 708 Fed. Appx. 1019.

No. 18–40. Legacy Community Health Services, Inc. *v.* Smith, Executive Commissioner, Texas Health and Human Services Commission. C. A. 5th Cir. Certiorari denied. Reported below: 881 F. 3d 358.

No. 18–41. Baptiste *v.* Gray. Sup. Ct. Fla. Certiorari denied.

No. 18–43. Loor *v.* Bailey et al. C. A. 11th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 992.

No. 18–44. Kwok et al. *v.* Mingo Energy, LLC. Ct. Civ. App. Okla. Certiorari denied. Reported below: 2018 OK CIV APP 33, 417 P. 3d 393.

No. 18–45. Whitehead *v.* Netflix et al. C. A. 5th Cir. Certiorari denied.

No. 18–46. City of Middletown, Connecticut, et al. *v.* McKinney. C. A. 2d Cir. Certiorari denied. Reported below: 712 Fed. Appx. 97.

No. 18–47. McClary et al. *v.* Commodores Entertainment Corp. C. A. 11th Cir. Certiorari denied. Reported below: 879 F. 3d 1114.

No. 18–49. Plumb et al. *v.* U. S. Bank N. A. et al. Ct. App. Wash. Certiorari denied. Reported below: 1 Wash. App. 2d 1045.

No. 18–51. Francis et ux. *v.* Commissioner of Internal Revenue. C. A. 8th Cir. Certiorari denied.

No. 18–52. Leitner-Wise *v.* LWRC International, LLC, et al. C. A. Fed. Cir. Certiorari denied. Reported below: 711 Fed. Appx. 646.

No. 18–53. Dillard *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 884 F. 3d 758.

No. 18–54. DABBS *v.* ANNE ARUNDEL COUNTY, MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 458 Md. 331, 182 A. 3d 798.

No. 18–55. DIGITAL ALLY, INC. *v.* TASER INTERNATIONAL, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 720 Fed. Appx. 1023.

No. 18–57. VALLEJOS *v.* LOVELACE MEDICAL CENTER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 696 Fed. Appx. 923.

No. 18–58. PRICE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 241.

No. 18–59. PINEIRO PEREZ ET AL. *v.* BP, P. L. C., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 360.

No. 18–60. GUNN *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 2018 ND 95, 909 N. W. 2d 701.

No. 18–62. COLBRY ET AL. *v.* VON PIER, DIRECTOR, NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–63. BRIGGS *v.* SONY PICTURES ENTERTAINMENT, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 712.

No. 18–65. ARONSTEIN ET AL. *v.* THOMPSON CREEK METALS CO., INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 711 Fed. Appx. 489.

No. 18–66. ROSS *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 18–68. CONFORTO *v.* SPENCER, SECRETARY OF THE NAVY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 669.

No. 18–69. YAN PING XU *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 700 Fed. Appx. 62.

No. 18–70. COSBY *v.* DICKINSON. Ct. App. Cal., 2d App. Dist., Div. 8. Certiorari denied. Reported below: 17 Cal. App. 5th 655, 225 Cal. Rptr. 3d 430.

No. 18–71. CANETE *v.* BARNABAS HEALTH SYSTEM ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 718 Fed. Appx. 168.

No. 18–72. DRK PHOTO *v.* JOHN WILEY & SONS, INC. C. A. 2d Cir. Certiorari denied. Reported below: 882 F. 3d 394.

No. 18–74. ZOVKO ET AL. *v.* NATIONAL CREDIT UNION ADMINISTRATION BOARD. C. A. 6th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 567.

No. 18–75. JIAN LONG DONG, AKA JIAN RONG DONG *v.* SESSIONS, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied.

No. 18–76. GEORGE ET AL. *v.* HARGETT, TENNESSEE SECRETARY OF STATE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 879 F. 3d 711.

No. 18–79. KLEIN ET AL. *v.* O'BRIEN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 884 F. 3d 754.

No. 18–80. MELVIN *v.* O'ROURKE, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 714 Fed. Appx. 1002.

No. 18–82. COTMAN ET AL. *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 342 Ga. App. 569, 804 S. E. 2d 672.

No. 18–83. BUSCH ET AL. *v.* NAPPIER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 571.

No. 18–85. STUART *v.* RYAN ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 232 So. 3d 418.

No. 18–87. SAMSON, TRUSTEE FOR THE HEIRS AND NEXT OF KIN OF SAMSON, DECEASED *v.* GORDON ET AL. Ct. App. Minn. Certiorari denied.

No. 18–90. COLONIAL SCHOOL DISTRICT *v.* RENA C. C. A. 3d Cir. Certiorari denied. Reported below: 890 F. 3d 404.

No. 18–91. PIZZINO *v.* NCL (BAHAMAS) LTD., DBA NORWEGIAN CRUISE LINE. C. A. 11th Cir. Certiorari denied. Reported below: 709 Fed. Appx. 563.

No. 18–92. PERRY *v.* KRIEGMAN. C. A. 9th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 922.

No. 18–94. THOMAS *v.* DELMARVA POWER & LIGHT CO. C. A. 4th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 301.

No. 18–95. WENTZELL ET AL. *v.* BP AMERICA, INC., ET AL. C. A. 5th Cir. Certiorari denied.

No. 18–100. DRANE *v.* SELLERS, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 18–101. EVERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 322.

No. 18–102. WHITE ET AL. *v.* FOSTER ET AL. Sup. Ct. N. H. Certiorari denied.

No. 18–103. VAN *v.* LANGUAGE LINE LLC ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 349.

No. 18–104. TUERK *v.* DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 18–105. SABENIANO *v.* CITIBANK, N. A., ET AL. C. A. 2d Cir. Certiorari denied.

No. 18–111. BARRETT *v.* MINOR. Sup. Ct. Va. Certiorari denied.

No. 18–117. GRIMM *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 458 Md. 602, 183 A. 3d 167.

No. 18–120. HERNANDEZ *v.* BAILEY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 298.

No. 18–126. GRIMSTAD *v.* DESCHUTES COUNTY, OREGON, ET AL. Sup. Ct. Ore. Certiorari denied.

No. 18–130. KARR *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 96 N. E. 3d 126.

No. 18–131. LYNDON *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 9th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 816.

No. 18–133. MOORE *v.* BRAMWELL ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied.

No. 18–134. PERKINS *v.* US AIRWAYS, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 709 Fed. Appx. 188.

No. 18–135. New Products Corp. *v.* Tibble et al. C. A. 6th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 379.

No. 18–137. Hunter *v.* District of Columbia. Ct. App. D. C. Certiorari denied. Reported below: 185 A. 3d 715.

No. 18–139. Freeman *v.* North Carolina Department of Health and Human Services. Sup. Ct. N. C. Certiorari denied. Reported below: 370 N. C. 690, 811 S. E. 2d 597.

No. 18–141. Baroni *v.* CIT Bank N. A., fka OneWest Bank FSB et al. C. A. 9th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 773.

No. 18–143. Bart *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 888 F. 3d 374.

No. 18–144. Baranski *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 880 F. 3d 951.

No. 18–145. Alston *v.* South Carolina. Sup. Ct. S. C. Certiorari denied. Reported below: 422 S. C. 270, 811 S. E. 2d 747.

No. 18–146. Marcoski *v.* Rath. C. A. 11th Cir. Certiorari denied. Reported below: 718 Fed. Appx. 910.

No. 18–154. Rooks *v.* Brewer, Warden. C. A. 6th Cir. Certiorari denied.

No. 18–155. Brady *v.* Associated Press Telecom et al. C. A. 2d Cir. Certiorari denied. Reported below: 714 Fed. Appx. 62.

No. 18–159. Clack *v.* United Services Automobile Assn. C. A. 5th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 356.

No. 18–160. Kinney *v.* United States Court of Appeals for the Ninth Circuit. C. A. 9th Cir. Certiorari denied.

No. 18–163. Teufel *v.* Northern Trust Co. et al. C. A. 7th Cir. Certiorari denied. Reported below: 887 F. 3d 799.

No. 18–174. Applied Underwriters Captive Risk Assurance Co., Inc. *v.* Citizens of Humanity, LLC, et al. Sup. Ct.

Neb. Certiorari denied. Reported below: 299 Neb. 545, 909 N. W. 2d 614.

No. 18–175. Applied Underwriters, Inc., et al. *v.* Citizens of Humanity, LLC, et al. Ct. App. Cal., 2d App. Dist., Div. 2. Certiorari denied. Reported below: 17 Cal. App. 5th 806, 226 Cal. Rptr. 3d 1.

No. 18–178. SGK Properties, L. L. C., et al. *v.* U. S. Bank N. A. et al. C. A. 5th Cir. Certiorari denied. Reported below: 881 F. 3d 933.

No. 18–179. Goodman *v.* Florida. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 229 So. 3d 366.

No. 18–180. Tirrez *v.* Commission for Lawyer Discipline et al. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 18–186. Silva-Ramirez *v.* Hospital Espanol Auxilio Mutuo de Puerto Rico, Inc., et al. C. A. 1st Cir. Certiorari denied.

No. 18–189. Smartflash LLC *v.* Samsung Electronics America, Inc., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 718 Fed. Appx. 985.

No. 18–190. Queen's University at Kingston *v.* Samsung Electronics Co., Ltd., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 708 Fed. Appx. 680.

No. 18–191. Cassidy *v.* Massachusetts. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 479 Mass. 527, 96 N. E. 3d 691.

No. 18–193. Cannici *v.* Village of Melrose Park, Illinois, et al. C. A. 7th Cir. Certiorari denied. Reported below: 885 F. 3d 476.

No. 18–196. Supeno et al. *v.* Secretary, Vermont Agency of Natural Resources. Sup. Ct. Vt. Certiorari denied. Reported below: 2018 VT 30, 207 Vt. 108, 185 A. 3d 1264.

No. 18–199. Liang *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 927.

No. 18–202. Haynes Timberland, Inc. *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 18–208. New Products Corp. et al. *v.* Dickinson Wright, PLLC, et al. C. A. 6th Cir. Certiorari denied. Reported below: 890 F. 3d 244.

No. 18–216. Paixao et al. *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 885 F. 3d 1203.

No. 18–219. Sewell *v.* Fidelity National Financial, Inc. C. A. 4th Cir. Certiorari denied. Reported below: 718 Fed. Appx. 212.

No. 18–221. Mouton *v.* Arkansas. Sup. Ct. Ark. Certiorari denied. Reported below: 2018 Ark. 187, 547 S. W. 3d 76.

No. 18–226. Zahnd *v.* Office of Chief Disciplinary Counsel, Supreme Court of Missouri. Sup. Ct. Mo. Certiorari denied.

No. 18–236. Weddle *v.* Nutzman et al. C. A. 9th Cir. Certiorari denied. Reported below: 725 Fed. Appx. 596.

No. 18–264. New World International, Inc., et al. *v.* Ford Global Technologies, LLC, et al. C. A. Fed. Cir. Certiorari denied. Reported below: 714 Fed. Appx. 1021.

No. 18–5001. Hancock *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 18–5005. Dawkins *v.* Eckert, Superintendent, Wende Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 18–5006. Deuman *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 18–5007. Tua *v.* California. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied. Reported below: 18 Cal. App. 5th 1136, 228 Cal. Rptr. 3d 143.

No. 18–5009. Drummond *v.* Sessions, Attorney General. C. A. 2d Cir. Certiorari denied.

No. 18–5010. Chang *v.* Andrews. Ct. App. Cal., 1st App. Dist., Div. 5. Certiorari denied.

No. 18–5011. Cardona *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 709 Fed. Appx. 275.

No. 18–5012. Lightbourne *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 235 So. 3d 285.

No. 18–5013. LANGLEY *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 716 Fed. Appx. 960.

No. 18–5014. ALLEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–5015. APONTE *v.* TICE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–5016. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 722.

No. 18–5018. QUINCE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 241 So. 3d 58.

No. 18–5019. SENIW *v.* CONNECTICUT GENERAL ASSEMBLY ET AL. C. A. 2d Cir. Certiorari denied.

No. 18–5021. BROWN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 235 So. 3d 289.

No. 18–5022. WATSON, AKA SEUI, ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 881 F. 3d 782.

No. 18–5023. EDWARDS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 717 Fed. Appx. 166.

No. 18–5024. DIXON *v.* LEGRAND, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 679 Fed. Appx. 571.

No. 18–5027. WRIGHT *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 18–5028. EDLIND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 887 F. 3d 166.

No. 18–5029. BLACK *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 522 S. W. 3d 2.

No. 18–5031. WALLACE *v.* KAUFFMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–5032. VASQUEZ *v.* CITY OF READING, PENNSYLVANIA, ET AL. Sup. Ct. Pa. Certiorari denied.

No. 18–5033. Dawson *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 991.

No. 18–5034. Anderson *v.* North Dakota et al. C. A. 8th Cir. Certiorari denied.

No. 18–5035. Grazzini-Rucki *v.* Minnesota. Ct. App. Minn. Certiorari denied.

No. 18–5037. Hamilton *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 236 So. 3d 276.

No. 18–5040. Sireci *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 237 So. 3d 916.

No. 18–5041. Robinson *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 18–5042. Sliney *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 235 So. 3d 310.

No. 18–5043. St. Amour *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 886 F. 3d 1009.

No. 18–5044. Angulo Riascos *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 18–5045. Brown *v.* United States District Court for the Western District of Pennsylvania. C. A. 3d Cir. Certiorari denied. Reported below: 714 Fed. Appx. 199.

No. 18–5046. Magno Zamora *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 18–5047. Tutt *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 766.

No. 18–5048. Taylor *v.* Brown, Superintendent, Wabash Valley Correctional Facility. C. A. 7th Cir. Certiorari denied.

No. 18–5049. Wells *v.* Peters et al. C. A. 9th Cir. Certiorari denied.

No. 18–5050. Whitney *v.* Trump, President of the United States. C. A. 8th Cir. Certiorari denied.

No. 18–5051. DERRICK *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 236 So. 3d 231.

No. 18–5053. LOPEZ-MARTINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 992.

No. 18–5054. JENNINGS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 237 So. 3d 909.

No. 18–5055. STEVENS *v.* VANNOY, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 718 Fed. Appx. 313.

No. 18–5056. BOUZIDEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 725 Fed. Appx. 653.

No. 18–5057. BAGBY *v.* HYATTE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 18–5058. DRAKE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 780.

No. 18–5059. BEDELL *v.* JORDAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–5060. FOTOPOULOS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 237 So. 3d 911.

No. 18–5061. HORNE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–5062. HUNTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–5063. BYERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 18–5065. ANTONIO RODRIGUEZ *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 237 So. 3d 918.

No. 18–5066. RAY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 18–5067. STUHR *v.* WHITE, SUPERINTENDENT, WASHINGTON CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 18–5068. TAYLOR *v.* LAMANNA, ACTING SUPERINTENDENT, BEDFORD HILLS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 18–5069. USCHOCK *v.* PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 711 Fed. Appx. 81.

No. 18–5072. EVANS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 684.

No. 18–5073. CRUZ-COLOCHO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 381.

No. 18–5074. MCLEAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 702 Fed. Appx. 81.

No. 18–5075. OKAFOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 352.

No. 18–5076. MELOT *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 5th Cir. Certiorari denied.

No. 18–5077. MCCOY *v.* MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 704 Fed. Appx. 286.

No. 18–5078. PACE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 237 So. 3d 912.

No. 18–5079. MICHAUD *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 4 Cal. 5th 790, 415 P. 3d 717.

No. 18–5080. PITTMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 197.

No. 18–5081. MORTON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 236 So. 3d 242.

No. 18–5082. SEDA *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 288.

No. 18–5083. FULTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 837 F. 3d 281.

No. 18–5084. BURNS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 234 So. 3d 555.

No. 18–5085. WILLIAMS *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 371 N. C. 111, 812 S. E. 2d 852.

No. 18–5086. UZZLE *v.* FLEMING, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 611.

No. 18–5087. WILSON *v.* PARAMO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–5088. JOHNSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 236 So. 3d 232.

No. 18–5089. BEAMON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 221.

No. 18–5091. FOSTER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 235 So. 3d 294.

No. 18–5093. CATERBONE *v.* TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–5094. SHERRY *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–5095. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 318.

No. 18–5096. TIBBETTS *v.* KASICH, GOVERNOR OF OHIO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 881 F. 3d 447.

No. 18–5097. TORRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 379.

No. 18–5098. WILLIAMS *v.* CURTIN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–5099. WILLIAMS *v.* LOS ANGELES COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 353.

No. 18–5100. RAHIM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 428.

No. 18–5102. ROBINSON *v.* SHAW, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied.

No. 18–5103. RIEBER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 265 So. 3d 318.

No. 18–5104. Reed *v.* Garman, Superintendent, State Correctional Institution at Rockview, et al. Sup. Ct. Pa. Certiorari denied.

No. 18–5106. Stewart *v.* Holder et al. C. A. 4th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 120.

No. 18–5107. Quinn *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 18–5108. Davila-Reyes *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 18–5109. Rankins *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2017 IL App (1st) 162145–U.

No. 18–5110. Spraggins *v.* Washburn, Warden. C. A. 6th Cir. Certiorari denied.

No. 18–5111. Gregory *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 18–5112. Robinson *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 405.

No. 18–5113. Hester *v.* Sprayberry. C. A. 11th Cir. Certiorari denied.

No. 18–5114. Faison *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 704 Fed. Appx. 252.

No. 18–5115. Hayward *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 706 Fed. Appx. 646.

No. 18–5116. Gibbs *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 690 Fed. Appx. 130.

No. 18–5117. Frazier *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 698 Fed. Appx. 80.

No. 18–5119. King *v.* King. Ct. Sp. App. Md. Certiorari denied.

No. 18–5120. Nelson *v.* Berryhill, Acting Commissioner of Social Security. C. A. 1st Cir. Certiorari denied.

No. 18–5122. Overton *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 236 So. 3d 238.

No. 18–5123. PARKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 289.

No. 18–5124. PIETRI *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 236 So. 3d 235.

No. 18–5125. FOSTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 709 Fed. Appx. 220.

No. 18–5126. HAMILTON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 18–5127. BLACK *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied.

No. 18–5129. TREJO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 396.

No. 18–5130. WATFORD *v.* FOSSUM ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 719 Fed. Appx. 24.

No. 18–5131. TU MY TONG *v.* NEW MEXICO ET AL. Ct. App. N. M. Certiorari denied.

No. 18–5133. HOPSON *v.* STARK COUNTY, OHIO, ET AL. C. A. 6th Cir. Certiorari denied.

No. 18–5134. FOWLKES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–5136. ILLARRAMENDI *v.* SECURITIES AND EXCHANGE COMMISSION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 703 Fed. Appx. 39.

No. 18–5138. PENNINGTON *v.* ARKANSAS GAME AND FISH COMMISSION. C. A. 8th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 609.

No. 18–5139. RUNNELS *v.* BORDELON, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 409.

No. 18–5140. M. P. F. *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 268 So. 3d 626.

No. 18–5141. FREDERIKSEN *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 18–5142. HEXIMER *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied.

No. 18–5143. GRAHAM *v.* HAINSWORTH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–5144. GUTIERREZ-JARAMILLO *v.* WARDEN, FEDERAL CORRECTIONAL INSTITUTION, GILMER. C. A. 4th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 311.

No. 18–5145. BENNETT *v.* WOLFE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 146.

No. 18–5146. TOGHILL *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 877 F. 3d 547.

No. 18–5148. BLALOCK *v.* OHIO. Ct. App. Ohio, 8th App. Dist., Cuyahoga County. Certiorari denied. Reported below: 2017-Ohio-2658.

No. 18–5149. CUBERO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–5150. CORREA-DIAZ *v.* SESSIONS, ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 881 F. 3d 523.

No. 18–5151. YAHNKE *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 2018 ND 66, 908 N. W. 2d 134.

No. 18–5152. HOWARD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 729 Fed. Appx. 181.

No. 18–5153. KNIFFLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 406.

No. 18–5154. RAY *v.* JEFFERSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 885.

No. 18–5155. QAZI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–5156. BATTIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 967.

No. 18–5158. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–5159. GOLDEN *v.* CALDWELL, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 18–5161. WADDLETON *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–5162. WELLS *v.* POTTER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–5163. THIER *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 241 So. 3d 851.

No. 18–5165. WILSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 18–5166. TAYLOR *v.* CLARK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–5167. BROWN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 3. Certiorari denied.

No. 18–5169. DAVIDSON *v.* FEDERAL BUREAU OF PRISONS. C. A. 6th Cir. Certiorari denied.

No. 18–5170. KHAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 236.

No. 18–5171. LOPEZ-MENDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 507.

No. 18–5172. MARQUEZ *v.* FILSON, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 924.

No. 18–5173. MEDINA GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 887 F. 3d 205.

No. 18–5174. GRIFFIN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 236 So. 3d 237.

No. 18–5177. MAJORS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 434.

No. 18–5178. Baltimore *v.* Buck. Sup. Ct. Ala. Certiorari denied.

No. 18–5179. Johnson *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 240 So. 3d 630.

No. 18–5180. Wen Liu *v.* University of Miami School of Medicine. C. A. 11th Cir. Certiorari denied. Reported below: 693 Fed. Appx. 793.

No. 18–5183. Holmes *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 18–5185. Zivot *v.* Superior Court of California, Contra Costa County, et al. Ct. App. Cal., 1st App. Dist., Div. 3. Certiorari denied.

No. 18–5186. Theresa *v.* Iancu, Director, United States Patent and Trademark Office. C. A. Fed. Cir. Certiorari denied. Reported below: 720 Fed. Appx. 634.

No. 18–5187. Tavares *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 18–5188. Wilks *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 718 Fed. Appx. 300.

No. 18–5189. Green *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 718 Fed. Appx. 141.

No. 18–5192. McLaughlin *v.* Ohio Department of Job & Family Services. Ct. App. Ohio, 10th App. Dist., Franklin County. Certiorari denied.

No. 18–5193. Brown *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 18–5194. Brank *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 527.

No. 18–5195. Alvarez *v.* Spearman, Warden. C. A. 9th Cir. Certiorari denied.

No. 18–5196. Corbin *v.* Federal Express, dba FedEx. C. A. 4th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 319.

No. 18–5197. DIXIT *v.* DIXIT. Ct. App. Ga. Certiorari denied.

No. 18–5198. JONES *v.* GRAND CANYON UNIVERSITY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 703 Fed. Appx. 612.

No. 18–5199. LEWIS *v.* HADARI. Super. Ct. N. J., App. Div. Certiorari denied.

No. 18–5200. KRUSKAL *v.* MELTZER ET AL. Ct. App. N. M. Certiorari denied.

No. 18–5201. LOWE *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 18–5202. KNOWLES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–5203. MUJAHID *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 297.

No. 18–5204. LUIS MORALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 839.

No. 18–5205. LITTLES *v.* ROUNDTREE. Sup. Ct. Fla. Certiorari denied.

No. 18–5206. OATMAN *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–5207. MONTOYA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–5210. ESPINOZA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 267.

No. 18–5211. TAYLOR B. *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 3. Certiorari denied.

No. 18–5212. BLANC *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 886 F. 3d 1318.

No. 18–5214. MCGINLEY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 174 A. 3d 47.

No. 18–5215. CONTRERAS MEJIA *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–5216. MARTIN *v.* MCLAUGHLIN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 18–5218. ROBERTSON *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2016–1742 (La. 4/6/18), 239 So. 3d 268.

No. 18–5219. CAMPBELL *v.* MENDEZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 683 Fed. Appx. 575.

No. 18–5220. LIBBY *v.* BAKER, WARDEN, ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 134 Nev. 973, 409 P. 3d 889.

No. 18–5221. GUIZAMANO-CORTES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 984.

No. 18–5224. COSTELON *v.* NEW MEXICO. C. A. 10th Cir. Certiorari denied. Reported below: 726 Fed. Appx. 696.

No. 18–5225. SAVAGE, AKA KAMARA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 885 F. 3d 212.

No. 18–5226. LUGO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 18–5227. HARRIS *v.* ESTES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–5229. NEUMAN *v.* NOOTH. C. A. 9th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 613.

No. 18–5231. ODOM *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 18–5233. ALEJANDRO RADILLO ET AL. *v.* NDOH, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 918.

No. 18–5235. THOMAS *v.* CHANDRAN. C. A. 4th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 263.

No. 18–5237. BLAND *v.* GELLMAN, BRYDGES & SCHROFF, ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 151 App. Div. 3d 1484, 58 N. Y. S. 3d 225.

No. 18–5238. WRIGHT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 235.

No. 18–5239. TERRELL *v.* OHIO. Ct. App. Ohio, 8th App. Dist., Cuyahoga County. Certiorari denied. Reported below: 2016-Ohio-4563.

No. 18–5240. WARD *v.* CARTER, COMMISSIONER, INDIANA DEPARTMENT OF CORRECTION, ET AL. Sup. Ct. Ind. Certiorari denied. Reported below: 90 N. E. 3d 660.

No. 18–5241. MATURINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 887 F. 3d 716.

No. 18–5242. MARTIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 353.

No. 18–5243. JACOB *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 18–5244. JENSEN *v.* MADDEN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–5245. RIOS-RAMOS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 18–5246. RIVERS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 18–5247. MCCRAY *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–5248. PAYNE, AKA POWER *v.* PUBLISHERS CLEARING HOUSE, INC., ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–5249. THOMAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 700.

No. 18–5250. MARINO *v.* DEPARTMENT OF JUSTICE ET AL. C. A. D. C. Cir. Certiorari denied.

No. 18–5253. DECIANCIO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 726 Fed. Appx. 333.

No. 18–5254. YOUNG *v.* OREGON DEPARTMENT OF CORRECTIONS ET AL. Ct. App. Ore. Certiorari denied. Reported below: 288 Ore. App. 853, 406 P. 3d 619.

No. 18–5255. GIBSON *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 718 Fed. Appx. 126.

No. 18–5256. Moragne-El *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 179 A. 3d 613.

No. 18–5257. Melvin *v.* Jones, Secretary, Florida Department of Corrections, et al. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 240 So. 3d 677.

No. 18–5258. Miller *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 18–5259. Nowlin *v.* Shannon et al. C. A. 5th Cir. Certiorari denied.

No. 18–5260. McGlocklin *v.* Blankenship et al. C. A. 11th Cir. Certiorari denied.

No. 18–5261. Patterson *v.* California. Ct. App. Cal., 2d App. Dist., Div. 2. Certiorari denied.

No. 18–5264. Jenkins et al. *v.* WMC Mortgage et al. Ct. App. D. C. Certiorari denied. Reported below: 184 A. 3d 851.

No. 18–5266. Ferguson *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 745.

No. 18–5267. Waters *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 883 F. 3d 1022.

No. 18–5269. St. Hubert *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 883 F. 3d 1319.

No. 18–5270. Deem *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 18–5272. Ben-Ari *v.* United States; and Ben-Ari *v.* United States District Court for the Middle District of Florida. C. A. 11th Cir. Certiorari denied.

No. 18–5273. Wilson *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 209.

No. 18–5274. Vega *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 905.

No. 18–5275. Counts *v.* Wilson, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 699 Fed. Appx. 779.

No. 18–5276. CLARK *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 18–5278. COLLINGS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 543 S. W. 3d 1.

No. 18–5279. HAYHOE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 734 Fed. Appx. 179.

No. 18–5280. LANIER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 879 F. 3d 141.

No. 18–5281. MOSLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 267.

No. 18–5282. MOSS *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 18–5283. MCGOWAN *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 18–5284. SMALL *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied.

No. 18–5286. SULEITOPA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 233.

No. 18–5287. SALAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–5290. LONG *v.* ROBINSON, ADMINISTRATOR, NORTHERN STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–5291. BALLARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 757.

No. 18–5292. ANGELES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 725 Fed. Appx. 624.

No. 18–5293. AUTOBEE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 701 Fed. Appx. 710.

No. 18–5294. PRIDGEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 171.

No. 18–5295. PEDRAZA *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–5297. Robinson *v.* Vannoy, Warden. C. A. 5th Cir. Certiorari denied.

No. 18–5299. Smith *v.* North Carolina. Ct. App. N. C. Certiorari denied. Reported below: 257 N. C. App. 389, 808 S. E. 2d 621.

No. 18–5300. Robinson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 227.

No. 18–5301. Clay *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 883 F. 3d 1056.

No. 18–5302. Dixon *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 334.

No. 18–5304. Sanchez Lopez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 445.

No. 18–5305. Johnson *v.* Copenhaver, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 883 F. 3d 756.

No. 18–5307. Hulen *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 879 F. 3d 1015.

No. 18–5308. Harris *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 873.

No. 18–5309. McLain *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 171.

No. 18–5310. Rhodes *v.* Baker, Warden, et al. C. A. 11th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 947.

No. 18–5311. Reid *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 732 Fed. Appx. 14.

No. 18–5312. Rowe *v.* Clark, Superintendent, State Correctional Institution at Albion, et al. C. A. 3d Cir. Certiorari denied.

No. 18–5315. Chambers *v.* Green Tree Servicing, L. L. C., et al. C. A. 5th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 439.

No. 18–5316. Vaughan *v.* Vaughan et al. Ct. App. N. C. Certiorari denied. Reported below: 256 N. C. App. 398, 806 S. E. 2d 80.

No. 18–5317. VILLANUEVA-CARDENAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 205.

No. 18–5318. TERRY *v.* STONEBREAKER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 236.

No. 18–5319. TOLBERT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 725 Fed. Appx. 319.

No. 18–5320. MACDONALD *v.* SINGER ET AL. Ct. App. Cal., 2d App. Dist., Div. 3. Certiorari denied.

No. 18–5324. LAOUTARIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 215.

No. 18–5325. LASHER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 18–5326. LLOYD *v.* MOATS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 490.

No. 18–5327. MAKDESSI *v.* FIELDS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 148.

No. 18–5328. ANDERSON *v.* LARSEN. Sup. Ct. Wash. Certiorari denied. Reported below: 190 Wash. 2d 1013, 415 P. 3d 1189.

No. 18–5329. LOCKHART *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 743.

No. 18–5330. KOKAL *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 18–5332. KEMP *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 368.

No. 18–5333. CARMELL *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 295.

No. 18–5334. CRAWFORD *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–5335. MIN KWON *v.* ERIE INSURANCE. Sup. Ct. Va. Certiorari denied.

No. 18–5336. LOTT *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–5337. JOHNSON *v.* JOHNSON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–5338. KING *v.* ERDOS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–5339. JAMES *v.* SNYDER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 789.

No. 18–5340. WILSON *v.* FEDERAL CORRECTIONAL INSTITUTION AT CUMBERLAND ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 726 Fed. Appx. 199.

No. 18–5341. WILSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 18–5342. WILSON *v.* DELTA AIRLINES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 731 Fed. Appx. 90.

No. 18–5343. WILSON *v.* MCKEESPORT POLICE DEPARTMENT ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 731 Fed. Appx. 92.

No. 18–5344. WILSON *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 731 Fed. Appx. 94.

No. 18–5345. WILSON *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 731 Fed. Appx. 95.

No. 18–5346. WILSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 18–5347. COSTIC *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2017 IL App (3d) 140218–U.

No. 18–5348. CLACK *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 18–5349. YOUNG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 803.

No. 18–5350. CRIDER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 18–5351. BORHAN *v.* LIZARRAGA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–5353. BERRY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 732 Fed. Appx. 127.

No. 18–5354. BARWICK *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 237 So. 3d 927.

No. 18–5355. SANDERS *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–5356. CIRIA *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 18–5358. REYNOLDS *v.* STEWART, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 18–5360. CLINTON *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 153 Ohio St. 3d 422, 2017-Ohio-9423, 108 N. E. 3d 1.

No. 18–5361. SAYED *v.* TRANI, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 691.

No. 18–5362. QAZI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 691.

No. 18–5363. RENDON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 712.

No. 18–5364. AUSTIN *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 760.

No. 18–5365. BRUNO *v.* CITY OF SCHENECTADY, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 727 Fed. Appx. 717.

No. 18–5366. MARTIN *v.* TRIERWEILER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 443.

No. 18–5367. JONES *v.* SCHWARZENEGGER, FORMER GOVERNOR OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 523.

No. 18–5368. WERDENE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 883 F. 3d 204.

No. 18–5369. TAAL *v.* ST. MARY'S BANK ET AL. C. A. 1st Cir. Certiorari denied.

No. 18–5370. JURESIC *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 18–5371. ELLIS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2018 IL App (1st) 140613–U.

No. 18–5372. BAGWELL *v.* SOUTHERN NATIONAL ASSETS, LLC. Ct. App. Ga. Certiorari denied. Reported below: 341 Ga. App. XXIII.

No. 18–5373. SYKES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 885 F. 3d 488.

No. 18–5374. HYMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 884 F. 3d 496.

No. 18–5375. HENRIQUEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 4 Cal. 5th 1, 406 P. 3d 748.

No. 18–5377. HUTCHINSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 243 So. 3d 880.

No. 18–5378. CHAVEZ-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 708.

No. 18–5379. FREEMAN *v.* DIAZ, ACTING SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 705 Fed. Appx. 513.

No. 18–5380. LOPEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 890 F. 3d 332.

No. 18–5382. FIEDLER *v.* BRINDLEY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 396.

No. 18–5383. SHUMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–5385. BELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 217.

No. 18–5386. ALEXANDER, AKA KEENAN *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 233 N. J. 132, 183 A. 3d 903.

No. 18–5388. ROBERTS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 881 F. 3d 1049.

No. 18–5389. RODGERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 718 Fed. Appx. 217.

No. 18–5390. RAYYAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 885 F. 3d 436.

No. 18–5392. CARTER *v.* BLACKMON, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 268.

No. 18–5394. PEEBLES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 883 F. 3d 1062.

No. 18–5396. MCMILLAN *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 358 So. 3d 1154.

No. 18–5397. PARRA-RAMOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 403.

No. 18–5404. COOPER *v.* COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT, ET AL. Sup. Ct. Cal. Certiorari denied.

No. 18–5405. PIMENTEL-SOTO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 99.

No. 18–5406. MCDANIEL *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 176 A. 3d 175.

No. 18–5407. MITROVIC *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 890 F. 3d 1217.

No. 18–5408. SERNA *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 18–5414. DEICHERT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 18–5416. HAMMOND *v.* OHIO. Ct. App. Ohio, 8th App. Dist., Cuyahoga County. Certiorari denied. Reported below: 2017-Ohio-8574, 99 N. E. 3d 1262.

No. 18–5419. GRIFFIN *v.* DINAPOLI. C. A. 2d Cir. Certiorari denied.

No. 18–5421. GAINES *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 289.

No. 18–5423. Seungjin Kim *v.* United States Customs and Border Protection. C. A. D. C. Cir. Certiorari denied. Reported below: 729 Fed. Appx. 10.

No. 18–5426. Rivero *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 889 F. 3d 618.

No. 18–5427. Saint Louis *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 889 F. 3d 145.

No. 18–5430. Bennett et ux. *v.* United States et al. C. A. 9th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 577.

No. 18–5431. Morris *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 885 F. 3d 405.

No. 18–5433. Atkins *v.* Jones, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 18–5436. Taylor *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 740.

No. 18–5438. Tulin *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 889 F. 3d 145.

No. 18–5439. Longoria *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 874 F. 3d 1278.

No. 18–5444. Buchanan *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 717.

No. 18–5445. Pyles *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 888 F. 3d 1320.

No. 18–5452. Reid *v.* United States District Court for the District of South Carolina. C. A. 4th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 281.

No. 18–5456. Kachina *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 587.

No. 18–5458. Taylor *v.* Vannoy, Warden. C. A. 5th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 418.

No. 18–5461. Henderson *v.* Minnesota. Sup. Ct. Minn. Certiorari denied.

No. 18–5462. SENIOR *v.* HAYNES, SUPERINTENDENT, STAFFORD CREEK CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 882.

No. 18–5466. WILSON *v.* OHIO. Ct. App. Ohio, 2d App. Dist., Montgomery County. Certiorari denied. Reported below: 2017-Ohio-8498.

No. 18–5467. WYCHE *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 232 So. 3d 1117.

No. 18–5469. DORTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–5470. BOHLMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 734 Fed. Appx. 425.

No. 18–5471. GABRIEL CONTRERAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 700 Fed. Appx. 669.

No. 18–5473. CREDICO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 718 Fed. Appx. 116.

No. 18–5474. GARCIA-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 726 Fed. Appx. 250.

No. 18–5480. LUSTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–5482. ZEPEDA-RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 803.

No. 18–5483. VANDEMERWE *v.* LANGFORD, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–5484. WASHINGTON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 18–5488. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–5490. LOWE *v.* VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 209.

No. 18–5497. JOHNSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 704.

No. 18–5500. Reynolds *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 18–5508. Darby *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 304.

No. 18–5510. Jones *v.* United States. C. A. 4th Cir. Certiorari denied.

No. 18–5511. Tarvin *v.* Mississippi. Sup. Ct. Miss. Certiorari denied.

No. 18–5515. Salemi *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 18–5516. Galbreath *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 310.

No. 18–5519. Templeton *v.* Amsberry, Superintendent, Eastern Oregon Correctional Institution, et al. C. A. 9th Cir. Certiorari denied.

No. 18–5520. Sellers *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 309.

No. 18–5521. Antonio Ramos *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 329.

No. 18–5522. Ray *v.* Diaz, Acting Secretary, California Department of Corrections and Rehabilitation. C. A. 9th Cir. Certiorari denied.

No. 18–5524. Rochelle *v.* Vannoy, Warden. C. A. 5th Cir. Certiorari denied.

No. 18–5525. Jouette *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 360.

No. 18–5526. Lough *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 291.

No. 18–5527. Alejandro Chavez *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 894 F. 3d 593.

No. 18–5528. Thurman *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 889 F. 3d 356.

No. 18–5532. Ruiz-Hernandez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 890 F. 3d 202.

No. 18–5533. SHANNON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 356.

No. 18–5535. SCHLIEVE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 434.

No. 18–5539. PELTO *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–5541. STEPP-ZAFFT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 327.

No. 18–5542. MAYER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–5547. ESTRADA-CORRALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 409.

No. 18–5550. LOPEZ-PACHECO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 588.

No. 18–5552. VEGA-JIMENEZ, AKA HERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–5554. TROCHE-ALVARADO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 18–5555. WOMACK *v.* ADAMS ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–5556. BARNES *v.* LANDRY, ATTORNEY GENERAL OF LOUISIANA. C. A. 5th Cir. Certiorari denied.

No. 18–5559. EASTER *v.* AMSBERRY, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 791.

No. 18–5561. NIEVES-GALARZA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 718 Fed. Appx. 159.

No. 18–5564. CURRY *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 288 Ore. App. 703, 406 P. 3d 242.

No. 18–5565. EDWARDS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 175 A. 3d 356.

No. 18–5576. Asar, aka Gist *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 704 Fed. Appx. 280.

No. 18–5585. Mackey *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 734 Fed. Appx. 227.

No. 18–5587. Rosa *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 403.

No. 18–5588. Sanchez-Jara *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 889 F. 3d 418.

No. 18–5593. Mitchell *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 771.

No. 18–5598. Moore *v.* Stephan, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 300.

No. 18–5599. Chi *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 184.

No. 18–5601. Ramirez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 377.

No. 18–5604. Fidel Flores *v.* Montgomery, Acting Warden. C. A. 9th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 273.

No. 18–5605. Beyer *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 878 F. 3d 610.

No. 18–5606. Demirjian *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 888.

No. 18–5607. James *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 18–5613. Sykes *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2017 IL App (1st) 150023, 96 N. E. 3d 468.

No. 18–5614. Santiago *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 744 Fed. Appx. 135.

No. 18–5615. Chavira-Nunez *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 689 Fed. Appx. 896.

No. 18–5617. BARTUNEK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–5620. ZUNIGA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 18–5622. WALKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–5624. VILLA-SARIANA, AKA VILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 383.

No. 18–5630. EURE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 238.

No. 18–5636. SEARCY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 880 F. 3d 116.

No. 18–5638. PURNELL *v.* ST. MARY'S HOSPITAL ET AL. Ct. App. Cal., 2d App. Dist., Div. 4. Certiorari denied.

No. 18–5640. LAUX *v.* ZATECKY, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied. Reported below: 890 F. 3d 666.

No. 18–5642. FEJFAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 621.

No. 18–5646. MARTIN *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 342 Ga. App. XXVI.

No. 18–5647. MARES *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2018 IL App (2d) 150565, 98 N. E. 3d 554.

No. 18–5651. SWOOPES *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 732.

No. 18–5653. BRAVEBULL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 896 F. 3d 897.

No. 18–5654. DANIELS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–5658. BROWN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 614.

No. 18–5663. Dale *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 726 Fed. Appx. 503.

No. 18–5665. Cabrera *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 18–5667. Browne *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 751.

No. 18–5673. Smalls *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 307.

No. 18–5675. Pate *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 228.

No. 18–5678. Paul *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 885 F. 3d 1099.

No. 18–5679. O'Brien *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 738 Fed. Appx. 38.

No. 18–5680. McGee *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 346.

No. 18–5682. Anderson *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 365.

No. 18–5684. Verduzco-Rangel *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 884 F. 3d 918.

No. 18–5685. Patterson *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 18–5686. Mundle *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 700 Fed. Appx. 70.

No. 18–5693. Kay *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 750.

No. 18–5696. Croft *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2018 IL App (1st) 150043, 100 N. E. 3d 577.

No. 18–5699. Boyd *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 709 Fed. Appx. 679.

No. 18–5701. Aguiar *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 18–5706. ISLAS-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 511.

No. 18–5708. ARNOLD *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 18–5709. ANDERSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–5710. AMOR *v.* UNITED STATES EX REL. PENA ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–5715. SWEENEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 891 F. 3d 232.

No. 18–5717. SAVANH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 931.

No. 18–5721. LEVY *v.* PARRIS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 734 Fed. Appx. 960.

No. 18–5725. THOMAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 723 Fed. Appx. 60.

No. 18–5729. DIAZ *v.* HURWITZ, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 716 Fed. Appx. 98.

No. 18–5731. COX *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–5732. LACONTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–5736. MOSES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 18–5739. KINCHEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–5744. CLARK *v.* BERRY, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–5745. MOLINA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–5748. MEEKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–5751. BURKE *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 302 Ga. 786, 809 S. E. 2d 765.

No. 18–5752. CAUSEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 18–5754. CAMPILLO RESTREPO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–5756. BLEVINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–5757. BERRY *v.* NICHOLSON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 18–5759. CASTELLANOS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 891 F. 3d 359.

No. 18–5766. JIAN-YUN DONG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 180.

No. 18–5775. HOGAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 373.

No. 18–5776. PLACERES-CRUZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 297.

No. 18–5778. DEPRIEST *v.* BONDI, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–5780. CAPRA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 811.

No. 18–5788. DUTSCHKE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–5789. THOMPSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 18–5790. TEAUPA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–5795. ANTONIO IBARRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 336.

No. 18–5822. KEENE *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 2018 IL App (5th) 140553–U.

No. 18–5854. LAMBRIGHT *v.* ARIZONA. Ct. App. Ariz. Certiorari denied. Reported below: 243 Ariz. 244, 404 P. 3d 646.

No. 17–1353. FORT PECK HOUSING AUTHORITY ET AL. *v.* DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ET AL. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 881 F. 3d 1181.

No. 17–1375. GERAWAN FARMING, INC. *v.* AGRICULTURAL LABOR RELATIONS BOARD. Sup. Ct. Cal. Motion of National Federation of Independent Business Small Business Legal Center et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 3 Cal. 5th 1118, 405 P. 3d 1087.

No. 17–1397. SPENCER *v.* ABBOTT ET AL. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 731 Fed. Appx. 731.

No. 17–1438. NOBLE ENERGY, INC. *v.* CONOCOPHILLIPS CO. Sup. Ct. Tex. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 532 S. W. 3d 771.

No. 17–1449. ARIZONA *v.* RUSHING. Sup. Ct. Ariz. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 243 Ariz. 212, 404 P. 3d 240.

No. 17–1478. JONES *v.* LIFE INSURANCE COMPANY OF NORTH AMERICA ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 716 Fed. Appx. 584.

No. 17–1487. COOK ET AL. *v.* HARDING ET AL. C. A. 9th Cir. Motions of Concerned United Birthparents, Inc., et al.; American Association of Pro-Life Obstetricians & Gynecologists et al.; and 10 Feminist Academics and Advocates for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 879 F. 3d 1035.

No. 17–1592. MAKAH INDIAN TRIBE *v.* QUILEUTE INDIAN TRIBE ET AL. C. A. 9th Cir. Motion of United Catcher Boats for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 873 F. 3d 1157.

No. 17–1602. PICKARD *v.* DEPARTMENT OF JUSTICE. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the

consideration or decision of this petition. Reported below: 713 Fed. Appx. 609.

No. 17–1616. Regeneron Pharmaceuticals, Inc. *v.* Merus N. V. C. A. Fed. Cir. Motion of Seven Chicago Patent Lawyers for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 864 F. 3d 1343.

No. 17–1633. Children's Hospital Los Angeles et al. *v.* N. L., a Minor, By and Through his Guardian ad Litem, Arce. C. A. 9th Cir. Motion of California Hospital Association et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 711 Fed. Appx. 433.

No. 17–1638. Sanchez et al. *v.* Young County, Texas, et al. C. A. 5th Cir. Motion of National Alliance on Mental Illness of Texas et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 866 F. 3d 274.

No. 17–1669. Promega Corp. *v.* Life Technologies 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: 875 F. 3d 651.

No. 17–1698. Pacetta, LLC, et al. *v.* Town of Ponce Inlet, Florida. Dist. Ct. App. Fla., 5th Dist. Motion of Cato Institute et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 226 So. 3d 303.

No. 17–6853. Paracha *v.* Trump, President of the United States, et al. C. A. D. C. Cir. Certiorari denied. Justice Gorsuch took no part in the consideration or decision of this petition. Reported below: 697 Fed. Appx. 703.

No. 17–7974. Williams *v.* Jarvis, Warden. C. A. 11th Cir. Certiorari denied. Justice Kagan took no part in the consideration or decision of this petition.

No. 17–8457. Robinson *v.* United States. C. A. 10th Cir. Certiorari denied. Justice Gorsuch took no part in the consideration or decision of this petition. Reported below: 720 Fed. Appx. 946.

No. 17–8480. Couchman *v.* United States. C. A. 10th Cir. Certiorari denied. Justice Gorsuch took no part in the consid-

eration or decision of this petition. Reported below: 720 Fed. Appx. 501.

No. 17–8752. OLIVER *v.* LINK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 17–9086. WADE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 719 Fed. Appx. 822.

No. 17–9100. KLEINMAN *v.* UNITED STATES. C. A. 9th Cir. Motion of Fully Informed Jury Association for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 880 F. 3d 1020.

No. 17–9101. DECARLO *v.* TRUE, WARDEN. C. A. 7th Cir. Certiorari before judgment denied.

No. 17–9115. GHAILANI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR and JUSTICE GORSUCH took no part in the consideration or decision of this petition.

No. 17–9123. GREGORY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 17–9170. SAFFORD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 707 Fed. Appx. 571.

No. 17–9369. STUCKEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 878 F. 3d 62.

No. 17–9374. CARTER *v.* KANE ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 717 Fed. Appx. 105.

No. 17–9568. ADAMS *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari before judgment denied.

No. 18–8. COHEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 685 Fed. Appx. 609.

No. 18–17. KEISTER *v.* BELL ET AL. C. A. 11th Cir. Motion of Alliance Defending Freedom et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 879 F. 3d 1282.

No. 18–97. LIU, INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO LIU, DECEASED *v.* JANSSEN RESEARCH & DEVELOPMENT, LLC. Ct. App. Cal., 2d App. Dist., Div. 5. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 18–170. GENTRY *v.* TENNESSEE ET AL. C. A. 6th Cir. Motion of petitioner to expedite consideration of petition for writ of certiorari denied. Certiorari denied.

No. 18–5357. REDIFER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 728 Fed. Appx. 804.

No. 18–5381. HANDY *v.* JOHNSON & JOHNSON ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 724 Fed. Appx. 218.

No. 18–5428. BARRAQUIAS *v.* WILKIE, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 18–5536. PACHECO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 884 F. 3d 1031.

No. 18–5538. GIESWEIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN and JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 887 F. 3d 1054.

No. 18–5578. AKEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 18–5644. DELVA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 704 Fed. Appx. 8.

Rehearing Denied

No. 17–1532. KRAMER *v.* UNITED STATES ET AL., 584 U. S. 1034;

No. 17–6892. WILFORD *v.* UNITED STATES, 585 U. S. 1033;

No. 17–7141. YOUNG *v.* OCASIO, WARDEN, 585 U. S. 1019;

No. 17–7633. DEVLIN *v.* MONTANA, 584 U. S. 907;

No. 17–7830. IN RE ALDRIDGE ET UX., 583 U. S. 1178;

No. 17–7885. GRIFFIN ET AL. *v.* HESS CORP., AKA AMERADA PETROLEUM CORP., ET AL., 584 U. S. 910;

No. 17–8230. WEST *v.* BERGHUIS, WARDEN, 584 U. S. 1005;

No. 17–8231. WHEELER *v.* DAVIS, 584 U. S. 995;

No. 17–8319. DOREMUS *v.* BERRYHILL, DEPUTY COMMISSIONER FOR OPERATIONS, SOCIAL SECURITY ADMINISTRATION, 584 U. S. 1006;

No. 17–8444. FLORES GONZALEZ *v.* FLORIDA ET AL., 584 U. S. 1017;

No. 17–8471. BLAIR *v.* YUM! BRANDS, INC., ET AL., 585 U. S. 1006;

No. 17–8534. STARKS *v.* PARBALL CORP., DBA BALLY'S LAS VEGAS, 584 U. S. 1037;

No. 17–8627. ARLOTTA *v.* COOK MOVING SYSTEM, INC., ET AL., 585 U. S. 1026;

No. 17–8653. MABRY *v.* VIRGINIA, 584 U. S. 1017;

No. 17–8840. JOHNSTON *v.* UNITED STATES, 584 U. S. 1039; and

No. 17–8975. BUXTON *v.* ESTOCK, ACTING SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MERCER, ET AL., 585 U. S. 1023. Petitions for rehearing denied.

No. 17–1321. GRANTON *v.* WASHINGTON STATE LOTTERY, 584 U. S. 951;

No. 17–7074. CARTER *v.* LABOR READY MID-ATLANTIC, INC., ET AL., 583 U. S. 1128; and

No. 17–8938. GILLS *v.* UNITED STATES, 585 U. S. 1009. Motions for leave to file petitions for rehearing denied.

October 5, 2018

Dismissal Under Rule 46

No. 18–114. Rollyson *v.* O'Neal et al. C. A. 4th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 729 Fed. Appx. 254.

October 9, 2018*

Certiorari Granted—Vacated and Remanded

No. 17–1428. Niang et al. *v.* Tomblinson et al. C. A. 8th Cir. Certiorari granted, judgment of the United States Court of Appeals for the Eighth Circuit vacated, and case remanded to that court with instructions to direct the District Court to dismiss the case as moot. See *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950). Reported below: 879 F. 3d 870.

No. 17–8381. Frazier *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 *Sessions* v. *Dimaya*, 584 U. S. 148 (2018). Reported below: 878 F. 3d 508.

Miscellaneous Orders

No. 18A335. Brakebill et al. *v.* Jaeger, North Dakota Secretary of State. Application to vacate the stay entered by the United States Court of Appeals for the Eighth Circuit on September 24, 2018, presented to Justice Gorsuch, and by him referred to the Court, denied.

Justice Ginsburg, with whom Justice Kagan joins, dissenting.

I would grant the application to vacate the Eighth Circuit's stay because last-minute "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls." *Purcell* v. *Gonzalez*, 549 U. S. 1, 4–5 (2006) (*per curiam*). The risk of voter confusion appears severe here because the injunction against requiring residential-address identification was in force during the

*Justice Kavanaugh took no part in the consideration or decision of the orders announced on this date.

primary election and because the Secretary of State's website announced for months the ID requirements as they existed under that injunction. Reasonable voters may well assume that the IDs allowing them to vote in the primary election would remain valid in the general election. If the Eighth Circuit's stay is not vacated, the risk of disfranchisement is large. The Eighth Circuit observed that voters have a month to "adapt" to the new regime. But that observation overlooks specific factfindings by the District Court: (1) 70,000 North Dakota residents—almost 20% of the turnout in a regular quadrennial election—lack a qualifying ID; and (2) approximately 18,000 North Dakota residents also lack supplemental documentation sufficient to permit them to vote without a qualifying ID. Although the unchallenged portion of the injunction permitting the use of more informal supplemental documents somewhat lessens this concern, that relief, by itself, scarcely cures the problem given the all too real risk of grand-scale voter confusion. True, an order by this Court vacating the stay would be yet another decision that disrupts the status quo as the election draws ever closer. But the confusion arising from vacating the stay would at most lead to voters securing an additional form of ID. That inconvenience pales in comparison to the confusion caused by the Eighth Circuit's order, which may lead to voters finding out at the polling place that they cannot vote because their formerly valid ID is now insufficient.

No. 18M39. Strong *v.* Burt, Warden;

No. 18M40. Pfeffer *v.* Wells Fargo Advisors, LLC, et al.;

No. 18M41. Williams *v.* Cox, Judge, Court of Appeal of Louisiana, Second Circuit, et al.;

No. 18M45. Adams *v.* United States;

No. 18M46. Moss *v.* Pollard, Warden;

No. 18M48. Kilpatrick *v.* Kamkar; and

No. 18M49. Sylince *v.* Florida. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 18M42. Laschkewitsch *v.* American National Life Insurance Co.;

No. 18M43. Wairi *v.* United States; and

No. 18M44. Johnson *v.* United States. Motions for leave to file petitions for writs of certiorari with supplemental appendixes under seal granted.

No. 18M47. Ruiz *v.* Diaz, Acting Secretary, California Department of Corrections and Rehabilitation. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 16–1094. Republic of Sudan *v.* Harrison et al. C. A. 2d Cir. [Certiorari granted, 585 U. S. 1015.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 16–1498. Washington State Department of Licensing *v.* Cougar Den, Inc. Sup. Ct. Wash. [Certiorari granted, 585 U. S. 1015.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 17–419. Dawson et ux. *v.* Steager, West Virginia State Tax Commissioner. Sup. Ct. App. W. Va. [Certiorari granted, 585 U. S. 1015.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 17–949. Sturgeon *v.* Frost, Alaska Regional Director of the National Park Service, et al. C. A. 9th Cir. [Certiorari granted, 585 U. S. 1002.] Motion of Alaska for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 17–1026. Garza *v.* Idaho. Sup. Ct. Idaho. [Certiorari granted, 585 U. S. 1002.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 17–1107. Carpenter, Interim Warden *v.* Murphy. C. A. 10th Cir. [Certiorari granted *sub nom. Royal* v. *Murphy*, 584 U. S. 992.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Justice Gorsuch took no part in the consideration or decision of this motion.*

No. 17–1174. Nieves et al. *v.* Bartlett. C. A. 9th Cir. [Certiorari granted, 585 U. S. 1029.] Motion of respondent to file volume II of the joint appendix under seal granted.

*See also note, 586 U. S. 913.

No. 17–1229. HELSINN HEALTHCARE S. A. *v.* TEVA PHARMACEUTICALS USA, INC., ET AL. C. A. Fed. Cir. [Certiorari granted, 585 U. S. 1015.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 18–164. FIRST SOLAR, INC., ET AL. *v.* MINEWORKERS' PENSION SCHEME 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. 18–351. CITY OF PENSACOLA, FLORIDA, ET AL. *v.* KONDRAT'YEV ET AL. C. A. 11th Cir. Motion of petitioners to expedite consideration of petition for writ of certiorari denied.

No. 18–5401. POIRIER *v.* MASSACHUSETTS DEPARTMENT OF CORRECTION. C. A. 1st Cir.;

No. 18–5567. CURRY *v.* CITY OF MANSFIELD, OHIO, ET AL. Ct. App. Ohio, 5th App. Dist., Richland County; and

No. 18–5568. CURRY *v.* CITY OF MANSFIELD, OHIO, ET AL. Ct. App. Ohio, 5th App. Dist., Richland County. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until October 30, 2018, 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. 18–5976. IN RE AMUN RE EL. Petition for writ of habeas corpus denied.

No. 18–6034. IN RE BURWELL. Petition for writ of habeas corpus denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.*

No. 18–5952. IN RE WILLIAMS. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 18–5852. IN RE SMOTHERMAN. Petition for writ of mandamus denied.

No. 18–5454. IN RE GOUCH-ONASSIS;

No. 18–5455. IN RE GOUCH-ONASSIS; and

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*See also note, 586 U. S. 913.

No. 18–5551. In re Joseph. 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. 18–5575. In re Allah. 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*).

Certiorari Denied

No. 17–1318. Kindred Nursing Centers L. P., dba Winchester Centre for Health and Rehabilitation, nka Fountain Circle Health and Rehabilitation, et al. *v.* Wellner, Individually and on Behalf of the Estate of Wellner, Deceased. Sup. Ct. Ky. Certiorari denied. Reported below: 533 S. W. 3d 189.

No. 17–1463. Segovia et al. *v.* United States et al. C. A. 7th Cir. Certiorari denied. Reported below: 880 F. 3d 384.

No. 17–1483. Alexsam, Inc. *v.* Wildcard Systems, Inc., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 708 Fed. Appx. 680.

No. 17–1499. RP Healthcare, Inc., et al. *v.* Ranbaxy Pharmaceuticals Inc. et al. C. A. 3d Cir. Certiorari denied. Reported below: 722 Fed. Appx. 132.

No. 17–1510. Veal *v.* Georgia. Sup. Ct. Ga. Certiorari denied. Reported below: 303 Ga. 18, 810 S. E. 2d 127.

No. 17–1559. Villegas-Sarabia *v.* Sessions, Attorney General. C. A. 5th Cir. Certiorari denied. Reported below: 874 F. 3d 871.

No. 17–1566. Lacaze *v.* Louisiana. Sup. Ct. La. Certiorari denied. Reported below: 2016–0234 (La. 3/13/18), 239 So. 3d 807.

No. 17–1607. Fairley *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 880 F. 3d 198.

No. 17–1610. JONES *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES. C. A. Fed. Cir. Certiorari denied. Reported below: 702 Fed. Appx. 988.

No. 17–1611. HILLSMAN *v.* ESCOTO. C. A. 9th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 722.

No. 17–1699. MR. P. ET UX., INDIVIDUALLY AND AS NEXT FRIENDS OF M. P. *v.* WEST HARTFORD BOARD OF EDUCATION. C. A. 2d Cir. Certiorari denied. Reported below: 885 F. 3d 735.

No. 17–1703. HONEYWELL INTERNATIONAL INC. ET AL. *v.* MEXICHEM FLUOR INC. ET AL.; and

No. 18–2. NATURAL RESOURCES DEFENSE COUNCIL *v.* MEXICHEM FLUOR, INC., ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 866 F. 3d 451.

No. 17–8382. GLOVER ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 872 F. 3d 625.

No. 17–8558. LONG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 875 F. 3d 411.

No. 17–8801. DEL MONTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–9000. ACOSTA *v.* RAEMISCH, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 877 F. 3d 918.

No. 17–9130. POTENCIANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 620.

No. 17–9159. WARD *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2018 Ark. 59, 539 S. W. 3d 546.

No. 17–9549. ZACK *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 918.

No. 18–108. DUNCAN *v.* GEICO GENERAL INSURANCE CO. C. A. 11th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 900.

No. 18–115. WYNN *v.* WASHINGTON. C. A. 9th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 513.

No. 18–116. Reardon *v.* Zonies et al. C. A. 3d Cir. Certiorari denied. Reported below: 730 Fed. Appx. 129.

No. 18–118. Schwartz et al. *v.* JPMorgan Chase Bank, N. A., et al. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 18–128. Abouelmagd *v.* Newell. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 18–129. W. S. *v.* S. T. et al. Ct. App. Cal., 6th App. Dist. Certiorari denied. Reported below: 20 Cal. App. 5th 132, 228 Cal. Rptr. 3d 756.

No. 18–132. Elmhirst *v.* McLaren Northern Michigan Hospital, dba Northern Michigan Emergency Medicine Center, et al. C. A. 6th Cir. Certiorari denied. Reported below: 726 Fed. Appx. 439.

No. 18–136. Dreyer *v.* County Court of Texas, Coleman County. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 18–142. Baroni *v.* Bank of New York Mellon, fka Bank of New York. C. A. 9th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 770.

No. 18–147. Scott *v.* District Hospital Partners, L. P., et al. C. A. D. C. Cir. Certiorari denied. Reported below: 715 Fed. Appx. 6.

No. 18–148. Lothian Cassidy, L. L. C., et al. *v.* Lothian Exploration & Development II, L. P. (LEAD II), et al.; and Shoshana Trust et al. *v.* Raleigh et al. C. A. 5th Cir. Certiorari denied.

No. 18–151. Petit-Clair et al. *v.* Grewal, Attorney General of New Jersey, et al. C. A. 3d Cir. Certiorari denied. Reported below: 730 Fed. Appx. 120.

No. 18–152. Garmong *v.* Supreme Court of Nevada et al. C. A. 9th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 656.

No. 18–156. Brady *v.* Goldman et al. C. A. 2d Cir. Certiorari denied. Reported below: 714 Fed. Appx. 63.

No. 18–157. Brady *v.* Underwood, Attorney General of New York. C. A. 2d Cir. Certiorari denied. Reported below: 714 Fed. Appx. 60.

No. 18–158. GEBHARDT *v.* NIELSEN, SECRETARY OF HOMELAND SECURITY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 879 F. 3d 980.

No. 18–166. PROBANDT ET AL. *v.* WALKER. Ct. App. Neb. Certiorari denied. Reported below: 25 Neb. App. 30, 902 N. W. 2d 468.

No. 18–169. LABER *v.* MILBERG LLP ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 413.

No. 18–171. SNYDER *v.* CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 457.

No. 18–172. ANDRADE HERNANDEZ *v.* SESSIONS, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 708.

No. 18–173. XIU JIAN SUN *v.* ZEVE. C. A. 2d Cir. Certiorari denied.

No. 18–183. ADVANCED AUDIO DEVICES, LLC *v.* HTC CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 721 Fed. Appx. 989.

No. 18–184. AYANBADEJO *v.* SIEGL ET AL. C. A. 5th Cir. Certiorari denied.

No. 18–197. WADE *v.* ACOSTA, SECRETARY OF LABOR, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 454.

No. 18–207. DUGGAN *v.* DEPARTMENT OF DEFENSE. C. A. 9th Cir. Certiorari denied. Reported below: 883 F. 3d 842.

No. 18–211. HURD *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist., Div. 3. Certiorari denied.

No. 18–237. THOMAS ET AL. *v.* UNITED STATES; and
No. 18–240. KIRK TANG YUK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 885 F. 3d 57.

No. 18–249. CONNOR *v.* CASTRO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 376.

No. 18–250. TU YING CHEN *v.* SUFFOLK COUNTY COMMUNITY COLLEGE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 734 Fed. Appx. 773.

No. 18–253. Felix *v.* New York. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 159 App. Div. 3d 1508, 70 N. Y. S. 3d 104.

No. 18–256. Bartlett et al. *v.* Honeywell International, Inc. C. A. 2d Cir. Certiorari denied. Reported below: 737 Fed. Appx. 543.

No. 18–270. Phillips *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 883 F. 3d 399.

No. 18–291. Jaisinghani *v.* Sharma et al. Ct. App. Cal., 2d App. Dist., Div. 5. Certiorari denied.

No. 18–312. Smith *v.* Tennessee National Guard. Sup. Ct. Tenn. Certiorari denied. Reported below: 551 S. W. 3d 702.

No. 18–5036. Martinez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 498.

No. 18–5038. Sweeney *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 887 F. 3d 529.

No. 18–5039. Rowland *v.* Chappell, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 876 F. 3d 1174.

No. 18–5164. Brooks *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 671.

No. 18–5217. Perez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 804.

No. 18–5285. Singh *v.* Sessions, Attorney General. C. A. 6th Cir. Certiorari denied.

No. 18–5352. Brown *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 237 So. 3d 924.

No. 18–5359. Suggs *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 238 So. 3d 699.

No. 18–5376. Geralds *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 237 So. 3d 923.

No. 18–5387. Smith *v.* Washington. Sup. Ct. Wash. Certiorari denied. Reported below: 189 Wash. 2d 655, 405 P. 3d 997.

No. 18–5395. Mezzles *v.* Katavich, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 639.

No. 18–5402. POPE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 237 So. 3d 926.

No. 18–5403. DENNIS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 18–5410. PODARAS *v.* CITY OF MENLO PARK, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 698 Fed. Appx. 348.

No. 18–5411. MEHMETI *v.* JOFAZ TRANSPORTATION, INC. C. A. 2d Cir. Certiorari denied.

No. 18–5412. JOHNSON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 18–5413. LEWIS *v.* HEDGEMON ET AL. C. A. 5th Cir. Certiorari denied.

No. 18–5415. GASKIN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 237 So. 3d 928.

No. 18–5420. HEAGY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 179 A. 3d 552.

No. 18–5424. SAKUMA *v.* ASSOCIATION OF APARTMENT OWNERS OF THE TROPICS OF WAIKELE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 906.

No. 18–5425. JOAQUIN RAMIREZ *v.* APONTE ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 18–5429. GARRY *v.* TRANE CO. Sup. Ct. Wis. Certiorari denied.

No. 18–5432. SANKARA *v.* O'HARA ET AL. C. A. 2d Cir. Certiorari denied.

No. 18–5434. VICTORINO *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 241 So. 3d 48.

No. 18–5437. WHITTON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 238 So. 3d 724.

No. 18–5440. LOMAX *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 18–5441. BYRD *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 237 So. 3d 922.

No. 18–5442. WALL *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 238 So. 3d 127.

No. 18–5443. DEGRATE *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–5446. STORY *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–5447. ROCK *v.* BRACY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–5448. STANLEY *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 8th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 818.

No. 18–5450. RIVAS-RIVERA *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 161 A. 3d 382.

No. 18–5451. STEELE *v.* JENKINS, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 18–5453. ELLIOTT *v.* PALMER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–5457. KENNEDY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 18–5459. WARNELL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 18–5460. HILL *v.* REINKE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 707.

No. 18–5463. KENNEDY *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–5465. DREYFUSE *v.* JUSTICE, GOVERNOR OF WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 18–5476. ISMAIYL *v.* BROWN ET AL. C. A. 6th Cir. Certiorari denied.

No. 18–5477. EBRON *v.* BROWN, CHAIR, VIRGINIA PAROLE BOARD, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 697 Fed. Appx. 779.

No. 18–5478. JENNINGS *v.* DEUTSCHE BANK NATIONAL TRUST CO. ET AL. Sup. Ct. Mo. Certiorari denied.

No. 18–5479. JACKSON *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–5481. WATSON *v.* VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 325.

No. 18–5485. WASHINGTON *v.* ARNOLD, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–5486. QUINTANA *v.* HANSEN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 439.

No. 18–5489. MIN HO KWON *v.* HYOUN PHIL WON ET AL. Sup. Ct. Va. Certiorari denied.

No. 18–5491. LOVIN *v.* ALLBAUGH, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 698.

No. 18–5493. GANT *v.* WINN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–5494. MILAM *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 781.

No. 18–5496. PEREZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 4 Cal. 5th 1055, 416 P. 3d 42.

No. 18–5498. CURTIS *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 501 Mich. 1037, 909 N. W. 2d 251.

No. 18–5499. SANCHEZ *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–5501. JONES *v.* BANK OF AMERICA ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–5502. JACOBSON *v.* ARIZONA. Ct. App. Ariz. Certiorari denied. Reported below: 244 Ariz. 187, 418 P. 3d 960.

No. 18–5503. PRESTON *v.* GREAT LAKES SPECIALTY FINANCE, INC., DBA AXCESS FINANCIAL. C. A. 6th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 453.

No. 18–5506. SUNDY *v.* FRIENDSHIP PAVILION ACQUISITION CO., LLC, ET AL. Ct. App. Ga. Certiorari denied.

No. 18–5507. SCHWARZMAN *v.* GRAY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–5512. WILSON *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 2018 WI App 16, 380 Wis. 2d 282, 913 N. W. 2d 233.

No. 18–5513. MY VAN TRAN *v.* SHELDON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–5514. WILKINS *v.* VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 310.

No. 18–5523. SANCHEZ *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–5531. CULVER *v.* ZATECKY, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 18–5540. RUSH *v.* REWERTS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–5544. VAN LE *v.* ALDRIDGE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 763.

No. 18–5545. LOPEZ *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 18–5546. COBLE *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 297.

No. 18–5553. WILLIAMS *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 18–5566. LIBRACE *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 8th Cir. Certiorari denied. Reported below: 709 Fed. Appx. 418.

No. 18–5573. WILLIAMS *v.* CAMPBELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–5600. BONNER *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–5609. LAJEUNESSE *v.* IOWA. Ct. App. Iowa. Certiorari denied. Reported below: 913 N. W. 2d 275.

No. 18–5616. CLAYBORNE *v.* NEBRASKA. C. A. 8th Cir. Certiorari denied.

No. 18–5623. WILLIAMS *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied.

No. 18–5633. KENNEDY *v.* MICHIGAN STATE TREASURER. Ct. App. Mich. Certiorari denied.

No. 18–5639. CASTLEMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–5657. PASSMORE *v.* O'FALLON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 703.

No. 18–5661. WILLIAMS *v.* SAMSON RESOURCES CORP. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 726 Fed. Appx. 162.

No. 18–5666. DENNISON *v.* HOOKS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–5669. CRUZ *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied.

No. 18–5688. EMANUEL *v.* DEPARTMENT OF JUSTICE. C. A. D. C. Cir. Certiorari denied.

No. 18–5689. BRIDGETTE *v.* ASUNCION, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–5698. BROWN *v.* OHIO. Ct. App. Ohio, 6th App. Dist., Lucas County. Certiorari denied. Reported below: 2018-Ohio-132.

No. 18–5713. DUNNING *v.* WARE, DIRECTOR, COURT SERVICES AND OFFENDER SUPERVISION AGENCY. C. A. D. C. Cir. Certiorari denied.

No. 18–5743. SIMMONS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–5747. AMADOR-FLORES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 839.

No. 18–5749. AGOLLI *v.* DISTRICT OF COLUMBIA ET AL. Ct. App. D. C. Certiorari denied.

No. 18–5750. CUEVAS *v.* KELLY, SUPERINTENDENT, OREGON STATE PENITENTIARY. Ct. App. Ore. Certiorari denied.

No. 18–5753. PELLO *v.* ZATECKY, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 18–5797. GUTIERREZ-TORRES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 709 Fed. Appx. 502.

No. 18–5800. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 290.

No. 18–5803. DURY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 123.

No. 18–5804. DIALLO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 732 Fed. Appx. 94.

No. 18–5808. ANGEL RONDON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–5809. SHARP *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 879 F. 3d 327.

No. 18–5814. CRUZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 18–5817. MOORER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–5823. MARSHALL *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 185 A. 3d 722.

No. 18–5824. LARIVE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–5825. JOHNSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 737 Fed. Appx. 839.

No. 18–5826. CARTER *v.* CALDWELL, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 18–5828. LOPEZ-GARCIA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 18–5831. CURRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 314.

No. 18–5835. LIZARRAGA-LEYVA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 258.

No. 18–5839. REBMANN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–5840. STONEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 18–5842. CHHEA *v.* DELBALSO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–5844. TINOCO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 581.

No. 18–5845. PIERCE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–5846. WILKINS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 734 Fed. Appx. 1.

No. 18–5847. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 837.

No. 18–5849. SOZA *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–5858. GLOOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 725 Fed. Appx. 493.

No. 18–5861. LOPEZ CHAVEZ *v.* MARTINEZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 518.

No. 18–5865. PENNINGTON *v.* CLARK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. Sup. Ct. Pa. Certiorari denied.

No. 18–5866. MOSLEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 18–5871. POSA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–5872. MEDINA-REYES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 732.

No. 18–5874. EDWARDS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 891 F. 3d 708.

No. 18–5875. VIVO *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 179 Conn. App. 906, 176 A. 3d 1261.

No. 18–5879. ENEH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 367.

No. 18–5882. VELA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 136.

No. 18–5884. RICHARDSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 890 F. 3d 616.

No. 18–5885. SHANNON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 725 Fed. Appx. 243.

No. 18–5890. WHITFIELD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–5893. STREETMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 725 Fed. Appx. 594.

No. 18–5894. SHAW *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 885 F. 3d 1217.

No. 18–5895. IZATT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 610.

No. 18–5896. BAKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 704 Fed. Appx. 281.

No. 18–5899. LEWIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 735 Fed. Appx. 28.

No. 18–5900. MARTINEZ-BARRIENTOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 95.

No. 18–5901. MAXI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 886 F. 3d 1318.

No. 18–5904. CROSS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 888 F. 3d 985.

No. 18–5910. PACKARD *v.* GOODRICH, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 711.

No. 18–5912. KIMMELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 725 Fed. Appx. 586.

No. 18–5913. ESCOBEDO GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 725 Fed. Appx. 322.

No. 18–5914. FINNEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 342.

No. 18–5915. HILL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 877 F. 3d 717.

No. 18–5916. FLORES, AKA BECERRA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 891 F. 3d 359.

No. 18–5917. DOE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 723 Fed. Appx. 178.

No. 18–5921. STEVENS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 881 F. 3d 1249.

No. 18–5928. LIMON-URENDA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–5929. ODOM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 254.

No. 18–5933. WILKERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 745.

No. 18–5934. WAGNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 18–5935. CESAR VELASQUEZ *v.* UNITED STATES (Reported below: 728 Fed. Appx. 359); and LAGUNA-GOMEZ *v.* UNITED STATES (732 Fed. Appx. 340). C. A. 5th Cir. Certiorari denied.

No. 18–5944. TANCO-PIZARRO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 892 F. 3d 472.

No. 18–5953. THORNE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 706 Fed. Appx. 143.

No. 18–5984. BEYAH *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 17–1284. APODACA ET AL. *v.* RAEMISCH ET AL.; and
No. 17–1289. LOWE *v.* RAEMISCH ET AL. C. A. 10th Cir. Certiorari denied. Reported below: No. 17–1284, 864 F. 3d 1071; No. 17–1289, 864 F. 3d 1205.

Statement of JUSTICE SOTOMAYOR respecting the denial of certiorari.

A punishment need not leave physical scars to be cruel and unusual. See *Trop* v. *Dulles*, 356 U. S. 86, 101 (1958). As far back as 1890, this Court expressed concerns about the mental anguish caused by solitary confinement.[1] These petitions address one aspect of what a prisoner subjected to solitary confinement may experience: the denial of even a moment in daylight for months or years. Although I agree with the Court's decision not to grant certiorari in these cases because of arguments unmade and facts underdeveloped below, I write because the issue raises deeply troubling concern.

I

Petitioners Jonathan Apodaca, Joshua Vigil, and Donnie Lowe were all previously incarcerated in the Colorado State Penitentiary (CSP). During that time, they were held in what is often referred to as "administrative segregation," but what is also fairly known by its less euphemistic name: solitary confinement. As described in a prior case involving the same prison's conditions:

> "In administrative segregation at the CSP, each offender is housed in a single cell approximately 90 square feet in

[1] See *In re Medley*, 134 U. S. 160, 168 (1890) ("[E]xperience demonstrated that there were serious objections to it. A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others, still, committed suicide, while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community").

> size. . . . The cell contains a metal bed, desk, toilet and three shelves. There is [a] small vertical glass window that admits light but which, because of its placement in relation to the bed, desk and shelving, is difficult to access to look out. A light in the cell is left on 24 hours a day. The inmates' daily existence is one of extreme isolation. They remain in their cells at least 23 hours a day. The cells were designed in a manner that discourages and largely restricts vocal communication between cells. [One prisoner could] hear other people yelling and screaming but not conversations. All meals are passed through a slot in the cell door to the inmate. The inmates have little human contact except with prison staff and limited opportunities for visitors . . . ." *Anderson* v. *Colorado*, 887 F. Supp. 2d 1133, 1137 (Colo. 2012).

Under then-operative Colorado Department of Corrections (CDOC) regulations, prisoners like Apodaca, Vigil, and Lowe were allowed out of their cells five days per week, for at least "one hour of recreation in a designated exercise area." CDOC Reg. No. 650–03, p. 7 (May 15, 2012). That "designated exercise area" was also about 90 square feet in size, but "oddly shaped" and "empty except for a chin-up bar." *Anderson*, 887 F. Supp. 2d, at 1137. As the prior District Court described it:

> "It has two vertical 'windows,' approximately five feet by six inches in size, which are not glassed but instead are covered with metal grates. The grates have holes approximately the size of a quarter that open to the outside. The inmate can see through the holes, can sometimes feel a breeze, and can sometimes feel the warmth of the sun. This is his only exposure of any kind to fresh air." *Ibid.*

During their time at CSP, Apodaca, Vigil, and Lowe were denied any out-of-cell exercise other than the prescribed hour in that room for between 11 and 25 months.[2] In 2015, Lowe, indi-

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[2] For Apodaca and Vigil, the deprivation lasted 11 months—from September 2013 to August 2014. Complaint in *Apodaca* v. *Raemisch*, No. 15–cv–845 (D Colo.), Doc. 1, pp. 16–17. For Lowe, it lasted 25 months—from February 2013 to March 2015. Complaint in *Lowe* v. *Raemisch*, No. 15–cv–1830 (D Colo.), Doc. 1, pp. 20–21 (Complaint). All three were later either transferred or released from prison. Brief in Opposition 1. Lowe has since passed away. Reply Brief 2.

vidually, and Apodaca and Vigil, on behalf of themselves and others similarly situated, filed lawsuits seeking damages under Rev. Stat. § 1979, 42 U. S. C. § 1983, in the District of Colorado, alleging that this deprivation violated their Eighth Amendment rights to be free from cruel and unusual punishment. Respondents, CDOC Executive Director Rick Raemisch and CSP Warden Travis Trani, moved to dismiss both cases.[3] The District Court denied both motions to dismiss. The U. S. Court of Appeals for the Tenth Circuit reversed both denials, concluding that its prior precedents allowed "reasonable debate on the constitutionality of disallowing outdoors exercise for two years and one month" in Lowe's case, 864 F. 3d 1205, 1209 (2017), or, moreover, 11 months in Apodaca and Vigil's case, 864 F. 3d 1071, 1078 (2017).

Apodaca, Vigil, and Lowe petitioned this Court for certiorari, arguing that the Tenth Circuit had diverged from the common practice among the Courts of Appeals of allowing a deprivation of outdoor exercise only when it was supported by a sufficient security justification. See Pet. for Cert. in No. 17–1284, pp. 2–3; Pet. for Cert. in No. 17–1289, pp. 2–3. Petitioners are correct that the presence (or absence) of a particularly compelling security justification has, rightly, played an important role in the analysis of the Courts of Appeals.[4] But the litigation before the lower courts here did not focus on the presence or absence of a

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[3] With regard to Apodaca and Vigil's 11-month deprivation, respondents both contested that there was an Eighth Amendment violation and claimed qualified immunity. See Motion To Dismiss or Motion for Summary Judgment in *Apodaca*, Doc. 18, pp. 6–11. With regard to Lowe's 25-month deprivation, respondents did not contest that there was an Eighth Amendment violation but did again claim qualified immunity. See Motion To Dismiss in *Lowe*, Doc. 10, pp. 7–13.

[4] See, *e. g.*, *Pearson* v. *Ramos*, 237 F. 3d 881, 884–885 (CA7 2001) (reversing judgment for plaintiff who was denied outdoor exercise for a year after a series of serious infractions, including beating a guard to the point that he was hospitalized, setting a fire that prompted an evacuation, and throwing bodily fluids in a medical technician's face); *Bass* v. *Perrin*, 170 F. 3d 1312, 1316–1317 (CA11 1999) (affirming summary judgment for defendants where plaintiffs had, between them, been convicted of aggravated battery, murder, and attempted murder since their incarceration and each had attempted to escape during outdoor recreation); *Spain* v. *Procunier*, 600 F. 2d 189, 200 (CA9 1979) (affirming injunctive relief in the absence of "an adequate justification" from the State for not providing outdoor exercise for over four years).

valid security justification, and therefore the factual record before this Court—as well as the legal analysis provided by the lower courts—is not well suited to our considering the question now.[5] Despite my deep misgivings about the conditions described, I therefore concur in the Court's denial of certiorari. Cf. *Perez* v. *Florida*, 580 U. S. 1187, 1188 (2017) (SOTOMAYOR, J., concurring in denial of certiorari).

II

I write to note, however, that what is clear all the same is that to deprive a prisoner of any outdoor exercise for an extended period of time in the absence of an especially strong basis for doing so is deeply troubling—and has been recognized as such for many years. Then-Judge Kennedy observed as much in 1979, ruling that, in the absence of "an adequate justification" from the State, "it was cruel and unusual punishment for a prisoner to be confined for a period of years without opportunity to go outside except for occasional court appearances, attorney interviews, and hospital appointments." *Spain* v. *Procunier*, 600 F. 2d 189, 200 (CA9 1979). And while he acknowledged that various security concerns—including the safety of staff and other prisoners and preventing escape—could "justify not permitting plaintiffs to mingle with the general prison population," he observed that those generalized concerns did "not explain why other exercise arrangements were not made." *Ibid.* The same inquiry remains essential today, given the vitality—recognized by the Tenth Circuit in other cases[6]—of the basic human need at issue. It should be

[5] For example, the CDOC regulations in effect during the relevant time period outlined particular conduct that could justify the imposition of solitary confinement, including, for example, attempting to harm seriously or kill another person, organizing or inciting a riot, or attempting to escape from a secure facility. See CDOC Reg. No. 650–03, p. 4 (May 15, 2012). But those regulations also included provisions that could be questionable in their application, including a catchall for "[o]ther circumstances." See *ibid.* Here, we have not been presented with facts in the record explaining what led to this extreme condition of confinement being imposed on Apodaca, Vigil, or Lowe, or, similarly, whether permitting outdoor exercise would have meaningfully increased any of the potential risks.

[6] See *Fogle* v. *Pierson*, 435 F. 3d 1252, 1260 (2006) ("[W]e think it is clear that a factfinder might conclude that the risk of harm from three years of deprivation of any form of outdoor exercise was obvious"); *Perkins* v. *Kansas Dept. of Corrections*, 165 F. 3d 803, 810 (1999) ("[W]e conclude the district court here erred when it held that plaintiff's allegations about the

clear by now that our Constitution does not permit such a total deprivation in the absence of a particularly compelling interest.

Two Justices of this Court have recently called attention to the broader Eighth Amendment concerns raised by long-term solitary confinement. See *Ruiz* v. *Texas*, 580 U. S. 1191–1192 (BREYER, J., dissenting from denial of stay of execution); *Davis* v. *Ayala*, 576 U. S. 257, 286–290 (2015) (Kennedy, J., concurring). Those writings came in cases involving capital prisoners, but it is important to remember that the issue sweeps much more broadly: Whereas fewer than 3,000 prisoners are on death row, a recent study estimated that 80,000 to 100,000 people were held in some form of solitary confinement.[7] The Eighth Amendment, of course, protects them all.

Lowe himself, respondents tell us, was convicted of second-degree burglary and introduction of contraband—and he evidently spent 11 years in solitary confinement. See Brief in Opposition 1, n. 1; Complaint, at 5. It is hard to see how those 11 years could have prepared him for the day in July 2015 when he "was released from solitary confinement directly to the streets," though his Complaint mentions that he had found "wor[k] doing construction labor and [was] striving to establish a life on the streets." *Ibid.* While we do not know what caused his death in May 2018, see Reply Brief 2, n. 2, we do know that solitary confinement imprints on those that it clutches a wide range of psychological scars.[8]

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extended deprivation of outdoor exercise showed no excessive risk to his well-being" (internal quotation marks and alteration omitted)); *Bailey* v. *Shillinger*, 828 F. 2d 651, 653 (1987) ("There is substantial agreement among the cases in this area that some form of regular outdoor exercise is extremely important to the psychological and physical well being of inmates, and some courts have held a denial of fresh air and exercise to be cruel and unusual punishment under certain circumstances").

[7] See Dept. of Justice, Bureau of Justice Statistics, E. Davis & T. Snell, Capital Punishment, 2016, p. 2 (Apr. 2018); The Liman Program & Assn. of State Correctional Adm'rs, Time-In-Cell: The ASCA-Liman 2014 National Survey of Administrative Segregation in Prison, p. ii (Aug. 2015).

[8] See, *e. g.*, *Davis* v. *Ayala*, 576 U. S. 257, 289 (2015) (Kennedy, J., concurring) (detailing psychological effects and citing story of 16-year-old who was held in pretrial solitary confinement for three years and committed suicide two years after his release); *Grissom* v. *Roberts*, 902 F. 3d 1162, 1175–1178 (CA10 2018) (Lucero, J., concurring); see also B. Stevenson, Just Mercy 153 (2014) (recounting story of juvenile prisoner whose "mental health unrav-

Respondent Raemisch, CDOC's executive director, himself has acknowledged the ills of solitary confinement,[9] and I note that Colorado has in recent years revised its regulations such that it now allows all inmates "access to outdoor recreation" for at least one hour, three times per week, subject to "security or safety considerations."[10] Those changes cannot undo what petitioners, and others similarly situated, have experienced, but they are nevertheless steps toward a more humane system.

More steps may well be needed. Justice Kennedy, in his *Ayala* concurrence, 576 U. S., at 287, referenced Charles Dickens' depiction of the ravages of solitary confinement in A Tale of Two Cities, but it is worth appreciating that the portrayal referenced was not merely the result of a skilled novelist's imagination. In 1842, Dickens recounted his real-life visit to Philadelphia's Eastern State Penitentiary, in which he described the prisoners housed in solitary confinement there:

> "[The prisoner] is led to the cell from which he never again comes forth, until his whole term of imprisonment has expired. He never hears of wife and children; home or friends; the life or death of any single creature. He sees the prison-officers, but with that exception he never looks upon a human countenance, or hears a human voice. He is a man buried alive; to be dug out in the slow round of years; and in the mean time dead to everything but torturing anxieties and horrible despair." C. Dickens, American Notes for General Circulation 148 (J. Whitley & A. Goldman eds. 1972).

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eled" in solitary, yielding self-harm and multiple suicide attempts). See generally Bennion, Banning the Bing: Why Extreme Solitary Confinement Is Cruel and Far Too Usual Punishment, 90 Ind. L. J. 741, 753–763 (2015); Betts, Only Once I Thought About Suicide, 125 Yale L. J. Forum 222 (2016); Grassian, Psychiatric Effects of Solitary Confinement, 22 Wash. U. J. L. & Pol'y 325 (2006); Smith, The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature, 34 Crime & Justice 441 (2006); Calambokidis, Note, Beyond Cruel and Unusual: Solitary Confinement and Dignitary Interests, 68 Ala. L. Rev. 1117, 1150–1155 (2017).

[9] See Raemisch, Why We Ended Long-Term Solitary Confinement in Colorado, N. Y. Times, Oct. 12, 2017, p. A25 ("It is time for this unethical tool to be removed from the penal toolbox"); Raemisch, My Night in Solitary, N. Y. Times, Feb. 21, 2014, p. A25 ("I felt as if I'd been there for days. I sat with my mind. How long would it take before Ad Seg chipped that away? I don't know, but I'm confident that it would be a battle I would lose").

[10] CDOC Reg. No. 600–09, p. 7 (Jan. 1, 2018).

Dickens did not question the penal officers' motives. He concluded, rather, that they did "not know what it is that they are doing" and that "very few" were "capable of estimating the immense amount of torture and agony which this dreadful punishment, prolonged for years, inflicts upon the sufferers." *Id.*, at 146. The pain caused was invisible and inaudible, such that "slumbering humanity" was "not roused up" to put a stop to it. *Id.*, at 147.

We are no longer so unaware. Courts and corrections officials must accordingly remain alert to the clear constitutional problems raised by keeping prisoners like Apodaca, Vigil, and Lowe in "near-total isolation" from the living world, *Ayala*, 576 U. S., at 289 (Kennedy, J., concurring), in what comes perilously close to a penal tomb.

No. 18–35. PENNSYLVANIA *v.* JOHNSON. Sup. Ct. Pa. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 644 Pa. 150, 174 A. 3d 1050.

No. 18–112. DAY, JUDGE, CIRCUIT COURT OF OREGON, THIRD JUDICIAL DISTRICT *v.* OREGON COMMISSION ON JUDICIAL FITNESS AND DISABILITY. Sup. Ct. Ore. Motion of Freedom of Conscience Defense Fund for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 362 Ore. 547, 413 P. 3d 907.

No. 18–210. BATS GLOBAL MARKETS, INC., ET AL. *v.* CITY OF PROVIDENCE, RHODE ISLAND, ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.* Reported below: 878 F. 3d 36.

No. 18–231. NEW WEST, L. P., ET AL. *v.* CITY OF JOLIET, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.* Reported below: 891 F. 3d 271.

No. 18–5560. BEAUCHAMP *v.* DOGLIETTO ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.* Reported below: 698 Fed. Appx. 396.

No. 18–5583. TURNER *v.* SMITH ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consider-

*See also note, 586 U. S. 913.

ation or decision of this petition.* Reported below: 734 Fed. Appx. 460.

No. 18–5704. AUSTIN *v.* DISTRICT ATTORNEY OF PHILADELPHIA COUNTY, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.*

No. 18–5810. CHIRINO RIVERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.*

No. 18–5811. 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.*

No. 18–5930. WALKER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.* Reported below: 738 Fed. Appx. 91.

Rehearing Denied

No. 17–8324. WELLS *v.* HARRY, WARDEN, 584 U. S. 1016. Petition for rehearing denied.

OCTOBER 11, 2018

Miscellaneous Order

No. 18A385. MAYS, WARDEN, *v.* ZAGORSKI. Application to vacate stay of execution of sentence of death, entered by the United States Court of Appeals for Sixth Circuit on October 10, 2018, presented to JUSTICE KAGAN, and by her referred to the Court, granted. JUSTICE BREYER and JUSTICE SOTOMAYOR would deny the application to vacate the stay.

Certiorari Denied

No. 18–6238 (18A376). ZAGORSKI *v.* PARKER, COMMISSIONER, TENNESSEE DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Tenn. 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: 558 S. W. 3d 606.

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*See also note, 586 U. S. 913.

JUSTICE SOTOMAYOR, with whom JUSTICE BREYER joins, dissenting.

Once again, a State hastens to kill a prisoner despite mounting evidence that the sedative to be used, midazolam, will not prevent the prisoner from feeling as if he is "drowning, suffocating, and being burned alive from the inside out" during a process that could last as long as 18 minutes. *Irick* v. *Tennessee*, 585 U. S. 1048, 1048–1049 (2018) (SOTOMAYOR, J., dissenting from denial of application for stay); see also *Arthur* v. *Dunn*, 580 U. S. 1141, 1153–1154 (2017) (SOTOMAYOR, J., dissenting from denial of certiorari). And once again the State claims the right to do so under the Eighth Amendment not because a court has concluded that these risks are overblown, but rather because of the "perverse requirement that inmates offer alternative methods for their own executions." *McGehee* v. *Hutchinson*, 581 U. S. 933, 935 (2017) (SOTOMAYOR, J., dissenting from denial of application for stay and denial of certiorari); see also *Glossip* v. *Gross*, 576 U. S. 863, 878–881 (2015). This requirement was legally and morally wrong when it was promulgated, and it has been proved even crueler in light of the obstacles that have prevented capital prisoners from satisfying this precondition. I would therefore grant a stay of execution and grant petitioner Edmund Zagorski's petition for certiorari to consider what suffices for a prisoner to prove "a known and available alternative method of execution." *Id.*, at 878.[1]

For several years, Tennessee has provided for the execution of capital prisoners via a single drug called pentobarbital. See *Abdur'Rahman* v. *Parker*, No. M2018–01385–SC–RDO–CV (Sup. Ct. Tenn., Oct. 8, 2018), pp. 3–4. Pentobarbital, a barbiturate, does not carry the risks described above; unlike midazolam (a benzodiazepine), pentobarbital is widely conceded to be able to render a person fully insensate. See, *e. g.*, *Glossip*, 576 U. S., at 878.

In January 2018, Tennessee Department of Corrections (TDOC) adopted an alternative to pentobarbital: Protocol B, a three-drug

[1] The State's refusal to allow Zagorski's attorneys to access a telephone during Zagorski's scheduled execution is also troubling. For reasons expressed before, I would grant review of this question as well. See *Arthur* v. *Dunn*, 581 U. S. 1002, 1002–1003 (2017) (SOTOMAYOR, J., dissenting from denial of application for stay and denial of certiorari).

sequence beginning with midazolam (the drug whose sedative properties are dubious), to be followed by vecuronium bromide (to paralyze the prisoner) and then potassium chloride (to stop the prisoner's heart).[2] No. M2018–01385–SC–RDO–CV, at 4. The pentobarbital option—Protocol A—remained, meanwhile, in effect. *Ibid.* In February 2018, the State set execution dates for several prisoners, including Zagorski, and Zagorski and others soon thereafter filed suit challenging Protocol B and pointing to Protocol A, pentobarbital, as the available, significantly less risky alternative. See *id.*, at 4–5. The State, however, was noncommittal about pentobarbital's availability. At a pretrial hearing in April 2018, as Justice Lee explained in dissent below, the trial court "zeroed in on the problem and repeatedly questioned counsel about the availability of pentobarbital," emphasizing that an answer to this question was "'essential.'" *Id.*, at 4. "The State's response to the trial court's direct question—'will [Protocol A] be available for the August 9th execution?'—was 'I can't answer that question, Your Honor.'" *Id.*, at 5.

Then, "[j]ust a few hours before the parties filed their trial briefs on July 5, 2018, [TDOC] adopted a revised execution protocol that abandoned [pentobarbital], leaving only Protocol B"—the midazolam option. *Id.*, at 4. Trial commenced a few days later. Working on a highly expedited timeline, the trial court ruled against the prisoners later that month, concluding that they had failed to prove the availability of pentobarbital—the very method that TDOC had retained as Protocol A until just before trial started.[3] See *Abdur'Rahman* v. *Parker*, No. 18–183–II(III) (Ch.

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[2] "The first drug [midazolam] is critical; without it, the prisoner faces the unadulterated agony of the second and third drugs." *Arthur* v. *Dunn*, 580 U. S. 1141, 1142 (2017) (SOTOMAYOR, J., dissenting from denial of certiorari). This Court in *Glossip* concluded that a district court did not clearly err in finding that midazolam could render a prisoner sufficiently insensate to the excruciating effects of the second and third drugs. See 576 U. S., at 885. Any confidence in that conclusion has since eroded in the face of growing contrary medical evidence and worrisome results from executions themselves. See, *e. g.*, *Abdur'Rahman* v. *Parker*, No. 18–183–II(III) (Ch. Ct. Davidson Cty., Tenn., July 26, 2018), pp. 21–22, 27–28. Because the opinions below do not defend the use of midazolam on the merits, midazolam's inadequacy is not the focus here.

[3] The trial court also concluded that the prisoners' experts "established that midazolam does not elicit strong analgesic effects and the inmate being executed may be able to feel pain from the administration of the second and

Ct. Davidson Cty., Tenn., July 26, 2018), pp. 2, 34. The Tennessee Supreme Court affirmed on that ground, while declining to "address the Plaintiffs' claim that the three-drug protocol creates a demonstrated risk of severe pain." No. M2018–01385–SC–RDO–CV, at 22.

The circumstances surrounding Zagorski and his fellow prisoners' attempts to prove that pentobarbital was "available" demonstrate how unfairly this already perverse requirement is being applied. For one, the prisoners' ability to prove the drug's availability was severely constrained by rules of secrecy surrounding individuals involved in the execution process. See *id.*, at 3 (Lee, J., dissenting); see also Tenn. Code Ann. § 10–7–504(h) (2018). The prisoners were unable to depose individuals with direct knowledge of the State's efforts to obtain pentobarbital. Nor were the prisoners allowed to learn which potential sellers the State ostensibly approached to try to obtain pentobarbital. Short of cold-calling every pharmacy in the country and asking for pentobarbital, it is anyone's guess how the prisoners were supposed to challenge meaningfully the State's claim that it could not obtain the drug. Yet they were faulted below for failing to offer "direct proof." No. M2018–01385–SC–RDO–CV, at 21.

Moreover, it is not as if pentobarbital has vanished from the Earth, for purposes of execution or otherwise. As Justice Lee noted in dissent, Texas and Georgia have each used it multiple times in executions this year alone. *Id.*, at 5. Missouri also appears to be prepared to use it in upcoming executions. See, *e. g.*, Brief for Respondent in *Bucklew* v. *Precythe*, O. T. 2018, No. 17–8151, p. 1. Moreover, what discovery the prisoners did obtain below indicates that roughly 10 of the 100 suppliers that TDOC reached out to in 2017 did have pentobarbital for sale—just not the number of doses that the State had requested. No. 18–183–II(III), at 13. And at least one supplier around this time evidently quoted a price and discussed a "bulk $ option." App. to Pet. for Cert. 197a.

The trial court found credible the senior TDOC officials who testified to having delegated a search for pentobarbital to their

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third drugs." *Id.*, at 21. But it nevertheless concluded, without expressing any countervailing confidence in midazolam's anesthetic properties, that this Court "would not find the facts established in this case to violate the Constitution." *Id.*, at 22; see also *Irick* v. *Tennessee*, 585 U. S. 1048, 1049–1050 (2018) (SOTOMAYOR, J., dissenting from denial of certiorari).

subordinates, see No. 18–183–II(III), at 11–12, and the Tennessee Supreme Court based its affirmance in significant part on these "credibility determinations," see No. M2018–01385–SC–RDO–CV, at 21–22. But these senior officials were not the individuals who actually undertook the search for pentobarbital, see *id.*, at 12; the actual procurers, by contrast, were unavailable to the prisoners because of the State's secrecy laws. When the prisoners tasked with asking the State to kill them another way are denied by the State information crucial to establishing the availability of that other means of killing, a grotesque requirement has become Kafkaesque as well.

Such barriers are not the only ways in which prisoners proposing a more humane means of execution may be thwarted. In other instances, courts have rejected claims by petitioners proposing means of execution that are unavailable under state law. See, *e. g.*, *Arthur*, 580 U. S., at 1141–1142 (SOTOMAYOR, J., dissenting from denial of certiorari). Such rejections are likewise troubling, because they suggest that "all a State has to do to execute [a person] through an unconstitutional method is to pass a statute declining to authorize any alternative method," *id.*, at 1148, and they likewise show the need for us to address in more detail what *Glossip* actually requires. In any event, the prisoners here sought only the State's own Protocol A, which the State itself had held out as a seemingly available method before eliminating it "on the eve of trial." No. M2018–01385–SC–RDO–CV, at 5 (Lee, J., dissenting). That is hardly an extravagant request, particularly when the State's own evidence discloses that there had been opportunities to purchase pentobarbital both in smaller quantities and in bulk.

I accordingly would grant Zagorski's request for a stay and grant certiorari to address what renders a method of execution "available" under *Glossip*. Capital prisoners are not entitled to pleasant deaths under the Eighth Amendment, but they are entitled to humane deaths. The longer we stand silent amid growing evidence of inhumanity in execution methods like Tennessee's, the longer we extend our own complicity in state-sponsored brutality. I dissent.

OCTOBER 12, 2018

Certiorari Granted

No. 17–1702. MANHATTAN COMMUNITY ACCESS CORP. ET AL. *v.* HALLECK ET AL. C. A. 2d Cir. Motion of Chicago Access

Corporation for leave to file brief as *amicus curiae* granted. Certiorari granted. Reported below: 882 F. 3d 300.

OCTOBER 15, 2018

Dismissal Under Rule 46

No. 18–161. DETROIT INTERNATIONAL BRIDGE CO., INC., ET AL. *v.* DEPARTMENT OF STATE ET AL. C. A. D. C. Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 883 F. 3d 895.

Certiorari Granted—Vacated and Remanded

No. 18–5184. HASHIMI *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 *McCoy* v. *Louisiana*, 584 U. S. 414 (2018). Reported below: 718 Fed. Appx. 178.

Miscellaneous Orders

No. 18M50. LYON *v.* CANADIAN NATIONAL RAILWAY COMPANY ET AL.;

No. 18M51. ZAREMBA FAMILY FARMS, INC., ET AL. *v.* ENCANA OIL & GAS (USA) INC.;

No. 18M52. REID *v.* UNITED STATES; and

No. 18M54. MCGHEE *v.* DAVIS, WARDEN. Motions for leave to file petitions for writs of certiorari with supplemental appendixes under seal granted.

No. 18M53. SMITH *v.* FOOD BANK OF EASTERN MICHIGAN; and

No. 18M55. RAFI *v.* BRIGHAM AND WOMEN'S HOSPITAL ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 18–5621. TORKORNOO *v.* HELWIG ET AL. C. A. 4th Cir.; and

No. 18–5982. BRITTON-HARR *v.* UNITED STATES. C. A. 5th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 5, 2018, 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. 18–6048. IN RE SPOTTSVILLE; and

No. 18–6065. IN RE RICHARDSON. Motions of petitioners for leave to proceed *in forma pauperis* denied, and petitions for writs of habeas corpus dismissed. See this Court's Rule 39.8.

No. 18–6054. IN RE BOONE. 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. 18–5968. IN RE GRACIA-CANTU. Petition for writ of mandamus denied.

No. 18–6018. IN RE TERRY. 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.

Certiorari Denied

No. 17–1575. YONG *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 644 Pa. 613, 177 A. 3d 876.

No. 17–1624. CITIZEN POTAWATOMI NATION *v.* OKLAHOMA. C. A. 10th Cir. Certiorari denied. Reported below: 881 F. 3d 1226.

No. 17–1713. EMERSON ELECTRIC CO. ET AL. *v.* SUPERIOR COURT OF CALIFORNIA, ORANGE COUNTY, ET AL. Sup. Ct. Cal. Certiorari denied. Reported below: 4 Cal. 5th 316, 410 P. 3d 32.

No. 17–7929. BROWN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 17–8462. PETRAS ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 879 F. 3d 155.

No. 17–8495. VELEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 17–8853. DIXON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 718 Fed. Appx. 924.

No. 17–9326. KORNSE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 135.

No. 17–9436. Francisco Vega *v.* Germaine. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 247 So. 3d 471.

No. 17–9458. Porter *v.* Rhode Island. Sup. Ct. R. I. Certiorari denied. Reported below: 179 A. 3d 1218.

No. 18–84. ConAgra Grocery Products Co. et al. *v.* California; and

No. 18–86. Sherwin-Williams Co. *v.* California. Ct. App. Cal., 6th App. Dist. Certiorari denied. Reported below: 17 Cal. App. 5th 51, 227 Cal. Rptr. 3d 499.

No. 18–124. Two-Way Media Ltd. *v.* Comcast Cable Communications, LLC, et al. C. A. Fed. Cir. Certiorari denied. Reported below: 874 F. 3d 1329.

No. 18–167. MCC (Xiangtan) Heavy Industrial Equipment Co., Ltd. *v.* Liebherr Mining & Construction Equipment, Inc., dba Liebherr Mining Equipment Newport News Co. Sup. Ct. Va. Certiorari denied.

No. 18–176. Conestoga Trust Services, LLC, as Trustee of the Conestoga Settlement Trust, dated May 1, 2010 *v.* Sun Life Assurance Company of Canada. C. A. 6th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 600.

No. 18–181. Klayman *v.* Luck. Ct. App. Ohio, 8th App. Dist., Cuyahoga County. Certiorari denied. Reported below: 2017-Ohio-8231.

No. 18–198. Celli *v.* New York City Department of Education et al. C. A. 2d Cir. Certiorari denied. Reported below: 699 Fed. Appx. 88.

No. 18–200. Michigan *v.* Jones. Ct. App. Mich. Certiorari denied.

No. 18–201. Montazer *v.* Montazer. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 18–205. Northern California Water Assn. et al. *v.* California State Water Resources Control Board et al. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 20 Cal. App. 5th 1204, 230 Cal. Rptr. 3d 142.

No. 18–224. PICKENS *v.* BREVARD POLICE TESTING AND SELECTION CENTER. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 245 So. 3d 745.

No. 18–258. EL-KHALIDI *v.* ARABIAN AMERICAN DEVELOPMENT CO. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 18–293. FARKAS *v.* OCWEN LOAN SERVICING, L. L. C., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 725 Fed. Appx. 273.

No. 18–303. OLEKSY *v.* GENERAL ELECTRIC CO. C. A. Fed. Cir. Certiorari denied. Reported below: 718 Fed. Appx. 981.

No. 18–342. CITY OF MAPLEWOOD, MISSOURI *v.* WEBB ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 889 F. 3d 483.

No. 18–368. THOMAS *v.* COZZI. C. A. 11th Cir. Certiorari denied. Reported below: 892 F. 3d 1288.

No. 18–5168. PALACIOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 405.

No. 18–5191. PANIAGUA-PANIAGUA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 700.

No. 18–5222. COOPER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 259.

No. 18–5529. TERRY *v.* EARLEY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 704 Fed. Appx. 684.

No. 18–5530. KALDAWI *v.* STATE OF KUWAIT ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 709 Fed. Appx. 452.

No. 18–5557. BUSSING *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 18–5558. ATWELL *v.* FERGUSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–5562. PIERRE *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 891 F. 3d 224.

No. 18–5563. BRUTON *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–5569. Weisner *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 18–5570. Vargas *v.* Superior Court of California, San Bernardino County. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 18–5571. Wilkins, aka Brown *v.* Contra Costa County, California, et al. C. A. 9th Cir. Certiorari denied.

No. 18–5572. Wells *v.* Gray, Warden. C. A. 6th Cir. Certiorari denied.

No. 18–5581. Jenewicz *v.* New Jersey. Super. Ct. N. J., App. Div. Certiorari denied.

No. 18–5582. Kissner *v.* Michigan. Ct. App. Mich. Certiorari denied.

No. 18–5584. Thompson *v.* Copeland et al. C. A. 9th Cir. Certiorari denied. Reported below: 885 F. 3d 582 and 714 Fed. Appx. 805.

No. 18–5586. Knight *v.* Florida. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 247 So. 3d 481.

No. 18–5589. Dema *v.* Allegiant Air LLC. C. A. 9th Cir. Certiorari denied.

No. 18–5590. Johnson *v.* Virginia et al. C. A. 4th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 308.

No. 18–5591. Mason *v.* Polster, Judge, United States District Court for the Northern District of Ohio, et al. C. A. 6th Cir. Certiorari denied.

No. 18–5592. Madrid *v.* Vannoy, Warden. C. A. 5th Cir. Certiorari denied.

No. 18–5595. Williams *v.* Sood et al. C. A. 7th Cir. Certiorari denied.

No. 18–5596. Wallace *v.* Barnes, Warden. C. A. 9th Cir. Certiorari denied.

No. 18–5602. Leonard *v.* Florida. Sup. Ct. Fla. Certiorari denied.

No. 18–5608. MATA *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–5610. SAXENA *v.* ABUD. C. A. 9th Cir. Certiorari denied. Reported below: 677 Fed. Appx. 436.

No. 18–5611. STEWART *v.* STUKEY. C. A. 8th Cir. Certiorari denied.

No. 18–5619. CONTRERAS *v.* ANGLEA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–5625. CREW *v.* MONTGOMERY, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–5627. WEBB *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–5628. TACQUARD *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 18–5629. CHANEY *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–5632. LEONOR *v.* FRAKES, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES. Ct. App. Neb. Certiorari denied. Reported below: 25 Neb. App. xvi.

No. 18–5635. JACKSON *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–5637. DESIR *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 239 So. 3d 678.

No. 18–5643. CRAFT *v.* BONDS, ADMINISTRATOR, SOUTH WOODS STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–5668. BLACKLEDGE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 247.

No. 18–5677. LOUGHNER *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 18–5728. EARNEST *v.* DAVIS, WARDEN, ET AL. Sup. Ct. Va. Certiorari denied.

No. 18–5769. SMITH *v.* EPPINGER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–5794. DAVIS *v.* MADDIE. C. A. 5th Cir. Certiorari denied. Reported below: 702 Fed. Appx. 230.

No. 18–5857. LATIMORE *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 18–5859. MARTINEZ PEREZ *v.* SESSIONS, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 605.

No. 18–5868. CANNON *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 18–5889. WELCH *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–5902. ALLEN *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 273.

No. 18–5905. MOORE *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2017 IL App (1st) 150208–U.

No. 18–5922. SARHAN *v.* FEDERAL BUREAU OF PRISONS. C. A. 11th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 871.

No. 18–5937. BURTON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 273 So. 3d 867.

No. 18–5941. TIPPENS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 18–5949. MORRIS *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 18–5950. MILLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 431.

No. 18–5956. WHITNEY *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2018 Ark. 138.

No. 18–5957. ARCILA *v.* UNITED STATES; and
No. 18–6016. SANDOVAL-RAMOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 279.

No. 18–5964. HACHENEY *v.* OBENLAND, SUPERINTENDENT, MONROE CORRECTIONAL COMPLEX. C. A. 9th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 541.

No. 18–5966. FAULKNER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 885 F. 3d 488.

No. 18–5967. HOWARD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 726 Fed. Appx. 720.

No. 18–5970. GORION *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 528.

No. 18–5971. FORTIN *v.* CAIN, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 762.

No. 18–5972. FAYE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 728 Fed. Appx. 120.

No. 18–5973. RAMIREZ-DE JESUS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 733 Fed. Appx. 558.

No. 18–5978. REGISTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 709 Fed. Appx. 670.

No. 18–5979. DERRY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 738 Fed. Appx. 107.

No. 18–5983. CHARLTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 737 Fed. Appx. 257.

No. 18–5987. HAMMOND *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 890 F. 3d 901.

No. 18–5992. BUTLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–5994. WHITE *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2018 Ark. 81, 540 S. W. 3d 291.

No. 18–5996. Barris *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 583.

No. 18–5997. Burciaga *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 811.

No. 18–6006. Gonzalez Tovar *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 89.

No. 18–6007. Williams *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 771.

No. 18–6008. Pagan-Romero *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 894 F. 3d 441.

No. 18–6010. Patel *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 18–6012. Wilson *v.* Soto, Warden. C. A. 9th Cir. Certiorari denied.

No. 18–6014. Vega-Orozco *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 726 Fed. Appx. 233.

No. 18–6020. Rodgers *v.* Miller, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 294.

No. 18–6023. Blackwell *v.* Hansen, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 826.

No. 18–6024. Brown *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 18–6028. Baum *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 167.

No. 18–6030. Smith *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 720 Fed. Appx. 647.

No. 18–6031. Robinson *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 18–6033. Myers *v.* Osborne, Warden. C. A. 6th Cir. Certiorari denied.

No. 18–6036. Harden *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 893 F. 3d 434.

No. 18–6041. BURSE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 83.

No. 18–6042. ARY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 892 F. 3d 787.

No. 18–6046. SKILLERN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 884 F. 3d 1103.

No. 18–6049. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 726.

No. 18–6060. CHAVEZ *v.* LEGRAND, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 388.

No. 18–6063. ALEXANDER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 423.

No. 17–508. LIVNAT, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF LIVNAT, ET AL. *v.* PALESTINIAN AUTHORITY, AKA PALESTINIAN INTERIM SELF-GOVERNMENT AUTHORITY. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition. Reported below: 851 F. 3d 45.

No. 17–1656. VIOLET DOCK PORT, INC., LLC *v.* ST. BERNARD PORT, HARBOR & TERMINAL DISTRICT. Sup. Ct. La. Motion of National Federation of Independent Business Small Business Legal Center et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 2017–0434 (La. 1/30/18), 239 So. 3d 243.

No. 17–8368. MOLETTE *v.* UNITED STATES. C. A. 5th Cir.;

No. 17–8637. GIPSON *v.* UNITED STATES (Reported below: 710 Fed. Appx. 697); and WALKER *v.* UNITED STATES (710 Fed. Appx. 696). C. A. 6th Cir.;

No. 17–8746. WILSON *v.* UNITED STATES. Reported below: 710 Fed. Appx. 435. C. A. 11th Cir.;

No. 17–9045. HOMRICH *v.* UNITED STATES. C. A. 6th Cir.;

No. 17–9379. CHUBB *v.* UNITED STATES. Reported below: 707 Fed. Appx. 388. C. A. 6th Cir.;

No. 17–9400. SMITH *v.* UNITED STATES. Reported below: 714 Fed. Appx. 310. C. A. 4th Cir.;

No. 17–9411. BUCKNER *v.* UNITED STATES. Reported below: 714 Fed. Appx. 273. C. A. 4th Cir.; and

No. 17–9490. LEWIS *v.* UNITED STATES. Reported below: 733 Fed. Appx. 501. C. A. 11th Cir. Certiorari denied.

JUSTICE SOTOMAYOR, dissenting.

I dissent from the denial of certiorari for the reasons set out in *Brown* v. *United States*, 586 U. S. 953 (2018) (SOTOMAYOR, J., dissenting from denial of certiorari).

No. 17–8775. GREER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 881 F. 3d 1241.

JUSTICE SOTOMAYOR, dissenting.

I dissent from the denial of certiorari for the reasons set out in *Brown* v. *United States*, 586 U. S. 953 (2018) (SOTOMAYOR, J., dissenting from denial of certiorari).

No. 17–9276. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 868 F. 3d 297.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, dissenting.

Today this Court denies petitioners, and perhaps more than 1,000 like them, a chance to challenge the constitutionality of their sentences.[1] They were sentenced under a then-mandatory provision of the U. S. Sentencing Guidelines, the exact language of which we have recently identified as unconstitutionally vague in another legally binding provision. These petitioners argue that their sentences, too, are unconstitutional. This important question, which has generated divergence among the lower courts, calls out for an answer. Because this Court's decision to deny certiorari precludes petitioners from obtaining such an answer, I respectfully dissent.

Petitioner Thilo Brown, like others whose petitions the Court denies today, was sentenced as a "career offender" under the U. S. Sentencing Guidelines. United States Sentencing Commission,

[1] In addition to Thilo Brown's petition, this Court denies the petitions of Gregory Molette, No. 17–8368; Bobby Jo Gipson and Keith Walker, No. 17–8637; Carlos Wilson, No. 17–8746; Jason Greer, No. 17–8775; Robert Homrich, No. 17–9045; Charles Chubb, No. 17–9379; Terrance Smith, No. 17–9400; John Elwood Buckner, No. 17–9411; and Paul Lewis, No. 17–9490. For the reasons expressed herein, I respectfully dissent from denial of certiorari in their cases as well.

Guidelines Manual § 4B1.1(a) (Nov. 2004) (USSG). At the time, those Guidelines were mandatory. They were "binding on judges" and carried "the force and effect of laws."[2] *United States* v. *Booker*, 543 U. S. 220, 234 (2005).[3] The Guidelines directed enhanced punishment for "career offender[s]." USSG § 4B1.1(a). Defendants qualified as "career offender[s]" if they had "at least two prior felony convictions of either a crime of violence or a controlled substance offense." *Ibid.* There were different ways that a past conviction could count as "a crime of violence," but only one is at issue here: A conviction counted as "a crime of violence" if it "involve[d] conduct that presents a serious potential risk of physical injury to another." § 4B1.2(a)(2) (Nov. 2002). Because it supplied an amorphous catchall at the end of a more definite list, that phrase has been known as the "residual clause." If the phrase sounds familiar, it may be because in *Johnson* v. *United States*, 576 U. S. 591 (2015), this Court considered the exact same language in another provision where it was binding on judges and had the force and effect of law: a statute called the Armed Career Criminal Act (ACCA), 18 U. S. C. § 924(e). Like the Guidelines, the ACCA also required enhanced punishments for career offenders. And, like the Guidelines, the ACCA included its own residual clause. In fact, the ACCA's residual clause was identical to the Guidelines' residual clause. See § 924(e)(2)(B)(ii) (" . . . involves conduct that presents a serious potential risk of physical injury to another").

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[2] This Court accordingly ruled that the mandatory Guidelines violated the Sixth Amendment. See *United States* v. *Booker*, 543 U. S. 220, 226–227 (2005). The Court then rendered the Guidelines advisory by striking down the provisions that had made them mandatory. See *id.*, at 245.

[3] Indeed, before *Booker*, this Court consistently held that the Sentencing Guidelines "b[ound] judges and courts in their uncontested responsibility to pass sentence in criminal cases." *Mistretta* v. *United States*, 488 U. S. 361, 391 (1989); see also *Stinson* v. *United States*, 508 U. S. 36, 42 (1993) ("The principle that the Guidelines Manual is binding on federal courts applies as well to policy statements"). The lower courts heeded that instruction. See *United States* v. *Hendricks*, 171 F. 3d 1184, 1186 (CA8 1999) ("The sentencing guidelines are, of course, binding on federal district courts"); accord, *United States* v. *Lafayette*, 337 F. 3d 1043, 1051–1052 (CADC 2003); *United States* v. *Stephens*, 347 F. 3d 427, 430 (CA2 2003); *United States* v. *Barbosa*, 271 F. 3d 438, 465 (CA3 2001); *United States* v. *Bahe*, 201 F. 3d 1124, 1129, n. 5 (CA9 2000); *United States* v. *Harriott*, 976 F. 2d 198, 202–203 (CA4 1992); *United States* v. *Lee*, 957 F. 2d 770, 772 (CA10 1992).

Johnson struck down the ACCA's residual clause as unconstitutionally vague. 576 U. S., at 597. You might think that if a sequence of words that increases a person's time in prison is unconstitutionally vague in one legally binding provision, that same sequence is unconstitutionally vague if it serves the same purpose in another legally binding provision. Indeed, after *Johnson*, the Sentencing Commission deleted the residual clause from the Guidelines. See USSG §4B1.2(a)(2) (Nov. 2016). But for petitioners like Brown, who were sentenced long before *Johnson*, this Court has thus far left the validity of their sentences an open question. See *Beckles* v. *United States*, 580 U. S. 256, 266–267 (2017); *id.*, at 281, n. 4 (SOTOMAYOR, J., concurring). The Court's decision today all but ensures that the question will never be answered.

In these petitions, that question largely overlaps with a related, timeliness question: whether Brown and his fellow petitioners may rely on the right announced in *Johnson*, in the ACCA context, to attack collaterally their mandatory-Guidelines sentences. Federal law imposes on prisoners seeking to mount collateral attacks on final sentences "[a] 1-year period of limitation . . . from the latest of" several events. See 28 U. S. C. §2255(f). One event that can reopen this window is this Court "newly recogniz-[ing]" a right and making that right "retroactively applicable to cases on collateral review." §2255(f)(3). The right recognized in the ACCA context in *Johnson*, we have held, is retroactive on collateral review. *Welch* v. *United States*, 578 U. S. 120, 130 (2016).

The question for a petitioner like Brown, then, is whether he may rely on the right recognized in *Johnson* to challenge identical language in the mandatory Guidelines. Three Courts of Appeals have said no. See 868 F. 3d 297 (CA4 2017) (case below); *Raybon* v. *United States*, 867 F. 3d 625 (CA6 2017); *United States* v. *Greer*, 881 F. 3d 1241 (CA10 2018). One Court of Appeals has said yes. See *Cross* v. *United States*, 892 F. 3d 288 (CA7 2018). Another has strongly hinted yes in a different posture, after which point the Government dismissed at least one appeal that would have allowed the court to answer the question directly. See *Moore* v. *United States*, 871 F. 3d 72, 80–84 (CA1 2017); see also *United States* v. *Roy*, 282 F. Supp. 3d 421 (Mass. 2017); *United States* v. *Roy*, Withdrawal of Appeal in No. 17–2169 (CA1). One other court has concluded that the mandatory Guidelines themselves cannot be challenged for vagueness. See *In re Griffin*, 823 F. 3d 1350, 1354 (CA11 2016).

Regardless of where one stands on the merits of how far *Johnson* extends, this case presents an important question of federal law that has divided the courts of appeals and in theory could determine the liberty of over 1,000 people.[4] That sounds like the kind of case we ought to hear. See this Court's Rules 10(a), (c).[5] Because the Court nevertheless declines to do so, I respectfully dissent.

No. 18–5998. BIGGINS *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. 17–7972. BARNES *v.* TEXAS, 584 U. S. 940. Petition for rehearing denied.

No. 17–6147. SAPPINGTON *v.* OLDHAM, SHERIFF, SHELBY COUNTY, TENNESSEE, 583 U. S. 1017. Motion for leave to file petition for rehearing denied.

OCTOBER 19, 2018

Miscellaneous Order. (For Court's order making allotment of Justices, see 586 U. S. IV.)

OCTOBER 22, 2018

Miscellaneous Order

No. 18A375. IN RE DEPARTMENT OF COMMERCE ET AL. Application for stay, presented to JUSTICE GINSBURG, and by her referred to the Court, granted in part and denied in part. The application is granted as to the order of the United States District Court for the Southern District of New York dated September 21, 2018, which is stayed through October 29, 2018, at 4 p.m. The

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[4] See Brief for Eight Federal Public Defender Offices as *Amici Curiae* in No. 16–7056 (CA4), pp. 1a–5a (estimating 1,187 cases pending nationwide).

[5] Rule 10 sets forth situations that can weigh in favor of certiorari, although they are "neither controlling nor fully measuring the Court's discretion." Rule 10(a) points to a situation in which "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter." Rule 10(c) points to a situation in which "a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court."

application is denied as to the orders of the District Court dated July 3, 2018, and August 17, 2018.

If applicants file a petition for writ of certiorari or a petition for writ of mandamus with respect to the stayed order by or before October 29, 2018, at 4 p.m., the stay will remain in effect until disposition of such petition by this Court. Should the petition be denied, this stay shall terminate automatically. In the event the petition is granted, the stay shall terminate upon the sending down of the judgment of this Court. Denial of the stay with respect to the remaining orders does not preclude applicants from making arguments with respect to those orders.

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

To implement the constitutional requirement for an "actual Enumeration" of the people every 10 years, Art. I, § 2, cl. 3, Congress has instructed the Secretary of Commerce to "take a decennial census . . . in such form and content as he may determine." 13 U. S. C. § 141(a). Most censuses in our history have asked about citizenship, and Commerce Secretary Wilbur Ross recently decided to reinstate a citizenship question in the 2020 census, citing a statement from the Department of Justice indicating that citizenship data would help it enforce the Voting Rights Act of 1965. Normally, judicial review of an agency action like this is limited to the record the agency has compiled to support its decision. But in the case before us the district court held that the plaintiffs—assorted States and interest groups—had made a "strong showing" that Secretary Ross acted in "bad faith" and were thus entitled to explore his subjective motivations through "extra-record discovery," including depositions of the Secretary, an Acting Assistant Attorney General, and other senior officials. *New York* v. *Department of Commerce*, 333 F. Supp. 3d 282, 285, 289 (SDNY 2018). In two weeks, the district court plans to hold a trial to probe the Secretary's mental processes.

This is all highly unusual, to say the least. Leveling an extraordinary claim of bad faith against a coordinate branch of government requires an extraordinary justification. As evidence of bad faith here, the district court cited evidence that Secretary Ross was predisposed to reinstate the citizenship question when he took office; that the Justice Department hadn't expressed a desire for more detailed citizenship data until the Secretary solic-

ited its views; that he overruled the objections of his agency's career staff; and that he declined to order more testing of the question given its long history. But there's nothing unusual about a new cabinet secretary coming to office inclined to favor a different policy direction, soliciting support from other agencies to bolster his views, disagreeing with staff, or cutting through red tape. Of course, some people may disagree with the policy and process. But until now, at least, this much has never been thought enough to justify a claim of bad faith and launch an inquisition into a cabinet secretary's motives.

Unsurprisingly, the government tells us that it intends to file a petition seeking review of the district court's bad faith determination and its orders allowing extra-record discovery. Toward that end, it has asked us to stay temporarily all extra-record discovery until we may consider its petition for review.

Today, the Court signals that it is likely to grant the government's petition. It stays Secretary Ross's deposition after weighing, among other things, the likelihood of review and the injury that could occur without a stay. And it expressly invites the government to seek review of all of the district court's orders allowing extra-record discovery, including those authorizing the depositions of other senior officials.

Respectfully, I would take the next logical step and simply stay all extra-record discovery pending our review. When it comes to the likelihood of success, there's no reason to distinguish between Secretary Ross's deposition and those of other senior executive officials: each stems from the same doubtful bad faith ruling, and each seeks to explore his motives. As to the hardships, the Court apparently thinks the deposition of a cabinet secretary especially burdensome. But the other extra-record discovery also burdens a coordinate branch in most unusual ways. Meanwhile and by comparison, the plaintiffs would suffer no hardship from being temporarily denied that which they very likely have no right to at all.

There is another factor here, too, weighing in favor of a more complete stay: the need to protect the very review we invite. One would expect that the Court's order today would prompt the district court to postpone the scheduled trial and await further guidance. After all, that is what normally happens when we grant certiorari or indicate that we are likely to do so in a case where trial is imminent. But because today's order technically

leaves the plaintiffs able to pursue much of the extra-record discovery they seek, it's conceivable they might withdraw their request to depose Secretary Ross, try to persuade the trial court to proceed quickly to trial on the basis of the remaining extra-record evidence they can assemble, and then oppose certiorari on the ground that their discovery dispute has become "moot." To ensure that the Court's offer of prompt review is not made meaningless by such maneuvers, I would have thought it simplest to grant the requested extra-record discovery stay in full. Of course, other, if more involved, means exist to ensure that this Court's review of the district court's bad faith finding is not frustrated. I only hope they are not required.

October 26, 2018

Miscellaneous Orders

No. 17–571. Fourth Estate Public Benefit Corp. *v.* Wall-Street.com, LLC, et al. C. A. 11th Cir. [Certiorari granted, 585 U. S. 1029.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 17–1077. Lorenzo *v.* Securities and Exchange Commission. C. A. D. C. Cir. [Certiorari granted, 585 U. S. 1002.] Motion of the Solicitor General to argue *pro hac vice* granted. Justice Kavanaugh took no part in the consideration or decision of this motion.

No. 17–1107. Carpenter, Interim Warden *v.* Murphy. C. A. 10th Cir. [Certiorari granted *sub nom. Royal* v. *Murphy*, 584 U. S. 992.] Joint motion of respondent and Muscogee (Creek) Nation for leave for Muscogee (Creek) Nation to participate in oral argument as *amicus curiae* and for divided argument granted. Justice Gorsuch took no part in the consideration or decision of this motion.

No. 17–1174. Nieves et al. *v.* Bartlett. C. A. 9th Cir. [Certiorari granted, 585 U. S. 1029.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

Certiorari Granted

No. 17–1594. Return Mail, Inc. *v.* United States Postal Service et al. C. A. Fed. Cir. Certiorari granted limited to

Question 1 presented by the petition. Reported below: 868 F. 3d 1350.

No. 17–1657. Mission Product Holdings, Inc. *v.* Tempnology, LLC, nka Old Cold LLC. C. A. 1st Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 879 F. 3d 389.

No. 17–1672. United States *v.* Haymond. C. A. 10th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 869 F. 3d 1153.

October 29, 2018

Certiorari Dismissed

No. 18–5645. Johnson *v.* Diaz, Acting Secretary, California Department of Corrections and Rehabilitation. 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. 18–5774. Driessen *v.* Royal Bank of Scotland. 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. Reported below: 691 Fed. Appx. 21.

No. 18–5801. Larson *v.* Moore et al. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 18–5836. Shekhem El-Bey *v.* United States et al. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Co-*

lumbia Court of Appeals, 506 U. S. 1 (1992) (*per curiam*). JUSTICE KAVANAUGH took no part in the consideration or decision of this motion and this petition.

No. 18–5856. JEEP *v.* UNITED STATES. 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*).

No. 18–5974. SPAULDING *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 18–6118. JONASSEN *v.* SHARTLE, WARDEN. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

Miscellaneous Orders

No. D–3029. IN RE DISCIPLINE OF SPEIGHTS. Nathaniel H. Speights, 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–3030. IN RE DISCIPLINE OF REINER. Martin Barnett Reiner, of Beverly Hills, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–3031. IN RE DISCIPLINE OF ROBERTS. Richard Allen Roberts, of White Plains, N. Y., is suspended from the practice of

law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–3032. IN RE DISCIPLINE OF POWELL. Roger N. Powell, of Reisterstown, 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–3033. IN RE DISCIPLINE OF CASALE. Michael J. Casale, Jr., of Montoursville, 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–3034. IN RE DISCIPLINE OF JONAS. W. James Jonas, of San Antonio, Tex., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–3035. IN RE DISCIPLINE OF BLYTHE. Angela M. Blythe, of Oakland, Md., 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–3036. IN RE DISCIPLINE OF KWASNIK. Michael William Kwasnik, of Hollywood, 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–3037. IN RE DISCIPLINE OF COOPER. John Edwin Cooper, 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–3038. IN RE DISCIPLINE OF HICKS. Thomas Stephen Hicks, of Snow Hill, 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–3039. In re Discipline of Marcin. John Bernard Marcin, of Las Vegas, Nev., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–3040. In re Discipline of Mandelbaum. David Ben Mandelbaum, of Overland Park, Kan., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–3041. In re Discipline of Durban. Frampton Durban, Jr., of Newberry, S. C., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 18M56. Cotner *v.* United States Court of Appeals for the Tenth Circuit. Motion for leave to proceed as a veteran denied.

No. 18M57. In re Sealed Petitioner. Motion for leave to file petition for writ of mandamus under seal with redacted copies for the public record denied.

No. 18M58. Craft *v.* National Labor Relations Board; and

No. 18M59. Thompson *v.* Bank of New York Mellon Trust Co. et al. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 18M60. Bullock *v.* District of Columbia 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. 17–9484. Jason K. *v.* Maine Department of Health and Human Services et al. Sup. Jud. Ct. Me. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 19, 2018, 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. 18–109. Ariosa Diagnostics, Inc. *v.* Illumina, Inc. C. A. Fed. Cir.; and

No. 18–309. SWARTZ *v.* RODRIGUEZ, INDIVIDUALLY AND AS SURVIVING MOTHER AND PERSONAL REPRESENTATIVE OF J. A. C. A. 9th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 18–5843. CHANTHUNYA *v.* MARYLAND ATTORNEY GRIEVANCE COMMISSION. Ct. App. Md.; and

No. 18–6128. DIAMOND *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. D. C. Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 19, 2018, 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. 18–6099. IN RE MARGHEIM. Petition for writ of mandamus denied.

No. 18–5850. IN RE SCHNEIDER. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 17–1544. FATHER *v.* MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 2017 ME 214, 173 A. 3d 142.

No. 17–1568. PADILLA-RAMIREZ *v.* CULLEY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 882 F. 3d 826.

No. 17–1572. PETERSON ET AL. *v.* FRANKLIN, TRUSTEE FOR THE ESTATE OF FRANKLIN. C. A. 8th Cir. Certiorari denied. Reported below: 878 F. 3d 631.

No. 17–1604. BROWN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 709 Fed. Appx. 103.

No. 17–1636. CALIFORNIA SEA URCHIN COMMISSION ET AL. *v.* COMBS, ACTING ASSISTANT SECRETARY FOR FISH, WILDLIFE, AND PARKS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 883 F. 3d 1173.

No. 17–1654. WISE ET AL. *v.* HURT ET AL.; and

No. 17–1655. VANTLIN ET AL. *v.* HURT ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 880 F. 3d 831.

No. 17–1673. AVIATION & GENERAL INSURANCE CO., LTD., ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 882 F. 3d 1088.

No. 17–1700. TURZAI, SPEAKER OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES, ET AL. *v.* BRANDT ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 644 Pa. 287, 175 A. 3d 282.

No. 17–1701. WEI SUN *v.* SESSIONS, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 883 F. 3d 23.

No. 17–8844. COOPER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–8960. HASKIN *v.* US AIRWAYS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 689 Fed. Appx. 515.

No. 17–9171. SANDOVAL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 705 Fed. Appx. 773.

No. 17–9310. LOPEZ LARA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 432.

No. 17–9377. DESILIEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–9474. GREENWAY *v.* ARIZONA. Super. Ct. Ariz., Pima County. Certiorari denied.

No. 17–9535. KING *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 883 F. 3d 577.

No. 18–67. HURST *v.* CALDWELL ET AL. Ct. App. Ky. Certiorari denied.

No. 18–77. ADVANCED VIDEO TECHNOLOGIES LLC *v.* HTC CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 879 F. 3d 1314.

No. 18–182. AIDS HEALTHCARE FOUNDATION, INC. *v.* GILEAD SCIENCES, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 890 F. 3d 986.

No. 18–187. SIMPSON *v.* BANK OF NEW YORK MELLON. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 227 So. 3d 669.

No. 18–194. NUNN *v.* TENNESSEE DEPARTMENT OF CORRECTION ET AL. Ct. App. Tenn. Certiorari denied. Reported below: 547 S. W. 3d 163.

No. 18–206. CUNNINGHAM *v.* GENERAL DYNAMICS INFORMATION TECHNOLOGY, INC. C. A. 4th Cir. Certiorari denied. Reported below: 888 F. 3d 640.

No. 18–209. MEHTA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 5. Certiorari denied.

No. 18–213. AUSTIN *v.* HANOVER INSURANCE CO., AKA MASSACHUSETTS BAY INSURANCE CO. C. A. 8th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 319.

No. 18–214. BAZARGANI *v.* LATCH'S LANE OWNERS ASSN. ET AL. Super. Ct. Pa. Certiorari denied.

No. 18–215. AUBUCHON ET AL. *v.* MARICOPA COUNTY, ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 436.

No. 18–218. BEAM *v.* ABERCROMBIE. C. A. 11th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 918.

No. 18–220. CARRILLO ET AL. *v.* U. S. BANK N. A. ET AL. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 241 So. 3d 143.

No. 18–222. EMED TECHNOLOGIES CORP. *v.* REPRO-MED SYSTEMS, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 725 Fed. Appx. 1005.

No. 18–228. WESTERN RADIO SERVICES CO., INC. *v.* ALLEN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 660.

No. 18–230. RICHARDS *v.* COUNTY OF LOS ANGELES, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 556.

No. 18–233. INDIEZONE, INC., ET AL. *v.* ROOKE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 333.

No. 18–235. VENTURA CONTENT, LTD. *v.* MOTHERLESS, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 885 F. 3d 597.

No. 18–239. RINALDO *v.* MAHAN ET AL. Ct. App. Colo. Certiorari denied.

No. 18–241. PARMAR, INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE OF PARMAR, ET AL. *v.* MADIGAN, ATTORNEY GENERAL OF ILLINOIS, ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 2018 IL 122265, 106 N. E. 3d 1004.

No. 18–242. GICHARU ET AL. *v.* SESSIONS, ATTORNEY GENERAL. C. A. 1st Cir. Certiorari denied.

No. 18–243. FOX *v.* POWELL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 726 Fed. Appx. 865.

No. 18–245. PENN *v.* NEW YORK METHODIST HOSPITAL ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 884 F. 3d 416.

No. 18–248. AHMED *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 863.

No. 18–251. SCHWARTZ *v.* HRI HOSPITAL, INC., ET AL. App. Ct. Mass. Certiorari denied. Reported below: 92 Mass. App. 1120, 95 N. E. 3d 302.

No. 18–255. BRISCOE *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied. Reported below: 542 S. W. 3d 109.

No. 18–263. FAUST *v.* ILLINOIS WORKERS COMPENSATION COMMISSION ET AL. Sup. Ct. Ill. Certiorari denied.

No. 18–284. GESSLER *v.* SMITH ET AL. Sup. Ct. Colo. Certiorari denied. Reported below: 419 P. 3d 964.

No. 18–297. WHITE ET AL. *v.* UNDERWOOD, ATTORNEY GENERAL OF NEW YORK, ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 31 N. Y. 3d 543, 106 N. E. 3d 709.

No. 18–298. BEATY *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 423 S. C. 26, 813 S. E. 2d 502.

No. 18–313. DIAMOND *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 250 So. 3d 1.

No. 18–332. SINGSON *v.* REYES, ATTORNEY GENERAL OF UTAH. Ct. App. Utah. Certiorari denied.

No. 18–335. TEAMER *v.* LEWIS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 286.

No. 18–341. KEYES ET AL. *v.* GUNN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 890 F. 3d 232.

No. 18–343. ANDREWS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 77 M. J. 393.

No. 18–356. ORTH *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 7th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 223.

No. 18–357. TASKOV *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–360. BERGRIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 885 F. 3d 416.

No. 18–381. MARRO *v.* NEW YORK STATE TEACHERS' RETIREMENT SYSTEM. C. A. 6th Cir. Certiorari denied.

No. 18–387. TRIESTMAN *v.* UNDERWOOD, ATTORNEY GENERAL OF NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 715 Fed. Appx. 97.

No. 18–396. HOLLAND ET AL. *v.* ROSEN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 895 F. 3d 272.

No. 18–397. CLOWDIS *v.* VIRGINIA BOARD OF MEDICINE. Sup. Ct. Va. Certiorari denied.

No. 18–407. STICKLE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 18–5004. MITCHELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 146.

No. 18–5230. MURPHY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 887 F. 3d 1064.

No. 18–5263. MCGEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–5268. SAILOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–5271. MURRAY *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 882 F. 3d 778.

No. 18–5298. STEWART *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 711 Fed. Appx. 810.

No. 18–5331. JEREMIAS *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 134 Nev. 46, 412 P. 3d 43.

No. 18–5391. SEXTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 894 F. 3d 787.

No. 18–5399. PEREZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 4 Cal. 5th 421, 411 P. 3d 490.

No. 18–5618. CHON *v.* OBAMA, FORMER PRESIDENT OF THE UNITED STATES, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 718 Fed. Appx. 653.

No. 18–5641. ALSTON *v.* FLORIDA ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 243 So. 3d 885.

No. 18–5648. LAMARCA *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 237 So. 3d 914.

No. 18–5649. RICHARDSON *v.* KENT, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 18–5650. ROSS *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 235 Md. App. 747.

No. 18–5652. SPRINGER *v.* CAPLE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 650.

No. 18–5656. METAYER *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 241 So. 3d 836.

No. 18–5659. CAVALIERI *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 18–5660. GARTON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 4 Cal. 5th 485, 412 P. 3d 315.

No. 18–5662. DIAZ *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 18–5672. RENCHENSKI *v.* MCGINLEY, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–5676. MORRIS *v.* PENNSYLVANIA. C. A. 3d Cir. Certiorari denied.

No. 18–5681. JOHNSON *v.* OKLAHOMA. Sup. Ct. Okla. Certiorari denied.

No. 18–5687. O'KEEFE *v.* BAKER, WARDEN, ET AL. Ct. App. Nev. Certiorari denied. Reported below: 134 Nev. 990.

No. 18–5690. TAYLOR *v.* SCHWEITZER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–5695. ANNABEL *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir. Certiorari denied.

No. 18–5697. REECE *v.* WHITLEY ET AL. C. A. 6th Cir. Certiorari denied.

No. 18–5700. DOCAJ *v.* JOHNSON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–5703. BLAIR *v.* VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 699 Fed. Appx. 182.

No. 18–5705. EASTERLY *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 251 So. 3d 844.

No. 18–5711. COLEMAN *v.* WARD. C. A. 4th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 279.

No. 18–5712. CHRISTMON *v.* B&B AIRPARTS, INC. C. A. 10th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 510.

No. 18–5714. RIVERA-QUINONES *v.* PENNSYLVANIA. C. A. 3d Cir. Certiorari denied.

No. 18–5716. RAY *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–5718. CAMPBELL *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 294 Va. 486, 807 S. E. 2d 735.

No. 18–5719. BARTLETT *v.* PINEDA, JUDGE, SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY, ET AL. Ct. App. Ariz. Certiorari denied.

No. 18–5720. BARTLETT *v.* PINEDA, JUDGE, SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY, ET AL. Ct. App. Ariz. Certiorari denied.

No. 18–5722. LUGO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 18–5723. KUSHNER *v.* GREWAL, ATTORNEY GENERAL OF NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 734 Fed. Appx. 95.

No. 18–5724. CONCEPCION *v.* MCGINLEY, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–5726. CAZARES *v.* TEXAS. Ct. App. Tex., 8th Dist. Certiorari denied.

No. 18–5727. CLARKE *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 18–5733. PINDER *v.* MCDOWELL ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 612.

No. 18–5734. MARTIN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 18–5735. ERVIN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 18–5737. KYLES *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 734 Fed. Appx. 912.

No. 18–5738. MARQUARDT *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 550.

No. 18–5741. RILEY *v.* WELLS FARGO BANK, N. A., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 413.

No. 18–5742. ROBERTS *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 253 So. 3d 1111.

No. 18–5746. NIX *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 242 So. 3d 1118.

No. 18–5755. ALLEN *v.* SUPERIOR COURT OF GEORGIA, CAMDEN COUNTY. C. A. 11th Cir. Certiorari denied.

No. 18–5758. ANNAMALAI *v.* SIVANADIYAN. C. A. 5th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 409.

No. 18–5761. HERMAN *v.* YOUNG ET AL. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 2018 IL App (4th) 170001, 92 N. E. 3d 1070.

No. 18–5764. CRANE *v.* DIAZ, ACTING SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 18–5767. SALERNO *v.* GENTRY, JUDGE, SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY, ET AL. Sup. Ct. Ariz. Certiorari denied.

No. 18–5768. RAYFORD *v.* LEIBACH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–5772. SALDIVAR *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 416.

No. 18–5777. PEDERSON *v.* ARCTIC SLOPE REGIONAL CORP. Sup. Ct. Alaska. Certiorari denied. Reported below: 421 P. 3d 58.

No. 18–5779. COBIA *v.* OHIO ET AL. C. A. 6th Cir. Certiorari denied.

No. 18–5782. COOK *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–5783. COTTON *v.* COUNTY OF SAN BERNARDINO, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 700 Fed. Appx. 776.

No. 18–5784. WABUYABO *v.* CORRECT CARE SOLUTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 642.

No. 18–5787. TUBBS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 18–5792. WATFORD *v.* LAFOND ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 725 Fed. Appx. 412.

No. 18–5798. C. B. *v.* FISCHGRUND. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 243 So. 3d 365.

No. 18–5802. DOE *v.* KAWEAH DELTA HOSPITAL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 698 Fed. Appx. 457.

No. 18–5805. COBB *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–5806. CORBETT *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 18–5807. RUBENS *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 18–5815. FRANCISCO PUENTES *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–5829. MATELYAN *v.* ATLANTIC RECORDS ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–5830. A. L. *v.* FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 240 So. 3d 708.

No. 18–5832. DIXON *v.* LEE, SUPERINTENDENT, EASTERN NEW YORK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 18–5837. ROBERTS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 268 So. 3d 605.

No. 18–5848. DARBY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 18–5851. SALINAS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 18–5855. KNIGHT *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 18–5860. AMIN *v.* SESSIONS, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 206.

No. 18–5867. PRESTON *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–5869. MONTGOMERY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 700 Fed. Appx. 278.

No. 18–5870. PROW *v.* ROY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 649.

No. 18–5883. LOWE *v.* DELTA AIR LINES, INC. C. A. 11th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 724.

No. 18–5887. MORTON *v.* HAYNES, SUPERINTENDENT, STAFFORD CREEK CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 18–5911. LAMPON-PAZ *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–5918. GUERRERO LOZANO *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 243 So. 3d 352.

No. 18–5942. BYLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 409.

No. 18–5943. LINH THI MINH TRAN *v.* PHAM ET AL. Ct. App. Ore. Certiorari denied. Reported below: 288 Ore. App. 384, 414 P. 3d 486.

No. 18–5946. PARRISH *v.* WAINWRIGHT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–5951. CASSADY *v.* HALL. C. A. 11th Cir. Certiorari denied. Reported below: 892 F. 3d 1150.

No. 18–5959. INGEBRETSEN *v.* PALMER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–5975. SINGH *v.* SESSIONS, ATTORNEY GENERAL. C. A. 6th Cir. Certiorari denied.

No. 18–6000. BARREIRO *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 18–6001. CARMAN *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 304 Ga. 21, 815 S. E. 2d 860.

No. 18–6015. TORRES-MEDEL *v.* LASHBROOK, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 18–6017. ROBEY *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 18–6035. CHAMBERS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 18–6057. Sosa-Gonzalez *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 900 F. 3d 1.

No. 18–6066. Vasquez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 323.

No. 18–6067. Lewis *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 827.

No. 18–6068. Jones *v.* Kelley, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied.

No. 18–6069. Cadena *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 381.

No. 18–6072. Gamez Mendez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 358.

No. 18–6073. Price *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 369.

No. 18–6076. Sandifer *v.* Florida. Sup. Ct. Fla. Certiorari denied.

No. 18–6078. Springer *v.* Ohio. Ct. App. Ohio, 8th App. Dist., Cuyahoga County. Certiorari denied. Reported below: 2017-Ohio-8861.

No. 18–6079. Brooks *v.* Frauenheim, Warden. C. A. 9th Cir. Certiorari denied.

No. 18–6080. Bonowitz et al. *v.* United States. Ct. App. D. C. Certiorari denied.

No. 18–6083. Laureano-Perez *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 892 F. 3d 50.

No. 18–6084. Lee *v.* Florida. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 243 So. 3d 337.

No. 18–6087. Johnson *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 18–6090. Williams *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 181 A. 3d 1253.

No. 18–6095. Luis Buenrostro *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 895 F. 3d 1160.

No. 18–6100. PLIEGO-HERNANDEZ *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 790.

No. 18–6102. MAYES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 18–6103. VALDEZ-CEJAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 408.

No. 18–6104. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 689.

No. 18–6107. STONE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–6108. SMOTHERMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–6109. SINGH *v.* UNITED STATES POSTAL SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 661.

No. 18–6111. MANDRELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 554.

No. 18–6112. JONES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–6113. BALLESTEROS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 801.

No. 18–6116. JEAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 891 F. 3d 712.

No. 18–6117. BUENDIA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 907 F. 3d 399.

No. 18–6119. LONG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–6120. PULIDO-NOLAZCO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 859.

No. 18–6121. VEGA-GARCIA, AKA MORENO MOLINA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 893 F. 3d 326.

No. 18–6122. KAPAHU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 600.

No. 18–6123. GREEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 18–6127. VALLIER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 711 Fed. Appx. 786.

No. 18–6132. OLIVER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–6133. OLIVARES-CEPEDA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–6143. RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–6145. NICHOLS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 18–6146. NEUMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–6148. NANDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 401.

No. 18–6150. AQUINO-FLORENCIANI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 894 F. 3d 4.

No. 18–6151. THELEMAQUE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 696 Fed. Appx. 966.

No. 18–6171. TAYLOR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 405.

No. 18–6173. TIZNADO-VALENZUELA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 731 F. 3d 627.

No. 17–7894. TOWNES *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 253 So. 3d 447.

Statement of JUSTICE SOTOMAYOR respecting the denial of certiorari.

Today the Court denies review of Tawuan Townes' capital murder conviction, the constitutionality of which hinges on whether the trial court instructed jurors that they "may" infer his intent to kill a victim or that they "must" do so. The former instruction is constitutional; the latter is not. There is no way to know for sure which instruction the trial court gave. Two court reporters

certified two conflicting transcripts, and the trial court no longer has the original recording. Because Townes has not shown that the procedures below amount to constitutional error, I must vote to deny his petition for certiorari. I write separately because the trial court's failure to preserve the original recording gives cause for deep concern.

Petitioner Tawuan Townes was convicted of capital murder committed in the course of a burglary and sentenced to death. At trial, the crucial question for the jury was whether Townes possessed the requisite intent for a capital murder conviction. According to the trial transcript prepared and certified by the court reporter after trial, the trial court instructed the jury on how to make that decision as follows:

> "'A specific intent to kill is an essential ingredient of capital murder as charged in this indictment, and may be inferred from the character of an assault, the use of a deadly weapon, or other attendant circumstances. Such intent *must be inferred* if the act was done deliberately and death was reasonably to be apprehended or expected as a natural and probable consequence of the act.'" No. CR–10–1892 (Ala. Crim. App., June 13, 2014), App. to Pet. for Cert. A–5 (emphasis added), withdrawn and substituted, 253 So. 3d 447 (Ala. Crim. App. 2015).

Townes appealed, arguing that the trial court's jury instructions violated his constitutional right to due process. The Alabama Court of Criminal Appeals agreed that the jury instruction, as reproduced above, plainly violated his due process rights. Instructing the jury that it "must" infer Townes' specific intent removed the issue of intent from the jury's consideration and relieved the State of its burden to prove each element of the crime beyond a reasonable doubt. See *Sandstrom* v. *Montana*, 442 U. S. 510, 523 (1979). Such presumptions, this Court has held, violate the Due Process Clause. *Francis* v. *Franklin*, 471 U. S. 307, 325 (1985).

Indeed, Townes' intent was the only issue for the jury to resolve at trial. He was charged with shooting and killing Christopher Woods during a burglary. Townes admitted that he and an acquaintance had planned to rob Woods. But Townes adamantly disclaimed any intent to kill Woods, insisting that he shot at

Woods only to scare him. At trial, Townes' counsel focused the defense on this distinction. Under state law, if the jury found that Townes lacked specific intent to kill Woods, it could find Townes guilty of only felony murder. But if the jury found that Townes intended to kill Woods, it could convict Townes of capital murder, making him eligible to receive a death sentence. Because the trial court's instructions took that pivotal question away from the jury, the Court of Criminal Appeals reversed Townes' conviction.

After the reversal, however, the trial court judge filed a "supplemental record" with the appellate court asserting that the certified trial transcript—or rather, a single word of that transcript—had been mistranscribed. The trial court judge insisted that he had properly instructed the jury that it "may," rather than "must," infer specific intent and that the audio recording of Townes' trial confirmed as much. (The government, notably, had not contested the accuracy of the transcript.)

Upon receiving the trial court's *sua sponte* filing, the Court of Criminal Appeals, citing Alabama law, remanded the case and directed the trial court to appoint a new court reporter to listen to the audio recording and retranscribe the trial court proceedings.[1] The second court reporter submitted a new 56-page transcript. It differed from the original transcript by exactly one word: The new transcript said "may" where the original had said "must."[2]

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[1] Alabama Rule of Appellate Procedure 10(g) (1991) provides: "The appellate court may, on motion of a party or on its own initiative, order that a supplemental or corrected record be certified and transmitted to the appellate court if necessary to correct an omission or misstatement."

[2] This was not the first time that the same trial court judge sought to correct a transcript while a case was pending review. In *Hammonds* v. *Commissioner, Ala. Dept. of Corrections*, 712 Fed. Appx. 841, 847–848 (2017), the Eleventh Circuit rejected the State's attempt to amend the habeas record with a corrected transcript filed by a court reporter at the request of the same trial judge who presided over Townes' trial. The court reporter—the same one who prepared the second transcript in Townes' case—stated that she had reviewed her notes and the recording of the defendant's trial and concluded that the judge had said "inference" instead of "innocence," curing an allegedly erroneous instruction that the defendant challenged on collateral review. *Ibid.*

On the basis of the new transcript, the Court of Criminal Appeals withdrew its reversal and affirmed Townes' conviction and death sentence. The court explained that, according to the new transcript—which was now the official record—the trial judge properly instructed the jury. There is no indication that the Court of Criminal Appeals itself reviewed the audio recording of the instructions.

Townes filed a petition for writ of certiorari. This Court called for the record and specifically requested that the trial court provide a copy of the audio recording. The trial court informed this Court's Clerk's Office that the recording no longer exists.

Without the recording, we cannot know what the judge actually said at trial. The second transcript is now the official record of the trial court proceedings, on which this Court must rely in evaluating Townes' challenge to his conviction. On that record, I am unable to conclude that Townes' conviction is unconstitutional.

But the absence of demonstrable constitutional error makes the doubts raised by the trial court's unusual handling of this matter no less troubling. In a matter of life and death, hinging on a single disputed word, all should take great care to protect the reviewing courts' opportunity to learn what was said to the jury before Townes was convicted of capital murder and sentenced to death. Yet the trial court, after its unilateral intervention in Townes' appeal resulted in dueling transcripts, failed to preserve the recording at issue—despite the fact that Townes' case was still pending direct review, and, consequently, his conviction was not yet final. As a result, the potential for this Court's full review of Townes' conviction has been frustrated.

The Constitution guarantees certain procedural protections when the government seeks to prove that a person should pay irreparably for a crime. A reliable, credible record is essential to ensure that a reviewing court—not to mention the defendant and the public at large—can say with confidence whether those fundamental rights have been respected. *Parker* v. *Dugger*, 498 U. S. 308, 321 (1991) ("It cannot be gainsaid that meaningful appellate review requires that the appellate court consider the defendant's actual record"). By fostering uncertainty about the result here, the trial court's actions in this case erode that confidence. That gives me—and should give us all—great pause.

No. 17–9340. METCALF *v.* UNITED STATES. C. A. 8th Cir. Motion of Gail Heriot et al. for leave to file brief as *amici curiae* granted. Reported below: 881 F. 3d 641.

No. 18–48. MINNESOTA *v.* CHUTE. Sup. Ct. Minn. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 908 N. W. 2d 578.

No. 18–232. GRIFFIN *v.* TEAMCARE ET AL. C. A. 7th Cir. Certiorari before judgment denied.

No. 18–254. XIU JIAN SUN *v.* TRUMP, PRESIDENT OF THE UNITED STATES. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition.

No. 18–277. BHAGAT *v.* IANCU, DIRECTOR, UNITED STATES PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Motion of Independent Inventors et al. for leave to file brief as *amici curiae* out of time denied. Certiorari denied. Reported below: 726 Fed. Appx. 772.

No. 18–553 (18A449). YACKEL *v.* SOUTH DAKOTA ET AL. Sup. Ct. S. D. Application for stay of execution of sentence of death, presented to JUSTICE GORSUCH, and by him referred to the Court, denied. Certiorari denied.

Rehearing Denied

No. 17–8407. MINCEY *v.* DAVIS, WARDEN, 584 U. S. 996. Petition for rehearing denied.

NOVEMBER 1, 2018

Certiorari Denied

No. 18–6525 (18A465). ZAGORSKI *v.* MAYS, 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: 907 F. 3d 901.

No. 18–6530 (18A470). ZAGORSKI *v.* HASLAM, GOVERNOR OF TENNESSEE, ET AL. 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: 741 Fed. Appx. 320.

JUSTICE SOTOMAYOR, dissenting.

Three weeks ago, I expressed my concerns with the Tennessee Supreme Court's rejection of petitioner Edmund Zagorski's challenge to the lethal-injection protocol that the State previously

planned to use to execute him. *Zagorski* v. *Parker*, 586 U. S. 938, 939 (2018) (opinion dissenting from denial of application for stay and denial of certiorari). In the wake of that ruling, Zagorski sought instead to be executed by the electric chair. He did so not because he thought that it was a humane way to die, but because he thought that the three-drug cocktail that Tennessee had planned to use was even worse. Given what most people think of the electric chair, it is hard to imagine a more striking testament—from a person with more at stake—to the legitimate fears raised by the lethal-injection drugs that Tennessee uses. See *ibid.* (noting "mounting evidence that the sedative to be used, midazolam, will not prevent the prisoner from feeling as if he is 'drowning, suffocating, and being burned alive from the inside out' during a process that could last as long as 18 minutes").

The present challenge does not concern lethal injection. That said, it might never have arisen if Zagorski had been able to prevail simply by showing that Tennessee's lethal-injection protocol "creates a demonstrated risk of severe pain." *Abdur'Rahman* v. *Parker*, 558 S. W. 3d 606, 625 (Tenn., 2018). Instead, under this Court's decision in *Glossip* v. *Gross*, 576 U. S. 863 (2015), Zagorski's prior challenge failed only because the Tennessee Supreme Court ruled that he had not proved the "availability of" a safer lethal-injection drug (pentobarbital) that was Zagorski's "proposed alternative method of execution." *Abdur'Rahman*, 558 S. W. 3d, at 625. His eleventh-hour decision to accept the electric chair as a marginally less excruciating alternative does not undermine, as a matter of logic, his contention that both Tennessee's lethal-injection protocol and the electric chair are cruel and unusual in violation of the Eighth Amendment.

Given this petition's unique posture, I note that this Court's denial of Zagorski's challenge says nothing about the constitutional tolerability of the electric chair, which has raised concern in other forums. See, *e. g.*, *State* v. *Mata*, 275 Neb. 1, 67, 745 N. W. 2d 229, 278 (2008) ("Electrocution's proven history of burning and charring bodies is inconsistent with both the concepts of evolving standards of decency and the dignity of man"). It says a great deal, however, about how this Court's decision in *Glossip* continues to "immunize . . . methods of execution—no matter how cruel or how unusual—from judicial review." *Arthur* v. *Dunn*, 580 U. S. 1141, 1142 (2017) (SOTOMAYOR, J., dissenting from denial

of certiorari). Because I continue to believe that we should rethink this troubling doctrinal shift and reaffirm that "[t]he Cruel and Unusual Punishments Clause prohibits the imposition of inherently barbaric punishments under all circumstances," *Graham* v. *Florida*, 560 U. S. 48, 59 (2010), I dissent.

NOVEMBER 2, 2018

Miscellaneous Orders

No. 18A410. IN RE UNITED STATES ET AL. The Government seeks a stay of proceedings in the District Court pending disposition of a petition for a writ of mandamus, No. 18–505, ordering dismissal of the suit. In such circumstances, a stay is warranted if there is (1) "a fair prospect that a majority of the Court will vote to grant mandamus," and (2) "a likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth* v. *Perry*, 558 U. S. 183, 190 (2010) (*per curiam*). Mandamus may issue when "(1) 'no other adequate means [exist] to attain the relief [the party] desires,' (2) the party's 'right to issuance of the writ is clear and indisputable,' and (3) 'the writ is appropriate under the circumstances.'" *Ibid.* (quoting *Cheney* v. *United States Dist. Court for D. C.*, 542 U. S. 367, 380–381 (2004)). "'The traditional use of the writ in aid of appellate jurisdiction . . . has been to confine [the court against which mandamus is sought] to a lawful exercise of its prescribed jurisdiction.'" *Id.*, at 380 (quoting *Roche* v. *Evaporated Milk Assn.*, 319 U. S. 21, 26 (1943)).

The Government contends that these standards are satisfied here because the litigation is beyond the limits of Article III. The Government notes that the suit is based on an assortment of unprecedented legal theories, such as a substantive due process right to certain climate conditions, and an equal protection right to live in the same climate as enjoyed by prior generations. The Government further points out that plaintiffs ask the District Court to create a "national remedial plan" to stabilize the climate and "restore [the] Earth's energy balance."

The District Court denied the Government's dispositive motions, stating that "[t]his action is of a different order than the typical environmental case. It alleges that defendants' actions and inactions—whether or not they violate any specific statutory duty—have so profoundly damaged our home planet that they threaten plaintiffs' fundamental constitutional rights to life and

liberty." *Juliana* v. *United States*, 217 F. Supp. 3d 1224, 1261 (Ore. 2016). The District Court declined to certify its orders for interlocutory review under 28 U. S. C. § 1292(b) (permitting such review when the district court certifies that its order "involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal . . . may materially advance the ultimate termination of the litigation"). See this Court's order of July 30, 2018, No. 18A65 [585 U. S. 1045] (noting that the "striking" breadth of plaintiffs' below claims "presents substantial grounds for difference of opinion").

At this time, however, the Government's petition for a writ of mandamus does not have a "fair prospect" of success in this Court because adequate relief may be available in the United States Court of Appeals for the Ninth Circuit. When mandamus relief is available in the court of appeals, pursuit of that option is ordinarily required. See this Court's Rule 20.1 (petitioners seeking extraordinary writ must show "that adequate relief cannot be obtained in any other form *or from any other court*" (emphasis added)); Rule 20.3 (mandamus petition must "set out with particularity why the relief sought is not available in any other court"); see also *Ex parte Peru*, 318 U. S. 578, 585 (1943) (mandamus petition "ordinarily must be made to the intermediate appellate court").

Although the Ninth Circuit has twice denied the Government's request for mandamus relief, it did so without prejudice. And the court's basis for denying relief rested, in large part, on the early stage of the litigation, the likelihood that plaintiffs' claims would narrow as the case progressed, and the possibility of attaining relief through ordinary dispositive motions. Those reasons are, to a large extent, no longer pertinent. The 50-day trial was scheduled to begin on October 29, 2018, and being held in abeyance only because of the current administrative stay.

In light of the foregoing, the application for stay, presented to THE CHIEF JUSTICE, and by him referred to the Court, is denied without prejudice. The order heretofore entered by THE CHIEF JUSTICE is vacated. JUSTICE THOMAS and JUSTICE GORSUCH would grant the application.

No. 18A455. IN RE DEPARTMENT OF COMMERCE ET AL. D. C. S. D. N. Y. Application for stay, presented to JUSTICE GINSBURG, and by her referred to the Court, denied. JUSTICE THOMAS,

JUSTICE ALITO, and JUSTICE GORSUCH would grant the application.

No. 17–647. KNICK *v.* TOWNSHIP OF SCOTT, PENNSYLVANIA, ET AL. C. A. 3d Cir. [Certiorari granted, 583 U. S. 1166.] Case restored to the calendar for reargument. The parties and the Solicitor General are directed to file letter briefs, not to exceed 10 pages, addressing petitioner's alternative argument for vacatur, discussed at pages 12–15 and 40–42 of the transcript of oral argument and in footnote 14 of petitioner's brief on the merits. Briefs are to be filed simultaneously with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, November 30, 2018. Reply briefs, not to exceed four pages, are to be filed simultaneously with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, December 21, 2018.

Certiorari Granted

No. 17–1606. SMITH *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 6th Cir. Certiorari granted. Reported below: 880 F. 3d 813.

No. 17–1679. GRAY *v.* WILKIE, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari granted. Reported below: 875 F. 3d 1102.

No. 17–1717. AMERICAN LEGION ET AL. *v.* AMERICAN HUMANIST ASSN. ET AL.; and

No. 18–18. MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION *v.* AMERICAN HUMANIST ASSN. ET AL. C. A. 4th Cir. Certiorari granted, cases consolidated, and a total of one hour is allotted for oral argument. Reported below: 874 F. 3d 195.

No. 17–8995. MONT *v.* UNITED STATES. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 723 Fed. Appx. 325.

No. 17–9572. FLOWERS *v.* MISSISSIPPI. Sup. Ct. Miss. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to the following question: "Whether the Mississippi Supreme Court erred in how it applied *Batson* v. *Kentucky*, 476 U. S. 79 (1986), in this case." Reported below: 240 So. 3d 1082.

November 5, 2018

Appeal Dismissed

No. 18–290. LaVergne et al. *v.* United States House of Representatives et al. Appeal from D. C. D. C. dismissed for want of jurisdiction.

Certiorari Dismissed

No. 18–5863. Johnson *v.* Butler Law Firm. 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: 712 Fed. Appx. 345.

No. 18–5873. Olic *v.* Spearman, 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. 18–5881. Vurimindi *v.* Hoopskirt Lofts Condominium Assn. Commw. Ct. Pa. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 18A365. Keyes *v.* Banks. Cir. Ct. Letcher County, Ky. Application for stay, addressed to The Chief Justice and referred to the Court, denied.

No. 65, Orig. Texas *v.* New Mexico. Motion of the River Master for fees and expenses granted, and the River Master is awarded a total of $14,242.82 for the period July 1, 2017, through June 30, 2018, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 583 U. S. 810.]

No. 17–1606. Smith *v.* Berryhill, Acting Commissioner of Social Security. C. A. 6th Cir. [Certiorari granted, 586 U. S. 985.] Deepak Gupta, Esq., of Washington, D. C., is invited to brief and argue this case as *amicus curiae* in support of judgment below.

No. 18–5820. EVANS *v.* DELAWARE. Sup. Ct. Del. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [586 U. S. 807] denied.

No. 18–6160. CARMODY *v.* BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS ET AL. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 26, 2018, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

Certiorari Denied

No. 17–9218. CAIN *v.* DAVIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 870 F. 3d 1003.

No. 18–121. ROTHERY ET AL. *v.* BLANAS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 700 Fed. Appx. 782.

No. 18–125. GRUSSGOTT *v.* MILWAUKEE JEWISH DAY SCHOOL, INC. C. A. 7th Cir. Certiorari denied. Reported below: 882 F. 3d 655.

No. 18–252. REAL ESTATE ALLIANCE LTD. *v.* MOVE, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 721 Fed. Appx. 950.

No. 18–259. CITY OF EAST CLEVELAND, OHIO, ET AL. *v.* WHEATT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 302.

No. 18–262. XIU JIAN SUN *v.* MULLKOFF. C. A. 2d Cir. Certiorari denied.

No. 18–271. TROST ET UX. *v.* TROST. C. A. 6th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 875.

No. 18–276. BAKER *v.* MICROSOFT CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 726 Fed. Appx. 800.

No. 18–278. KOZIOL, INDIVIDUALLY, AS NATURAL PARENT OF CHILD A ET AL., AND ON BEHALF OF PARENTS SIMILARLY SITUATED *v.* DIFIORE, CHIEF JUDGE, NEW YORK STATE UNIFIED COURT SYSTEM, ET AL. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied.

No. 18–282. TUCKER *v.* ATWATER ET AL. Ct. App. Ga. Certiorari denied. Reported below: 343 Ga. App. 301, 807 S. E. 2d 56.

No. 18–286. PRASAD *v.* LIGHTBOURNE ET AL. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 18–289. DEGENNARO *v.* AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 737 Fed. Appx. 631.

No. 18–296. DIAZ *v.* SESSIONS, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 726 Fed. Appx. 240.

No. 18–299. BRIGGS *v.* RENDLEN, JUDGE, UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF MISSOURI. C. A. 8th Cir. Certiorari denied. Reported below: 888 F. 3d 930.

No. 18–314. CAPELLA PHOTONICS, INC. *v.* CISCO SYSTEMS, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 711 Fed. Appx. 642.

No. 18–346. ESTATE OF SMALLWOOD *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 717 Fed. Appx. 1007.

No. 18–371. WANG *v.* IANCU, DIRECTOR, UNITED STATES PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 737 Fed. Appx. 534.

No. 18–388. PARKER ET AL. *v.* IANCU, UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR, PATENT AND TRADEMARK OFFICE (two judgments). C. A. Fed. Cir. Certiorari denied. Reported below: 731 Fed. Appx. 979 (second judgment) and 980 (first judgment).

No. 18–411. OMIDI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 808.

No. 18–417. HARKONEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 705 Fed. Appx. 606.

No. 18–421. CEPEDA-CORTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 894 F. 3d 686.

No. 18–427. BAMDAD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–430. JONES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 893 F. 3d 66.

No. 18–5003. MULET *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 697.

No. 18–5105. MAKONNEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 905.

No. 18–5132. BRYANT *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 238 So. 3d 751.

No. 18–5182. BUTLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 732.

No. 18–5303. MASON *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 153 Ohio St. 3d 476, 2018-Ohio-1462, 108 N. E. 3d 56.

No. 18–5393. MCMAHAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 665.

No. 18–5435. YBARRA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 660.

No. 18–5765. RUSSELL *v.* REDSTONE FEDERAL CREDIT UNION ET AL. (Reported below: 710 Fed. Appx. 830); and RUSSELL *v.* INGEGNERI ET AL. (713 Fed. Appx. 991). C. A. 11th Cir. Certiorari denied.

No. 18–5816. NASH *v.* BISHOP ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 332.

No. 18–5818. KILPATRICK *v.* KONDAVEETI. C. A. 2d Cir. Certiorari denied.

No. 18–5819. KILPATRICK *v.* FIELDS. C. A. 2d Cir. Certiorari denied.

No. 18–5827. KING *v.* NEALL, SECRETARY, MARYLAND DEPARTMENT OF HEALTH, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 221.

No. 18–5833. KILPATRICK *v.* VOLTERRA. C. A. 2d Cir. Certiorari denied.

No. 18–5834. KILPATRICK *v.* ROBINSON. C. A. 2d Cir. Certiorari denied.

No. 18–5841. RODRIGUEZ *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 18–5862. ROSS *v.* CLERK OF COURTS OF THE COURT OF COMMON PLEAS OF PHILADELPHIA, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 726 Fed. Appx. 864.

No. 18–5864. LEE *v.* PEERY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–5877. STOLTZFOOS *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 733 Fed. Appx. 34.

No. 18–5878. JAMERSON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 698 Fed. Appx. 581.

No. 18–5886. MITCHELL *v.* TAYLOR ET AL. C. A. 6th Cir. Certiorari denied.

No. 18–5897. BRADDY *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 246 So. 3d 281.

No. 18–5903. JONES *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 18–5961. MARINO *v.* RICKARD, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 794.

No. 18–5962. MATTIS *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 244 So. 3d 1076.

No. 18–5977. RAFI *v.* YALE UNIVERSITY SCHOOL OF MEDICINE ET AL. C. A. 2d Cir. Certiorari denied.

No. 18–5981. PASTOR *v.* PARTNERSHIP FOR CHILDREN'S RIGHTS. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 159 App. Div. 3d 910, 70 N. Y. S. 3d 65.

No. 18–5986. CALDWELL *v.* PAYNE, SUPERINTENDENT, EASTERN RECEPTION, DIAGNOSTIC AND CORRECTIONAL CENTER. Sup. Ct. Mo. Certiorari denied.

No. 18–6037. ZAVALA *v.* RIOS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 720.

No. 18–6040. THORNBERRY *v.* DIAZ, ACTING SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 18–6051. BENDER *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–6074. KURI *v.* KANSAS DEPARTMENT OF LABOR, EMPLOYMENT SECURITY BOARD OF REVIEW. Ct. App. Kan. Certiorari denied. Reported below: 55 Kan. App. 2d xiii, 405 P. 3d 1247.

No. 18–6081. CAMACHO *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 888 Fed. Appx. 389.

No. 18–6088. BURRIS *v.* RAMEY, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. Sup. Ct. Mo. Certiorari denied.

No. 18–6093. TATE *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 459 Md. 587, 187 A. 3d 660.

No. 18–6138. FOX *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–6139. FRIAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 893 F. 3d 1268.

No. 18–6141. TOWNE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–6149. POLK *v.* LEWIS, SUPERINTENDENT, SOUTHEAST CORRECTIONAL CENTER. Sup. Ct. Mo. Certiorari denied.

No. 18–6155. LEMUS CERNA, AKA LEMUS ALFARO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 894 F. 3d 593.

No. 18–6156. MEDINA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 734 Fed. Appx. 777.

No. 18–6159. WILLIAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 892 F. 3d 242.

No. 18–6161. LOMBARD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–6163. JONES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–6165. RINEHART *v.* OHIO. Ct. App. Ohio, 4th App. Dist., Ross County. Certiorari denied. Reported below: 2018-Ohio-1261.

No. 18–6169. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–6178. CLARK *v.* RAMEY, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. Sup. Ct. Mo. Certiorari denied.

No. 18–6180. DERONCELER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 683.

No. 18–6184. BARNES *v.* MASTERS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 93.

No. 18–6186. GAITAN BENITEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 894 F. 3d 593.

No. 18–6188. LUCERO *v.* COLORADO DEPARTMENT OF CORRECTIONS. Sup. Ct. Colo. Certiorari denied.

No. 18–6190. SWENSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 894 F. 3d 677.

No. 18–6193. WHITE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–6197. MEDINA ORTIZ *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–6198. ACOSTA-JOAQUIN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 894 F. 3d 60.

No. 18–6201. DEANGELIS *v.* PLUMLEY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 718 Fed. Appx. 290.

No. 18–6204. FRANKLIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–6205. GUEVARA-GUEVARA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 348.

No. 18–6206. HOWARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 743 Fed. Appx. 526.

No. 18–6208. HEMSHER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 893 F. 3d 525.

No. 18–6209. WERBACH *v.* UNIVERSITY OF ARKANSAS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 801.

No. 18–6215. PERAGINE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 498.

No. 18–6216. MULENGA *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 185 A. 3d 720.

No. 18–6222. BACON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 884 F. 3d 605.

No. 18–6225. BUMMER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 721.

No. 18–6226. FOREST *v.* LEWIS, SUPERINTENDENT, SOUTHEAST CORRECTIONAL CENTER. Sup. Ct. Mo. Certiorari denied.

No. 18–6229. WAIRI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 18–6232. JOHNSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 734 Fed. Appx. 153.

No. 18–6240. JOHNSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 18–6241. JEWELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–6242. LOCKE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–6251. PEBLEY *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 18–6266. RIVERA-SOLIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 207.

No. 18–6267. ROBERTSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 895 F. 3d 1206.

No. 18–6268. KING *v.* KILPATRICK, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 18–6271. SCOTT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 244.

No. 18–6277. YAWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 881.

No. 18–6279. KWUSHUE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 693.

No. 18–6280. STEWART *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 254.

No. 18–6282. DIXON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 627.

No. 17–498. BERNINGER *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.;

No. 17–499. AT&T INC. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.;

No. 17–500. AMERICAN CABLE ASSN. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.;

No. 17–501. CTIA–THE WIRELESS ASSN. ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.;

No. 17–502. NCTA–THE INTERNET AND TELEVISION ASSN. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.;

No. 17–503. TECHFREEDOM ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; and

No. 17–504. UNITED STATES TELECOM ASSN. ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE THOMAS, JUSTICE ALITO, and JUSTICE GORSUCH would grant the petitions, vacate the judgment, and remand with instructions to dismiss the cases as moot. See *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950). THE CHIEF JUSTICE and JUSTICE KAVANAUGH took no part in the consideration or decision of these petitions. Reported below: 825 F. 3d 674.

No. 18–275. SMITH ET AL. *v.* CLINTON ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition. Reported below: 886 F. 3d 122.

No. 18–325. GEHRMANN ET AL. *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 731 Fed. Appx. 792.

No. 18–334. MEDINA DEL ROSARIO ET AL. *v.* WELLS FARGO BANK, N. A., AS TRUSTEE, ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 714 Fed. Appx. 722.

No. 18–5932. JONES *v.* JOHNSON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 18–6094. GARCIA-MARTINEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 730 Fed. Appx. 665.

No. 18–6213. BAXTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

NOVEMBER 6, 2018

Miscellaneous Orders

No. 17–961. FRANK ET AL. *v.* GAOS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL. C. A. 9th Cir. [Certiorari granted, 584 U. S. 958.] The parties and the Solicitor General are directed to file supplemental briefs addressing whether any named plaintiff has standing such that the federal courts have Article III jurisdiction over this dispute. Briefs, not to exceed 6,000 words, are to be filed simultaneously with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, November 30, 2018. Reply briefs, not to exceed 3,000 words, are to be filed simultaneously with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, December 21, 2018.

No. 18–557. IN RE DEPARTMENT OF COMMERCE ET AL. Respondents are directed to file a response to the petition on or before 5 p.m., Tuesday, November 13, 2018. Petitioners may file a reply brief on or before 2 p.m., Thursday, November 15, 2018.

Amicus curiae briefs may be filed on or before 5 p.m., Tuesday, November 13, 2018.

NOVEMBER 13, 2018

Miscellaneous Orders

No. 18M61. HENDRICKS *v.* BINGHAM ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 18M62. RODWELL *v.* MASSACHUSETTS. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal granted.

No. 18–5955. IN RE TURNER. Petition for writ of prohibition denied.

Probable Jurisdiction Postponed

No. 18–281. VIRGINIA HOUSE OF DELEGATES ET AL. *v.* BETHUNE-HILL ET AL. Appeal from D. C. E. D. Va. Further consideration of question of jurisdiction postponed to hearing of case on the merits. In addition to the questions presented by the jurisdictional statement, the parties are directed to fully brief the following question: "Whether appellants have standing to bring this appeal." Reported below: 326 F. Supp. 3d 128.

Certiorari Granted

No. 17–1705. PDR NETWORK, LLC, ET AL. *v.* CARLTON & HARRIS CHIROPRACTIC, INC. C. A. 4th Cir. Certiorari granted limited to the following question: "Whether the Hobbs Act required the District Court in this case to accept the FCC's legal interpretation of the Telephone Consumer Protection Act." Reported below: 883 F. 3d 459.

Certiorari Denied

No. 17–8719. DE VERA *v.* UNITED AIRLINES, INC. C. A. 9th Cir. Certiorari denied. Reported below: 689 Fed. Appx. 575.

No. 17–9105. DEBEIKES *v.* HAWAIIAN AIRLINES, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 725 Fed. Appx. 499.

No. 17–9295. JEANTY *v.* NEW YORK CITY DEPARTMENT OF FINANCE. C. A. 2d Cir. Certiorari denied. Reported below: 709 Fed. Appx. 89.

No. 17–9306. TRINH *v.* TRINH. Super. Ct. Pa. Certiorari denied.

No. 17–9339. SILVA MEDINA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–29. BHAWNANI ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied.

No. 18–37. SECURIFORCE INTERNATIONAL AMERICA, LLC *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 879 F. 3d 1354.

No. 18–50. CARTY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 543 S. W. 3d 149.

No. 18–73. CARPENTER *v.* JORDAN. C. A. 6th Cir. Certiorari denied. Reported below: 885 F. 3d 413.

No. 18–119. GOTECH INTERNATIONAL TECHNOLOGY LTD. ET AL. *v.* NAGRAVISION SA. C. A. 5th Cir. Certiorari denied. Reported below: 882 F. 3d 494.

No. 18–244. WOIDE ET AL. *v.* FEDERAL NATIONAL MORTGAGE ASSOCIATION. C. A. 11th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 731.

No. 18–269. MAPUATULI ET AL. *v.* WHITAKER, ACTING ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 730.

No. 18–279. KONARSKI, DBA FGPJ APARTMENTS AND DEVELOPMENT, ET AL. *v.* CITY OF TUCSON, ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 609.

No. 18–305. KIRBY *v.* OFFICE OF THE ATTORNEY GENERAL OF NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 48.

No. 18–310. TUCKER *v.* LCP-MAUI, LLC. Int. Ct. App. Haw. Certiorari denied. Reported below: 142 Haw. 149, 414 P. 3d 201.

No. 18–316. WEESE *v.* MARYLAND. C. A. 4th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 271.

No. 18–318. KOUTENTIS *v.* NEW YORK CITY POLICE DEPARTMENT, LICENSING DIVISION. App. Div., Sup. Ct. N. Y., 1st Jud.

Dept. Certiorari denied. Reported below: 158 App. Div. 3d 542, 68 N. Y. S. 3d 722.

No. 18–320. CEH Energy, LLC, et al. *v.* Kean Miller, LLP, et al. C. A. 5th Cir. Certiorari denied.

No. 18–322. Miner *v.* Illinois Attorney Registration and Disciplinary Commission. Sup. Ct. Ill. Certiorari denied.

No. 18–345. Xiu Jian Sun *v.* Newman et al. C. A. 2d Cir. Certiorari denied.

No. 18–347. West Congress Street Partners, LLC *v.* Rivertown Development, LLC, et al. C. A. 6th Cir. Certiorari denied. Reported below: 739 Fed. Appx. 778.

No. 18–350. Brown *v.* South Carolina. Sup. Ct. S. C. Certiorari denied. Reported below: 423 S. C. 519, 815 S. E. 2d 761.

No. 18–352. South Carolina *v.* Young. Ct. App. S. C. Certiorari denied.

No. 18–353. Clark *v.* Southwest Airlines Co. C. A. 5th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 442.

No. 18–372. Coddington *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 134 Nev. 925, 415 P. 3d 12.

No. 18–400. Hoskins *v.* Fuchs. Ct. App. Tex., 2d Dist. Certiorari denied. Reported below: 517 S. W. 3d 834.

No. 18–402. Pezhman *v.* Chanel et al. Ct. App. N. Y. Certiorari denied. Reported below: 32 N. Y. 3d 1018, 111 N. E. 3d 320.

No. 18–403. Shear *v.* MAZ Partners, LP, Individually and on Behalf of All Others Similarly Situated. C. A. 1st Cir. Certiorari denied. Reported below: 894 F. 3d 419.

No. 18–429. Germinaro et al. *v.* Fidelity National Title Insurance Co. et al. C. A. 3d Cir. Certiorari denied. Reported below: 737 Fed. Appx. 96.

No. 18–435. LabMD, Inc. *v.* Tiversa, Inc. C. A. 11th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 878.

No. 18–439. JANANGELO *v.* TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION. C. A. 9th Cir. Certiorari denied. Reported below: 726 Fed. Appx. 660.

No. 18–440. NERO ET AL. *v.* MOSBY. C. A. 4th Cir. Certiorari denied. Reported below: 890 F. 3d 106.

No. 18–449. PHARMAVITE LLC *v.* BRADACH. C. A. 9th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 251.

No. 18–454. DINGER *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 77 M. J. 447.

No. 18–455. EMINETH *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 290 Ore. App. 720, 414 P. 3d 498.

No. 18–456. PERSICO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 732 Fed. Appx. 44.

No. 18–467. FLETCHER ET AL. *v.* HONEYWELL INTERNATIONAL, INC. C. A. 6th Cir. Certiorari denied. Reported below: 892 F. 3d 217.

No. 18–509. KINNEY *v.* STATE BAR OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 409.

No. 18–5137. DANIEL *v.* BROOKLYN LAW SCHOOL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 153 App. Div. 3d 708, 60 N. Y. S. 3d 308.

No. 18–5223. RATCLIFF *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 725 Fed. Appx. 894.

No. 18–5487. SOTO *v.* SWEETMAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 882 F. 3d 865.

No. 18–5517. GALLARDO *v.* ARIZONA. Super. Ct. Ariz., County of Maricopa. Certiorari denied.

No. 18–5534. CARRASQUILLA-LOMBADA ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 685 Fed. Appx. 761.

No. 18–5537. OPENGEYM *v.* HEARTLAND EMPLOYMENT SERVICES, LLC. C. A. 6th Cir. Certiorari denied.

No. 18–5548. TUTTLE *v.* ALLIED NEVADA GOLD CORP. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 725 Fed. Appx. 144.

No. 18–5888. MORRISON *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–5891. WHITNEY *v.* GUTERRES, SECRETARY GENERAL OF THE UNITED NATIONS, ET AL. Sup. Ct. Ark. Certiorari denied. Reported below: 2018 Ark. 133.

No. 18–5892. JACKSON *v.* OHIO. Ct. App. Ohio, 8th App. Dist., Cuyahoga County. Certiorari denied. Reported below: 2018-Ohio-276, 105 N. E. 3d 472.

No. 18–5906. KILPATRICK *v.* WEISS. C. A. 2d Cir. Certiorari denied.

No. 18–5907. KILPATRICK *v.* ELIA, COMMISSIONER, NEW YORK STATE DEPARTMENT OF EDUCATION. C. A. 2d Cir. Certiorari denied.

No. 18–5908. KILPATRICK *v.* ZUCKER, COMMISSIONER, NEW YORK STATE DEPARTMENT OF HEALTH, OFFICE OF PROFESSIONAL MEDICAL CONDUCT; and KILPATRICK *v.* DRESLIN, EXECUTIVE DEPUTY COMMISSIONER, NEW YORK STATE DEPARTMENT OF HEALTH, OFFICE OF PROFESSIONAL MEDICAL CONDUCT. C. A. 2d Cir. Certiorari denied.

No. 18–5909. SOLDRIDGE *v.* MAHALLY, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–5919. MARTIN *v.* BROWN ET AL.; and MARTIN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 18–5920. ROLLAND *v.* CARNATION BUILDING SERVICES, INC. C. A. 10th Cir. Certiorari denied. Reported below: 739 Fed. Appx. 920.

No. 18–5926. WILKINS *v.* LANE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–5927. J. A. *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 233 N. J. 432, 186 A. 3d 266.

No. 18–5931. LASCHKEWITSCH *v.* LEGAL & GENERAL AMERICA, INC., DBA BANNER LIFE INSURANCE CO. C. A. 4th Cir. Certiorari denied. Reported below: 725 Fed. Appx. 252.

No. 18–5936. JOHNSON *v.* WILLIAMS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 238.

No. 18–5938. BAILEY *v.* NAGY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 425.

No. 18–5947. ROBERSON *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–5958. WILMOT *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 18–5963. KASSAB *v.* SKINNER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 877.

No. 18–5989. BILBO *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–5990. BROCKMAN *v.* BALCARCEL, ACTING WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–5991. BENNETT *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–5993. BURNS *v.* HORTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–5995. WEBB *v.* HARRISON, SHERIFF, WAKE COUNTY, NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 225.

No. 18–5999. BAILEY *v.* LOUISIANA. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 51,627 (La. App. 2 Cir. 9/27/17), 245 So. 3d 145.

No. 18–6039. TAYLOR *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 18–6050. RODRIGUEZ *v.* BURTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–6056. BLEVINS *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 244 So. 3d 1084.

No. 18–6058. REEVES *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 18–6126. VILLAVERDE *v.* SMITH, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–6181. PATINO *v.* RHODE ISLAND. Sup. Ct. R. I. Certiorari denied. Reported below: 188 A. 3d 646.

No. 18–6183. LYNCH *v.* HALL, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–6196. TUNSTALL *v.* WOLFE, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 251.

No. 18–6235. LANE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–6246. PARNELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 745.

No. 18–6248. MERCEDES-RIJO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 18–6255. ODEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–6256. MOCK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 545.

No. 18–6260. TRAVERSO *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 237 Md. App. 760.

No. 18–6270. LYNCH *v.* OHIO. Ct. App. Ohio, 8th App. Dist., Cuyahoga County. Certiorari denied. Reported below: 2018-Ohio-1078, 109 N. E. 3d 628.

No. 18–6283. COLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 749.

No. 18–6284. CHURCHWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–6285. CHAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 728.

No. 18–6293. MARTINEZ-REY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 266.

No. 18–6297. ROBLES-AVALOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 895 F. 3d 405.

No. 18–6299. DUNNING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 743 Fed. Appx. 261.

No. 18–6300. SINGLETON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 947.

No. 18–6301. DANCY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–6302. MELGAR-CABRERA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 892 F. 3d 1053.

No. 18–6303. PENDLETON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 894 F. 3d 978.

No. 18–6304. MCCOY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 895 F. 3d 358.

No. 18–6308. HERNANDEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 894 F. 3d 496.

No. 18–6313. WASHINGTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 895 F. 3d 410.

No. 18–6314. KHOUANMANY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 726 Fed. Appx. 514.

No. 18–6317. TURNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 687.

No. 18–6322. MEDINA OSORIO *v.* UNITED STATES (Reported below: 734 Fed. Appx. 922); VELASQUEZ-RIOS *v.* UNITED STATES (731 Fed. Appx. 358); and VEGA-ZAPATA *v.* UNITED STATES (735 Fed. Appx. 135). C. A. 5th Cir. Certiorari denied.

No. 18–6324. COLEMAN *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 18–6328. HUNTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–6348. PENCE *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2018 IL App (2d) 151102, 100 N. E. 3d 218.

No. 18–6362. LETT *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 17–9284. GUARDADO *v.* FLORIDA. Sup. Ct. Fla. Reported below: 238 So. 3d 162;
No. 17–9556. PHILMORE *v.* FLORIDA. Sup. Ct. Fla. Reported below: 234 So. 3d 567;
No. 18–5160. TANZI *v.* FLORIDA. Sup. Ct. Fla. Reported below: 251 So. 3d 805;
No. 18–5228. FRANKLIN *v.* FLORIDA. Sup. Ct. Fla. Reported below: 236 So. 3d 989;
No. 18–5518. GRIM *v.* FLORIDA. Sup. Ct. Fla. Reported below: 244 So. 3d 147; and
No. 18–5793. JOHNSTON *v.* FLORIDA. Sup. Ct. Fla. Reported below: 246 So. 3d 266. Certiorari denied.

JUSTICE THOMAS, concurring.

I concur for the reasons set out in *Reynolds* v. *Florida*, 586 U. S. 1004, 1008 (2018) (THOMAS, J., concurring in denial of certiorari).

JUSTICE SOTOMAYOR, dissenting.

I dissent for the reasons set out in *Reynolds* v. *Florida*, 586 U. S. 1004, 1011 (2018) (SOTOMAYOR, J., dissenting from denial of certiorari).

No. 18–153. LOUISIANA PUBLIC SERVICE COMMISSION *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition. Reported below: 883 F. 3d 929.

No. 18–283. COLEMAN ET AL. *v.* CAMPBELL COUNTY LIBRARY BOARD OF TRUSTEES. Ct. App. Ky. Motion of the New England Legal Foundation for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 547 S. W. 3d 526.

No. 18–301. CHIEFTAIN ROYALTY CO. *v.* NUTLEY ET AL. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 888 F. 3d 455.

No. 18–5181. REYNOLDS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 251 So. 3d 811.

Statement of JUSTICE BREYER respecting the denial of certiorari.

This case, along with 83 others in which the Court has denied certiorari in recent weeks, asks us to decide whether the Florida Supreme Court erred in its application of this Court's decision in *Hurst* v. *Florida*, 577 U. S. 92 (2016). In *Hurst*, this Court concluded that Florida's death penalty scheme violated the Constitution because it required a judge rather than a jury to find the aggravating circumstances necessary to impose a death sentence. The Florida Supreme Court now applies *Hurst* retroactively to capital defendants whose sentences became final after this Court's earlier decision in *Ring* v. *Arizona*, 536 U. S. 584 (2002), which similarly held that the death penalty scheme of a different State, Arizona, violated the Constitution because it required a judge rather than a jury to find the aggravating circumstances necessary to impose a death sentence. The Florida Supreme Court has declined, however, to apply *Hurst* retroactively to capital defendants whose sentences became final before *Ring*. *Hitchcock* v. *State*, 226 So. 3d 216, 217 (2017). As a result, capital defendants whose sentences became final before 2002 cannot prevail on a "*Hurst*-is-retroactive" claim.

Many of the Florida death penalty cases in which we have denied certiorari in recent weeks involve—directly or indirectly—three important issues regarding the death penalty as it is currently administered. *First*, these cases highlight what I have previously described as a serious flaw in the death penalty system: the unconscionably long delays that capital defendants must endure as they await execution. Henry Sireci, the petitioner in one case we recently denied, was first sentenced to death in 1976. He has lived in prison under threat of execution for nearly 42 years. Unfortunately, Sireci is far from alone in having endured lengthy delays. The Court has recently denied petitions from at least 10 other capital defendants in Florida who have lived under a death sentence for more than 30 years, and from at least 50 other capital defendants who have lived under a death sentence for more than 20 years. I have previously written that lengthy delays—made inevitable by the Constitution's procedural protections for defendants facing execution—deepen the cruelty of the death penalty and undermine its penological rationale. *Glossip* v. *Gross*, 576 U. S. 863, 925 (2015) (dissenting opinion); see *Dunn*

v. *Madison*, 583 U. S. 10, 15 (2017) (concurring opinion); *Smith* v. *Ryan*, 581 U. S. 954, 955 (2017) (statement respecting denial of certiorari); *Sireci* v. *Florida*, 580 U. S. 1036, 1037 (2016) (opinion dissenting from denial of certiorari). I remain of that view. However, because the petitioners in these cases did not squarely raise the delay issue, I do not vote to grant certiorari on that basis here.

Second, many of these cases raise the question whether the Constitution demands that *Hurst* be made retroactive to all cases on collateral review, not just to cases involving death sentences that became final after *Ring*. I believe the retroactivity analysis here is not significantly different from our analysis in *Schriro* v. *Summerlin*, 542 U. S. 348 (2004), where we held that *Ring* does not apply retroactively. Although I dissented in *Schriro*, I am bound by the majority's holding in that case. I therefore do not dissent on that ground here.

Third, several of the cases in which we deny certiorari today, including this one, indirectly raise the question whether the Eighth Amendment requires a jury rather than a judge to make the ultimate decision to sentence a defendant to death. See *Guardado* v. *Florida*, No. 17–9284; *Philmore* v. *Florida*, No. 17–9556; *Tanzi* v. *Florida*, No. 18–5160; *Franklin* v. *Florida*, No. 18–5228; *Grim* v. *Florida*, No. 18–5518; *Johnston* v. *Florida*, No. 18–5793. In these cases, the Florida Supreme Court treated *Hurst* errors as harmless in significant part because the jury in each case unanimously recommended that the defendant be sentenced to death. The problem, however, is that the defendants in these cases were sentenced to death under a scheme that required the judge to make the ultimate decision to impose the death penalty, and in which the jury was repeatedly instructed that its recommended verdict would be advisory. As I have previously written, I believe that this scheme violates the Eighth Amendment. See *Middleton* v. *Florida*, 583 U. S. 1162 (2018) (opinion dissenting from denial of certiorari); *Hurst*, *supra*, at 103 (opinion concurring in judgment); *Ring*, *supra*, at 619 (same). Because juries are better suited than judges to "express the conscience of the community on the ultimate question of life or death," the Constitution demands that jurors make, and take responsibility for, the ultimate decision to impose a death sentence. *Witherspoon* v. *Illinois*, 391 U. S. 510, 519 (1968).

Although these cases do not squarely present the general question whether the Eighth Amendment requires jury sentencing, they do present a closely related question: whether the Florida Supreme Court's harmless-error analysis violates the Eighth Amendment because it "rest[s] a death sentence on a determination made by a sentencer who has been led to believe that the responsibility for determining the appropriateness of the defendant's death rests elsewhere." *Caldwell* v. *Mississippi*, 472 U. S. 320, 328–329 (1985). For the reasons set out in JUSTICE SOTOMAYOR's dissent, *post*, at 1011–1016, I believe the Court should grant certiorari on that question in an appropriate case. That said, I would not grant certiorari on that question here. In many of these cases, the Florida Supreme Court did not fully consider that question, or the defendants may not have properly raised it. That may ultimately impede, or at least complicate, our review.

Nonetheless, the three issues raised by these cases draw into focus a more basic point I made in *Schriro*: A death sentence should reflect a jury's "community-based judgment that the sentence constitutes proper retribution." 542 U. S., at 360 (dissenting opinion). It seems to me that the jurors in at least some of these cases might not have made a "community-based judgment" that a death sentence was "proper retribution" had they known at the time of sentencing (1) that the death penalty might not be administered for another 40 years or more; (2) that other defendants who were sentenced years later would be entitled to resentencing based on a later-discovered error, but that the defendants in question would not be entitled to the same remedy for roughly the same error; or (3) that the jury's death recommendation would be treated as if it were decisive, despite the judge's instruction that the jury's recommendation was merely advisory. Had jurors known about these issues at the time of sentencing, some might have hesitated before recommending a death sentence. At least a few might have recommended a life sentence instead. The result is that some defendants who have lived under threat of execution for decades might never have been sentenced to death in the first place.

The flaws in the current practice of capital punishment could often cast serious doubt on the death sentences imposed in these and other capital cases. Rather than attempting to address the flaws in piecemeal fashion, however, I remain of the view that "it

would be wiser to reconsider the root cause of the problem—the constitutionality of the death penalty itself." *Madison*, *supra*, at 16 (BREYER, J., concurring).

JUSTICE THOMAS, concurring.

On the night of July 21, 1998, petitioner Michael Gordon Reynolds murdered nearly an entire family. While the father, Danny Ray Privett, relieved himself outside the family's camping trailer, petitioner snuck up behind him and "viciously and deliberately battered [his] skull with a piece of concrete." *Reynolds* v. *State*, 934 So. 2d 1128, 1157 (Fla. 2006) (*Reynolds I*). Petitioner would later explain: "'[W]ith my record'"—which included aggravated robbery, aggravated assault, and aggravated battery—"'I couldn't afford to leave any witnesses.'" *Id.*, at 1149, 1157. So petitioner entered the trailer, where he brutally beat, stabbed, and murdered Privett's girlfriend, Robin Razor, and their 11-year-old daughter, Christina Razor. Robin "suffered multiple stab wounds along with multiple blows to the side of her face and a broken neck resulting in injuries to her spinal cord." *Id.*, at 1136. She desperately fought back, suffering "significant defensive wounds" and "torment wounds"—shallow slashes that occur when "the perpetrator tak[es] a depraved, measured approach to the infliction of the injury and tak[es] pleasure in his cruel activity." *Id.*, at 1136, 1153. Eleven-year-old Christina also resisted, suffering "blunt force trauma to her head, a stab wound to the base of her neck that pierced her heart, and another stab wound to her right shoulder that pierced her lung and lacerated her pulmonary artery." *Id.*, at 1136. Only petitioner knows whether Robin had to watch her daughter die, or whether Christina had to watch her mother die. "Regardless, in the close confines of that cramped camping trailer, Christina Razor, in great pain and fear, was forced to fight a losing battle for her life knowing that either her mother had already been killed and she was next or that after Reynolds killed her, he was sure to end her mother's life." *Id.*, at 1154. "For a child to experience the fear, terror and emotional strain that accompanied Christina Razor as she fought for her life, knowing full well that she was fighting a losing battle, is unimaginable, heinous, atrocious and cruel." *Ibid.* "Christina was found not wearing any underwear," and petitioner's DNA was matched to both a pubic hair and Christina's underwear, both found near her body. *Reynolds* v. *State*, 99 So. 3d 459, 487–488,

501 (Fla. 2012). The sole surviving family member, Danielle, "was spared only because she was spending the night with a friend." Stutzman, Judge Gives Killer Death Sentence, Orlando Sentinel, Sept. 20, 2003, p. B7, col. 1. Danielle was devastated; "she wished she'd been home that night" to "f[ight] the attacker and tr[y] to save her sister and parents" or "di[e] alongside them." *Ibid.*

JUSTICE BREYER worries that the jurors here "might not have made a 'community-based judgment' that a death sentence was 'proper retribution' had they known" of his concerns with the death penalty. *Ante*, at 1007 (statement respecting denial of certiorari). In light of petitioner's actions, I have no such worry, and I write separately to alleviate JUSTICE BREYER's concerns.*

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*JUSTICE BREYER cites several other cases in which we have denied certiorari today. *Ante*, at 1006. He need not worry about the jury's decisions in those cases either. In *Guardado* v. *Florida*, No. 17–9284, petitioner, in need of money to "continue his recent crack cocaine binge," went to the home of a 75-year-old woman who had given him repeated assistance, struck her over and over with a "'breaker bar,'" and when "'she would not die,'" "pulled [a] kitchen knife and stabbed her several times, then slashed her throat." *Guardado* v. *State*, 965 So. 2d 108, 110–111 (Fla. 2007). In *Philmore* v. *Florida*, No. 17–9556, petitioner, in need of a getaway car for a planned bank robbery, asked the victim if he could use her phone, then pushed himself into her car, drove her to "an isolated area," "ordered her to walk towards high vegetation," and "shot her once in the head." *Philmore* v. *State*, 820 So. 2d 919, 923–924 (Fla. 2002). In *Tanzi* v. *Florida*, No. 18–5160, petitioner carjacked his victim by "punch[ing] her in the face until he gained entry," "forced [her] to perform oral sex," then "told [her] that he was going to kill her," put "duct tape over her mouth, nose, and eyes," and "strangle[d her] until she died." *Tanzi* v. *State*, 964 So. 2d 106, 110–111 (Fla. 2007). In *Franklin* v. *Florida*, No. 18–5228, petitioner stole a woman's car after invading her home and bashing her on the head with a hammer (leaving her "unable to live on her own"), asked a security guard at a local store for driving directions, bragged that he was going to come back and "'get'" the guard, and did just that, shooting the guard once in the back. *Franklin* v. *State*, 965 So. 2d 79, 84 (Fla. 2007). In *Grim* v. *Florida*, No. 18–5518, petitioner invited his neighbor over for coffee and then "repeatedly attacked [her] with a hammer, stabbed [her] multiple times," "forcefully inserted [an object] into her vagina," and dumped her body in Pensacola Bay. *Grim* v. *State*, 971 So. 2d 85, 89–90, 93 (Fla. 2007). Finally, in *Johnston* v. *Florida*, No. 18–5793, petitioner kidnaped his victim, "bea[t], raped, and manually strangled [her], then dragged her to a pond and left her nude, floating face down." *Johnston* v. *State*, 63 So. 3d 730, 735 (Fla. 2011).

JUSTICE BREYER's first concern is "that the death penalty might not be administered for another 40 years or more" after the jury's verdict. *Ante,* at 1007. That is a reason to carry out the death penalty sooner, not to decline to impose it. In any event, petitioner evidently is not bothered by delay. Petitioner has litigated all the way through the state courts and petitioned this Court for review three separate times. He can avoid "endur-[ing]" an "unconscionably long dela[y]," *ante,* at 1005, "by submitting to what the people of Florida have deemed him to deserve: execution," *Foster* v. *Florida*, 537 U. S. 990, 991 (2002) (THOMAS, J., concurring in denial of certiorari). "It makes 'a mockery of our system of justice for a convicted murderer, who, through his own interminable efforts of delay has secured the almost-indefinite postponement of his sentence, to then claim that the almost-indefinite postponement renders his sentence unconstitutional.'" *Thompson* v. *McNeil*, 556 U. S. 1114, 1117 (2009) (THOMAS, J., concurring in denial of certiorari) (quoting *Turner* v. *Jabe*, 58 F. 3d 924, 933 (CA4 1995) (Luttig, J., concurring in judgment); alterations omitted).

It is no mystery why it often takes decades to execute a convicted murderer. The "labyrinthine restrictions on capital punishmen[t] promulgated by this Court" have caused the delays that JUSTICE BREYER now bemoans. *Glossip* v. *Gross*, 576 U. S. 863, 898 (2015) (Scalia, J., concurring); see *Knight* v. *Florida*, 528 U. S. 990, 991 (1999) (THOMAS, J., concurring in denial of certiorari). As "the Drum Major in this parade" of new precedents, JUSTICE BREYER is not well positioned to complain about their inevitable consequences. *Glossip*, *supra,* at 898 (Scalia, J., concurring).

JUSTICE BREYER's second concern is that petitioner's jury might have declined to impose the death penalty if it had known that other capital defendants "would be entitled to resentencing," while petitioner himself would not be resentenced. *Ante,* at 1007. What this has to do with the original jury's judgment as to "'proper retribution,'" *ibid.*, is beyond me. Petitioner murdered Danielle Privett's entire family. Whether he deserves to be sentenced to death has nothing to do with whether a different person who engaged in different conduct might be entitled to be resentenced on procedural grounds. Moreover, if petitioner *had* been resentenced, and was again sentenced to death, I have little doubt

that JUSTICE BREYER would instead be fretting that the original jury failed to consider his belief that resentencing "sharpen[s]" "[d]eath row's inevitable anxieties and uncertainties." *Foster*, *supra*, at 993 (opinion dissenting from denial of certiorari).

JUSTICE BREYER's third concern is that petitioner was "sentenced to death under a scheme that required the judge to make the ultimate decision to impose the death penalty, and in which the jury was repeatedly instructed that its recommended verdict would be advisory." *Ante*, at 1006. Once again, petitioner did not share JUSTICE BREYER's concern. "After thorough consultation with his attorneys and the trial court," petitioner waived "his right to a jury's penalty recommendation as to the appropriate sentence" and "waived the presentation of mitigating evidence before the penalty phase jury." *Reynolds I*, 934 So. 2d, at 1138, 1148. When the trial court did not allow petitioner to waive the jury's involvement, petitioner appealed, arguing that "the trial court abused its discretion and committed reversible error when it refused to honor" his waiver. *Id.*, at 1147–1148.

Contrary to JUSTICE BREYER's suggestion that the jury did not feel an adequate sense of "responsibility" for its recommendation, *ante*, at 1006, the jury was instructed that a "'human life is at stake'" and that the trial court could reject the jury's recommendation "'only if the facts [are] so clear and convincing that virtually no reasonable person could differ.'" 251 So. 3d 811, 813, 828 (Fla. 2018) (*per curiam*). The jury was further instructed that its recommendation did not need to be unanimous. *Id.*, at 815. Nonetheless, the jury returned not one but two unanimous death recommendations. *Ibid.*

JUSTICE BREYER's final (and actual) concern is with the "'death penalty itself.'" *Ante*, at 1008. As I have elsewhere explained, "it is clear that the Eighth Amendment does not prohibit the death penalty." *Baze* v. *Rees*, 553 U. S. 35, 94 (2008) (opinion concurring in judgment); see *Glossip*, *supra*, at 899–901, and n. 1 (THOMAS, J., concurring). The only thing "cruel and unusual" in this case was petitioner's brutal murder of three innocent victims.

JUSTICE SOTOMAYOR, dissenting.

Today, this Court denies the petitions of seven capital defendants, each of whom was sentenced to death under a capital sentencing scheme that this Court has since declared unconstitu-

tional.[1] The Florida Supreme Court has left petitioners' death sentences undisturbed, reasoning that any sentencing error in their cases was harmless. Petitioners challenge the Florida Supreme Court's analysis because it treats the fact of unanimous jury recommendations in their cases as highly significant, or legally dispositive, even though those juries were told repeatedly that their verdicts were merely advisory. I have dissented before from this Court's failure to intervene on this issue.[2] Petitioners' constitutional claim is substantial and affects numerous capital defendants. The consequence of error in these cases is too severe to leave petitioners' challenges unanswered, and I therefore would grant the petitions.

I

I begin by acknowledging that petitioners have been convicted of gruesome crimes. Their victims, and the families and communities of those victims, have suffered. I am cognizant of their suffering. I am also mindful that it is this Court's duty to ensure that all defendants, even those who have committed the most heinous crimes, receive a sentence that is the result of a fair process. It is with that responsibility in mind that I analyze petitioners' challenges.

II

Like the petitioners described in my prior dissents, each petitioner here was sentenced pursuant to Florida's former sentencing scheme. That regime involved an evidentiary hearing before a jury, after which the jury would issue an advisory sentence for life or death. See *Hurst* v. *Florida*, 577 U. S. 92, 95–96 (2016).

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[1] In addition to Reynolds' petition, this Court denies the petitions of Jesse Guardado, No. 17–9284; Lenard James Philmore, No. 17–9556; Michael Anthony Tanzi, No. 18–5160; Quawn M. Franklin, No. 18–5228; Norman Mearle Grim, No. 18–5518; and Ray Lamar Johnston, No. 18–5793. For the reasons expressed herein, I respectfully dissent from denial of certiorari in their cases as well.

[2] I thrice dissented because the Florida Supreme Court had failed even to address the significant constitutional question petitioners raised. See *Guardado* v. *Jones*, 584 U. S. 922 (2018) (opinion dissenting from denial of certiorari); *Middleton* v. *Florida*, 583 U. S. 1162 (2018) (same); *Truehill* v. *Florida*, 583 U. S. 938, 939 (2017) (same). I dissented again after the Florida Supreme Court ultimately did take up the question, and I noted the need for a definitive resolution of the issue. *Kaczmar* v. *Florida*, 585 U. S. 1011 (2018) (same).

Next, the judge independently decided whether aggravating and mitigating factors existed, weighed those factors, and entered a sentence of life or death. *Id.*, at 96. In *Hurst*, this Court held that Florida's scheme violated the Sixth Amendment because it impermissibly allowed a judge to increase the punishment authorized for a defendant "based on her own factfinding." *Id.*, at 99.

Petitioners sought relief from the Florida courts after *Hurst* was decided. Although the Florida Supreme Court assumed that *Hurst* errors had occurred in petitioners' cases, it concluded that any such errors were harmless—in other words, there was "no reasonable possibility" that the errors affected petitioners' sentences. 251 So. 3d 811, 815 (2018) (*per curiam*) (case below).

In theory, the Florida Supreme Court's harmless-error analysis turns on an individualized review of each case. See *id.*, at 816. And, indeed, in some cases the Florida Supreme Court has considered several factors in its harmless-error analysis. See *Davis* v. *State*, 207 So. 3d 142, 174–175 (2016) (referring to the unanimity of the jury recommendations of death as well as the "egregious facts" of the case). In practice, however, the Florida Supreme Court's harmless-error approach appears to reflect a myopic focus on one factor: whether the advisory jury's recommendation for death was unanimous. Because the jurors in pre-*Hurst* cases were informed that they should recommend death only if they determined that sufficient aggravating factors existed and outweighed the mitigating factors, the Florida Supreme Court has reasoned that a jury that unanimously recommended death necessarily made the findings that *Hurst* said are constitutionally required. See *Davis*, 207 So. 3d, at 174–175. By concluding that *Hurst* violations are harmless because jury recommendations were unanimous, the Florida Supreme Court "transforms those advisory jury recommendations into binding findings of fact." *Guardado* v. *Jones*, 584 U. S. 922, 925 (2018) (SOTOMAYOR, J., dissenting from denial of certiorari).

III

A

Because the Florida Supreme Court's harmless-error analysis relies heavily on the fact that a purely advisory jury rendered a unanimous decision, it raises serious questions under this Court's precedents.

In *Caldwell* v. *Mississippi*, 472 U. S. 320 (1985), this Court said it is "constitutionally impermissible to rest a death sentence on a determination made by a sentencer who has been led to believe that the responsibility for determining the appropriateness of the defendant's death rests elsewhere." *Id.*, at 328–329. *Caldwell* involved misleading comments by a prosecutor who emphasized that the jury's verdict would be subject to appellate review. See *id.*, at 336. This Court concluded that the resulting sentence did not satisfy the minimum standard of reliability required by the Eighth Amendment because the prosecutor's suggestions created "an intolerable danger" that the jury would "minimize the importance of its role." *Id.*, at 333. *Caldwell* explained that this Court has "always premised its capital punishment decisions on the assumption that a capital sentencing jury recognizes the gravity of its task and proceeds with the appropriate awareness of its 'truly awesome responsibility.'" *Id.*, at 341. Where a sentencing jury is encouraged to proceed without that awareness, *Caldwell* suggests that "there are specific reasons to fear substantial unreliability as well as bias in favor of death sentences." *Id.*, at 330.

As noted above, the sentencing scheme in place in Florida when petitioners were sentenced placed the final responsibility with the trial judge. Juries were instructed accordingly. Thus although the jury in this case was instructed that the court would reject a recommendation "only if the facts [we]re so clear and convincing that virtually no reasonable person could differ" and that a "human life [wa]s at stake," the jury also was told that its duty was to "advise the court" and that "the final decision as to what punishment shall be imposed [wa]s the responsibility of the judge." App. D to Pet. for Cert. The jury also heard, repeatedly, that it was to "recommend" an "advisory sentence." *Ibid.* Jury instructions varied across cases. For example, the jurors in petitioner Jesse Guardado's case heard that "human life [wa]s at stake," but not that the court would reject the jury's recommendation only in limited circumstances. App. to Pet. for Cert. in *Guardado* v. *Florida*, O. T. 2018, No. 17–9284, pp. 92a–105a. Like the jurors in this case, the jurors in Guardado's case were instructed that it was their responsibility to "advise the Court" as to the appropriate punishment. *Id.*, at 92a. The court further instructed jurors that the "[f]inal decision as to what punishment shall be imposed rest[ed] solely with the judge of th[e] court."

Ibid. These jurors knew that the final decision as to whether Guardado would live or die did not rest with them. The Court's reasoning in *Caldwell* informs how much weight, if any, to give such a purely advisory recommendation for death.

B

In the case below, the Florida Supreme Court addressed the *Caldwell* issue at length. See 251 So. 3d, at 814–828.[3] Two aspects of the plurality's analysis show the need for further engagement with this issue.

First, the Florida Supreme Court said that its application of the harmless-error rule does not entirely turn on jury unanimity. See *id.*, at 816 ("a unanimous recommendation is not sufficient alone" to find harmlessness). To be sure, in some cases the Florida Supreme Court has mentioned factors other than unanimity to support a finding of harmlessness. See, *e. g.*, *Philmore* v. *State*, 234 So. 3d 567, 568 (2018) (noting that the defendant's confession and the aggravation in the case, as well as the jury's unanimous recommendation, supported a finding of harmlessness), cert. denied, 586 U. S. 1004 (2018). But in many other cases, the court's analysis started and ended with the unanimity of the jury's recommendation. Indeed, on the very day that the Florida Supreme Court decided this case, it treated jury unanimity as dispositive in four other capital cases.[4] In a recent opinion, the Florida Supreme Court again stated that it "has consistently . . . den[ied] *Hurst* relief to defendants who have received a unani-

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[3] Of the seven justices of the Florida Supreme Court, only two justices concurred in the court's *per curiam* opinion and one justice concurred specially with an opinion. Of the remaining four justices, two dissented and two concurred only in the result.

[4] See *Tanzi* v. *State*, 251 So. 3d 805, 806 (2018) (citing *Davis* v. *State*, 207 So. 3d 142, 175 (2016), for the proposition that the unanimity of a jury's recommendation for death ensures that jurors have made the necessary findings of fact), cert. denied, 586 U. S. 1004 (2018); *Johnston* v. *State*, 246 So. 3d 266 ("Johnston received a unanimous jury recommendation of death and, therefore, the *Hurst* error in this case is harmless beyond a reasonable doubt"), cert. denied, 586 U. S. 1004 (2018); *Crain* v. *State*, 246 So. 3d 206, 210 (2018) ("[T]his Court can rely on the jury's unanimous recommendation for death to conclude that the *Hurst* error in Crain's case was harmless beyond a reasonable doubt"); *Taylor* v. *State*, 246 So. 3d 204, 206 (2018) ("[T]his Court has consistently relied on *Davis* to deny *Hurst* relief to defendants who have received unanimous jury recommendations of death").

mous jury recommendation of death." *Anderson* v. *State*, 257 So. 3d 355, 356 (2018) (internal quotation marks omitted). To the extent the Florida Supreme Court gives dispositive weight to the fact that an advisory jury offered a unanimous recommendation, that action implicates the Eighth Amendment concerns that *Caldwell* addressed.

Second, the state court dismissed *Caldwell* as inapplicable to cases like petitioners' because the pre-*Hurst* jury instructions accurately described the advisory role assigned to the jury by state law at that time. 251 So. 3d, at 824–825. It is true that *Caldwell*'s holding invalidates only those sentences imposed following comments that "*mislead* the jury as to its role in the sentencing process." *Romano* v. *Oklahoma*, 512 U. S. 1, 9 (1994) (internal quotation marks omitted; emphasis added). But whether or not *Caldwell* itself makes petitioners' sentences unconstitutional, the reasoning in *Caldwell* surely informs the related question whether a purely advisory jury recommendation is sufficiently reliable for a court to treat it as legally dispositive for purposes of harmless-error review. *Caldwell* provides strong reasons to doubt that a jury would have reached the same decision had it been instructed that its role was not advisory. See 251 So. 3d, at 832 (Pariente, J., dissenting) ("[T]he jury [in Reynolds' case] was repeatedly told that its sentencing recommendation between life and death was merely 'advisory.' . . . I would conclude that *Caldwell* further supports the conclusion that the *Hurst* error in Reynolds' case is not harmless beyond a reasonable doubt").

IV

"[T]his Court's Eighth Amendment jurisprudence has taken as a given that capital sentencers would view their task as the serious one of determining whether a specific human being should die at the hands of the State." *Caldwell*, 472 U. S., at 329. The jurors in petitioners' cases were repeatedly instructed that their role was merely advisory, yet the Florida Supreme Court has treated their recommendations as legally binding by way of its harmless-error analysis. This approach raises substantial Eighth Amendment concerns. As I continue to believe that "the stakes in capital cases are too high to ignore such constitutional challenges," *Truehill* v. *Florida*, 583 U. S. 938, 940 (2017) (opinion dissenting from denial of certiorari), I would grant review to decide whether the Florida Supreme Court's harmless-error ap-

proach is valid in light of *Caldwell*. This Court's refusal to address petitioners' challenges signals that it is unwilling to decide this issue. I respectfully dissent from the denial of certiorari, and I will continue to note my dissent in future cases raising the *Caldwell* question.

No. 18–5190. GARCIA-ECHAVERRIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 717 Fed. Appx. 505.

No. 18–6003. KAVANDI *v.* TIME WARNER CABLE, INC., ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 18–6281. CALLINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, dissenting.

I dissent for the reasons set out in *Brown* v. *United States*, 586 U. S. 953 (2018) (SOTOMAYOR, J., dissenting from denial of certiorari).

No. 18–6333. STAPLES *v.* MAYE, WARDEN. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 711 Fed. Appx. 866.

Rehearing Denied

No. 17–1479. GENTRY *v.* THOMPSON, JUDGE, CIRCUIT COURT OF TENNESSEE, SUMNER COUNTY, 586 U. S. 816;

No. 17–1684. FRANCE *v.* PATRICK, 586 U. S. 824;

No. 17–9333. THYBERG *v.* UNITED STATES, 586 U. S. 854;

No. 17–9398. ROCK *v.* EXECUTIVE OFFICE PARK OF DURHAM ASSN., INC., 586 U. S. 858;

No. 17–9478. FISHER *v.* MISSOURI, 586 U. S. 862;

No. 17–9517. DENOMA *v.* KASICH, GOVERNOR OF OHIO, ET AL., 586 U. S. 864;

No. 18–105. SABENIANO *v.* CITIBANK, N. A., ET AL., 586 U. S. 874;

No. 18–170. GENTRY *v.* TENNESSEE ET AL., 586 U. S. 911; and

No. 18–5812. IN RE DECARO, 586 U. S. 811. Petitions for rehearing denied.

No. 17–9069. DEGRATE *v.* HARRIS, CLERK, SUPREME COURT OF THE UNITED STATES, 586 U. S. 841. Petition for rehearing denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition.

NOVEMBER 14, 2018

Dismissal Under Rule 46

No. 18–162. BALL ET AL. *v.* LEBLANC, SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 881 F. 3d 346.

Certiorari Denied

No. 18–6680 (18A510). MORENO RAMOS *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE ALITO, and by him referred to the Court, denied. Certiorari denied.

No. 18–6682 (18A512). MORENO RAMOS *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE ALITO, and by him referred to the Court, denied. Certiorari denied.

NOVEMBER 16, 2018

Certiorari Granted

No. 18–315. COCHISE CONSULTANCY, INC., ET AL. *v.* UNITED STATES EX REL. HUNT. C. A. 11th Cir. Certiorari granted. Reported below: 887 F. 3d 1081.

No. 18–557. IN RE DEPARTMENT OF COMMERCE ET AL. Petition for writ of mandamus is treated as a petition for writ of certiorari, and certiorari is granted. Petitioners' brief on the merits is to be filed on or before Monday, December 17, 2018. Respondents' brief on the merits is to be filed on or before Thursday, January 17, 2019. Reply brief is to be filed on or before Monday, February 4, 2019. Case is set for oral argument on Tuesday, February 19, 2019.

NOVEMBER 19, 2018

Miscellaneous Orders

No. 18M63. LOFTON *v.* SP PLUS CORP., FKA STANDARD PARKING CORP. ET AL.; and

No. 18M65. CARTER *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 18M64. ZUKERMAN *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal granted.

No. 18M66. TYSON *v.* TEXAS (two cases). Motion for leave to proceed as a veteran denied.

No. 17–646. GAMBLE *v.* UNITED STATES. C. A. 11th Cir. [Certiorari granted, 585 U. S. 1029.] Motion of Texas et al. for leave to participate in oral argument as *amici curiae* and for enlargement of time for oral argument granted, and the time is allotted as follows: 40 minutes for petitioner, 30 minutes for respondent, and 10 minutes for Texas et al.

No. 17–8151. BUCKLEW *v.* PRECYTHE, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 8th Cir. [Certiorari granted, 584 U. S. 959.] Motion of petitioner for appointment of counsel granted, and Cheryl A. Pilate, Esq., of Kansas City, Mo., is appointed to serve as counsel for petitioner in this case.

No. 17–9041. CIOTTA *v.* HOLLAND, WARDEN. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [586 U. S. 803] denied.

No. 18–5002. GRAY *v.* DAVIS, 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* [586 U. S. 805] denied.

No. 18–5017. SELDEN *v.* KOVACHEVICH, JUDGE, UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, ET AL. C. A. 11th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [586 U. S. 805] denied.

No. 18–5631. JACOB *v.* FRAKES, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 8th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [586 U. S. 807] denied.

No. 18–6071. NAYSHTUT *v.* COMERCIALIZADORA TRAVEL ADVISORY, S. A. DE C. V., ET AL. Ct. App. Cal., 1st App. Dist., Div. 1.; and

No. 18–6384. LANTERI *v.* CONNECTICUT. C. A. 2d Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 10, 2018, 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. 18–6448. IN RE QUATTROCCHI;

No. 18–6470. IN RE MALONE;

No. 18–6486. IN RE HERNANDEZ; and

No. 18–6514. IN RE BELL. Petitions for writs of habeas corpus denied.

Certiorari Denied

No. 17–8988. BOOK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 696 Fed. Appx. 231.

No. 17–9223. HINTON *v.* WALKER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 691 Fed. Appx. 733.

No. 18–78. RAMIREZ-BARAJAS *v.* WHITAKER, ACTING ATTORNEY GENERAL (Reported below: 877 F. 3d 808); and ONDUSO *v.* WHITAKER, ACTING ATTORNEY GENERAL (877 F. 3d 1073). C. A. 8th Cir. Certiorari denied.

No. 18–150. PLUMMER ET AL. *v.* HOPPER, SPECIAL ADMINISTRATOR OF THE ESTATE OF RICHARDSON. C. A. 6th Cir. Certiorari denied. Reported below: 887 F. 3d 744.

No. 18–204. PORTFOLIO RECOVERY ASSOCIATES, LLC *v.* POUNDS ET AL. C. A. 4th Cir. Certiorari denied.

No. 18–212. BANK OF AMERICA, N. A. *v.* LUSNAK. C. A. 9th Cir. Certiorari denied. Reported below: 883 F. 3d 1185.

No. 18–300. DELANO FARMS CO. ET AL. *v.* CALIFORNIA TABLE GRAPE COMMISSION. Sup. Ct. Cal. Certiorari denied. Reported below: 4 Cal. 5th 1204, 417 P. 3d 699.

No. 18–326. Estate of Goldberg by Executor Goldberg *v.* Nimoityn et al. C. A. 3d Cir. Certiorari denied. Reported below: 734 Fed. Appx. 141.

No. 18–330. Greene *v.* Frost Brown Todd, LLC, et al. C. A. 6th Cir. Certiorari denied.

No. 18–336. Jones et al. *v.* Markiewicz-Qualkinbush et al. C. A. 7th Cir. Certiorari denied. Reported below: 892 F. 3d 935.

No. 18–338. Soccolich et ux. *v.* Wilmington Savings Fund Society, FSB, as Trustee. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 241 So. 3d 119.

No. 18–344. Shao *v.* McManis Faulkner, LLP. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 18–354. Weiss *v.* New Jersey. C. A. 3d Cir. Certiorari denied.

No. 18–358. Roe *v.* United States et al. C. A. 2d Cir. Certiorari denied.

No. 18–361. Alleyne *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 181 A. 3d 1272.

No. 18–362. Brown *v.* Virginia. C. A. 4th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 344.

No. 18–363. Uribe-Sanchez *v.* Whitaker, Acting Attorney General. C. A. 5th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 363.

No. 18–367. Jacobi *v.* New York Tax Appeals Tribunal et al. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 156 App. Div. 3d 1154, 68 N. Y. S. 3d 184.

No. 18–382. Rab *v.* Superior Court of California, Sacramento County, et al. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 18–401. Hobson *v.* Mattis, Secretary of Defense. C. A. 6th Cir. Certiorari denied.

No. 18–405. Dastmalchian *v.* Department of Justice et al. C. A. 9th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 603.

No. 18–413. Bosch *v.* Arizona Department of Revenue. Ct. App. Ariz. Certiorari denied.

No. 18–441. Accord Healthcare, Inc., et al. *v.* UCB, Inc., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 890 F. 3d 1313.

No. 18–463. Morello *v.* Texas. Sup. Ct. Tex. Certiorari denied. Reported below: 547 S. W. 3d 881.

No. 18–468. SSL Services, LLC *v.* Cisco Systems, Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 721 Fed. Appx. 987.

No. 18–492. Souza *v.* California. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 18–522. Ishee *v.* Mississippi. Ct. App. Miss. Certiorari denied. Reported below: 248 So. 3d 841.

No. 18–524. Gathings *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 18–532. Sixty-01 Association of Apartment Owners *v.* Goudelock. C. A. 9th Cir. Certiorari denied. Reported below: 895 F. 3d 633.

No. 18–5252. Earp *v.* Davis, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 881 F. 3d 1135.

No. 18–5289. Barbee *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 259.

No. 18–5321. Ortiz-Uresti *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 721 Fed. Appx. 145.

No. 18–5401. Poirier *v.* Massachusetts Department of Correction. C. A. 1st Cir. Certiorari denied.

No. 18–5597. Miller *v.* Mays, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 879 F. 3d 691.

No. 18–5948. Murphy *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 737 Fed. Appx. 693.

No. 18–5985. SPARKS *v.* PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY. Ct. App. Ore. Certiorari denied. Reported below: 289 Ore. App. 159, 408 P. 3d 276.

No. 18–5988. ALLAH *v.* WILSON ET AL. C. A. 2d Cir. Certiorari denied.

No. 18–6002. LIBRACE *v.* WRIGHT ET AL. C. A. 8th Cir. Certiorari denied.

No. 18–6004. JONES *v.* SUPERIOR COURT OF CONNECTICUT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 722 Fed. Appx. 109.

No. 18–6019. QUINTERO *v.* NEVADA. Ct. App. Nev. Certiorari denied. Reported below: 134 Nev. 998.

No. 18–6021. BURNEY *v.* ALDRIDGE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 856.

No. 18–6022. UDEIGWE *v.* TEXAS TECH UNIVERSITY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 788.

No. 18–6026. BOOTH *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 861.

No. 18–6027. BEAULIEU *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied.

No. 18–6029. AQUILINA *v.* DAVIS, ADMINISTRATOR, EDNA MAHAN CORRECTIONAL FACILITY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–6032. D. L. *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 18–6038. VILLAVICENCIO *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 18–6043. MANNING *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 18–6045. BECKHAM *v.* MILLER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 169.

No. 18–6047. SEED *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 18–6052. KHOSHMOOD *v.* CATHOLIC CHARITY ET AL. C. A. D. C. Cir. Certiorari denied.

No. 18–6053. KISSNER *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 18–6055. TRIPLETT *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 396.

No. 18–6059. CARTER *v.* OHIO. Ct. App. Ohio, 1st App. Dist., Hamilton County. Certiorari denied. Reported below: 2018-Ohio-645, 95 N. E. 3d 443.

No. 18–6082. LEE *v.* CHEATHAM, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 984.

No. 18–6154. EASLEY *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 290 Ore. App. 506, 415 P. 3d 1099.

No. 18–6200. UZOECHI *v.* WILSON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 65.

No. 18–6253. WESLING *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 169 A. 3d 1219.

No. 18–6254. TYLER *v.* OCWEN LOAN SERVICING, LLC, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 221.

No. 18–6259. TYLER *v.* OCWEN LOAN SERVICING, LLC, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 699 Fed. Appx. 424.

No. 18–6275. LUPIAN-BARAJAS *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–6291. COOK *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–6327. HUMPHREY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 265.

No. 18–6335. JENKINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 730.

No. 18–6339. WILLAN *v.* PETITIONER. Ct. App. Wis. Certiorari denied. Reported below: 2018 WI App 21, 380 Wis. 2d 510, 913 N. W. 2d 515.

No. 18–6341. LIEBA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 480.

No. 18–6342. LOPEZ-VAAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 193.

No. 18–6343. LLERENAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 743 Fed. Appx. 86.

No. 18–6346. DUBARRY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 568.

No. 18–6347. BRAKE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 904 F. 3d 97.

No. 18–6349. PALOMINO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 485.

No. 18–6350. BRAND *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–6351. BAKER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 899 F. 3d 123.

No. 18–6352. ABERANT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 905.

No. 18–6355. SCOTT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 348.

No. 18–6358. HILTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 948.

No. 18–6359. GOMEZ-SAAVEDRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 483.

No. 18–6360. FAURISMA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 932.

No. 18–6361. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 710.

No. 18–6363. BERNHARDT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 903 F. 3d 818.

No. 18–6366. BARBOSA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 896 F. 3d 60.

No. 18–6370. HARPER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 445.

No. 18–6371. HENDERSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 565.

No. 18–6372. SMALL *v.* LINDAMOOD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–6373. SEMIEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 746 Fed. Appx. 303.

No. 18–6379. NAKHLEH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 895 F. 3d 838.

No. 18–6389. LOMAX *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 743 Fed. Appx. 678.

No. 18–6391. HAWKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 868.

No. 18–6436. CINTRON *v.* FERGUSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PHOENIX, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–6444. WHITNEY *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL. C. A. 8th Cir. Certiorari denied.

No. 17–1676. STUART *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 268 So. 3d 607.

JUSTICE GORSUCH, with whom JUSTICE SOTOMAYOR joins, dissenting.

More and more, forensic evidence plays a decisive role in criminal trials today. But it is hardly "immune from the risk of manipulation." *Melendez-Diaz* v. *Massachusetts*, 557 U. S. 305, 318 (2009). A forensic analyst "may feel pressure—or have an incentive—to alter the evidence in a manner favorable to the prosecution." *Ibid.* Even the most well-meaning analyst may lack essential training, contaminate a sample, or err during the testing process. See *ibid.*; see also *Bullcoming* v. *New Mexico*, 564 U. S. 647, 654, n. 1 (2011) (documenting laboratory prob-

lems). To guard against such mischief and mistake and the risk of false convictions they invite, our criminal justice system depends on adversarial testing and cross-examination. Because cross-examination may be "the greatest legal engine ever invented for the discovery of truth," *California* v. *Green*, 399 U. S. 149, 158 (1970) (internal quotation marks omitted), the Constitution promises every person accused of a crime the right to confront his accusers. Amdt. 6.

That promise was broken here. To prove Vanessa Stuart was driving under the influence, the State of Alabama introduced in evidence the results of a blood-alcohol test conducted hours after her arrest. But the State refused to bring to the stand the analyst who performed the test. Instead, the State called a *different* analyst. Using the results of the test after her arrest and the rate at which alcohol is metabolized, this analyst sought to estimate for the jury Ms. Stuart's blood-alcohol level hours earlier when she was driving. Through these steps, the State effectively denied Ms. Stuart the chance to confront the witness who supplied a foundational piece of evidence in her conviction. The engine of cross-examination was left unengaged, and the Sixth Amendment was violated.

To be fair, the problem appears to be largely of our creation. This Court's most recent foray in this field, *Williams* v. *Illinois*, 567 U. S. 50 (2012), yielded no majority and its various opinions have sown confusion in courts across the country. See, *e. g.*, *State* v. *Dotson*, 450 S. W. 3d 1, 68 (Tenn. 2014) ("The Supreme Court's fractured decision in *Williams* provides little guidance and is of uncertain precedential value"); *State* v. *Michaels*, 219 N. J. 1, 31, 95 A. 3d 648, 666 (2014) ("We find *Williams*'s force, as precedent, at best unclear"); *United States* v. *Turner*, 709 F. 3d 1187, 1189 (CA7 2013); *United States* v. *James*, 712 F. 3d 79, 95 (CA2 2013).

This case supplies another example of that confusion. Though the opinion of the Alabama court is terse, the State defends it by arguing that, "[u]nder the rule of the *Williams* plurality," the prosecution was free to introduce the forensic report in this case without calling the analyst who prepared it. Brief in Opposition 6. This is so, the State says, because it didn't offer the report for the truth of what it said about Ms. Stuart's blood-alcohol level at the time of the test, only to provide the State's testifying expert a basis for estimating Ms. Stuart's blood-alcohol level when she was driving.

But while *Williams* yielded no majority opinion, at least five Justices rejected this logic—and for good reason. After all, why would any prosecutor bother to offer in evidence the nontestifying analyst's report in this case except to prove the truth of its assertions about the level of alcohol in Ms. Stuart's blood at the time of the test? The whole point of the exercise was to establish—*because of the report's truth*—a basis for the jury to credit the testifying expert's estimation of Ms. Stuart's blood-alcohol level hours earlier. As the four dissenting Justices in *Williams* explained, "when a witness . . . repeats an out-of-court statement as the basis for a conclusion, . . . the statement's utility is then dependent on its truth." 567 U. S., at 126 (opinion of KAGAN, J.). With this JUSTICE THOMAS fully agreed, observing that "[t]here is no meaningful distinction between disclosing an out-of-court statement so that the factfinder may evaluate the [testifying] expert's opinion and disclosing that statement for its truth." *Id.*, at 106 (opinion concurring in judgment).

Faced with this difficulty, the State offers an alternative defense of its judgment in this case. Even if it did offer the forensic report for the truth of its assertion about Ms. Stuart's blood-alcohol level at the time of her arrest, the State contends that the Sixth Amendment right to confrontation failed to attach because the report wasn't "'testimonial.'" Brief in Opposition 9.

But piecing together the fractured decision in *Williams* reveals this argument to be mistaken too—and this time in the view of *eight* Justices. The four-Justice *Williams* plurality took the view that a forensic report qualifies as testimonial only when it is "prepared for the primary purpose of accusing a targeted individual" who is "in custody [or] under suspicion." 567 U. S., at 84. Meanwhile, four dissenting Justices took the broader view that even a report devised purely for investigatory purposes without a target in mind can qualify as testimonial when it is "made under circumstances which would lead an objective witness reasonably to believe that [it] would be available for use at a later trial." *Id.*, at 121 (opinion of KAGAN, J.) (internal quotation marks omitted). But however you slice it, a routine postarrest forensic report like the one here must qualify as testimonial. For even under the plurality's more demanding test, there's no question that Ms. Stuart *was* in custody when the government conducted its forensic test or that the report *was* prepared for the primary purpose of securing her conviction.

Respectfully, I believe we owe lower courts struggling to abide our holdings more clarity than we have afforded them in this area. *Williams* imposes on courts with crowded dockets the job of trying to distill holdings on two separate and important issues from four competing opinions. The errors here may be manifest, but they are understandable and they affect courts across the country in cases that regularly recur. I would grant review.

No. 18–380. VANNOY, WARDEN *v.* FLOYD. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 894 F. 3d 143.

No. 18–5925. LOREN *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 18–6387. BOWENS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 322.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, dissenting.

I dissent for the reasons set out in *Brown* v. *United States*, 586 U. S. 953 (2018) (SOTOMAYOR, J., dissenting from denial of certiorari).

Rehearing Denied

No. 17–1537. MORRISON *v.* QUEST DIAGNOSTICS INC. ET AL., 586 U. S. 818;

No. 17–1571. MARRANCA *v.* LOYTSKER, 586 U. S. 819;

No. 17–1601. BARONE *v.* WELLS FARGO BANK, N. A., 586 U. S. 820;

No. 17–1608. HOLKESVIG *v.* NORTH DAKOTA, 586 U. S. 820;

No. 17–1612. HINDS *v.* UNITED STATES, 586 U. S. 821;

No. 17–1621. ANDERSON *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, 586 U. S. 821;

No. 17–1626. ASSADIAN *v.* PARSI ET AL., 586 U. S. 821;

No. 17–1647. IN RE HENDERSON ET AL., 586 U. S. 811;

No. 17–1651. BATES ET UX. *v.* VILLAGE OF PENTWATER, MICHIGAN, 586 U. S. 823;

No. 17–1690. COONEY *v.* BARRY SCHOOL OF LAW, AKA DWAYNE O. ANDREAS SCHOOL OF LAW, 586 U. S. 825;

No. 17–7988. MATHURIN *v.* UNITED STATES, 586 U. S. 827;

No. 17–8846. Ramey *v.* United States, 586 U. S. 834;

No. 17–8937. Ferguson-Cassidy *v.* City of Los Angeles, California, et al., 586 U. S. 837;

No. 17–9078. Arlotta *v.* Bank of America, N. A., et al.; and Arlotta *v.* Diocese of Buffalo et al., 586 U. S. 841;

No. 17–9210. Buttercase *v.* Nebraska, 586 U. S. 848;

No. 17–9311. Johnson *v.* United States, 586 U. S. 853;

No. 17–9331. Chasson, aka Alias, aka Hason *v.* Sessions, Attorney General, 586 U. S. 854;

No. 17–9352. Viola *v.* Bennett, 586 U. S. 855;

No. 17–9423. Woods *v.* Arizona, 586 U. S. 859;

No. 17–9428. Johnson *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division, 586 U. S. 860;

No. 17–9444. Stephens et al. *v.* City of Englewood, New Jersey, et al., 586 U. S. 860;

No. 17–9476. Elghannam *v.* Educational Testing Service, 586 U. S. 862;

No. 17–9504. Ray *v.* McCollum, Warden, 586 U. S. 864;

No. 17–9567. Brown *v.* Del Norte County, California, et al., 586 U. S. 867;

No. 18–9. Washington *v.* Azar, Secretary of Health and Human Services, 586 U. S. 869;

No. 18–49. Plumb et al. *v.* U. S. Bank N. A. et al., 586 U. S. 871;

No. 18–92. Perry *v.* Kriegman, 586 U. S. 873;

No. 18–95. Wentzell et al. *v.* BP America, Inc., et al., 586 U. S. 874;

No. 18–104. Tuerk *v.* Disciplinary Board of the Supreme Court of Pennsylvania, 586 U. S. 874;

No. 18–139. Freeman *v.* North Carolina Department of Health and Human Services, 586 U. S. 875;

No. 18–143. Bart *v.* United States, 586 U. S. 875;

No. 18–186. Silva-Ramirez *v.* Hospital Espanol Auxilio Mutuo de Puerto Rico, Inc., et al., 586 U. S. 876;

No. 18–5009. Drummond *v.* Sessions, Attorney General, 586 U. S. 877;

No. 18–5094. Sherry *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division, 586 U. S. 882;

No. 18–5099. WILLIAMS *v.* LOS ANGELES COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES ET AL., 586 U. S. 882;
No. 18–5178. BALTIMORE *v.* BUCK, 586 U. S. 887;
No. 18–5197. DIXIT *v.* DIXIT, 586 U. S. 888;
No. 18–5235. THOMAS *v.* CHANDRAN, 586 U. S. 889;
No. 18–5309. MCLAIN *v.* UNITED STATES, 586 U. S. 893;
No. 18–5316. VAUGHAN *v.* VAUGHAN ET AL., 586 U. S. 893;
No. 18–5327. MAKDESSI *v.* FIELDS ET AL., 586 U. S. 894;
No. 18–5665. CABRERA *v.* UNITED STATES, 586 U. S. 905; and
No. 18–5799. IN RE SMITHBACK, 586 U. S. 811. Petitions for rehearing denied.

NOVEMBER 27, 2018

Dismissal Under Rule 46

No. 17–1056. QUALITY SYSTEMS, INC., ET AL. *v.* CITY OF MIAMI FIRE FIGHTERS' AND POLICE OFFICERS' RETIREMENT TRUST ET AL. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 865 F. 3d 1130.

DECEMBER 3, 2018

Certiorari Granted—Vacated and Remanded

No. 17–74. MARKLE INTERESTS, L. L. C., ET AL. *v.* UNITED STATES FISH AND WILDLIFE SERVICE ET AL. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Weyerhaeuser Co.* v. *United States Fish and Wildlife Serv.*, 586 U. S. 9 (2018). Reported below: 827 F. 3d 452.

No. 17–886. FLECK *v.* WETCH ET AL. C. A. 8th Cir. Motions of Pacific Legal Foundation and Kourosh Kenneth Hamidi et al. for leave to file briefs as *amici curiae* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Janus* v. *State, County, and Municipal Employees*, 585 U. S. 878 (2018). Reported below: 868 F. 3d 652.

Certiorari Dismissed

No. 18–5813. KILPATRICK *v.* HENKIN. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 18–6129. MATELYAN *v.* CD BABY DISTRIBUTION CO. 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. 18–6130. KILPATRICK *v.* CUOMO, GOVERNOR OF NEW YORK. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 18–6131. KILPATRICK *v.* ARP; and KILPATRICK *v.* SCOTT. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 18–6191. SANDERS *v.* ESQUEDA, DANE COUNTY CLERK OF COURT. Ct. App. Wis. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 18–6195. WATFORD *v.* DOE ET AL. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 18–6223. JONASSEN *v.* UNITED STATES 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*).

Miscellaneous Orders

No. 18M67. DENG *v.* UNITED STATES;

No. 18M68. MCGUIRK *v.* AIRBNB, INC., ET AL.; and

No. 18M69. TREASE *v.* FLORIDA. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 17–290. MERCK SHARP & DOHME CORP. *v.* ALBRECHT ET AL. C. A. 3d Cir. [Certiorari granted, 585 U. S. 1029.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 17–532. HERRERA *v.* WYOMING. Dist. Ct. Wyo., Sheridan County. [Certiorari granted, 585 U. S. 1029.] Motion of the So-

licitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 17–1307. OBDUSKEY *v.* MCCARTHY & HOLTHUS LLP. C. A. 10th Cir. [Certiorari granted, 585 U. S. 1029.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 17–1335. CONSOLIDATION COAL CO. *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR, ET AL., 586 U. S. 814. Motion of respondent Robert Thompson for attorney's fees and expenses granted. The Court approves the parties' agreed upon attorney's fees of $14,732.50, and expenses of $1,152.63, to be paid by Consolidation Coal Co.

No. 17–9480. IN RE WOODS. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [586 U. S. 812] denied.

No. 18–260. COUNTY OF MAUI, HAWAII *v.* HAWAII WILDLIFE FUND ET AL. C. A. 9th Cir.; and

No. 18–268. KINDER MORGAN ENERGY PARTNERS, L. P., ET AL. *v.* UPSTATE FOREVER ET AL. C. A. 4th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States on or before 4 p.m., Friday, January 4, 2019.

No. 18–5020. IN RE BROWN. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [586 U. S. 813] denied. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 18–5400. IN RE PENNINGTON-THURMAN. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [586 U. S. 812] denied.

No. 18–5567. CURRY *v.* CITY OF MANSFIELD, OHIO, ET AL. Ct. App. Ohio, 5th App. Dist., Richland County. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [586 U. S. 916] denied.

No. 18–5568. Curry *v.* CITY OF MANSFIELD, OHIO, ET AL. Ct. App. Ohio, 5th App. Dist., Richland County. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [586 U. S. 916] denied.

No. 18–5786. THOMAS *v.* UNITED STATES. C. A. 7th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [586 U. S. 811] denied.

No. 18–6321. NGUYEN *v.* NIELSEN, SECRETARY OF HOMELAND SECURITY. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 26, 2018, 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. 18–614. IN RE HOUSTON;
No. 18–5683. IN RE BRITTON-HARR;
No. 18–6654. IN RE DEBOLT; and
No. 18–6675. IN RE ZATER. Petitions for writs of habeas corpus denied.

No. 18–6632. IN RE HOWELL. 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. 18–6091. IN RE WALCOTT. Petition for writ of mandamus denied.

No. 18–223. IN RE DAWSON. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 17–9134. YOUNG, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF GREEN, DECEASED *v.* CITY OF TAMPA, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 986.

No. 17–9332. VINSON *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 711 Fed. Appx. 329.

No. 18–81. TAYLOR *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 86 N. E. 3d 157.

No. 18–89. AMERICULTURE, INC., ET AL. *v.* LOS LOBOS RENEWABLE POWER, LLC, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 885 F. 3d 659.

No. 18–113. RODGERS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 242 So. 3d 276.

No. 18–165. DHL Supply Chain *v.* DEX Systems, Inc. C. A. 9th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 276.

No. 18–188. Tucker *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 889 F. 3d 881.

No. 18–246. Doherty et al. *v.* Allstate Indemnity Co. C. A. 3d Cir. Certiorari denied. Reported below: 734 F. 3d 817.

No. 18–247. Animal Legal Defense Fund et al. *v.* Department of Homeland Security et al. D. C. S. D. Cal. Certiorari denied. Reported below: 284 F. Supp. 3d 1092.

No. 18–257. Bauch, Individually and as Father and Next Friend of O. B., a Minor, et al. *v.* Richland County Children Services et al. C. A. 6th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 292.

No. 18–321. TVEyes, Inc. *v.* Fox News Network, LLC. C. A. 2d Cir. Certiorari denied. Reported below: 883 F. 3d 169.

No. 18–329. Rountree *v.* Dyson et al. C. A. 5th Cir. Certiorari denied. Reported below: 892 F. 3d 681.

No. 18–366. Golden et vir *v.* Peterson. App. Ct. Mass. Certiorari denied. Reported below: 92 Mass. App. 1131, 103 N. E. 3d 766.

No. 18–369. Valdez *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 18–376. Partin et vir *v.* Michigan Children's Institute. Sup. Ct. Mich. Certiorari denied. Reported below: 501 Mich. 865, 901 N. W. 2d 382.

No. 18–379. Keyes *v.* Banks. Ct. App. Ky. Certiorari denied.

No. 18–383. Davis et al. *v.* JPMorgan Chase Bank N. A. Sup. Ct. Conn. Certiorari denied. Reported below: 328 Conn. 921, 180 A. 3d 963.

No. 18–390. Pletos et al. *v.* Makower Abatte Guerra Wegner Vollmer, PLLC, et al. C. A. 6th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 431.

No. 18–393. Moody *v.* National Football League. C. A. 2d Cir. Certiorari denied. Reported below: 711 Fed. Appx. 65.

No. 18–399. Fink *v.* Kirchner et al. C. A. 3d Cir. Certiorari denied. Reported below: 731 Fed. Appx. 157.

No. 18–409. Liu *v.* Ryan et al. C. A. 2d Cir. Certiorari denied. Reported below: 724 Fed. Appx. 92.

No. 18–414. Burnett *v.* Panasonic Corp. et al. C. A. Fed. Cir. Certiorari denied. Reported below: 741 Fed. Appx. 777.

No. 18–416. Hatch *v.* Brennan, Postmaster General, et al. C. A. 9th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 868.

No. 18–419. Boogaard et al., as Personal Representatives of the Estate of Boogaard, Deceased *v.* National Hockey League et al. C. A. 7th Cir. Certiorari denied. Reported below: 891 F. 3d 289.

No. 18–424. Brown-Williams et al. *v.* Superior Court of California, Los Angeles County, et al. Ct. App. Cal., 2d App. Dist., Div. 8. Certiorari denied.

No. 18–425. Williams et al. *v.* Superior Court of California, Los Angeles County, et al. Ct. App. Cal., 2d App. Dist., Div. 8. Certiorari denied.

No. 18–434. Mosby *v.* Parilla. Ct. App. N. Y. Certiorari denied. Reported below: 30 N. Y. 3d 1083, 92 N. E. 3d 1240.

No. 18–452. Wesley *v.* Town Square Media West Central Radio Broadcasting et al. C. A. 9th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 595.

No. 18–464. Hatfield Enterprizes, Inc., et al. *v.* Washington State Employment Security Department. Ct. App. Wash. Certiorari denied. Reported below: 1 Wash. App. 2d 174, 404 P. 3d 517.

No. 18–465. Garnett *v.* Remedi Seniorcare of Virginia, LLC. C. A. 4th Cir. Certiorari denied. Reported below: 892 F. 3d 140.

No. 18–466. Gulick Trucking, Inc. *v.* Washington State Employment Security Department. Ct. App. Wash. Certiorari denied. Reported below: 2 Wash. App. 2d 1016.

No. 18–469. MacMillan-Piper, Inc. *v.* Washington State Employment Security Department. Ct. App. Wash. Certiorari denied. Reported below: 1 Wash. App. 2d 1055.

No. 18–484. Pettigrew *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 18–494. Ross *v.* Apple Inc. C. A. 11th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 733.

No. 18–497. Coulter *v.* Bissoon, Judge, United States District Court for the Western District of Pennsylvania, et al. C. A. 3d Cir. Certiorari denied. Reported below: 731 Fed. Appx. 83.

No. 18–501. Adburahman et al. *v.* Hyundai Motor America, Inc., et al. C. A. 4th Cir. Certiorari denied. Reported below: 896 F. 3d 278.

No. 18–531. Coffman *v.* Iowa. Sup. Ct. Iowa. Certiorari denied. Reported below: 914 N. W. 2d 240.

No. 18–535. Residents Against Flooding et al. *v.* Reinvestment Zone Number Seventeen, City of Houston, Texas, et al. C. A. 5th Cir. Certiorari denied. Reported below: 734 Fed. Appx. 916.

No. 18–538. Nora *v.* Wisconsin Office of Lawyer Regulation. Sup. Ct. Wis. Certiorari denied. Reported below: 2018 WI 23, 380 Wis. 2d 311, 909 N. W. 2d 155.

No. 18–541. Deol *v.* Depreta et al. C. A. 4th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 232.

No. 18–542. Hamilton *v.* Clarke, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 217.

No. 18–563. Commander *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 734 Fed. Appx. 824.

No. 18–568. Rippl *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 18–5052. Cureton *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 887 F. 3d 318.

No. 18–5071. CARLOS VAZQUEZ *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied.

No. 18–5121. MUSGROVE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 155.

No. 18–5296. RASBERRY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 882 F. 3d 241.

No. 18–5322. RODRIGUEZ-APARICIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 888 F. 3d 189.

No. 18–5468. VILLARREAL ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 725 Fed. Appx. 515.

No. 18–5475. GEORGE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–5621. TORKORNOO *v.* HELWIG ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 198.

No. 18–5674. SWAIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–5692. JORDAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–5702. ANGEL MEJIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 734 Fed. Appx. 731.

No. 18–5791. WHARTON *v.* VAUGHN. C. A. 3d Cir. Certiorari denied. Reported below: 722 Fed. Appx. 268.

No. 18–5796. CROMARTIE *v.* SELLERS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 18–5982. BRITTON-HARR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–6064. ROSE *v.* KIRKEGARD, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 406.

No. 18–6077. QAZI *v.* NEVADA ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–6085. DANIELS *v.* DOWLING, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 756.

No. 18–6089. Assa'ad-Faltas *v.* City of Columbia, South Carolina. Sup. Ct. S. C. Certiorari denied.

No. 18–6101. Pierre *v.* FJC Security Services, Inc. C. A. 2d Cir. Certiorari denied. Reported below: 723 Fed. Appx. 70.

No. 18–6105. Wallace *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 18–6106. Miller *v.* Kashani et al. C. A. 9th Cir. Certiorari denied.

No. 18–6110. Mahdi *v.* South Carolina. Sup. Ct. S. C. Certiorari denied.

No. 18–6114. Linh Thi Minh Tran *v.* Pham. Ct. App. Ore. Certiorari denied. Reported below: 288 Ore. App. 385, 406 P. 3d 247.

No. 18–6115. Antonio Jimenez *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 247 So. 3d 395.

No. 18–6124. Washington *v.* Palmer, Warden. C. A. 6th Cir. Certiorari denied.

No. 18–6125. Wright *v.* Carter et al. C. A. 2d Cir. Certiorari denied. Reported below: 712 Fed. Appx. 80.

No. 18–6134. Peters *v.* Baldwin et al. C. A. 7th Cir. Certiorari denied.

No. 18–6136. Lara-Aguilar *v.* Whitaker, Acting Attorney General. C. A. 4th Cir. Certiorari denied. Reported below: 889 F. 3d 134.

No. 18–6140. Hardaway *v.* Cross State Moving et al. C. A. D. C. Cir. Certiorari denied. Reported below: 729 Fed. Appx. 8.

No. 18–6142. Dingler *v.* Georgia et al. C. A. 11th Cir. Certiorari denied. Reported below: 725 Fed. Appx. 923.

No. 18–6144. Padilla *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 18–6152. M. E. D. *v.* New Jersey. Super. Ct. N. J., App. Div. Certiorari denied.

No. 18–6153. Raisbeck *v.* Stewart, Warden. C. A. 6th Cir. Certiorari denied.

No. 18–6158. Terry *v.* Abraham, Chief, Dillon County Detention Center. C. A. 4th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 242.

No. 18–6164. Laschkewitsch *v.* ReliaStar Life Insurance Co. C. A. 4th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 155.

No. 18–6166. Rafi *v.* Brigham and Women's Hospital et al. C. A. 1st Cir. Certiorari denied.

No. 18–6167. Clark *v.* Florida. Sup. Ct. Fla. Certiorari denied.

No. 18–6168. Soon Young Kim *v.* California. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 18–6170. Henderson *v.* VIP Taxi LLC et al. C. A. 9th Cir. Certiorari denied.

No. 18–6176. Lucero *v.* California. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 18–6179. Emanuel *v.* Territory of the Virgin Islands. Sup. Ct. V. I. Certiorari denied. Reported below: 68 V. I. 666.

No. 18–6182. Moore *v.* Nevada et al. Sup. Ct. Nev. Certiorari denied. Reported below: 134 Nev. 262, 417 P. 3d 356.

No. 18–6189. Salgado *v.* California. Ct. App. Cal., 2d App. Dist., Div. 4. Certiorari denied.

No. 18–6194. Vandivere *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 265.

No. 18–6199. Torres *v.* Perrone, Judge, Judicial Circuit Court of Florida, Hillsborough County. Sup. Ct. Fla. Certiorari denied.

No. 18–6202. Dinsio *v.* Appellate Division, Supreme Court of New York, Third Judicial Department. C. A. 2d Cir. Certiorari denied.

No. 18–6203. HAYES *v.* PLUMLEY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 772.

No. 18–6217. MARQUIS *v.* DEUTSCHE BANK NATIONAL TRUST CO. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 437.

No. 18–6219. MAY *v.* CONTINENTAL TOWERS CONDOMINIUMS ASSN. ET AL. Ct. App. Ky. Certiorari denied.

No. 18–6228. LASCHKEWITSCH *v.* AMERICAN NATIONAL LIFE INSURANCE CO. C. A. 4th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 283.

No. 18–6305. POLSHYN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 411.

No. 18–6329. SANDOVAL DOMINGUEZ *v.* SPEARMAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–6337. WILLIAMS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 548 S. W. 3d 275.

No. 18–6338. WILLIAMS *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL. Ct. App. Cal., 2d App. Dist., Div. 1. Certiorari denied.

No. 18–6364. BUTH *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 480 Mass. 113, 101 N. E. 3d 925.

No. 18–6393. QAZI *v.* KILLIAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–6395. RAMOS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 18–6396. SOLORIO *v.* MUNIZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 896 F. 3d 914.

No. 18–6397. ROSARIO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 18–6398. PITTMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 551.

No. 18–6399. PEREZ-TREVINO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 891 F. 3d 359.

No. 18–6401. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 743 Fed. Appx. 606.

No. 18–6404. RAMIREZ-CRUZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 345.

No. 18–6405. THIESZEN *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 300 Neb. 112, 912 N. W. 2d 696.

No. 18–6408. PRINCE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 749 Fed. Appx. 396.

No. 18–6415. CHERNIAVSKY, AKA YEGIYAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 601.

No. 18–6417. WILSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 737 Fed. Appx. 577.

No. 18–6421. NEGRON-CRUZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 18–6422. NORTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 893 F. 3d 464.

No. 18–6425. BEATTIE *v.* ROMERO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 385.

No. 18–6429. WHITE *v.* ECTOR COUNTY APPRAISAL DISTRICT. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 18–6430. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–6431. JENKINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 743 Fed. Appx. 636.

No. 18–6432. KILLEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 703.

No. 18–6434. SHULTS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 421.

No. 18–6445. VICK *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 18–6447. GOODWIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–6451. SPAIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 726 Fed. Appx. 180.

No. 18–6456. O'BRIEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 738 Fed. Appx. 38.

No. 18–6457. PUENTE *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–6459. BALMES-CRUZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 734 Fed. Appx. 515.

No. 18–6461. LOVE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 743 Fed. Appx. 194.

No. 18–6462. CARLOS MENDEZ *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 18–6463. PORTILLO *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 185 A. 3d 722.

No. 18–6468. LUGO-SANTIAGO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 18–6472. GIBSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–6473. HARRISON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 383.

No. 18–6474. HART *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 743 Fed. Appx. 919.

No. 18–6475. WRIGHT *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 181 A. 3d 1236.

No. 18–6483. CHAVEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 195.

No. 18–6484. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 714.

No. 18–6494. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–6495. TRENT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 884 F. 3d 985.

No. 18–6496. THOMAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 897 F. 3d 807.

No. 18–6497. WATSON *v.* BYRD, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 18–6504. RUSSIAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 737 Fed. Appx. 360.

No. 18–6505. POWELL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 925 F. 3d 1.

No. 18–6512. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–6515. VANOVER ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 746 Fed. Appx. 162.

No. 18–6518. CRUM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 261.

No. 18–6519. ALVAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–6524. THOMAS, AKA O'BRIAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 262.

No. 18–6531. EPPES *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 77 M. J. 339.

No. 18–6534. TYLER *v.* WILSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 119.

No. 18–6546. CASTELLANO-BENITEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 743 Fed. Appx. 715.

No. 18–6548. LEONE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–6549. BRANCH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 254.

No. 18–14. DONJUAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 720 Fed. Appx. 486.

No. 18–287. NEAL, SUPERINTENDENT, INDIANA STATE PRISON *v.* BAER. C. A. 7th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 879 F. 3d 769.

No. 18–385. JAKKS PACIFIC, INC. *v.* ACCASVEK LLC. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition. Reported below: 727 Fed. Appx. 704.

No. 18–426. ASHBOURNE *v.* HANSBERRY ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition. Reported below: 703 Fed. Appx. 3.

No. 18–554. WEISS *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition.

No. 18–562. COOMES *v.* MARYLAND INSURANCE ADMINISTRATION. Ct. App. Md. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 457 Md. 659, 181 A. 3d 204.

No. 18–5422. GARRETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, dissenting.

I dissent for the reasons set out in *Brown* v. *United States*, 586 U. S. 953 (2018) (SOTOMAYOR, J., dissenting from denial of certiorari).

No. 18–6394. STEELE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 18–6498. MAJALCA-AGUILAR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition.

Rehearing Denied

No. 17–1591. HOSKINS *v.* UNITED STATES ET AL., 586 U. S. 820;
No. 17–8008. LEON *v.* UNITED STATES, 586 U. S. 827;
No. 17–8043. MORGAN *v.* KANSAS ET AL., 584 U. S. 953;

No. 17–8352. MARTIN *v.* LIVING ESSENTIALS, LLC, 586 U. S. 828;

No. 17–8516. O'NEAL *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, 585 U. S. 1007;

No. 17–8710. IN RE ARMSTRONG, 586 U. S. 812;

No. 17–8824. CONNER *v.* METROPOLITAN LIFE INSURANCE CO. ET AL.; and CONNER *v.* UNITED STATES POSTAL SERVICE ET AL., 586 U. S. 833;

No. 17–8867. CLOPTON *v.* MURPHY, JUDGE, DISTRICT COURT OF GRAYSON COUNTY, TEXAS, 586 U. S. 834;

No. 17–8935. CAMPBELL *v.* NEW YORK CITY TRANSIT AUTHORITY, ADJUDICATION BUREAU, 586 U. S. 837;

No. 17–9031. MARTIN *v.* WENDY'S INTERNATIONAL, INC., ET AL., 586 U. S. 839;

No. 17–9071. BAILEY *v.* WHITE, WARDEN, 586 U. S. 841;

No. 17–9145. MALOY *v.* NEW YORK, 586 U. S. 844;

No. 17–9345. LASCHKEWITSCH *v.* TRANSAMERICA LIFE INSURANCE CO., 586 U. S. 855;

No. 17–9346. WOODWARD *v.* KANSAS, 586 U. S. 855;

No. 17–9569. BRADFIELD *v.* UNITED STATES, 586 U. S. 867;

No. 18–5011. CARDONA *v.* UNITED STATES, 586 U. S. 877;

No. 18–5058. DRAKE *v.* UNITED STATES, 586 U. S. 880;

No. 18–5067. STUHR *v.* WHITE, SUPERINTENDENT, WASHINGTON CORRECTIONS CENTER, 586 U. S. 880;

No. 18–5119. KING *v.* KING, 586 U. S. 883;

No. 18–5158. BROWN *v.* UNITED STATES, 586 U. S. 886;

No. 18–5163. THIER *v.* FLORIDA, 586 U. S. 886;

No. 18–5224. COSTELON *v.* NEW MEXICO, 586 U. S. 889;

No. 18–5280. LANIER *v.* UNITED STATES, 586 U. S. 892;

No. 18–5424. SAKUMA *v.* ASSOCIATION OF APARTMENT OWNERS OF THE TROPICS OF WAIKELE ET AL., 586 U. S. 922;

No. 18–5442. WALL *v.* FLORIDA, 586 U. S. 923;

No. 18–5450. RIVAS-RIVERA *v.* PENNSYLVANIA, 586 U. S. 923;

No. 18–5666. DENNISON *v.* HOOKS, WARDEN, 586 U. S. 926; and

No. 18–5788. DUTSCHKE *v.* UNITED STATES, 586 U. S. 907. Petitions for rehearing denied.

DECEMBER 4, 2018

Miscellaneous Orders

No. 17–1107. CARPENTER, INTERIM WARDEN *v.* MURPHY. C. A. 10th Cir. [Certiorari granted *sub nom. Royal* v. *Murphy*,

584 U. S. 992.] The parties, the Solicitor General, and the Muscogee (Creek) Nation are directed to file supplemental briefs addressing the following two questions: "(1) Whether any statute grants the State of Oklahoma jurisdiction over the prosecution of crimes committed by Indians in the area within the 1866 territorial boundaries of the Creek Nation, irrespective of the area's reservation status. (2) Whether there are circumstances in which land qualifies as an Indian reservation but nonetheless does not meet the definition of Indian country as set forth in 18 U. S. C. § 1151(a)." Briefs, not to exceed 6,000 words, are to be filed simultaneously with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, December 28, 2018. Reply briefs, not to exceed 3,000 words, are to be filed simultaneously with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, January 11, 2019. JUSTICE GORSUCH took no part in the consideration or decision of this order.

No. 18–6890 (18A570). IN RE GARCIA. Application for stay of execution of sentence of death, presented to JUSTICE ALITO, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 18–6891 (18A571). GARCIA *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to JUSTICE ALITO, and by him referred to the Court, denied. Certiorari denied.

No. 18–6892 (18A572). GARCIA *v.* COLLIER, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE ALITO, and by him referred to the Court, denied. Certiorari denied. Reported below: 744 Fed. Appx. 231.

No. 18–6893 (18A573). GARCIA *v.* JONES ET AL. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE ALITO, and by him referred to the Court, denied. Certiorari denied. Reported below: 910 F. 3d 188.

No. 18–6898 (18A579). GARCIA *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE ALITO, and by him

referred to the Court, denied. Certiorari denied. Reported below: 756 Fed. Appx. 391.

DECEMBER 6, 2018

Certiorari Denied

No. 18–6739 (18A528). MILLER ET AL. *v.* PARKER, COMMISSIONER, TENNESSEE DEPARTMENT OF CORRECTION, ET AL. Sup. Ct. Tenn. Application for stay of execution of sentence of death, presented to JUSTICE SOTOMAYOR, and by her referred to the Court, denied. Certiorari denied. Reported below: 558 S. W. 3d 606.

JUSTICE SOTOMAYOR, dissenting from denial of application for stay and denial of certiorari.

I dissent for the reasons set out in *Miller* v. *Parker*, 586 U. S. 1048 (2018) (SOTOMAYOR, J., dissenting from denial of application for stay and denial of certiorari).

No. 18–6906 (18A578). MILLER *v.* PARKER, COMMISSIONER, TENNESSEE DEPARTMENT OF CORRECTION, ET AL. C. A. 6th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SOTOMAYOR, and by her referred to the Court, denied. Certiorari denied. Reported below: 910 F. 3d 259.

JUSTICE SOTOMAYOR, dissenting.

Tennessee is scheduled to electrocute David Miller tonight. Miller is the second inmate in just over a month who has chosen to die by the electric chair in order to avoid the State's current lethal injection protocol. See *Zagorski* v. *Haslam*, 586 U. S. 981 (2018) (SOTOMAYOR, J., dissenting from denial of application for stay and denial of certiorari). Both so chose even though electrocution can be a dreadful way to die.* They did so against the backdrop of credible scientific evidence that lethal injection as currently practiced in Tennessee may well be even worse. See *Zagorski*, 586 U. S., at 981–982; *Irick* v. *Tennessee*, 585 U. S. 1048, 1048–1049 (2018) (SOTOMAYOR, J., dissenting from denial of application for stay).

The decision that the Court leaves undisturbed in this case rests in part on the fiction that Miller's choice was voluntary, and

*See *State* v. *Mata*, 275 Neb. 1, 66, 745 N. W. 2d 229, 278 (2008) (concluding that "electrocution will unquestionably inflict intolerable pain unnecessary to cause death in enough executions so as to present a substantial risk that any prisoner will suffer unnecessary and wanton pain").

in part on predictions about the efficacy of electric chairs made over a century ago. 910 F. 3d 259, 262 (CA6 2018); see *In re Kemmler*, 136 U. S. 436, 443–444 (1890). Another decision that the Court today declines to review faulted Miller for not proving an available alternative means of his own execution. See No. 18–6739, *Miller* v. *Parker*, 586 U. S. 1048. It did so while effectively permitting the State to turn that "perverse requirement" into a moving target. *McGehee* v. *Hutchinson*, 581 U. S. 933, 935 (2017) (SOTOMAYOR, J., dissenting from denial of application for stay and denial of certiorari). These cases are the unfortunate byproducts of this Court's decision in *Glossip* v. *Gross*, 576 U. S. 863 (2015). Such madness should not continue. Respectfully, I dissent.

DECEMBER 7, 2018

Certiorari Granted

No. 18–266. DUTRA GROUP *v.* BATTERTON. C. A. 9th Cir. Certiorari granted. Reported below: 880 F. 3d 1089.

DECEMBER 10, 2018

Appeal Dismissed

No. 18–433. LARRY *v.* ARKANSAS ET AL. Appeal from D. C. E. D. Ark. dismissed for want of jurisdiction.

Certiorari Dismissed

No. 18–6221. VINNIE *v.* HENRY ET AL. App. Ct. Mass. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 92 Mass. App. 1128, 102 N. E. 3d 1032.

Miscellaneous Orders

No. 18M70. PEREZ SOTO *v.* SUPREME COURT OF PUERTO RICO;

No. 18M72. WOODS *v.* WARDEN, FEDERAL DETENTION CENTER PHILADELPHIA;

No. 18M73. ROSE *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION;

No. 18M74. VILUTIS *v.* NRG SOLAR ALPINE LLC; and

No. 18M75. JAMES *v.* ELDORADO CASINO SHREVEPORT JOINT VENTURE ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 18M71. In re Chafe. Motion for leave to proceed as a veteran denied.

No. 17–1594. Return Mail, Inc. *v.* United States Postal Service et al. C. A. Fed. Cir. [Certiorari granted, 586 U. S. 959.] Motion of petitioner to dispense with printing joint appendix granted.

No. 18–5856. Jeep *v.* United States. C. A. 8th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [586 U. S. 961] denied.

No. 18–6731. In re Sudberry. Petition for writ of habeas corpus denied.

No. 18–6537. In re Wooten; and
No. 18–6630. In re Gullett. Petitions for writs of mandamus denied.

No. 18–6551. In re Hoskins et al. Petition for writ of mandamus and/or prohibition denied.

No. 18–6511. In re Ezeah; and
No. 18–6561. In re Lopez. Petitions for writs of prohibition denied.

Certiorari Granted

No. 18–15. Kisor *v.* Wilkie, Secretary of Veterans Affairs. C. A. Fed. Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 869 F. 3d 1360.

Certiorari Denied

No. 17–1641. Thomas et vir *v.* Williams. C. A. 5th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 346.

No. 17–9169. Robinson *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 408.

No. 17–9238. Streeter *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2017 IL App (1st) 140900–U.

No. 18–7. Choctaw County, Mississippi, et al. *v.* Jauch. C. A. 5th Cir. Certiorari denied. Reported below: 874 F. 3d 425.

No. 18–39. Boyd *v.* Washington. Ct. App. Wash. Certiorari denied. Reported below: 1 Wash. App. 2d 501, 408 P. 3d 362.

No. 18–93. ZIMMERMAN *v.* CITY OF AUSTIN, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 881 F. 3d 378.

No. 18–304. KIMBERLY-CLARK CORP. ET AL. *v.* DAVIDSON. C. A. 9th Cir. Certiorari denied. Reported below: 889 F. 3d 956.

No. 18–395. CORNING OPTICAL COMMUNICATIONS RF LLC *v.* PPC BROADBAND, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 714 Fed. Appx. 1022.

No. 18–412. WATTS *v.* ALLEN ET AL. Sup. Ct. Va. Certiorari denied.

No. 18–432. PINEDA, AKA PINEDA ALARCON *v.* NIELSON, SECRETARY OF HOMELAND SECURITY, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 348.

No. 18–437. MEDVEDEV *v.* HENRICO COUNTY. Sup. Ct. Va. Certiorari denied.

No. 18–438. PLACIDE *v.* SUPREME COURT OF WASHINGTON ET AL. Sup. Ct. Wash. Certiorari denied. Reported below: 190 Wash. 2d 402, 414 P. 3d 1124.

No. 18–448. ESTATE OF WEST, DECEASED *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. 6th Cir. Certiorari denied. Reported below: 895 F. 3d 432.

No. 18–471. COOPER *v.* BANK OF NEW YORK MELLON, TRUSTEE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 368.

No. 18–574. RACHAL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 18–585. FRANCESCHI *v.* YEE ET AL. (Reported below: 887 F. 3d 927); and DEORIO *v.* YEE ET AL. (718 Fed. Appx. 548). C. A. 9th Cir. Certiorari denied.

No. 18–5313. STEELE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 729 Fed. Appx. 47.

No. 18–5509. MAKELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 307.

No. 18–5670. CAMPISE *v.* NEW YORK COMMISSIONER OF LABOR. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 150 App. Div. 3d 1523, 54 N. Y. S. 3d 761.

No. 18–5843. CHANTHUNYA *v.* MARYLAND ATTORNEY GRIEVANCE COMMISSION. Ct. App. Md. Certiorari denied.

No. 18–5876. SANFORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–6128. DIAMOND *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. D. C. Cir. Certiorari denied.

No. 18–6175. JONES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 241 So. 3d 65.

No. 18–6192. RODRIGUEZ *v.* GORE, SHERIFF, SAN DIEGO COUNTY, CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 18–6211. RODRIGUEZ *v.* SAN DIEGO COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–6218. LINDEN *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–6220. KELLY *v.* BISHOP, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 153.

No. 18–6224. LATNEY *v.* PARKER. C. A. 4th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 202.

No. 18–6227. WESTER *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2018 IL App (2d) 150768–U.

No. 18–6230. SHOATE *v.* LEWIS, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 18–6231. RAHIM *v.* SOUTH CAROLINA DEPARTMENT OF PROBATION, PAROLE, AND PARDON SERVICES. C. A. 4th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 136.

No. 18–6234. BARRETT *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 18–6250. NAIRN *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–6252. WESSON *v.* OHIO. Ct. App. Ohio, 9th App. Dist., Summit County. Certiorari denied. Reported below: 2018-Ohio-834.

No. 18–6262. PENUNURI *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 5 Cal. 5th 126, 418 P. 3d 263.

No. 18–6288. COOLEY *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 734 Fed. Appx. 248.

No. 18–6295. WALCOTT *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied.

No. 18–6312. MASON *v.* LINDSEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–6316. WILKS *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 154 Ohio St. 3d 359, 2018-Ohio-1562, 114 N. E. 3d 1092.

No. 18–6320. MCGHEE *v.* DAVIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–6325. CONTRERAS-REBOLLAR *v.* OBENLAND, SUPERINTENDENT, MONROE CORRECTIONAL COMPLEX. C. A. 9th Cir. Certiorari denied.

No. 18–6326. COXE *v.* WHITE, SUPERINTENDENT, WASHINGTON STATE CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 18–6331. ROBINSON *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 250 So. 3d 5.

No. 18–6345. BRUETTE *v.* ZINKE, SECRETARY OF THE INTERIOR. C. A. 7th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 878.

No. 18–6353. BIEN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 550 S. W. 3d 180.

No. 18–6381. CROCKETT *v.* BROWN, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 18–6386. ADKINS *v.* WHOLE FOODS MARKET GROUP, INC. C. A. 4th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 238.

No. 18–6400. WATSON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–6406. TAPPEN *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 248 So. 3d 70.

No. 18–6414. LOCKE *v.* PARAMO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–6416. WILLIAMS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 3. Certiorari denied.

No. 18–6453. THOMPSON *v.* NIELSON, SECRETARY OF HOMELAND SECURITY. C. A. 11th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 430.

No. 18–6464. LAPENA *v.* GRIGAS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 651.

No. 18–6480. HILL *v.* GAMMON, SUPERINTENDENT, MOBERLY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 18–6499. JOHNSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 899 F. 3d 191.

No. 18–6536. WATERS *v.* LOCKETT, WARDEN. C. A. D. C. Cir. Certiorari denied. Reported below: 896 F. 3d 559.

No. 18–6542. LICEA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 713.

No. 18–6552. WOODS *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 480 Mass. 231, 102 N. E. 3d 961.

No. 18–6553. DIXON *v.* TEXAS (four judgments). Ct. Crim. App. Tex. Certiorari denied.

No. 18–6554. COLLINS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 18–6557. O'DELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 18–6560. WEAVER *v.* NICHOLSON, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 892 F. 3d 878.

No. 18–6564. HOLLIS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 183 A. 3d 737.

No. 18–6565. GORE *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2018 IL App (3d) 150627, 110 N. E. 3d 231.

No. 18–6566. FLOWERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 352.

No. 18–6567. DELPRADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 800.

No. 18–6570. KAPRELIAN *v.* TEGELS, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 18–6573. FARRAD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 895 F. 3d 859.

No. 18–6574. HALL *v.* UNITED STATES; HILL *v.* UNITED STATES; JACKSON *v.* UNITED STATES; PROCTOR *v.* UNITED STATES; and ANGEL ROSARIO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 18–6576. KEVRA-SHINER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 741 Fed. Appx. 130.

No. 18–6581. HAILEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 280.

No. 18–6582. GLASS *v.* HAINSWORTH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET. C. A. 3d Cir. Certiorari denied.

No. 18–6583. FIUMANO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 721 Fed. Appx. 45.

No. 18–6584. FLENOID *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–6585. GAGNON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–6586. WOOD *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 187 A. 3d 1248.

No. 18–6587. MATTHEW *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 688.

No. 18–6589. YOUNG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 726 Fed. Appx. 94.

No. 18–6591. CHIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 785.

No. 18–6596. DURY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 231.

No. 18–6597. JOSEPH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 258.

No. 18–6600. LABRADOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 734 Fed. Appx. 270.

No. 18–6601. PALOMO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–6602. NOLLEY *v.* MCLAUGHLIN, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–6604. JENKINS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 727 Fed. Appx. 732.

No. 18–6605. PERRONE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 889 F. 3d 898.

No. 18–6606. MERRICK *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 702.

No. 18–6616. SANUTTI-SPENCER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 183 A. 3d 1049.

No. 18–6618. MARQUEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 898 F. 3d 1036.

No. 18–6622. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 897 F. 3d 660.

No. 18–6625. BLAGMON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 18–6638. ISBELL *v.* MERLAK, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–6698. ALUISO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 84.

No. 17–1340. ANDERSEN, SECRETARY, KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT *v.* PLANNED PARENTHOOD OF KANSAS AND MID-MISSOURI ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 882 F. 3d 1205.

JUSTICE THOMAS, with whom JUSTICE ALITO and JUSTICE GORSUCH join, dissenting.

I dissent for the reasons set out in *Gee* v. *Planned Parenthood of Gulf Coast, Inc.*, 586 U. S. 1057 (2018) (THOMAS, J., dissenting from denial of certiorari).

No. 17–1492. GEE, SECRETARY, LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS *v.* PLANNED PARENTHOOD OF GULF COAST, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 862 F. 3d 445.

JUSTICE THOMAS, with whom JUSTICE ALITO and JUSTICE GORSUCH join, dissenting.

One of this Court's primary functions is to resolve "important matter[s]" on which the courts of appeals are "in conflict." This Court's Rule 10(a); *e. g.*, *Thompson* v. *Keohane*, 516 U. S. 99, 106 (1995). This case and *Andersen* v. *Planned Parenthood of Kan. and Mid-Missouri*, 586 U. S. 1057 (2018), present a conflict on a federal question with significant implications: whether Medicaid recipients have a private right of action to challenge a State's determination of "qualified" Medicaid providers under 42 U. S. C. § 1396a(a)(23) and Rev. Stat. § 1979, 42 U. S. C. § 1983. Five Circuits have held that Medicaid recipients have such a right, and one Circuit has held that they do not.* The last three Circuits to consider the question have themselves been divided.

This question is important and recurring. Around 70 million Americans are on Medicaid, and the question presented directly affects their rights. If the majority of the courts of appeals are correct, then Medicaid patients could sue when, for example, a State removes their doctor as a Medicaid provider or inadequately reimburses their provider. *E. g.*, *Bader* v. *Wernert*, 178

*Compare *Planned Parenthood of Kan.* v. *Andersen*, 882 F. 3d 1205, 1225–1229 (CA10 2018); 862 F. 3d 445, 457–462 (CA5 2017) (case below); *Planned Parenthood of Ariz., Inc.* v. *Betlach*, 727 F. 3d 960, 966–968 (CA9 2013); *Planned Parenthood of Ind., Inc.* v. *Commissioner of Ind. State Dept. of Health*, 699 F. 3d 962, 974–977 (CA7 2012); *Harris* v. *Olszewski*, 442 F. 3d 456, 461–465 (CA6 2006), with *Does* v. *Gillespie*, 867 F. 3d 1034, 1041–1046 (CA8 2017).

F. Supp. 3d 703 (ND Ind. 2016); *Women's Hospital Foundation* v. *Townsend*, 2008 WL 2743284 (MD La., July 10, 2008). Because of this Court's inaction, patients in different States—even patients with the same providers—have different rights to challenge their State's provider decisions.

The question presented also affects the rights of the States, many of which are *amici* requesting our guidance. Under the current majority rule, a State faces the threat of a federal lawsuit—and its attendant costs and fees—whenever it changes providers of medical products or services for its Medicaid recipients. *E. g.*, *Harris* v. *Olszewski*, 442 F. 3d 456 (CA6 2006). Not only are the lawsuits themselves a financial burden on the States, but the looming potential for complex litigation inevitably will dissuade state officials from making decisions that they believe to be in the public interest. State officials are not even safe doing nothing, as the cause of action recognized by the majority rule may enable Medicaid recipients to challenge the *failure* to list particular providers, not just the removal of former providers. *E. g.*, *Kapable Kids Learning Center, Inc.* v. *Arkansas Dept. of Human Servs.*, 420 F. Supp. 2d 956 (ED Ark. 2005); *Martin* v. *Taft*, 222 F. Supp. 2d 940 (SD Ohio 2002). Moreover, allowing patients to bring these claims directly in federal court reduces the ability of States to manage Medicaid, as the suits give Medicaid providers "an end run around the administrative exhaustion requirements in [the] state's statutory scheme." 876 F. 3d 699, 702 (CA5 2017) (Elrod, J., dissenting from denial of rehearing en banc).

Finally, the disagreement over § 1396a(a)(23) implicates fundamental questions about the appropriate framework for determining when a cause of action is available under § 1983—an important legal issue independently worthy of this Court's attention. The division in the lower courts stems, at least in part, from this Court's own lack of clarity on the issue. As one court observed, the disagreement "can be explained in part by an evolution in the law," *Does* v. *Gillespie*, 867 F. 3d 1034, 1043 (CA8 2017)—a tactful way of saying that this Court made a mess of the issue. We have acknowledged as much, explaining that language in our early opinions could be "read to suggest that something less than an unambiguously conferred right" can give rise to a cause of action under § 1983, and that "[t]his confusion has led some courts" astray. *Gonzaga Univ.* v. *Doe*, 536 U. S. 273, 282–283 (2002). We

have "[f]uel[ed] this uncertainty" by equivocating on whether the standards for implying private rights of action have any "bearing on the standards for discerning whether a statute creates rights enforceable by § 1983." *Id.*, at 283. Courts are not even able to identify which of our decisions are "binding"; in *Planned Parenthood of Kan.* v. *Andersen*, 882 F. 3d 1205 (CA10 2018), the Court of Appeals applied a decision that this Court recently said had been "'plainly repudiate[d].'" *Id.*, at 1229, and n. 16 (quoting *Armstrong* v. *Exceptional Child Center, Inc.*, 575 U. S. 320, 330, n. (2015), in turn citing *Wilder* v. *Virginia Hospital Assn.*, 496 U. S. 498 (1990)). One can hardly blame the Tenth Circuit for misunderstanding. We created this confusion. We should clear it up.

So what explains the Court's refusal to do its job here? I suspect it has something to do with the fact that some respondents in these cases are named "Planned Parenthood." That makes the Court's decision particularly troubling, as the question presented has nothing to do with abortion. It is true that these particular cases arose after several States alleged that Planned Parenthood affiliates had, among other things, engaged in "the illegal sale of fetal organs" and "fraudulent billing practices," and thus removed Planned Parenthood as a state Medicaid provider. *Andersen*, 882 F. 3d, at 1239, n. 2 (Bacharach, J., concurring in part and dissenting in part). But these cases are not about abortion rights. They are about private rights of action under the Medicaid Act. Resolving the question presented here would not even affect Planned Parenthood's ability to challenge the States' decisions; it concerns only the rights of individual Medicaid patients to bring their own suits.

Some tenuous connection to a politically fraught issue does not justify abdicating our judicial duty. If anything, neutrally applying the law is all the more important when political issues are in the background. The Framers gave us lifetime tenure to promote "that independent spirit in the judges which must be essential to the faithful performance" of the courts' role as "bulwarks of a limited Constitution," unaffected by fleeting "mischiefs." The Federalist No. 78, pp. 469–470 (C. Rossiter ed. 1961) (A. Hamilton). We are not "to consult popularity," but instead to rely on "nothing . . . but the Constitution and the laws." *Id.*, at 471.

We are responsible for the confusion among the lower courts, and it is our job to fix it. I respectfully dissent from the Court's decision to deny certiorari.

No. 17–9038. BANKS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 884 F. 3d 998.

No. 18–138. HUFFMAN *v.* NIELSEN, SECRETARY OF HOMELAND SECURITY. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition. Reported below: 732 Fed. Appx. 1.

No. 18–408. KOHN LAW GROUP, INC. *v.* AUTO PARTS MANUFACTURING MISSISSIPPI, INC. C. A. 5th Cir. Motion of Federal Bar Association Southern District of New York Chapter, Network of Bar Leaders, et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 725 Fed. Appx. 305.

No. 18–436. LIBERTY MUTUAL INSURANCE CO., DBA LIBERTY INTERNATIONAL UNDERWRITERS, ET AL. *v.* CARRIZO OIL & GAS, INC. C. A. 5th Cir. Motion of American Institute of Marine Underwriters for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 896 F. 3d 350.

No. 18–6424. DEITER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 890 F. 3d 1203.

No. 18–6559. 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: 726 Fed. Appx. 262.

No. 18–6593. MOLINA-VARELA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 726 Fed. Appx. 722.

No. 18–6599. JORDAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, dissenting.

I dissent for the reasons set out in *Brown* v. *United States*, 586 U. S. 953 (2018) (SOTOMAYOR, J., dissenting from denial of certiorari).

Rehearing Denied

No. 17–8780. CAINES *v.* GASTELO, WARDEN, 586 U. S. 832;
No. 17–8847. SATTERWHITE *v.* FRISCH'S RESTAURANT ET AL., 586 U. S. 834;
No. 17–8956. BONNER *v.* CUMBERLAND REGIONAL HIGH SCHOOL DISTRICT, 586 U. S. 837;
No. 17–8970. BLAKENEY *v.* UNITED STATES, 586 U. S. 837;
No. 17–8971. BARTLETT *v.* PINEDA, JUDGE, SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY, ET AL., 586 U. S. 837;
No. 17–9351. TRIPLETT *v.* WYOMING, 586 U. S. 855;
No. 17–9488. BROWN *v.* ILLINOIS DEPARTMENT OF HUMAN SERVICES, 586 U. S. 863;
No. 17–9526. CRUZ *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY, 586 U. S. 865;
No. 18–38. ERWIN *v.* DEPARTMENT OF THE ARMY, 586 U. S. 871;
No. 18–5145. BENNETT *v.* WOLFE ET AL., 586 U. S. 885;
No. 18–5157. IN RE LUIS AREVALO, 586 U. S. 813;
No. 18–5382. FIEDLER *v.* BRINDLEY ET AL., 586 U. S. 897;
No. 18–5622. WALKER *v.* UNITED STATES, 586 U. S. 904;
No. 18–5808. ANGEL RONDON *v.* UNITED STATES, 586 U. S. 927; and
No. 18–5933. WILKERSON *v.* UNITED STATES, 586 U. S. 930. Petitions for rehearing denied.

No. 17–9374. CARTER *v.* KANE ET AL., 586 U. S. 910. Petition for rehearing denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

DECEMBER 13, 2018

Certiorari Denied

No. 18–6970 (18A606). ANTONIO JIMENEZ *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: 265 So. 3d 462.

No. 18–7020 (18A628). ANTONIO JIMENEZ *v.* JONES, 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. Reported below: 758 Fed. Appx. 682.

DECEMBER 18, 2018

Dismissal Under Rule 46

No. 18–42. GLAXOSMITHKLINE LLC *v.* LOUISIANA. C. A. 3d Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 879 F. 3d 61.

DECEMBER 19, 2018

Dismissal Under Rule 46

No. 18–572. MCCALL *v.* APTIM CORP. C. A. 5th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 888 F. 3d 129.

DECEMBER 21, 2018

Miscellaneous Order

No. 18A615. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. *v.* EAST BAY SANCTUARY COVENANT ET AL. D. C. N. D. Cal. Application for stay, presented to JUSTICE KAGAN, and by her referred to the Court, denied. JUSTICE THOMAS, JUSTICE ALITO, JUSTICE GORSUCH, and JUSTICE KAVANAUGH would grant the application for stay.

JANUARY 4, 2019

Miscellaneous Orders

No. 17–1625. RIMINI STREET, INC., ET AL. *v.* ORACLE USA, INC., ET AL. C. A. 9th Cir. [Certiorari granted, 585 U. S. 1058.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 18–96. TENNESSEE WINE AND SPIRITS RETAILERS ASSN. *v.* BLAIR, INTERIM DIRECTOR OF THE TENNESSEE ALCOHOLIC BEVERAGE COMMISSION, ET AL. C. A. 6th Cir. [Certiorari granted *sub nom. Tennessee Wine and Spirits Retailers Assn.* v. *Byrd*, 585 U. S. 1058.] Motion of Illinois et al. for leave to participate in oral argument as *amici curiae* and for divided argument granted. Joint motion of respondents for divided argument denied.

Probable Jurisdiction Postponed

No. 18–422. RUCHO ET AL. *v.* COMMON CAUSE ET AL. Appeal from D. C. M. D. N. C. Further consideration of question of

jurisdiction postponed to hearing of case on the merits. Case will be set for argument in the March argument session. Reported below: 318 F. Supp. 3d 777.

No. 18–726. LAMONE ET AL. *v.* BENISEK ET AL. Appeal from D. C. Md. Motion of David Trone for leave to file brief as *amicus curiae* granted. Further consideration of question of jurisdiction postponed to hearing of case on the merits. Case will be set for argument in the March argument session. Reported below: 348 F. Supp. 3d 493.

Certiorari Granted

No. 18–302. IANCU, UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR, PATENT AND TRADEMARK OFFICE *v.* BRUNETTI. C. A. Fed. Cir. Certiorari granted. Reported below: 877 F. 3d 1330.

No. 18–459. EMULEX CORP. ET AL. *v.* VARJABEDIAN ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 888 F. 3d 399.

No. 18–489. TAGGART *v.* LORENZEN, EXECUTOR OF THE ESTATE OF BROWN, ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 888 F. 3d 438.

No. 18–431. UNITED STATES *v.* DAVIS ET AL. C. A. 5th Cir. Motions of respondents for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 903 F. 3d 483.

JANUARY 7, 2019

Certiorari Granted—Reversed in part, Vacated in Part, and Remanded. (See *Escondido* v. *Emmons*, 586 U. S. 38 (2019) (*per curiam*).)

Certiorari Granted—Vacated and Remanded. (See also *Shoop* v. *Hill*, 586 U. S. 45 (2019) (*per curiam*).)

No. 18–195. POFF *v.* UNITED STATES. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Lagos* v. *United States*, 584 U. S. 577 (2018). Reported below: 727 Fed. Appx. 249.

No. 18–227. WOLFE *v.* VIRGINIA. Sup. Ct. Va. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Class* v. *United States*, 583 U. S. 174 (2018).

Certiorari Dismissed

No. 18–6289. SMALL *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 253 So. 3d 1111.

No. 18–6380. BARTLETT *v.* PINEDA, JUDGE, SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY, ET AL. 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. 18–6460. BYNUM *v.* DEKALB COUNTY SANITATION. 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. 18–6491. REEVES *v.* LASHBROOK, WARDEN. Sup. Ct. Ill. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 18–6503. RICHARD *v.* DISTRICT ATTORNEY OF WESTMORELAND 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.

No. 18–6523. BELL *v.* ORLANDO HEALTH, INC., DBA WINNIE PALMER HOSPITAL. 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.

No. 18–6922. SINGH *v.* WELLS FARGO BANK, N. A. 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. 18A511. ZODHIATES *v.* UNITED STATES. C. A. 2d Cir. Application for stay, addressed to JUSTICE GORSUCH and referred to the Court, denied.

No. 18M76. FURMINGER *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari out of time denied. JUSTICE BREYER took no part in the consideration or decision of this motion.

No. 18M77. HIRAMANEK *v.* CLARK ET AL.;
No. 18M78. BARBER *v.* SHERMAN, WARDEN;
No. 18M79. WEBB-EL *v.* KANE ET AL.;
No. 18M80. DRIVAS *v.* UNITED STATES;
No. 18M81. DOUGHERTY *v.* GILMORE, WARDEN;
No. 18M84. WILSON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS;
No. 18M85. MARSHALL *v.* ASH ET AL.; and
No. 18M87. ABDUR-RAHIIM *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 18M82. BUSH *v.* ARIZONA. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal granted.

No. 18M83. DOE *v.* UNITED STATES; and
No. 18M86. WESTERNGECO LLC *v.* ION GEOPHYSICAL CORP. Motions for leave to file petitions for writs of certiorari under seal with redacted copies for the public record granted.

No. 148, Orig. MISSOURI ET AL. *v.* CALIFORNIA. Motion for leave to file bill of complaint denied. JUSTICE THOMAS would grant the motion. [For earlier order herein, see 584 U. S. 929.]

No. 149, Orig. INDIANA ET AL. *v.* MASSACHUSETTS. Motion for leave to file bill of complaint denied. JUSTICE THOMAS would grant the motion. [For earlier order herein, see 584 U. S. 929.]

No. 17–1672. UNITED STATES *v.* HAYMOND. C. A. 10th Cir. [Certiorari granted, 586 U. S. 960.] Motion of petitioner to dispense with printing joint appendix granted.

No. 17–8926. HARPER *v.* TEXAS ET AL. C. A. 5th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [586 U. S. 802] denied.

No. 17–9269. IN RE RODGERS. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [586 U. S. 812] denied.

No. 17–9538. HARPER *v.* CROW. C. A. 5th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [586 U. S. 805] denied.

No. 18–252. REAL ESTATE ALLIANCE LTD. *v.* MOVE, INC., ET AL., 586 U. S. 987. Motion of Mark Tornetta for leave to intervene to file a petition for rehearing denied.

No. 18–415. HP INC., FKA HEWLETT-PACKARD CO. *v.* BERKHEIMER. C. A. Fed. Cir.;

No. 18–575. YPF S. A. *v.* PETERSEN ENERGIA INVERSORA S. A. U. ET AL. C. A. 2d Cir.;

No. 18–581. ARGENTINE REPUBLIC *v.* PETERSEN ENERGIA INVERSORA S. A. U. ET AL. C. A. 2d Cir.; and

No. 18–600. TEXAS ADVANCED OPTOELECTRONIC SOLUTIONS, INC. *v.* RENESAS ELECTRONICS AMERICA, INC., FKA INTERSIL CORP. C. A. Fed. Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 18–5863. JOHNSON *v.* BUTLER LAW FIRM. C. A. 4th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [586 U. S. 986] denied.

No. 18–6410. MCKINZY *v.* GASTON *(*MCKINZY). Ct. App. Mo., Western Dist.;

No. 18–6781. FARR *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 10th Cir.;

No. 18–6792. FILLMORE *v.* INDIANA BELL TELEPHONE CO., INC. C. A. 7th Cir.;

No. 18–6813. GHOSH *v.* CITY OF BERKELEY, CALIFORNIA. Ct. App. Cal., 1st App. Dist.; and

No. 18–7063. IN RE DREAD. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until January 28, 2019, 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. 18–6949. KLEIN *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until January 28, 2019, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court. JUSTICE SOTOMAYOR and JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 18–6579. IN RE MCQUARRY;

No. 18–6784. IN RE RIVERA;
No. 18–6787. IN RE BAILEY; and
No. 18–6961. IN RE JOHNSON. Petitions for writs of habeas corpus denied.

No. 18–488. IN RE IDLETT;
No. 18–6357. IN RE SENTHILNATHAN;
No. 18–6479. IN RE GALVAN; and
No. 18–6526. IN RE YONAMINE. Petitions for writs of mandamus denied.

No. 18–6449. IN RE SULTAANA; and
No. 18–6500. IN RE RUMANEK. Petitions for writs of mandamus and/or prohibition denied.

No. 18–6478. IN RE GAITOR. Petition for writ of prohibition denied.

Certiorari Denied

No. 17–936. GILEAD SCIENCES, INC. *v.* UNITED STATES EX REL. CAMPIE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 862 F. 3d 890.

No. 17–1149. UNITED STATES EX REL. HARMAN *v.* TRINITY INDUSTRIES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 872 F. 3d 645.

No. 17–1285. ASSOCIATION DES ELEVEURS DE CANARDS ET D'OIES DU QUEBEC ET AL. *v.* BECERRA, ATTORNEY GENERAL OF CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 870 F. 3d 1140.

No. 17–1301. HARVEY ET AL. *v.* UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION ET AL. Sup. Ct. Utah. Certiorari denied. Reported below: 2017 UT 75, 416 P. 3d 401.

No. 17–1404. GORDON *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 654.

No. 17–1704. KERR, FOR KERR, DECEASED *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 6th Cir. Certiorari denied. Reported below: 874 F. 3d 926.

No. 17–7517. SMITH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 877 F. 3d 720.

No. 17–8160. KHOURY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 877 F. 3d 720.

No. 17–8282. NEBINGER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 17–9259. COLLINS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 7. Certiorari denied.

No. 18–16. ELIJAH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 191.

No. 18–36. BRICE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 179 A. 3d 870.

No. 18–98. COOK *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 242 So. 3d 865.

No. 18–110. BURNINGHAM ET AL. *v.* RAINES, GUARDIAN OF THE ESTATE OF RAINES. C. A. 8th Cir. Certiorari denied. Reported below: 883 F. 3d 1071.

No. 18–122. SINEGAL *v.* POLK. C. A. 5th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 457.

No. 18–127. AMGEN INC. ET AL. *v.* SANOFI ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 872 F. 3d 1367.

No. 18–168. NICHOLS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED *v.* CHESAPEAKE OPERATING, LLC, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 718 Fed. Appx. 736.

No. 18–177. DAWSON *v.* BOARD OF COUNTY COMMISSIONERS OF JEFFERSON COUNTY, COLORADO, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 624.

No. 18–185. CONNECTICUT *v.* SKAKEL. Sup. Ct. Conn. Certiorari denied. Reported below: 329 Conn. 1, 188 A. 3d 1.

No. 18–203. CHANDLER *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 242 So. 3d 65.

No. 18–229. CURRY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 968.

No. 18–238. SOUTH CAROLINA *v.* SAMUEL. Sup. Ct. S. C. Certiorari denied. Reported below: 422 S. C. 596, 813 S. E. 2d 487.

No. 18–261. CEBREROS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–273. WILLIAMS, AKA WILLIAMSON *v.* WHITAKER, ACTING ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 880 F. 3d 100.

No. 18–274. STEWART *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 651.

No. 18–288. MEARING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 18–308. BETHEA *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 255 N. C. App. 749, 806 S. E. 2d 677.

No. 18–311. EXXON MOBIL CORP. *v.* HEALEY, ATTORNEY GENERAL OF MASSACHUSSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 479 Mass. 312, 94 N. E. 3d 786.

No. 18–331. PABON ORTEGA *v.* LLOMPART ZENO ET AL. C. A. 1st Cir. Certiorari denied.

No. 18–333. OLD DOMINION ELECTRIC COOPERATIVE *v.* FEDERAL ENERGY REGULATORY COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 892 F. 3d 1223.

No. 18–337. COUNTY OF ORANGE, CALIFORNIA, ET AL. *v.* GORDON, INDIVIDUALLY AND AS SUCCESSOR IN INTEREST TO GORDON, DECEASED. C. A. 9th Cir. Certiorari denied. Reported below: 888 F. 3d 1118.

No. 18–339. HARPER *v.* LEAHY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 738 Fed. Appx. 716.

No. 18–348. WEISLER *v.* JEFFERSON PARISH SHERIFF'S OFFICE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 468.

No. 18–355. PRISON LEGAL NEWS *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 890 F. 3d 954.

No. 18–359. ST. BERNARD PARISH ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 887 F. 3d 1354.

No. 18–373. Rose *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 891 F. 3d 82.

No. 18–374. Lemus Castillo *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 899 F. 3d 1208.

No. 18–375. Alexander *v.* Bayview Loan Servicing, LLC. Sup. Ct. Fla. Certiorari denied.

No. 18–378. Merck & Co., Inc., et al. *v.* Gilead Sciences, Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 888 F. 3d 1231.

No. 18–386. Vasquez et al. *v.* Foxx, State's Attorney of Cook County, Illinois. C. A. 7th Cir. Certiorari denied. Reported below: 895 F. 3d 515.

No. 18–418. United States ex rel. Harper et al. *v.* Muskingum Watershed Conservancy District. C. A. 6th Cir. Certiorari denied. Reported below: 739 Fed. Appx. 330.

No. 18–445. Ramirez *v.* Texas. Ct. App. Tex., 13th Dist. Certiorari denied. Reported below: 557 S. W. 3d 717.

No. 18–453. de Havilland *v.* FX Networks, LLC, et al. Ct. App. Cal., 2d App. Dist., Div. 3. Certiorari denied. Reported below: 21 Cal. App. 5th 845, 230 Cal. Rptr. 3d 625.

No. 18–458. Pellegrini *v.* Fresno County, California, et al. C. A. 9th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 209.

No. 18–470. Stokes *v.* Corsbie et al. C. A. 5th Cir. Certiorari denied. Reported below: 734 Fed. Appx. 263.

No. 18–473. Davis *v.* Deutsche Bank National Trust Co. et al. C. A. 10th Cir. Certiorari denied. Reported below: 737 Fed. Appx. 379.

No. 18–474. Lyon *v.* Canadian National Railway Company et al. C. A. 7th Cir. Certiorari denied.

No. 18–476. Cowlitz County, Washington, et al. *v.* Crowell et al. C. A. 9th Cir. Certiorari denied. Reported below: 726 Fed. Appx. 593.

No. 18–477. Martin et al. *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 894 F. 3d 1356.

No. 18–478. MALNES *v.* CITY OF FLAGSTAFF, ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 764.

No. 18–479. SCHENKEL *v.* XYNGULAR CORP. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 890 F. 3d 868.

No. 18–482. HILL *v.* ACCOUNTS RECEIVABLE SERVICES, LLC. C. A. 8th Cir. Certiorari denied. Reported below: 888 F. 3d 343.

No. 18–487. D. A. *v.* D. P. Ct. App. Ind. Certiorari denied. Reported below: 96 N. E. 3d 663.

No. 18–490. WATTS *v.* ALLEN. Sup. Ct. Va. Certiorari denied.

No. 18–491. RAY *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 18–493. SPANO *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied.

No. 18–495. MORRIS & ASSOCIATES, INC. *v.* JOHN BEAN TECHNOLOGIES CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 887 F. 3d 1322.

No. 18–502. KINNEY ET AL. *v.* ANDERSON LUMBER CO., INC. C. A. 6th Cir. Certiorari denied.

No. 18–504. KINNEY *v.* BOREN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 410.

No. 18–507. MCDONALD *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE. C. A. 6th Cir. Certiorari denied.

No. 18–508. KINNEY *v.* TAKEUCHI ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 414.

No. 18–510. KINNEY *v.* CLARK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 411.

No. 18–511. GATES *v.* KHOKHAR ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 884 F. 3d 1290.

No. 18–512. SIMMONS *v.* SMITH, ACTING DIRECTOR OF THE NATIONAL PARK SERVICE, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 888 F. 3d 994.

No. 18–514. DRAKE ET AL. *v.* DEUTSCHE BANK NATIONAL TRUST CO. Ct. App. Kan. Certiorari denied. Reported below: 54 Kan. App. 2d x, 404 P. 3d 372.

No. 18–515. KINNEY *v.* CLARK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 413.

No. 18–516. KINNEY *v.* GUTIERREZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 709 Fed. Appx. 453.

No. 18–517. KINNEY *v.* GUTIERREZ. C. A. 9th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 415.

No. 18–518. KINNEY *v.* CLERK, COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION THREE, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 420.

No. 18–519. JENNINGS *v.* JENNINGS. Ct. App. Ohio, 10th App. Dist., Franklin County. Certiorari denied. Reported below: 2017-Ohio-8974.

No. 18–520. WECONNECT, INC. *v.* GOPLIN. C. A. 7th Cir. Certiorari denied. Reported below: 893 F. 3d 488.

No. 18–521. JUAN *v.* JNESO DISTRICT COUNCIL 1 ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–523. GRIFFIN *v.* VERIZON COMMUNICATIONS INC. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 746 Fed. Appx. 873.

No. 18–526. CHOIZILME *v.* WHITAKER, ACTING ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 886 F. 3d 1016.

No. 18–527. STRAUB *v.* CITY OF SPOKANE, WASHINGTON, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 392.

No. 18–528. KIFLE ET AL. *v.* AHMED. C. A. 11th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 934.

No. 18–529. JENN-CHING LUO *v.* OWEN J. ROBERTS SCHOOL DISTRICT ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 737 Fed. Appx. 111.

No. 18–536. TAYLOR *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 18–537. JAMES *v.* MONTGOMERY REGIONAL AIRPORT AUTHORITY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 772.

No. 18–549. VOTER VERIFIED, INC. *v.* ELECTION SYSTEMS & SOFTWARE LLC. C. A. Fed. Cir. Certiorari denied. Reported below: 887 F. 3d 1376.

No. 18–550. STOKES *v.* CORSBIE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 319.

No. 18–558. GUTIERREZ *v.* WHITAKER, ACTING ATTORNEY GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 887 F. 3d 770.

No. 18–559. NEGATU *v.* WELLS FARGO BANK, N. A. Ct. App. D. C. Certiorari denied. Reported below: 189 A. 3d 715.

No. 18–564. DECOSIMO *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 555 S. W. 3d 494.

No. 18–567. SNAPP *v.* BURLINGTON NORTHERN SANTA FE RAILWAY CO. C. A. 9th Cir. Certiorari denied. Reported below: 889 F. 3d 1088.

No. 18–569. SHAO *v.* TSAN-KUEN WANG. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 18–570. TUNAC, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF TUNAC, DECEASED *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 897 F. 3d 1197.

No. 18–571. WILLIAMS *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 730 Fed. Appx. 930.

No. 18–577. NETZER *v.* SHELL OIL CO. ET AL. C. A. Fed. Cir. Certiorari denied.

No. 18–582. YAGMAN *v.* COLELLO. C. A. 9th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 463.

No. 18–583. MAYLE *v.* UNITED STATES ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 891 F. 3d 680.

No. 18–584. HORNE *v.* WTVR, LLC, DBA CBS6. C. A. 4th Cir. Certiorari denied. Reported below: 893 F. 3d 201.

No. 18–586. KOCH *v.* ESTRELLA ET AL. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 18–590. CAVE CONSULTING GROUP, LLC *v.* OPTUMINSIGHT, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 725 Fed. Appx. 988.

No. 18–591. DRESSLER *v.* RICE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 739 Fed. Appx. 814.

No. 18–592. FERGUSON FLORISSANT SCHOOL DISTRICT *v.* MISSOURI STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 894 F. 3d 924.

No. 18–594. SNYDER *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 4. Certiorari denied.

No. 18–595. TATTEN *v.* CITY AND COUNTY OF DENVER, COLORADO, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 620.

No. 18–598. CHIEN *v.* CLARK ET AL. C. A. 2d Cir. Certiorari denied.

No. 18–599. WI-FI ONE, LLC *v.* BROADCOM CORP. ET AL. (three judgments). C. A. Fed. Cir. Certiorari denied. Reported below: 887 F. 3d 1329 (first judgment); 719 Fed. Appx. 1018 (second and third judgments).

No. 18–602. SMITH *v.* LAKEWOOD RANCH GYMNASTICS LLC ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 254 So. 3d 339.

No. 18–603. SIEGEL ET AL. *v.* DELTA AIR LINES, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 986.

No. 18–605. STEIN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 5. Certiorari denied.

No. 18–611. TATAR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–613. GRIFFIN *v.* AETNA HEALTH INC. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 169.

No. 18–616. NEPAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 894 F. 3d 204.

No. 18–619. HUSSEIN *v.* WHITAKER, ACTING ATTORNEY GENERAL, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 585.

No. 18–623. WALKER *v.* WEATHERSPOON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 900 F. 3d 354.

No. 18–624. RASKO *v.* NEW YORK CITY ADMINISTRATION FOR CHILDREN'S SERVICES. C. A. 2d Cir. Certiorari denied. Reported below: 734 Fed. Appx. 52.

No. 18–627. STARRETT *v.* LOCKHEED MARTIN CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 169.

No. 18–629. CODY *v.* CALIFORNIA AIR RESOURCES BOARD ET AL.; and

No. 18–666. ALLIANCE FOR CALIFORNIA BUSINESS *v.* CALIFORNIA AIR RESOURCES BOARD. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 23 Cal. App. 5th 1050, 234 Cal. Rptr. 3d 22.

No. 18–632. LEROUX *v.* NCL (BAHAMAS), LTD. C. A. 11th Cir. Certiorari denied. Reported below: 743 Fed. Appx. 407.

No. 18–633. BYRD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–637. MARRO *v.* CAESAR'S ENTERTAINMENT OPERATING CO. C. A. 7th Cir. Certiorari denied.

No. 18–639. BISZCZANIK *v.* NATIONSTAR MORTGAGE, LLC, ET AL. C. A. 6th Cir. Certiorari denied.

No. 18–667. WILLIAMS *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 18–675. WEST *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 551 S. W. 3d 506.

No. 18–683. STARK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 726 Fed. Appx. 767.

No. 18–685. ROBINSON ET AL. *v.* AMERICAN AIRLINES, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 743 Fed. Appx. 233.

No. 18–688. MANN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 747 Fed. Appx. 790.

No. 18–698. REYNOLDS *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 461 Md. 159, 192 A. 3d 617.

No. 18–702. YADAV ET UX. *v.* NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION. Super. Ct. N. J., App. Div. Certiorari denied.

No. 18–706. KIOBEL, BY AND THROUGH HER ATTORNEY-IN-FACT, SAMKALDEN *v.* CRAVATH, SWAINE & MOORE LLP. C. A. 2d Cir. Certiorari denied. Reported below: 895 F. 3d 238.

No. 18–708. BERTRAM ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 900 F. 3d 743.

No. 18–714. CHHAY LIM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 897 F. 3d 673.

No. 18–737. AIME ET AL. *v.* JTH TAX, INC., DBA LIBERTY TAX SERVICE, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 744 Fed. Appx. 787.

No. 18–5008. CANADATE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–5090. MASON *v.* BURTON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 241.

No. 18–5118. FLOYD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 872 F. 3d 760.

No. 18–5147. WING *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 592.

No. 18–5209. BARRETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 718 Fed. Appx. 288.

No. 18–5251. DAMBELLY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 714 Fed. Appx. 87.

No. 18–5314. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 878 F. 3d 498.

No. 18–5398. PRUTTING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 886.

No. 18–5418. GREEN *v.* COLORADO. Sup. Ct. Colo. Certiorari denied.

No. 18–5464. BENITEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 783.

No. 18–5504. POSEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–5505. MORRIS *v.* MAYS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–5549. KENNER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–5594. WASHINGTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 890 F. 3d 891.

No. 18–5626. WISHNEFSKY *v.* SALAMEH ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–5634. KINKEL *v.* LANEY, SUPERINTENDENT, OREGON STATE CORRECTIONAL INSTITUTION. Sup. Ct. Ore. Certiorari denied. Reported below: 363 Ore. 1, 417 P. 3d 401.

No. 18–5655. FOSTER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 734 Fed. Appx. 129.

No. 18–5664. CHEESEBORO *v.* LITTLE RICHIE BUS SERVICE, INC. C. A. 2d Cir. Certiorari denied. Reported below: 722 Fed. Appx. 107.

No. 18–5691. BAKER *v.* CHEATHAM, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 18–5730. DENMARK *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–5762. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 621.

No. 18–5770. ROUSE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 853.

No. 18–5771. QUALLS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 592.

No. 18–5821. FARMER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–5853. BINNS *v.* CITY OF MARIETTA, GEORGIA. C. A. 11th Cir. Certiorari denied. Reported below: 704 Fed. Appx. 797.

No. 18–5880. CAUDILL *v.* CONOVER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 881 F. 3d 454.

No. 18–5898. CASTILLO VALERIO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 551.

No. 18–5923. SANCHEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 739 Fed. Appx. 938.

No. 18–5939. ALLEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 313.

No. 18–5945. CHIDDO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 737 Fed. Appx. 917.

No. 18–5960. GHARIB *v.* CASEY (three judgments). C. A. 9th Cir. Certiorari denied. Reported below: 692 Fed. Appx. 950 (first judgment); 727 Fed. Appx. 455 (third judgment) and 456 (second judgment).

No. 18–5980. JONES *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 890 F. 3d 559.

No. 18–6005. WILLIAMS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 893 F. 3d 696.

No. 18–6013. WYATT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–6044. BEASLEY *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 153 Ohio St. 3d 497, 2018-Ohio-493, 108 N. E. 3d 1028.

No. 18–6070. CORNWELL *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 18–6071. Nayshtut *v.* Comercializadora Travel Advisory, S. A. de C. V., et al. Ct. App. Cal., 1st App. Dist., Div. 1. Certiorari denied.

No. 18–6137. Burton *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 677.

No. 18–6160. Carmody *v.* Board of Trustees of the University of Illinois et al. C. A. 7th Cir. Certiorari denied. Reported below: 893 F. 3d 397.

No. 18–6174. Lang *v.* Bobby, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 889 F. 3d 803.

No. 18–6214. Sanders *v.* Davis, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 873 F. 3d 778.

No. 18–6233. Schuermann *v.* Anqui. Sup. Ct. Fla. Certiorari denied.

No. 18–6236. Swan *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 18–6239. Reilly *v.* Herrera et al. C. A. 11th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 760.

No. 18–6243. Jackson *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 241 So. 3d 914.

No. 18–6244. Martin *v.* Oklahoma et al. C. A. 10th Cir. Certiorari denied. Reported below: 734 Fed. Appx. 612.

No. 18–6245. Kirkland *v.* Progressive Insurance Co. et al. Ct. Civ. App. Ala. Certiorari denied. Reported below: 278 So. 3d 483.

No. 18–6247. Parker *v.* Cain, Warden. C. A. 5th Cir. Certiorari denied.

No. 18–6261. Vargas, aka Vargas Romero *v.* McMahon. C. A. 9th Cir. Certiorari denied.

No. 18–6263. Vargas, aka Vargas Romero *v.* McMahon et al. C. A. 9th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 813.

No. 18–6264. Requena *v.* Roberts et al. C. A. 10th Cir. Certiorari denied. Reported below: 893 F. 3d 1195.

No. 18–6272. Steshenko *v.* McKay et al. C. A. 9th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 298.

No. 18–6274. Klein *v.* Centennial Ranch and Aspen Mountain Ranch Assn. Ct. App. Colo. Certiorari denied.

No. 18–6276. Terrell *v.* Berry, Warden. C. A. 11th Cir. Certiorari denied.

No. 18–6278. Martin *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 18–6287. Crutsinger *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 898 F. 3d 584.

No. 18–6290. Solgado *v.* Braun, Warden. C. A. 8th Cir. Certiorari denied.

No. 18–6294. Walcott *v.* Terrebonne Parish Jail Medical Department et al. C. A. 5th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 361.

No. 18–6296. Jacome *v.* California. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 18–6298. Fratta *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 889 F. 3d 225.

No. 18–6307. Latimer *v.* Macomber, Warden. C. A. 9th Cir. Certiorari denied.

No. 18–6311. Walters *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 18–6315. Ivy *v.* Tennessee. Ct. Crim. App. Tenn. Certiorari denied.

No. 18–6318. Ware *v.* Jones, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 18–6323. HUNTER *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 2018 ND 173, 914 N. W. 2d 527.

No. 18–6332. STROBLE *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 726 Fed. Appx. 254.

No. 18–6334. WIGGINS *v.* TANNER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 18–6340. WILLIAMS *v.* SAFIRE ET AL. Ct. App. Cal., 1st App. Dist., Div. 5. Certiorari denied.

No. 18–6344. LACY *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2018 Ark. 174, 545 S. W. 3d 746.

No. 18–6354. JOSSIE *v.* CVS PHARMACY. C. A. 11th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 912.

No. 18–6356. REYES *v.* ARTUS. C. A. 2d Cir. Certiorari denied.

No. 18–6365. BARTLETT *v.* MICHIGAN ET AL. C. A. 6th Cir. Certiorari denied.

No. 18–6367. CARTER *v.* AYALA ET AL. C. A. 6th Cir. Certiorari denied.

No. 18–6368. CALHOUN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 18–6382. CHAVEZ *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 7th Cir. Certiorari denied. Reported below: 895 F. 3d 962.

No. 18–6383. KULICK *v.* REIN. C. A. 9th Cir. Certiorari denied.

No. 18–6384. LANTERI *v.* CONNECTICUT. C. A. 2d Cir. Certiorari denied. Reported below: 726 Fed. Appx. 80.

No. 18–6388. BLACKMON *v.* EATON CORP. C. A. 6th Cir. Certiorari denied.

No. 18–6390. WHITE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 18–6392. KHOSHMOOD *v.* EASTERN MARKET MANAGEMENT (two judgments). C. A. D. C. Cir. Certiorari denied. Reported below: 728 Fed. Appx. 1 (both judgments).

No. 18–6402. ROBINSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 18–6403. STARNES *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–6407. VUE *v.* HENKE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 746 Fed. Appx. 780.

No. 18–6412. BEY *v.* ELMWOOD PLACE POLICE DEPARTMENT ET AL. C. A. 6th Cir. Certiorari denied.

No. 18–6418. WILSON *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 251 So. 3d 904.

No. 18–6419. WHIPPLE *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 18–6420. NESSELRODE *v.* DEVOS, SECRETARY OF EDUCATION. C. A. 6th Cir. Certiorari denied.

No. 18–6426. BRUNSON *v.* NORTH CAROLINA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 203.

No. 18–6427. VALLE *v.* ROGERS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 718 Fed. Appx. 309.

No. 18–6428. GONZALEZ DELACRUZ *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–6433. SMITHBACK *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 18–6435. ROGERS *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 18–6437. HOLDER *v.* SEPANEK, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 698 Fed. Appx. 216.

No. 18–6438. MORENO *v.* BUTLER. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 18–6439. ORTEGA LARA *v.* MADDEN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–6440. MEEKS *v.* TENNESSEE DEPARTMENT OF CORRECTION ET AL. C. A. 6th Cir. Certiorari denied.

No. 18–6441. MCKISSICK *v.* DEAL, GOVERNOR OF GEORGIA, ET AL. Sup. Ct. Ga. Certiorari denied.

No. 18–6442. MERRITT *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2017 IL App (2d) 150219, 83 N. E. 3d 1125.

No. 18–6443. ADAMS *v.* NETFLIX, INC. C. A. 2d Cir. Certiorari denied. Reported below: 726 Fed. Appx. 76.

No. 18–6446. FAIRLEY *v.* PM MANAGEMENT-SAN ANTONIO AL, L. L. C., DBA LAKESIDE ASSISTED LIVING BY TRISUN HEALTHCARE. C. A. 5th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 343.

No. 18–6452. BARTLETT *v.* STATE BAR OF CALIFORNIA ET AL. Sup. Ct. Cal. Certiorari denied.

No. 18–6454. NASH *v.* PHILLIPS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–6455. MCGEE *v.* BONDI, ATTORNEY GENERAL OF FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 704 Fed. Appx. 920.

No. 18–6458. WILLIAMS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 18–6465. YANEZ *v.* DIAZ, ACTING SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 18–6466. ORTEGA *v.* DIAZ, ACTING SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 617.

No. 18–6467. PULLEY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 18–6469. MORANT *v.* LEWIS, SUPERINTENDENT, SOUTHEAST CORRECTIONAL CENTER. Sup. Ct. Mo. Certiorari denied.

No. 18–6476. WHITE *v.* DETROIT EAST COMMUNITY MENTAL HEALTH ET AL. Ct. App. Mich. Certiorari denied.

No. 18–6477. ACKELS *v.* OLSEN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 665.

No. 18–6485. CAIN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 2 Wash. App. 2d 1054.

No. 18–6487. HOWELL *v.* NUCAR CONNECTION, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 416.

No. 18–6488. COLEMAN *v.* HAKALA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 608.

No. 18–6489. FIKROU *v.* MONTGOMERY COUNTY OFFICE OF CHILD SUPPORT ENFORCEMENT DIVISION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 695 Fed. Appx. 299.

No. 18–6490. HOPKINS *v.* LANGUAGE TESTING INTERNATIONAL ET AL. C. A. 2d Cir. Certiorari denied.

No. 18–6492. RENTAS *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 18–6493. BURKE *v.* TURNER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–6501. ROBERTSON *v.* INTERACTIVE COLLEGE OF TECHNOLOGY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 743 Fed. Appx. 269.

No. 18–6506. BOUDREAUX *v.* HOOPER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 18–6507. BROWN *v.* DEL NORTE COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–6508. WILLIAMS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 18–6509. TEDESCO *v.* MONROE COUNTY, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 723 Fed. Appx. 125.

No. 18–6510. PRUITT *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 32 N. Y. 3d 1007, 111 N. E. 3d 1121.

No. 18–6513. CHINCHILLA *v.* LEWIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 443.

No. 18–6516. Linh Thi Minh Tran *v.* Happy Valley Municipal Court, Oregon. Ct. App. Ore. Certiorari denied. Reported below: 289 Ore. App. 377, 412 P. 3d 1210.

No. 18–6517. Brown *v.* Elite Modeling Agency. C. A. 11th Cir. Certiorari denied.

No. 18–6520. Arnett *v.* Covello, Acting Warden. C. A. 9th Cir. Certiorari denied.

No. 18–6521. Porto *v.* City of Laguna Beach, California, et al. C. A. 9th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 853.

No. 18–6522. Prunty *v.* DeSoto County School Board et al. C. A. 11th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 648.

No. 18–6527. Jedediah C. *v.* West Virginia. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 240 W. Va. 534, 814 S. E. 2d 197.

No. 18–6528. Cabbagestalk *v.* Sterling et al. C. A. 4th Cir. Certiorari denied.

No. 18–6529. Kozich *v.* Deibert et al. C. A. 11th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 644.

No. 18–6532. Myers *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 154 Ohio St. 3d 405, 2018-Ohio-1903, 114 N. E. 3d 1138.

No. 18–6535. Williams *v.* Michigan. Ct. App. Mich. Certiorari denied.

No. 18–6538. Sydnor *v.* Hampton, Warden. C. A. 6th Cir. Certiorari denied.

No. 18–6539. Rencountre *v.* Braun, Warden. C. A. 8th Cir. Certiorari denied.

No. 18–6540. Rayan *v.* Georgia. Ct. App. Ga. Certiorari denied.

No. 18–6541. Stoller *v.* Wilmington Trust. C. A. 7th Cir. Certiorari denied.

No. 18–6543. Koresko *v.* Acosta, Secretary of Labor. C. A. 3d Cir. Certiorari denied. Reported below: 726 Fed. Appx. 127.

No. 18–6544. McNemar *v.* Terry, Acting Warden. C. A. 4th Cir. Certiorari denied. Reported below: 734 Fed. Appx. 207.

No. 18–6545. Lopez *v.* California. Ct. App. Cal., 2d App. Dist., Div. 2. Certiorari denied.

No. 18–6555. Barnett *v.* City of Gastonia, North Carolina. C. A. 4th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 111.

No. 18–6556. McAlister *v.* Wisconsin. Sup. Ct. Wis. Certiorari denied. Reported below: 2018 WI 34, 380 Wis. 2d 684, 911 N. W. 2d 77.

No. 18–6558. Merrick *v.* Arizona. Ct. App. Ariz. Certiorari denied.

No. 18–6562. Pierce *v.* Georgia. Sup. Ct. Ga. Certiorari denied.

No. 18–6568. Pompee *v.* Jones, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 819.

No. 18–6571. Jervis *v.* Brown, Warden. C. A. 7th Cir. Certiorari denied.

No. 18–6572. Thompson *v.* Missouri Board of Probation and Parole. C. A. 8th Cir. Certiorari denied.

No. 18–6575. Stokes *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 18–6577. Solano Godoy *v.* Clarke, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 689 Fed. Appx. 164.

No. 18–6578. Fox *v.* Illinois. Sup. Ct. Ill. Certiorari denied.

No. 18–6580. Fitts *v.* Goodrich, Warden, et al. Sup. Ct. Ga. Certiorari denied.

No. 18–6590. Mohamed *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 221.

No. 18–6592. PAVON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 978.

No. 18–6594. SAFFORD *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 252 So. 3d 163.

No. 18–6595. SMITH *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 18–6603. JOHNSON *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 102 N. E. 3d 355.

No. 18–6607. PETERS *v.* BALDWIN. C. A. 7th Cir. Certiorari denied.

No. 18–6609. LAMPON-PAZ *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. 3d Cir. Certiorari denied. Reported below: 732 Fed. Appx. 158.

No. 18–6610. JOHNSON *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied.

No. 18–6613. DEJESUS *v.* GODINEZ ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 766.

No. 18–6614. ROSE *v.* HORTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–6619. ROBINSON *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 247 So. 3d 1212.

No. 18–6620. ARMENTA *v.* DIAZ, ACTING SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 255.

No. 18–6623. COSME *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–6627. CURRY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 18–6628. CLEMONS *v.* KASICH, GOVERNOR OF OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 153 Ohio St. 3d 1449, 2018-Ohio-3025, 103 N. E. 3d 828.

No. 18–6629. HARLOFF *v.* KOENIG, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 170.

No. 18–6637. GRIST *v.* CARLIN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–6639. DIZAK *v.* SMITH, SUPERINTENDENT, MID-STATE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 18–6642. IBEABUCHI *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 18–6647. SHARMA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–6652. LOWE *v.* ROY, COMMISSIONER, MINNESOTA DEPARTMENT OF CORRECTIONS. Ct. App. Minn. Certiorari denied.

No. 18–6653. CALDERIN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2017 IL App (1st) 150730–U.

No. 18–6659. RODWELL *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied.

No. 18–6660. ARIF *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 897 F. 3d 1.

No. 18–6661. SAMUEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 117.

No. 18–6664. GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 258.

No. 18–6665. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–6666. SOSA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 897 F. 3d 615.

No. 18–6673. VICK *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 18–6676. WILMORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–6677. MARSHALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–6678. WHITE *v.* BRACY, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 18–6681. RIOS ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 904 F. 3d 854.

No. 18–6683. SAKOMAN *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 18–6687. KENNEDY *v.* POLLOCK. Sup. Ct. N. J. Certiorari denied. Reported below: 233 N. J. 604, 187 A. 3d 844.

No. 18–6689. SANCHEZ *v.* PFEIFFER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 745 Fed. Appx. 703.

No. 18–6691. MCCURTIS *v.* BURKE, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 18–6692. WATERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 749 Fed. Appx. 823.

No. 18–6693. MANGUAL-ROSADO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 907 F. 3d 107.

No. 18–6694. WEAKLEY *v.* EAGLE LOGISTICS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 894 F. 3d 1244.

No. 18–6695. MEHMOOD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 928.

No. 18–6697. BELLINGER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 731.

No. 18–6700. DEPIETRO *v.* ALLSTATE INSURANCE CO. ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 18–6703. TRIMBLE *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 482.

No. 18–6705. JILES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 1005.

No. 18–6707. PROA-DOMINGUEZ *v.* UNITED STATES (Reported below: 739 Fed. Appx. 309); LOPEZ *v.* UNITED STATES (740 Fed. Appx. 422); and CAZARES *v.* UNITED STATES (740 Fed. Appx. 456). C. A. 5th Cir. Certiorari denied.

No. 18–6711. DELEON COLON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 899 F. 3d 1236.

No. 18–6712. GILSTRAP *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 734 Fed. Appx. 312.

No. 18–6714. SUAREZ PLASENCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 886 F. 3d 1336.

No. 18–6718. EDWARDS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 18–6719. WILLIAMSON *v.* LUTHER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–6720. WITCHARD *v.* ANTONELLI, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 54.

No. 18–6721. CULLENS *v.* CURTIN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–6723. NOEL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–6725. BUSSELL *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 18–6726. BRANTLEY *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 91 N. E. 3d 566.

No. 18–6729. SANTIAGO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 739 Fed. Appx. 693.

No. 18–6732. STEVENS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 943.

No. 18–6733. SHAUGER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 18–6737. LOPEZ-CASTILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 363.

No. 18–6738. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–6742. MATHIS *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 258 N. C. App. 651, 813 S. E. 2d 861.

No. 18–6746. HAYMORE ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 421.

No. 18–6748. GLASS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 904 F. 3d 319.

No. 18–6753. MENDEZ *v.* SWARTHOUT, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 734 Fed. Appx. 421.

No. 18–6757. NORMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 208.

No. 18–6759. BROWN *v.* HATTON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 889 F. 3d 661.

No. 18–6760. UPSHAW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 739 Fed. Appx. 538.

No. 18–6761. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–6763. ANTONIO BONILLA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 18–6764. BORDERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–6765. BAGDIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 18–6767. GALBREATH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 348.

No. 18–6768. PEREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–6770. NINO-FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 152.

No. 18–6775. KEHOE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 893 F. 3d 232.

No. 18–6778. HORN *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 18–6791. BLAND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 194.

No. 18–6793. Booth *v.* Kelley, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied. Reported below: 882 F. 3d 759.

No. 18–6795. Brown *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 18–6797. Greene *v.* South Carolina. Sup. Ct. S. C. Certiorari denied. Reported below: 423 S. C. 263, 814 S. E. 2d 496.

No. 18–6798. Hill *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 890 F. 3d 51.

No. 18–6800. Powell *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 311.

No. 18–6801. McDuffy *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 890 F. 3d 796.

No. 18–6804. Roach *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 896 F. 3d 1185.

No. 18–6806. Sarmiento *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 739 Fed. Appx. 704.

No. 18–6808. Suarez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 893 F. 3d 1330.

No. 18–6809. Camp *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 903 F. 3d 594.

No. 18–6810. Hickman-Smith *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 18–6811. Rivera Fonseca *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 985.

No. 18–6812. Ferranti *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 18–6814. Gerald et al. *v.* Virginia. Sup. Ct. Va. Certiorari denied. Reported below: 295 Va. 469, 813 S. E. 2d 722.

No. 18–6816. Garcia *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 18–6817. FOCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 869 F. 3d 1269.

No. 18–6820. LANGLEY *v.* PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY. Ct. App. Ore. Certiorari denied. Reported below: 288 Ore. App. 168, 403 P. 3d 832.

No. 18–6821. KELLEY *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 279 So. 3d 14.

No. 18–6824. KEYS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 747 Fed. Appx. 198.

No. 18–6827. WILLIAMS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 162 App. Div. 3d 694, 78 N. Y. S. 3d 386.

No. 18–6828. THOMAS *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 237 Md. App. 760.

No. 18–6829. FUENTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 161.

No. 18–6830. HEREDIA-SILVA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 344.

No. 18–6833. RAMON ZUNIGA, AKA ZUNIGA-ZARAGOZA, AKA ZUNIGA-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 147.

No. 18–6838. ROUNDTREE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–6839. ROBIN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 179 A. 3d 867.

No. 18–6841. STEWART *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied.

No. 18–6842. DAVIS, AKA SEALED DEFENDANT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 715 Fed. Appx. 107.

No. 18–6844. KERR *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 2018 WI 87, 383 Wis. 2d 306, 913 N. W. 2d 787.

No. 18–6846. PENA *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 236 Md. App. 740.

No. 18–6847. ANTONIO HARO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 748 Fed. Appx. 727.

No. 18–6851. GOMEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–6853. GARCIA-LIMA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 374.

No. 18–6855. PEREZ-MARTINEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 746 Fed. Appx. 468.

No. 18–6856. MILLS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–6858. PRITCHETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 128.

No. 18–6861. WILBORN *v.* RYAN, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 18–6862. THOMAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 897 F. 3d 807.

No. 18–6863. LEWIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 895 F. 3d 1004.

No. 18–6864. WHITLOW *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–6865. NINA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 734 Fed. Appx. 27.

No. 18–6867. SILVA-IBARRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 858.

No. 18–6871. CABELLO *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON. C. A. 9th Cir. Certiorari denied.

No. 18–6873. ARMENTA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 883 F. 3d 1005.

No. 18–6875. THRIFT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 607.

No. 18–6879. HOGUE *v.* CAIN, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 426.

No. 18–6894. CROSBY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 748 Fed. Appx. 752.

No. 18–6895. CLARK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 906 F. 3d 667.

No. 18–6896. WINGATE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–6897. TAVIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 697.

No. 18–6900. WATTERS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 324.

No. 18–6910. MUSA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 265.

No. 18–6911. PINEDA-OROZCO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 739 Fed. Appx. 311.

No. 18–6912. MONIE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–6917. PORTELA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 901 F. 3d 1322.

No. 18–6918. VELAZQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 734 Fed. Appx. 462.

No. 18–6920. RETIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 500.

No. 18–6923. SARRAS *v.* UNKNOWN PARTY. C. A. 9th Cir. Certiorari denied.

No. 18–6924. WALDEN *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 18–6926. VALENTINE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–6934. EVANS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 64.

No. 18–6935. EWING *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 749 Fed. Appx. 317.

No. 18–6937. MORRILL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 884.

No. 18–6948. GAVIDIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 908 F. 3d 920.

No. 18–6951. COOPER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 893 F. 3d 840.

No. 18–6952. GARCIA LICON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–6963. CAMRAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 263.

No. 18–6964. WALLACE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 18–6967. DANILOVICH, AKA SEALED DEFENDANT, AKA DANIELS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 731 Fed. Appx. 45.

No. 18–6969. BIVINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 747 Fed. Appx. 765.

No. 18–6974. MCINTOSH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 18–6981. SURRATT *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 259 N. C. App. 940, 814 S. E. 2d 626.

No. 18–7028. SIMPSON *v.* ERKERD ET AL. C. A. 3d Cir. Certiorari denied.

No. 17–938. CITY OF CIBOLO, TEXAS *v.* GREEN VALLEY SPECIAL UTILITY DISTRICT. C. A. 5th Cir. Motion of Guadalupe Valley Development Corporation et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 866 F. 3d 339.

No. 17–1165. DE CSEPEL ET AL. *v.* REPUBLIC OF HUNGARY ET AL. C. A. D. C. Cir. Motions of Ambassador Stuart E. Eizenstat and AJC et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of these motions and this petition. Reported below: 859 F. 3d 1094.

No. 17–1237. OSAGE WIND, LLC, ET AL. *v.* OSAGE MINERALS COUNCIL. C. A. 10th Cir. Motions of American Wind Energy Association and Osage County Farm Bureau, Inc., et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 871 F. 3d 1078.

No. 17–1382. LANCE *v.* SELLERS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 706 Fed. Appx. 565.

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

Before deciding that petitioner Donnie Cleveland Lance should die as punishment for two murders he committed, a jury heard no evidence whatsoever to counterbalance the State's case for the death penalty. Lance's counsel bore responsibility for the one-sidedness of the sentencing proceedings; he inexcusably failed even to look into, much less to put on, a case for sparing Lance's life. And we have since learned that Lance suffers from significant cognitive impairments that the jury could have weighed in assessing his moral culpability. In other words, there is a meaningful case to be made for sparing Lance's life, but—because he lacked access to constitutionally adequate counsel—he has never had a chance to present it.

The Georgia Supreme Court concluded that this state of affairs was constitutionally tolerable because, in its view, Lance's untold story stood no chance of persuading even a single juror to favor life without parole over a death sentence. The U. S. Court of Appeals for the Eleventh Circuit held that its conclusion was not unreasonable. I cannot agree. Our precedents clearly establish that Lance was prejudiced by his inability to inform the jury about his impairments. I therefore would grant Lance's petition for review and summarily reverse.

I

A

The facts of Lance's crimes—murdering his ex-wife, Sabrina "Joy" Lance, and her boyfriend, Dwight "Butch" Wood, Jr., in 1997—admittedly inspire little sympathy. Lance went to Butch's home, kicked in the front door, shot Butch with a shotgun, then bludgeoned Joy to death with the gun. According to a fellow inmate, he later bragged about the killings. Lance also had an extensive prior history of domestic violence against Joy.[1]

[1] Lance previously had kidnapped Joy, electrocuted her, beaten her, strangled her, and threatened her with various other harms. He also repeatedly had threatened to kill her if she left him or became involved with Butch. Four years earlier, Lance and a friend took a shotgun to Butch's home and kicked in the door, but fled when a child inside spoke to them.

Due to his counsel's ineffectiveness, however, those facts were all the jurors ever learned about Lance; they heard no evidence why his life was worth sparing. Lance was represented during both the guilt and penalty phases of his trial by a solo practitioner who became convinced of Lance's innocence—and his own ability to prove it—early in the representation. He thus prepared exclusively for the guilt-or-innocence phase of the trial. Counsel did not even broach the subject of possible penalty-phase evidence with Lance or his family, because he did not want them "thinking that [he] might be thinking in terms of losing the case." App. to Pet. for Cert. 232. So when the jury found Lance guilty and the question became whether Lance should be put to death,[2] Lance's counsel had no evidence whatsoever to present.

The State did. It called six witnesses, including the victims' relatives, to explain why Lance deserved to die. The State's closing argument emphasized Lance's history of violence against Joy, the brutality of her killing, and Lance's apparent lack of remorse. The State urged the jury to perceive Lance as "'cold and calculating'" and repeatedly asked "'what kind of person'" would do these things. 1 App. in No. 16–15008 (CA11), pt. 1, pp. 68, 75, 77. Lance's counsel, by contrast, made no opening statement and presented no mitigating evidence. By his own admission, he "had nothing to put on." App. to Pet. for Cert. 273. His closing argument merely urged the jury to consider Lance's family and to resist the temptation to exact vengeance. About Lance, counsel said only that he was "'kind of a quiet person and a country boy'" who "'doesn't talk a lot.'" 1 App. in No. 16–15008, pt. 1, at 85.

The jury sentenced Lance to death.

B

In 2003, Lance filed a petition for postconviction relief in state court, asserting that his trial counsel's failure to investigate or present any mitigating evidence was ineffective assistance of counsel. Essentially, he argued that there was a meaningful case to be made for sparing his life, and that his counsel had forfeited his chance to do so through inattention.

[2] The jury found that two aggravating circumstances supported Lance's eligibility for the death penalty: that he committed a double murder and that Joy's killing was "outrageously or wantonly vile, horrible, or inhuman." App. to Pet. for Cert. 74; *Lance* v. *State*, 275 Ga. 11, 23, 560 S. E. 2d 663, 677 (2002); see also Ga. Code Ann. §§ 17–10–30(b)(2), (b)(7) (Supp. 2018).

The evidence showed that counsel could have found possible cognitive problems had he looked into Lance's personal history. That history included repeated serious head traumas caused by multiple car crashes, alcoholism, and—most seriously—Lance's once being shot in the head by unknown assailants while lying on his couch.[3] In the aftermath of the shooting, Lance had "terrible headaches," "dizziness," "difficulty working," and "became even more quiet than he had before." App. to Pet. for Cert. 171–172. The court found that any reasonable defense attorney would have had Lance's mental health evaluated and, in so doing, uncovered "significant mitigating evidence for the jury to consider." *Id.*, at 174.

Four mental health professionals testified at an evidentiary hearing.[4] They agreed on many points. First, Lance had permanent damage to his brain's frontal lobe. Second, his IQ placed him in the borderline range for intellectual disability. Third, his symptoms warranted a diagnosis of clinical dementia. The experts differed somewhat, however, over the extent and practical consequences of Lance's brain damage. Primarily, the experts seemed to disagree about the extent to which Lance's brain damage affected his impulse control.[5]

The Superior Court granted Lance's habeas petition and vacated his death sentence, holding that trial counsel's failure to

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[3] In addition to the history discussed by the court, Lance also ingested gasoline as a small child, was trampled by a horse as a teenager, and once was overcome by fumes while working to clean the interior of an oil tanker truck. 1 App. in No. 16–15008, pt. 2, pp. 202–203.

[4] Lance put on Thomas Hyde, an expert in behavioral neurology; Ricardo Weinstein, an expert in neuropsychology; and David Pickar, an expert in psychiatry and clinical neuroscience. The State called Daniel Martell, an expert in neuropsychology. (A fifth expert's unsworn report was ruled inadmissible by the Georgia Supreme Court. See *Hall* v. *Lance*, 286 Ga. 365, 371, n. 1, 687 S. E. 2d 809, 815, n. 1 (2010).)

[5] Hyde, Weinstein, and Pickar opined that the type and extent of damage reflected in Lance's test results would adversely affect his ability to suppress impulsive behavior. Weinstein and Hyde added that the damage could impair Lance's ability to conform his conduct to the law, and Hyde noted that the effects of Lance's impairments would be most acute in moments of emotional stress. Martell, in contrast, saw no direct evidence of impulse-control difficulties and opined that Lance's brain damage would not "'prevent him'" from conforming his conduct to the law. 1 App. in No. 16–15008, pt. 3, at 170.

investigate and present evidence of Lance's mental condition was deficient performance, and that his failure prejudiced Lance. The missing evidence could have prompted a different sentence, the court explained, because it went directly to the key issue before the jury: the assessment of Lance's character, culpability, and worth.

The Georgia Supreme Court, however, reversed and reinstated Lance's death sentence. *Hall* v. *Lance*, 286 Ga. 365, 687 S. E. 2d 809 (2010). It agreed that counsel's performance was deficient but held that Lance suffered no prejudice. As relevant here, it held that even if the jury had considered at trial all the neuropsychological evidence adduced at the postconviction hearing, there was no reasonable probability that Lance's sentence would have changed.[6] In the Georgia Supreme Court's view, the new evidence was only "somewhat mitigating" because it showed only "subtle neurological impairments," which would necessarily have been outweighed by Lance's prior threats and violence toward the victims, the nature of the crime, and Lance's statements and demeanor in its aftermath. *Id.*, at 373, 687 S. E. 2d, at 815–816.

C

Lance sought a federal writ of habeas corpus. The U. S. District Court for the Northern District of Georgia denied the petition but granted a certificate of appealability. Under the deferential review provisions of the Antiterrorism and Effective Death Penalty Act of 1996, 28 U. S. C. § 2254(d), the U. S. Court of Appeals for the Eleventh Circuit affirmed, holding that the Georgia Supreme Court's conclusion that the absence of the postconviction mental health evidence caused Lance no prejudice "was not unreasonable." *Lance* v. *Warden*, 706 Fed. Appx. 565, 573 (2017).

II

To prevail on a Sixth Amendment ineffective-assistance-of-counsel claim, a defendant must show both that his counsel's performance was deficient and that his counsel's errors caused him

[6] As an alternative ground for finding no prejudice, the Georgia Supreme Court also hypothesized that even an adequate investigation would not have uncovered the evidence that Lance presented at the postconviction hearing. That conclusion is not implicated by Lance's petition because the Court of Appeals did not address it.

prejudice. In assessing deficiency, a court asks whether defense "counsel's representation fell below an objective standard of reasonableness." *Strickland* v. *Washington*, 466 U. S. 668, 688 (1984). To establish prejudice, a defendant must show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.*, at 694. When, as here, a petitioner seeks federal habeas review of a state court's rejection of his ineffective-assistance-of-counsel claim, he can prevail only if the decision was "contrary to, or involved an unreasonable application of," *Strickland* and its progeny, or rested "on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U. S. C. § 2254(d).

Because the Supreme Court of Georgia mischaracterized or omitted key facts and improperly weighed the evidence, I agree with Lance that its decision was an objectively "unreasonable application of" our precedents. § 2254(d)(1); see *Wiggins* v. *Smith*, 539 U. S. 510, 528 (2003). I would therefore grant the petition and summarily reverse.

A

With regard to *Strickland*'s performance prong, the Georgia Supreme Court determined that trial counsel's failure to investigate possible mitigation was deficient. See *Lance*, 286 Ga., at 368, 687 S. E. 2d, at 812–813. That is plainly correct. Counsel in a death penalty case has an obligation at the very least to consider possible penalty-phase defenses. See *Wiggins*, 539 U. S., at 521–522. By his own admission, counsel here did not. Without any inquiry into what penalty-phase evidence he might be forgoing, he succumbed to tunnel vision—and as a consequence left Lance defenseless. Because nothing here "obviate[d] the need for defense counsel to conduct *some* sort of mitigation investigation," Lance has satisfied *Strickland*'s deficient-performance requirement. *Porter* v. *McCollum*, 558 U. S. 30, 40 (2009) (*per curiam*); see also *Rompilla* v. *Beard*, 545 U. S. 374, 381 (2005); *Wiggins*, 539 U. S., at 534.

B

Turning to the prejudice prong, the Court of Appeals was wrong to conclude that Lance suffered no clearly established prejudice from his inability to make his case. Georgia law permits a death sentence only upon a unanimous jury recommendation, so

Lance needed only to show "a reasonable probability that at least one juror would have struck a different balance" between the aggravating and the mitigating factors had he or she considered the missing evidence. *Wiggins*, 539 U. S., at 537; see Ga. Code Ann. §§ 17–10–31(a), (c).[7] The trial court, upon hearing Lance's proffered mitigation evidence, concluded that it was "extremely important for the jury to consider" and thus that its absence was prejudicial. App. to Pet. for Cert. 174. Under any reasonable application of *Strickland* and its progeny, that conclusion was correct. See 28 U. S. C. § 2254(d); *Wiggins*, 539 U. S., at 528.

To determine whether a defendant reasonably might have been spared a death sentence but for his counsel's deficiency, courts take into account "the totality of the available mitigation evidence—both that adduced at trial, and the evidence adduced in the habeas proceeding," then "reweig[h] it against the evidence in aggravation." *Williams* v. *Taylor*, 529 U. S. 362, 397–398 (2000). "We do not require a defendant to show that counsel's deficient conduct more likely than not altered the outcome of his penalty proceeding, but rather that he establish a probability sufficient to undermine confidence in that outcome." *Porter*, 558 U. S., at 44 (internal quotation marks and alteration omitted).

The jurors who sentenced Lance determined whether he would live or die "knowing hardly anything about him other than the facts of his crimes." *Id.*, at 33. They heard nothing "that would humanize [Lance] or allow them to accurately gauge his moral culpability." *Id.*, at 41. Yet if counsel had performed his duties, the jurors would have heard that Lance's brain endured physical trauma throughout his life, resulting in frontal lobe damage and dementia. The jury further would have heard that Lance's IQ placed him within the borderline range for intellectual disability. The jury also would have heard that Lance's cognitive deficits could affect his impulse control and capacity to conform his behavior to the law, especially at moments of emotional distress. Taken together, those facts—with their accompanying explanatory potential to humanize Lance, or at least to render less incompre-

[7] In Georgia, "a sentence of death shall not be imposed unless the jury verdict includes a finding of at least one statutory aggravating circumstance and a recommendation that such sentence be imposed." Ga. Code Ann. § 17–10–31(a). "If the jury is unable to reach a unanimous verdict as to sentence, the judge shall dismiss the jury and shall impose a sentence of either life imprisonment or imprisonment for life without parole." § 17–10–31(c).

hensible his conduct—were significant mitigating evidence. See *id.*, at 36, 42–43 (noting the potentially mitigating effect of evidence that the defendant "suffered from brain damage that could manifest in impulsive, violent behavior" and was "substantially impaired in his ability to conform his conduct to the law").

To be sure, the evidence before the jury—the brutality of Joy's death, Lance's past violence toward her, and Lance's conduct thereafter—could have supported a death sentence. See Ga. Code Ann. §§ 17–10–30(b), 17–10–31(a). But there is a stark contrast between no mitigation evidence whatsoever and the significant neuropsychological evidence that adequate counsel could have introduced as a potential counterweight. Lance's unintroduced case for leniency, even if not airtight, "adds up to a mitigation case that bears no relation to the few naked pleas for mercy actually put before the jury." *Rompilla*, 545 U. S., at 393; see also *Williams*, 529 U. S., at 398. Our precedents thus clearly establish Lance's right to a new sentencing at which a jury can, for the first time, weigh the evidence both for and against death.

The Georgia Supreme Court reached its contrary conclusion only by unreasonably disregarding or minimizing Lance's evidence. The state court acknowledged that experts would testify that "'significant damage'" to Lance's frontal lobe compromised his ability "'to conform his conduct to the requirements of the law.'" *Lance*, 286 Ga., at 370–371, 687 S. E. 2d, at 814. It failed, however, to allow for the possibility that the jury might credit that evidence. This Court previously has cautioned against prematurely resolving disputes or unreasonably discounting mitigating evidence in this context. See *Porter*, 558 U. S., at 43 ("While the State's experts identified perceived problems with the tests [showing brain damage and cognitive defects] and the conclusions [the defense expert] drew from them, it was not reasonable to discount entirely the effect that [the defense expert's] testimony might have had on the jury"). We should do so again here.

Further, the Georgia Supreme Court relied on characterizations of Lance's evidence that cannot be squared with the record, which "further highlights the unreasonableness of" the Georgia Supreme Court's decision. *Wiggins*, 539 U. S., at 528; see 28 U. S. C. § 2254(d)(2). With regard to Lance's frontal lobe damage, the Georgia Supreme Court appears to have credited the testimony of the State's expert over Lance's experts' testimony, treating as definitive Martell's assertion that "Lance's symptoms were so sub-

tle that a typical court-ordered evaluation might not have given any indication of problems." *Lance*, 286 Ga., at 372, 687 S. E. 2d, at 815; see also *id.*, at 373, 687 S. E. 2d, at 816. Yet the other experts concluded that Lance's impairments and resulting behavioral distortions were "serious" and "significant."[8] *E. g.*, 1 App. in No. 16–15008, pt. 3, at 92; 2 *id.*, at 10. The Georgia Supreme Court also unreasonably dismissed the experts' consensus that Lance was in the borderline range for intellectual disability,[9] and never mentioned—much less discussed the significance of—Lance's dementia diagnosis.

These errors, taken together, make clear that the Georgia Supreme Court applied our *Strickland* precedents in an objectively unreasonable manner. The mental impairment evidence reasonably could have affected at least one juror's assessment of whether Lance deserved to die for his crimes, and Lance should have been given a chance to make the case for his life. The Georgia Supreme Court's conclusion that it would be futile to allow him to do so was unreasonable.

III

Absent this Court's intervention, Lance may well be executed without any adequately informed jury having decided his fate. Because the Court's refusal to intervene permits an egregious breakdown of basic procedural safeguards to go unremedied, I respectfully dissent.

No. 17–9082. HESTER ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 441.

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[8] Moreover, it is unclear even that Martell's milder characterizations genuinely contradicted the other experts' testimony. Unlike the other experts, Martell seems at least sometimes to have been characterizing Lance's impairments "relative to his overall borderline [intellectually disabled] baseline," 1 App. in No. 16–15008, pt. 3, at 151, not relative to the average person or to the level at which Lance might have functioned absent his head traumas. Compare 2 *id.*, at 34 (Weinstein: specific test results "vastly excee[d] the threshold for impairment" and "indicate significant organic impairment of the frontal lobe"), with 2 *id.*, at 152 (Martell: results on the same test were "at a level expected for [Lance's] IQ" or "showed mild impairment").

[9] See *Lance*, 286 Ga., at 372, 687 S. E. 2d, at 815 (describing Lance as merely "in the lower range of normal intelligence"). But see, *e. g.*, 1 App. in No. 16–15008, pt. 3, at 135 (Martell, describing Lance's intellectual functioning as "in the borderline range," which is "lower than low average").

JUSTICE ALITO, concurring.

The argument that the Sixth Amendment, as originally understood, requires a jury to find the facts supporting an order of restitution depends upon the proposition that the Sixth Amendment requires a jury to find the facts on which a sentence of imprisonment is based. That latter proposition is supported by decisions of this Court, see *United States* v. *Booker*, 543 U. S. 220, 230–232 (2005); *Apprendi* v. *New Jersey*, 530 U. S. 466, 478 (2000), but it represents a questionable interpretation of the original meaning of the Sixth Amendment, *Gall* v. *United States*, 552 U. S. 38, 64–66 (2007) (ALITO, J., dissenting). Unless the Court is willing to reconsider that interpretation, fidelity to original meaning counsels against further extension of these suspect precedents.

JUSTICE GORSUCH, with whom JUSTICE SOTOMAYOR joins, dissenting.

If you're charged with a crime, the Sixth Amendment guarantees you the right to a jury trial. From this, it follows that the prosecutor must prove to a jury all of the facts legally necessary to support your term of incarceration. *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000). Neither is this rule limited to prison time. If a court orders you to pay a fine to the government, a jury must also find all the facts necessary to justify that punishment too. *Southern Union Co.* v. *United States*, 567 U. S. 343 (2012).

But what if instead the court orders you to pay restitution to victims? Must a jury find all the facts needed to justify a restitution order as well? That's the question presented in this case. After the defendants pleaded guilty to certain financial crimes, the district court held a hearing to determine their victims' losses. In the end and based on its own factual findings, the court ordered the defendants to pay $329,767 in restitution. The Ninth Circuit affirmed, agreeing with the government that the facts supporting a restitution order can be found by a judge rather than a jury.

Respectfully, I believe this case is worthy of our review. Restitution plays an increasing role in federal criminal sentencing today. Before the passage of the Victim and Witness Protection Act of 1982, 96 Stat. 1248, and the Mandatory Victims Restitution Act of 1996, 110 Stat. 1227, restitution orders were comparatively rare. But from 2014 to 2016 alone, federal courts sentenced 33,158 defendants to pay $33.9 billion in restitution. GAO, G. Goodwin, Federal Criminal Restitution 16 (GAO–18–203, 2018).

And between 1996 and 2016, the amount of unpaid federal criminal restitution rose from less than $6 billion to more than $110 billion. GAO, G. Goodwin, Federal Criminal Restitution 14 (GAO–18–115, 2017); Dept. of Justice, C. DiBattiste, U. S. Attorneys Annual Statistical Report 79–80 (1996) (Tables 12A and 12B). The effects of restitution orders, too, can be profound. Failure or inability to pay restitution can result in suspension of the right to vote, continued court supervision, or even reincarceration. Lollar, What Is Criminal Restitution? 100 Iowa L. Rev. 93, 123–129 (2014).

The ruling before us is not only important, it seems doubtful. The Ninth Circuit itself has conceded that allowing judges, rather than juries, to decide the facts necessary to support restitution orders isn't "well-harmonized" with this Court's Sixth Amendment decisions. *United States* v. *Green*, 722 F. 3d 1146, 1151 (2013). Judges in other circuits have made the same point in similar cases. See *United States* v. *Leahy*, 438 F. 3d 328, 343–344 (CA3 2006) (en banc) (McKee, J., concurring in part and dissenting in part); *United States* v. *Carruth*, 418 F. 3d 900, 905–906 (CA8 2005) (Bye, J., dissenting).

Nor does the government's defense of the judgment below dispel these concerns. This Court has held that the Sixth Amendment requires a jury to find any fact that triggers an increase in a defendant's "statutory maximum" sentence. *Apprendi*, 530 U. S., at 490. Seizing on this language, the government argues that the Sixth Amendment doesn't apply to restitution orders because the amount of restitution is dictated only by the extent of the victim's loss and thus has no "statutory maximum." But the government's argument misunderstands the teaching of our cases. We've used the term "statutory maximum" to refer to the harshest sentence the law allows a court to impose based on facts a jury has found or the defendant has admitted. *Blakely* v. *Washington*, 542 U. S. 296, 303 (2004). In that sense, the statutory maximum for restitution is usually *zero*, because a court can't award *any* restitution without finding additional facts about the victim's loss. And just as a jury must find any facts necessary to authorize a steeper prison sentence or fine, it would seem to follow that a jury must find any facts necessary to support a (nonzero) restitution order.

The government is not without a backup argument, but it appears to bear problems of its own. The government suggests

that the Sixth Amendment doesn't apply to restitution orders because restitution isn't a criminal penalty, only a civil remedy that "compensates victims for [their] economic losses." Brief in Opposition 8 (internal quotation marks omitted). But the Sixth Amendment's jury trial right expressly applies "[i]n all criminal prosecutions," and the government concedes that "restitution is imposed as part of a defendant's criminal conviction." Brief in Opposition 8. Federal statutes, too, describe restitution as a "penalty" imposed on the defendant as part of his criminal sentence, as do our cases. 18 U. S. C. §§ 3663(a)(1)(A), 3663A(a)(1), 3572(d)(1); see *Paroline* v. *United States*, 572 U. S. 434, 456 (2014); *Pasquantino* v. *United States*, 544 U. S. 349, 365 (2005). Besides, if restitution really fell beyond the reach of the Sixth Amendment's protections in *criminal* prosecutions, we would then have to consider the Seventh Amendment and its independent protection of the right to a jury trial in *civil* cases.

If the government's arguments appear less than convincing, maybe it's because they're difficult to reconcile with the Constitution's original meaning. The Sixth Amendment was understood as preserving the "'historical role of the jury at common law.'" *Southern Union*, 567 U. S., at 353. And as long ago as the time of Henry VIII, an English statute entitling victims to the restitution of stolen goods allowed courts to order the return only of those goods mentioned in the indictment and found stolen by a jury. 1 J. Chitty, Criminal Law 817–820 (2d ed. 1816); 1 M. Hale, Pleas of the Crown 545 (1736). In America, too, courts held that in prosecutions for larceny, the jury usually had to find the value of the stolen property before restitution to the victim could be ordered. See, *e. g.*, *Schoonover* v. *State*, 17 Ohio St. 294 (1867); *Jones* v. *State*, 13 Ala. 153 (1848); *State* v. *Somerville*, 21 Me. 20 (1842); *Commonwealth* v. *Smith*, 1 Mass. 245 (1804). See also Barta, Guarding the Rights of the Accused and Accuser: The Jury's Role in Awarding Criminal Restitution Under the Sixth Amendment, 51 Am. Crim. L. Rev. 463, 472–476 (2014). And it's hard to see why the right to a jury trial should mean less to the people today than it did to those at the time of the Sixth and Seventh Amendments' adoption.

Respectfully, I would grant the petition for review.

No. 18–61. Stand Up for California! et al. *v.* Department of the Interior et al. C. A. D. C. Cir. Certiorari de-

nied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition. Reported below: 879 F. 3d 1177.

No. 18–64. LUCIO-RAYOS *v.* WHITAKER, ACTING ATTORNEY GENERAL. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 875 F. 3d 573.

No. 18–267. ELECTRONIC PRIVACY INFORMATION CENTER *v.* PRESIDENTIAL ADVISORY COMMISSION ON ELECTION INTEGRITY ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition. Reported below: 878 F. 3d 371.

No. 18–327. N. K., AN INFANT, BY HIS MOTHER AND NATURAL GUARDIAN, BRUESTLE-KUMRA *v.* ABBOTT LABORATORIES. C. A. 2d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 731 Fed. Appx. 24.

No. 18–370. HAIGHT *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition. Reported below: 892 F. 3d 1271.

No. 18–398. FCA US LLC ET AL. *v.* FLYNN ET AL. (two judgments). C. A. 7th Cir. Motion of CTIA–The Wireless Association et al. for leave to file brief as *amici curiae* granted. Motion of respondents for leave to file brief in opposition under seal with redacted copies for the public record granted. Certiorari denied.

No. 18–480. RAGHAVENDRA *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 18–513. MULCAHY *v.* ASPEN PITKIN COUNTY HOUSING AUTHORITY. Ct. App. Colo. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied.

No. 18–544. CANUTO *v.* DEPARTMENT OF DEFENSE ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition. Reported below: 723 Fed. Appx. 6.

No. 18–6376. ALBRA *v.* BOARD OF TRUSTEES OF MIAMI DADE COLLEGE ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition.

No. 18–6502. EPPERSON *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA. C. A. 9th Cir. Certiorari before judgment denied.

No. 18–6717. LEI YIN *v.* THERMO FISHER SCIENTIFIC. C. A. 1st Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 18–6783. SCOTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 890 F. 3d 1239.

No. 18–6854. DURHAM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 902 F. 3d 1180.

No. 18–6872. ABDUL-SALAAM *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 895 F. 3d 254.

No. 18–6915. ROBINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 599.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, dissenting.

I dissent for the reasons set out in *Brown* v. *United States*, 586 U. S. 953 (2018) (SOTOMAYOR, J., dissenting from denial of certiorari).

Rehearing Denied

No. 17–8502. AMBROSE *v.* TRIERWEILER, WARDEN, 584 U. S. 1037;

No. 17–8558. LONG *v.* UNITED STATES, 586 U. S. 918;

No. 17–8688. ASSA'AD-FALTAS *v.* CITY OF COLUMBIA, SOUTH CAROLINA, 586 U. S. 830;

No. 17–8842. JACKSON *v.* GEORGIA, 586 U. S. 834;

No. 17–8909. JARAMILLO *v.* NEW YORK, 586 U. S. 835;

No. 17–9004. STURGES *v.* CURTIN, WARDEN, 586 U. S. 838;

No. 17–9034. Taylor *v.* Jones, Secretary, Florida Department of Corrections, 586 U. S. 839;

No. 17–9292. Styles *v.* Department of Veterans Affairs, 586 U. S. 852;

No. 17–9306. Trinh *v.* Trinh, 586 U. S. 997;

No. 17–9363. McFarlin *v.* Harris, Clerk, Supreme Court of the United States, et al., 586 U. S. 856;

No. 17–9433. Junod *v.* United States, 586 U. S. 860;

No. 17–9461. Bulovic *v.* Stop & Shop Supermarket Co., LLC, et al., 586 U. S. 861;

No. 18–79. Klein et al. *v.* O'Brien et al., 586 U. S. 873;

No. 18–209. Mehta *v.* California, 586 U. S. 966;

No. 18–220. Carrillo et al. *v.* U. S. Bank N. A. et al., 586 U. S. 966;

No. 18–233. Indiezone, Inc., et al. *v.* Rooke et al., 586 U. S. 966;

No. 18–239. Rinaldo *v.* Mahan et al., 586 U. S. 966;

No. 18–271. Trost et ux. *v.* Trost, 586 U. S. 987;

No. 18–330. Greene *v.* Frost Brown Todd, LLC, et al., 586 U. S. 1021;

No. 18–382. Rab *v.* Superior Court of California, Sacramento County, et al., 586 U. S. 1021;

No. 18–401. Hobson *v.* Mattis, Secretary of Defense, 586 U. S. 1021;

No. 18–427. Bamdad *v.* United States, 586 U. S. 988;

No. 18–5075. Okafor *v.* United States, 586 U. S. 881;

No. 18–5106. Stewart *v.* Holder et al., 586 U. S. 883;

No. 18–5139. Runnels *v.* Bordelon, Warden, 586 U. S. 884;

No. 18–5161. Waddleton *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division, 586 U. S. 886;

No. 18–5325. Lasher *v.* United States, 586 U. S. 894;

No. 18–5366. Martin *v.* Trierweiler, Warden, 586 U. S. 896;

No. 18–5388. Roberts *v.* United States, 586 U. S. 897;

No. 18–5403. Dennis *v.* Oklahoma, 586 U. S. 922;

No. 18–5413. Lewis *v.* Hedgemon et al., 586 U. S. 922;

No. 18–5452. Reid *v.* United States District Court for the District of South Carolina, 586 U. S. 899;

No. 18–5519. Templeton *v.* Amsberry, Superintendent, Eastern Oregon Correctional Institution, et al., 586 U. S. 901;

No. 18–5530. Kaldawi *v.* State of Kuwait et al., 586 U. S. 946;

No. 18–5599. Chi *v.* United States, 586 U. S. 903;

No. 18–5602. Leonard *v.* Florida, 586 U. S. 947;

No. 18–5659. Cavalieri *v.* Virginia, 586 U. S. 969;

No. 18–5689. Bridgette *v.* Asuncion, Warden, et al., 586 U. S. 926;

No. 18–5719. Bartlett *v.* Pineda, Judge, Superior Court of Arizona, Maricopa County, et al., 586 U. S. 970;

No. 18–5720. Bartlett *v.* Pineda, Judge, Superior Court of Arizona, Maricopa County, et al., 586 U. S. 970;

No. 18–5732. LaConte *v.* United States, 586 U. S. 906;

No. 18–5782. Cook *v.* Ryan, Director, Arizona Department of Corrections, et al., 586 U. S. 972;

No. 18–5793. Johnston *v.* Florida, 586 U. S. 1004;

No. 18–5802. Doe *v.* Kaweah Delta Hospital et al., 586 U. S. 972;

No. 18–5829. Matelyan *v.* Atlantic Records et al., 586 U. S. 973;

No. 18–5885. Shannon *v.* United States, 586 U. S. 929;

No. 18–5887. Morton *v.* Haynes, Superintendent, Stafford Creek Corrections Center, 586 U. S. 974;

No. 18–5903. Jones *v.* Berryhill, Acting Commissioner of Social Security, et al., 586 U. S. 990;

No. 18–5977. Rafi *v.* Yale University School of Medicine et al., 586 U. S. 990;

No. 18–6017. Robey *v.* Washington, 586 U. S. 974;

No. 18–6074. Kuri *v.* Kansas Department of Labor, Employment Security Board of Review, 586 U. S. 991; and

No. 18–6166. Rafi *v.* Brigham and Women's Hospital et al., 586 U. S. 1040. Petitions for rehearing denied.

January 8, 2019

Dismissal Under Rule 46

No. 18–5707. Flowers *v.* United States. C. A. 8th Cir. Certiorari dismissed under this Court's Rule 46.1.

Miscellaneous Orders

No. 18A629 (18–281). VIRGINIA HOUSE OF DELEGATES ET AL. *v.* BETHUNE-HILL ET AL. D. C. E. D. Va. Application for stay, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

No. 18A669. IN RE GRAND JURY SUBPOENA. Application for stay, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied. The administrative stay previously entered by THE CHIEF JUSTICE is vacated.

No. 18–422. RUCHO ET AL. *v.* COMMON CAUSE ET AL. D. C. M. D. N. C. [Probable jurisdiction postponed, 586 U. S. 1062]; and

No. 18–726. LAMONE ET AL. *v.* BENISEK ET AL. D. C. Md. [Probable jurisdiction postponed, 586 U. S. 1063.] Appellants' briefs on the merits are to be filed on or before Friday, February 8, 2019. Appellees' briefs on the merits are to be filed on or before Monday, March 4, 2019. Reply briefs on the merits are to be filed in accordance with Rule 25.3 of the Rules of this Court. *Amicus curiae* briefs in support of appellants or in support of neither party are to be filed on or before Tuesday, February 12, 2019. *Amicus curiae* briefs in support of appellees are to be filed on or before Friday, March 8, 2019.

JANUARY 11, 2019

Certiorari Granted

No. 17–778. QUARLES *v.* UNITED STATES. C. A. 6th Cir. Certiorari granted. Reported below: 850 F. 3d 836.

No. 18–389. PARKER DRILLING MANAGEMENT SERVICES, LTD. *v.* NEWTON. C. A. 9th Cir. Certiorari granted. Reported below: 881 F. 3d 1078 and 888 F. 3d 1085.

No. 18–457. NORTH CAROLINA DEPARTMENT OF REVENUE *v.* KIMBERLEY RICE KAESTNER 1992 FAMILY TRUST. Sup. Ct. N. C. Certiorari granted. Reported below: 371 N. C. 133, 814 S. E. 2d 43.

No. 18–481. FOOD MARKETING INSTITUTE *v.* ARGUS LEADER MEDIA, DBA ARGUS LEADER. C. A. 8th Cir. Certiorari granted. Reported below: 889 F. 3d 914.

No. 18–485. MCDONOUGH *v.* SMITH, INDIVIDUALLY AND AS SPECIAL DISTRICT ATTORNEY FOR THE COUNTY OF RENSSELAER,

New York. C. A. 2d Cir. Certiorari granted. Reported below: 898 F. 3d 259.

No. 18–525. Fort Bend County, Texas *v.* Davis. C. A. 5th Cir. Certiorari granted. Reported below: 893 F. 3d 300.

No. 17–9560. Rehaif *v.* United States. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 888 F. 3d 1138.

No. 18–6210. Mitchell *v.* Wisconsin. Sup. Ct. Wis. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 2018 WI 84, 383 Wis. 2d 192, 914 N. W. 2d 151.

January 14, 2019

Certiorari Granted—Vacated and Remanded

No. 17–9467. White *v.* Kentucky. Sup. Ct. Ky. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Moore* v. *Texas*, 581 U. S. 1 (2017).

Justice Alito, with whom Justice Thomas and Justice Gorsuch join, dissenting.

The Court grants, vacates, and remands this case in light of *Moore* v. *Texas*, 581 U. S. 1 (2017). But *Moore* was handed down on March 28, 2017—almost five months before the Supreme Court of Kentucky reached a decision in this case. I would accordingly deny the petition for the reasons previously stated in my dissent in *Kaushal* v. *Indiana*, 585 U. S. 1028 (2018), and in Justice Scalia's dissenting opinion in *Webster* v. *Cooper*, 558 U. S. 1039, 1040 (2009).

Miscellaneous Orders

No. 18M88. Deuschel *v.* USC Faculty Dental Practice et al. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal granted.

No. 18–266. Dutra Group *v.* Batterton. C. A. 9th Cir. [Certiorari granted, 586 U. S. 1049.] Motion of petitioner to dispense with printing joint appendix granted.

No. 18–447. Alabama Department of Revenue et al. *v.* CSX Transportation, Inc.; and

No. 18–612. CSX TRANSPORTATION, INC. *v.* ALABAMA DEPARTMENT OF REVENUE ET AL. C. A. 11th Cir. The Solicitor General is invited to file a brief in these cases expressing the views of the United States.

No. 18–486. TOSHIBA CORP. *v.* AUTOMOTIVE INDUSTRIES PENSION TRUST FUND 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. 18–6611. PHILIPS *v.* NORTH CAROLINA ET AL. C. A. 4th Cir.;

No. 18–6780. FARR *v.* DAVIS ET AL. C. A. 10th Cir.; and

No. 18–7026. COATS *v.* UNITED STATES. C. A. 4th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until February 4, 2019, 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. 18–7097. IN RE QUINTO; and

No. 18–7135. IN RE HARRINGTON. Petitions for writs of habeas corpus denied.

Certiorari Denied

No. 17–1423. SIMPLY WIRELESS, INC. *v.* T-MOBILE US, INC., FKA T-MOBILE USA, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 877 F. 3d 522.

No. 17–1692. AHSAN *v.* STAPLES THE OFFICE SUPERSTORE EAST, INC. C. A. 2d Cir. Certiorari denied. Reported below: 710 Fed. Appx. 31.

No. 18–149. LAIR ET AL. *v.* MANGAN, COMMISSIONER OF POLITICAL PRACTICES, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 873 F. 3d 1170.

No. 18–317. METZGAR ET AL. *v.* KBR, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 893 F. 3d 241.

No. 18–324. LEONE ET UX., AS TRUSTEES UNDER THAT CERTAIN UNRECORDED LEONE-PERKINS FAMILY TRUST DATED AUGUST 26, 1999, AS AMENDED *v.* MAUI COUNTY, HAWAII, ET AL. Sup. Ct. Haw. Certiorari denied.

No. 18–394. KELLEHER ET UX. *v.* NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 159 App. Div. 3d 822, 69 N. Y. S. 3d 832.

No. 18–573. COLONY COVE PROPERTIES, LLC *v.* CITY OF CARSON, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 888 F. 3d 445.

No. 18–604. DELFIERRO *v.* PENSCO TRUST CO., FBO HERMANN. C. A. 9th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 720.

No. 18–607. VAZEEN, AKA VAZIN *v.* VAZIN. Ct. App. Tenn. Certiorari denied.

No. 18–610. TIENERGY, LLC *v.* WISCONSIN CENTRAL LTD. C. A. 7th Cir. Certiorari denied. Reported below: 894 F. 3d 851.

No. 18–620. SIMMONS *v.* PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 731 Fed. Appx. 160.

No. 18–631. MCCABE *v.* ARANDA ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 896 F. 3d 792.

No. 18–635. BURMASTER *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 744 Fed. Appx. 699.

No. 18–638. ANDERSON *v.* HERBERT ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 745 Fed. Appx. 63.

No. 18–641. J. M., BY AND THROUGH HIS MOTHER, MANDEVILLE *v.* MATAYOSHI, SUPERINTENDENT, HAWAII PUBLIC SCHOOLS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 585.

No. 18–643. DUNKLE *v.* DALE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 616.

No. 18–644. COTTINGHAM *v.* WASHINGTON STATE BAR ASSN. ET AL. Sup. Ct. Wash. Certiorari denied. Reported below: 191 Wash. 2d 450, 423 P. 3d 818.

No. 18–668. BERG *v.* SOCIAL SECURITY ADMINISTRATION. C. A. 7th Cir. Certiorari denied. Reported below: 900 F. 3d 864.

No. 18–671. SMITH *v.* VALENTINE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 178.

No. 18–690. ROSETTO ET AL. *v.* MURPHY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 517.

No. 18–693. CRAIN *v.* NEVADA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 591.

No. 18–711. MARIN ET AL. *v.* BANK OF NEW YORK. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 257 So. 3d 128.

No. 18–715. CARPENTER-BARKER *v.* OHIO DEPARTMENT OF MEDICAID ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 752 Fed. Appx. 215.

No. 18–730. MCCORMICK ET AL. *v.* BROWNE ET AL. C. A. 6th Cir. Certiorari denied.

No. 18–738. RICHARDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 327.

No. 18–739. WALLACE *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 18–745. OVERTON *v.* TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES. Ct. App. Tenn. Certiorari denied.

No. 18–5135. HONISH *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–5763. WOOTEN *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2018 Ark. 198, 547 S. W. 3d 683.

No. 18–6162. LEMEUNIER-FITZGERALD *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 2018 ME 85, 188 A. 3d 183.

No. 18–6309. HARDY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 5 Cal. 5th 56, 418 P. 3d 309.

No. 18–6471. HAYNES *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 766.

No. 18–6598. ROBINSON *v.* BAYNES. C. A. 6th Cir. Certiorari denied.

No. 18–6615. RILEY *v.* DORETHY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 838.

No. 18–6621. VANG *v.* ROY, COMMISSIONER, MINNESOTA DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied.

No. 18–6624. MORRIS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 18–6626. MILLER *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 18–6631. HOLLENBACK *v.* CLARK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–6633. FREMIN *v.* TANNER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 18–6634. LEONEL GONZALEZ *v.* ARMENTA ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–6635. HAMPTON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 18–6636. GRIFFIN *v.* ARNOLD, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–6640. HUNDLEY *v.* BAKER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–6641. FAHIE *v.* MCDOWELL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–6643. ISKANDER *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–6644. JINGYUAN FENG *v.* KOMENDA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 699 Fed. Appx. 580.

No. 18–6645. HOPSON *v.* STARK COUNTY, OHIO, ET AL. C. A. 6th Cir. Certiorari denied.

No. 18–6646. DAVIS *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 245 So. 3d 745.

No. 18–6648. ESCOBEDO *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 718 Fed. Appx. 297.

No. 18–6649. DAVIS *v.* BROWN & DORTCH LLC ET AL. Ct. Sp. App. Md. Certiorari denied.

No. 18–6651. COBB *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 246 So. 3d 1244.

No. 18–6655. MILLER *v.* MACLAREN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 737 Fed. Appx. 269.

No. 18–6656. PRINCE *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–6657. KHOSHMOOD *v.* DISTRICT OF COLUMBIA HOUSING AUTHORITY HEADQUARTERS. C. A. D. C. Cir. Certiorari denied. Reported below: 727 Fed. Appx. 703.

No. 18–6658. VETETO *v.* DUNN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. Ct. Civ. App. Ala. Certiorari denied. Reported below: 268 So. 3d 49.

No. 18–6663. ESCOBAR *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2017 IL App (1st) 151963–U.

No. 18–6668. TORY *v.* WHITED ET AL. Sup. Ct. Va. Certiorari denied.

No. 18–6669. CHESTNUT *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 18–6670. BARKER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 18–6674. RHYMES *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied. Reported below: 536 S. W. 3d 85.

No. 18–6685. MERRYMAN *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–6686. PEDERSON *v.* MINNESOTA ET AL. C. A. 8th Cir. Certiorari denied.

No. 18–6688. LEONARD *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 18–6690. LAWSON *v.* SPEIGHT ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–6696. TORRES ORTEGA *v.* BONDI, ATTORNEY GENERAL OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 18–6699. DRANE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 18–6701. EPPERSON *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 18–6704. ZEMKE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 18–6709. LANDRUM *v.* OHIO. Ct. App. Ohio, 4th App. Dist., Ross County. Certiorari denied. Reported below: 2018-Ohio-1280.

No. 18–6710. TYLER *v.* MAIN INDUSTRIES, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 275.

No. 18–6724. OZIER *v.* HARRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–6730. RAMIREZ ET AL. *v.* SUPERIOR COURT OF CALIFORNIA, EL DORADO COUNTY, ET AL. Sup. Ct. Cal. Certiorari denied.

No. 18–6751. MCINTOSH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 900 F. 3d 1301.

No. 18–6754. MCCARNS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 900 F. 3d 1141.

No. 18–6756. KORESKO *v.* ACOSTA, SECRETARY OF LABOR. C. A. 3d Cir. Certiorari denied. Reported below: 726 Fed. Appx. 127.

No. 18–6831. WILLOCK *v.* SPERFSLAGE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 18–6860. MCCLOUD *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–6874. CORNELIUS *v.* TOWN OF ATKINSON, NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied.

No. 18–6939. NELSON *v.* NORWOOD, SECRETARY, KANSAS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 935.

No. 18–6941. CHAPMAN *v.* LAMPERT, DIRECTOR, WYOMING DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. Wyo. Certiorari denied.

No. 18–6955. HARRISON *v.* FULTON COUNTY, GEORGIA. C. A. 11th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 579.

No. 18–6971. COOLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 748 Fed. Appx. 957.

No. 18–6980. MARTIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 748 Fed. Appx. 501.

No. 18–6983. WEISS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–6984. TILLMAN *v.* BARNHART, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 361.

No. 18–6986. CLOUD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 727.

No. 18–6994. MEADOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 748 Fed. Appx. 488.

No. 18–6995. OWENS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 299.

No. 18–6996. CURSHEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–7004. RODRIGUEZ-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 748 Fed. Appx. 597.

No. 18–7005. AVILES SALGUERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 748 Fed. Appx. 109.

No. 18–7007. SPOOR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 904 F. 3d 141.

No. 18–7009. DAVIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 748 Fed. Appx. 449.

No. 18–7010. MITCHELL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 904 F. 3d 25.

No. 18–7012. ADDISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 18–7021. THOMAS *v.* JOHNSON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–7023. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 253.

No. 18–7029. RUELAS-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 737 Fed. Appx. 228.

No. 18–7032. LOMAX *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 744 Fed. Appx. 754.

No. 18–7035. REODICA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 747 Fed. Appx. 535.

No. 18–7037. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–7039. NDAULA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 18–7044. YELLOWBEAR *v.* LAMPERT, DIRECTOR, WYOMING DEPARTMENT OF CORRECTIONS. Sup. Ct. Wyo. Certiorari denied.

No. 18–7050. PORTILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 478.

No. 18–7060. SCHUMAKER *v.* JOYNER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 181.

No. 18–7061. REZA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 253.

No. 18–7065. LOBO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 749 Fed. Appx. 31.

No. 18–7066. JONES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 18–7067. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 221.

No. 18–7074. MATTIACCIO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 266.

No. 18–7076. PERSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 745 Fed. Appx. 380.

No. 18–7110. FLINN *v.* PARRIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–307. STATE NATIONAL BANK OF BIG SPRING ET AL. *v.* MNUCHIN, SECRETARY OF THE TREASURY, ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition.

No. 18–391. ARIZONA *v.* GOODMAN. Sup. Ct. Ariz. Motions of Arizona Voice for Crime Victims, Inc., et al. and Michael C. Dorf et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 244 Ariz. 22, 417 P. 3d 787.

No. 18–496. MICHAELS *v.* WHITAKER, ACTING ATTORNEY GENERAL, ET AL. C. A. 9th Cir. Motion of petitioner to substitute denied. Certiorari denied. Reported below: 700 Fed. Appx. 757.

No. 18–650. CABRERA-RANGEL *v.* UNITED STATES. C. A. 5th Cir. Motion of Cato Institute for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 730 Fed. Appx. 227.

No. 18–6617. RUDZAVICE *v.* HARMON, WARDEN. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 734 Fed. Appx. 317.

No. 18–6713. GRANT *v.* CARPENTER, INTERIM WARDEN. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 886 F. 3d 874.

Rehearing Denied

No. 17–7364. GORAYA *v.* FLORIDA, 583 U. S. 1171;

No. 17–8816. ACKERMAN ET AL. *v.* BANK OF NEW YORK MELLON, 586 U. S. 833;

No. 17–9500. SWINTON *v.* RACETTE, SUPERINTENDENT, GREAT MEADOWS CORRECTIONAL FACILITY, 586 U. S. 863;

No. 17–9540. FARMER *v.* UNITED STATES, 586 U. S. 866;

No. 18–5131. TU MY TONG *v.* NEW MEXICO ET AL., 586 U. S. 884;

No. 18–5180. WEN LIU *v.* UNIVERSITY OF MIAMI SCHOOL OF MEDICINE, 586 U. S. 887;

No. 18–5429. GARRY *v.* TRANE CO., 586 U. S. 922;

No. 18–5499. SANCHEZ *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, 586 U. S. 924;

No. 18–5523. SANCHEZ *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, 586 U. S. 925;

No. 18–5920. ROLLAND *v.* CARNATION BUILDING SERVICES, INC., 586 U. S. 1000;

No. 18–5981. PASTOR *v.* PARTNERSHIP FOR CHILDREN'S RIGHTS, 586 U. S. 990;

No. 18–6046. SKILLERN *v.* UNITED STATES, 586 U. S. 952; and

No. 18–6050. RODRIGUEZ *v.* BURTON, WARDEN, 586 U. S. 1001. Petitions for rehearing denied.

No. 18–5810. CHIRINO RIVERA *v.* UNITED STATES, 586 U. S. 938. Petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 18–5925. LOREN *v.* CITY OF NEW YORK, NEW YORK, ET AL., 586 U. S. 1029. Petition for rehearing denied. THE CHIEF JUSTICE, JUSTICE GINSBURG, and JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

JANUARY 22, 2019

Dismissal Under Rule 46

No. 18–636. PURE PRESBYTERIAN CHURCH OF WASHINGTON ET AL. *v.* GRACE OF GOD PRESBYTERIAN CHURCH. Sup. Ct. Va. Certiorari dismissed under this Court's Rule 46.1. Reported below: 296 Va. 42, 817 S. E. 2d 547.

Certiorari Dismissed

No. 18–6684. MATELYAN *v.* FOX 11. 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. 18–6736. WHITNEY *v.* GLOVER, CLERK, CIRCUIT COURT OF LINCOLN COUNTY, ARKANSAS, ET AL. C. A. 8th Cir. Motion

of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 18–7048. NANCE *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). Reported below: 732 Fed. Appx. 246.

Miscellaneous Orders

No. 18A625. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. *v.* KARNOSKI ET AL. D. C. W. D. Wash. Application for stay, presented to JUSTICE KAGAN, and by her referred to the Court, granted, and the District Court's December 11, 2017, order granting preliminary injunction is stayed pending disposition of the Government's appeal in the United States Court of Appeals for the Ninth Circuit and disposition of the Government's petition for writ of certiorari, if such writ is sought. If a writ of certiorari is sought and the Court denies the petition, this order shall terminate automatically. If the Court grants the petition for writ of certiorari, this order shall terminate when the Court enters its judgment. JUSTICE GINSBURG, JUSTICE BREYER, JUSTICE SOTOMAYOR, and JUSTICE KAGAN would deny the application.

No. 18A627. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. *v.* STOCKMAN ET AL. D. C. C. D. Cal. Application for stay presented to JUSTICE KAGAN, and by her referred to the Court, granted, and the District Court's December 22, 2017, order granting preliminary injunction is stayed pending disposition of the Government's appeal in the United States Court of Appeals for the Ninth Circuit and disposition of the Government's petition for writ of certiorari, if such writ is sought. If a writ of certiorari is sought and the Court denies the petition, this order shall terminate automatically. If the Court grants the petition for writ of certiorari, this order shall terminate when the Court enters its judgment. JUSTICE GINSBURG, JUSTICE BREYER, JUSTICE SOTOMAYOR, and JUSTICE KAGAN would deny the application.

No. 18A669. IN RE GRAND JURY SUBPOENA. Applications for leave to file the application for stay, the response, and the reply under seal presented to THE CHIEF JUSTICE, and by him referred to the Court, granted.

No. 18M89. BALTAZAR GARCIA *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal granted.

No. 18M90. HARRIS *v.* FULLER. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 18M93. IN RE GRAND JURY SUBPOENA. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 17–1657. MISSION PRODUCT HOLDINGS, INC. *v.* TEMPNOLOGY, LLC, NKA OLD COLD LLC. C. A. 1st Cir. [Certiorari granted, 586 U. S. 960.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 17–1705. PDR NETWORK, LLC, ET AL. *v.* CARLTON & HARRIS CHIROPRACTIC, INC. C. A. 4th Cir. [Certiorari granted, 586 U. S. 996.] Motion of petitioners to dispense with printing joint appendix granted.

No. 17–1717. AMERICAN LEGION ET AL. *v.* AMERICAN HUMANIST ASSN. ET AL.; and

No. 18–18. MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION *v.* AMERICAN HUMANIST ASSN. ET AL. C. A. 4th Cir. [Certiorari granted, 586 U. S. 985.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Joint motion of petitioners for enlargement of time for oral argument and for divided argument granted, and the time is divided as follows: 15 minutes for petitioner in No. 18–18, 10 minutes for petitioners in No. 17–1717, 10 minutes for the Acting Solicitor General as *amicus curiae*, and 35 minutes for respondents.

No. 18–6048. IN RE SPOTTSVILLE. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [586 U. S. 943] denied.

No. 18–6745. IN RE SPENCER; and

No. 18–6868. IN RE ROUKIS. Petitions for writs of mandamus denied.

No. 18–6825. IN RE SHEPHARD. Petition for writ of mandamus and/or prohibition denied. THE CHIEF JUSTICE and JUSTICE KAVANAUGH took no part in the consideration or decision of this petition.

Certiorari Granted

No. 18–280. NEW YORK STATE RIFLE & PISTOL ASSN., INC., ET AL. *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 883 F. 3d 45.

Certiorari Denied

No. 17–6891. WOOD *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 17–6943. JONES *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 18–475. ZAREMBA FAMILY FARMS, INC., ET AL. *v.* ENCANA OIL & GAS (USA) INC. C. A. 6th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 557.

No. 18–500. FIRST PRESBYTERIAN CHURCH U. S. A. OF TULSA, OKLAHOMA, ET AL. *v.* DOE. Sup. Ct. Okla. Certiorari denied. Reported below: 2017 OK 106, 421 P. 3d 284.

No. 18–506. HASSELL ET AL. *v.* YELP, INC. Sup. Ct. Cal. Certiorari denied. Reported below: 5 Cal. 5th 522, 420 P. 3d 776.

No. 18–561. BERKLEY ET AL. *v.* FEDERAL ENERGY REGULATORY COMMISSION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 896 F. 3d 624.

No. 18–615. MUNRO ET AL. *v.* LUCY ACTIVEWEAR INC. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 899 F. 3d 585.

No. 18–618. GUTIERREZ ET AL. *v.* WELLS FARGO BANK, N. A., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 889 F. 3d 1230.

No. 18–628. COOPER, AS ADMINISTRATOR OF THE ESTATE OF COOPER, DECEASED *v.* HAQ ET AL. Sup. Ct. Ala. Certiorari denied.

No. 18–630. RICHARDS *v.* CITY OF DES MOINES POLICE DEPARTMENT ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 821.

No. 18–634. EL-SABA *v.* UNIVERSITY OF SOUTH ALABAMA. C. A. 11th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 640.

No. 18–646. MARQUETTE TRANSPORTATION CO., L. L. C., ET AL. *v.* ENTERGY MISSISSIPPI, INC. C. A. 5th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 800.

No. 18–647. PULTE HOMES OF NEW YORK LLC *v.* TOWN OF CARMEL, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 736 Fed. Appx. 291.

No. 18–655. SPITZER *v.* ALJOE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 734 Fed. Appx. 457.

No. 18–659. MASOMI *v.* MADADI. C. A. 1st Cir. Certiorari denied.

No. 18–660. TAGGART *v.* WELLS FARGO BANK, N. A., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 723 Fed. Appx. 127.

No. 18–662. MCDONALD *v.* CITY OF WICHITA, KANSAS. C. A. 10th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 529.

No. 18–665. ALVIS *v.* SCHILLING. C. A. 10th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 453.

No. 18–764. STEINMETZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 900 F. 3d 595.

No. 18–793. BREWSTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 718 Fed. Appx. 197.

No. 18–5694. JAMES *v.* ASUNCION, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 451.

No. 18–5760. BROWN *v.* MANSUKHANI, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 320.

No. 18–5965. HARMON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 879.

No. 18–6062. RUBI IBARRA *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 814.

No. 18–6097. MARQUEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 884.

No. 18–6330. ARNALDO RODRIGUES *v.* DAVIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 918.

No. 18–6375. WHISBY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–6378. PEEDE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 249 So. 3d 1181.

No. 18–6650. DUPLESSIS-JEAN, AKA DUPLESSIS, AKA JEAN *v.* WHITAKER, ACTING ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 18–6708. WILLIAMS *v.* OHIO. Ct. App. Ohio, 12th App. Dist., Butler County. Certiorari denied. Reported below: 2018-Ohio-1358.

No. 18–6722. PORTER *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 540 S. W. 3d 178.

No. 18–6735. TAYLOR *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 246 So. 3d 231.

No. 18–6740. LASHER *v.* BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS, PENNSYLVANIA STATE BOARD OF PHARMACY. Commw. Ct. Pa. Certiorari denied.

No. 18–6743. KULICK *v.* LEISURE VILLAGE ASSN., INC. C. A. 9th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 439.

No. 18–6744. SCHAEFER *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CRIMINAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–6749. BARNES *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 888 F. 3d 1148.

No. 18–6762. THOMAS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 18–6769. MIDDLETON *v.* PASH, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. Sup. Ct. Mo. Certiorari denied.

No. 18–6785. SCOTT *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied.

No. 18–6786. HILL *v.* LIZARRAGA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 686.

No. 18–6788. BEAN *v.* HAMILTON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 324.

No. 18–6790. OTWORTH *v.* TRUMP, PRESIDENT OF THE UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 728 Fed. Appx. 6.

No. 18–6832. WEST *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 344 Ga. App. 274, 808 S. E. 2d 914.

No. 18–6843. DAILEY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 247 So. 3d 390.

No. 18–6880. LENZ *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–6889. BOOKER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 252 So. 3d 723.

No. 18–6945. WASHINGTON *v.* FRAUENHEIM, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–6973. MINOR *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 18–7072. HARPER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 737 Fed. Appx. 17.

No. 18–7077. PULHAM *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 937.

No. 18–7078. O'SHAUGHNESSY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–7079. MORILLO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 910 F. 3d 1.

No. 18–7108. PRYER *v.* GARDNER. Sup. Ct. Miss. Certiorari denied. Reported below: 247 So. 3d 1245.

No. 18–7138. ALVAREZ-MORENO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 465.

No. 18–7144. RUSSELL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 904 F. 3d 111.

No. 18–7156. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 752 Fed. Appx. 771.

No. 18–12. KENNEDY *v.* BREMERTON SCHOOL DISTRICT. C. A. 9th Cir. Certiorari denied. Reported below: 869 F. 3d 813.

Statement of JUSTICE ALITO, with whom JUSTICE THOMAS, JUSTICE GORSUCH, and JUSTICE KAVANAUGH join, respecting the denial of certiorari.

I concur in the denial of the petition for a writ of certiorari because denial of certiorari does not signify that the Court necessarily agrees with the decision (much less the opinion) below. In this case, important unresolved factual questions would make it very difficult if not impossible at this stage to decide the free speech question that the petition asks us to review.

I

Petitioner Joseph Kennedy claims that he lost his job as football coach at a public high school because he engaged in conduct that was protected by the Free Speech Clause of the First Amendment. He sought a preliminary injunction awarding two forms of relief: (1) restoration to his job and (2) an order requiring the school to allow him to pray silently on the 50-yard line after each football game. The latter request appears to depend on petitioner's entitlement to the first—to renewed employment—since it seems that the school would not permit members of the general public to access the 50-yard line at the relevant time.

The key question, therefore, is whether petitioner showed that he was likely to prevail on his claim that the termination of his employment violated his free speech rights, and in order to answer that question it is necessary to ascertain what he was likely to be able to prove regarding the basis for the school's action.

Unfortunately, the answer to this second question is far from clear.

On October 23, 2015, the superintendent wrote to petitioner to explain why the district found petitioner's conduct at the then-most recent football game to be unacceptable. And in that letter, the superintendent gave two quite different reasons: first, that petitioner, in praying on the field after the game, neglected his responsibility to supervise what his players were doing at that time and, second, that petitioner's conduct would lead a reasonable observer to think that the district was endorsing religion because he had prayed while "on the field, under the game lights, in BHS-logoed attire, in front of an audience of event attendees." 869 F. 3d 813, 819 (CA9 2017). After two subsequent games, petitioner again kneeled on the field and prayed, and the superintendent then wrote to petitioner, informing him that he was being placed on leave and was forbidden to participate in any capacity in the school football program. The superintendent's letter reiterated the two reasons given in his letter of October 23. And the district elaborated on both reasons in an official public statement explaining the reasons for its actions.

When the case was before the District Court, the court should have made a specific finding as to what petitioner was likely to be able to show regarding the reason or reasons for his loss of employment. If the likely reason was simply petitioner's neglect of his duties—if, for example, he was supposed to have been actively supervising the players after they had left the field but instead left them unsupervised while he prayed on his own—his free speech claim would likely fail. Under those circumstances, it would not make any difference that he was praying as opposed to engaging in some other private activity at that time. On the other hand, his free speech claim would have far greater weight if petitioner was likely to be able to establish either that he was not really on duty at the time in question or that he was on duty only in the sense that his workday had not ended and that his prayer took place at a time when it would have been permissible for him to engage briefly in other private conduct, say, calling home or making a reservation for dinner at a local restaurant.

Unfortunately, the District Court's brief, informal oral decision did not make any clear finding about what petitioner was likely to be able to prove. Instead, the judge's comments melded the two distinct justifications:

> "He was still in charge. He was still on the job. He was still responsible for the conduct of his students, his team. . . . And a reasonable observer, in my judgment, would have seen him as a coach, participating, in fact leading an orchestrated session of faith . . . ." App. to Pet. for Cert. 89.

The decision of the Ninth Circuit was even more imprecise on this critical point. Instead of attempting to pinpoint what petitioner was likely to be able to prove regarding the reason or reasons for his loss of employment, the Ninth Circuit recounted all of petitioner's prayer-related activities over the course of several years, including conduct in which he engaged as a private citizen, such as praying in the stands as a fan after he was suspended from his duties.

If this case were before us as an appeal within our mandatory jurisdiction, our clear obligation would be to vacate the decision below with instructions that the case be remanded to the District Court for proper application of the test for a preliminary injunction, including a finding on the question of the reason or reasons for petitioner's loss of employment. But the question before us is different. It is whether we should grant discretionary review, and we generally do not grant such review to decide highly fact-specific questions. Here, although petitioner's free speech claim may ultimately implicate important constitutional issues, we cannot reach those issues until the factual question of the likely reason for the school district's conduct is resolved. For that reason, review of petitioner's free speech claim is not warranted at this time.

II

While I thus concur in the denial of the present petition, the Ninth Circuit's understanding of the free speech rights of public school teachers is troubling and may justify review in the future.

The Ninth Circuit's opinion applies our decision in *Garcetti* v. *Ceballos*, 547 U. S. 410 (2006), to public school teachers and coaches in a highly tendentious way. According to the Ninth Circuit, public school teachers and coaches may be fired if they engage in any expression that the school does not like while they are on duty, and the Ninth Circuit appears to regard teachers and coaches as being on duty at all times from the moment they report for work to the moment they depart, provided that they are within the eyesight of students. Under this interpretation of *Garcetti*, if teachers are visible to a student while eating lunch, they can be ordered not to engage in any "demonstrative" conduct

of a religious nature, such as folding their hands or bowing their heads in prayer. And a school could also regulate what teachers do during a period when they are not teaching by preventing them from reading things that might be spotted by students or saying things that might be overheard.

This Court certainly has never read *Garcetti* to go that far. While *Garcetti* permits a public employer to regulate employee speech that is part of the employee's job duties, we warned that a public employer cannot convert private speech into public speech "by creating excessively broad job descriptions." *Id.*, at 424. If the Ninth Circuit continues to apply its interpretation of *Garcetti* in future cases involving public school teachers or coaches, review by this Court may be appropriate.

What is perhaps most troubling about the Ninth Circuit's opinion is language that can be understood to mean that a coach's duty to serve as a good role model requires the coach to refrain from any manifestation of religious faith—even when the coach is plainly not on duty. I hope that this is not the message that the Ninth Circuit meant to convey, but its opinion can certainly be read that way. After emphasizing that petitioner was hired to "communicate a positive message through the example set by his own conduct," the court criticized him for "his media appearances and prayer in the BHS bleachers (while wearing BHS apparel and surrounded by others)." 869 F. 3d, at 826. This conduct, in the opinion of the Ninth Circuit, "signal[ed] his intent to send a message to students and parents about appropriate behavior and what he values as a coach." *Ibid.* But when petitioner prayed in the bleachers, he had been suspended. He was attending a game like any other fan. The suggestion that even while off duty, a teacher or coach cannot engage in any outward manifestation of religious faith is remarkable.

III

While the petition now before us is based solely on the Free Speech Clause of the First Amendment, petitioner still has live claims under the Free Exercise Clause of the First Amendment and Title VII of the Civil Rights Act of 1964. See Brief in Opposition 11, n. 1. Petitioner's decision to rely primarily on his free speech claims as opposed to these alternative claims may be due to certain decisions of this Court.

In *Employment Div., Dept. of Human Resources of Ore.* v. *Smith*, 494 U. S. 872 (1990), the Court drastically cut back on the

protection provided by the Free Exercise Clause, and in *Trans World Airlines, Inc.* v. *Hardison*, 432 U. S. 63 (1977), the Court opined that Title VII's prohibition of discrimination on the basis of religion does not require an employer to make any accommodation that imposes more than a *de minimis* burden. In this case, however, we have not been asked to revisit those decisions.

No. 18–676. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. *v.* KARNOSKI ET AL. C. A. 9th Cir. Motion of Foundation for Moral Law for leave to file brief as *amicus curiae* granted. Certiorari before judgment denied.

No. 18–677. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. *v.* DOE ET AL. C. A. D. C. Cir. Certiorari before judgment denied.

No. 18–678. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. *v.* STOCKMAN ET AL. C. A. 9th Cir. Certiorari before judgment denied.

No. 18–6882. CRAIN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 246 So. 3d 206.

JUSTICE SOTOMAYOR, dissenting.

I dissent for the reasons set out in *Reynolds* v. *Florida*, 586 U. S. 1004, 1011 (2018) (SOTOMAYOR, J., dissenting from denial of certiorari).

Rehearing Denied

No. 17–9054. TOWBRIDGE *v.* FLORIDA, 586 U. S. 840;

No. 17–9213. WILLIAMS *v.* KENT, WARDEN, 586 U. S. 848;

No. 18–344. SHAO *v.* MCMANIS FAULKNER, LLP, 586 U. S. 1021;

No. 18–5420. HEAGY *v.* PENNSYLVANIA, 586 U. S. 922;

No. 18–5548. TUTTLE *v.* ALLIED NEVADA GOLD CORP. ET AL., 586 U. S. 1000; and

No. 18–5569. WEISNER *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, 586 U. S. 947. Petitions for rehearing denied.

JANUARY 30, 2019

Certiorari Denied

No. 18–6848 (18A540). JENNINGS *v.* TEXAS. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, pre-

sented to JUSTICE ALITO, and by him referred to the Court, denied. Certiorari denied. Reported below: 662 S. W. 3d 379.

No. 18–7650 (18A775). JENNINGS *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE ALITO, and by him referred to the Court, denied. Certiorari denied. Reported below: 760 Fed. Appx. 319.

FEBRUARY 1, 2019

Dismissal Under Rule 46

No. 18–625. CITY OF MIAMI, FLORIDA *v.* SMART. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 46.1 Reported below: 740 Fed. Appx. 952.

FEBRUARY 7, 2019

Miscellaneous Orders

No. 18A774. JUNE MEDICAL SERVICES, L. L. C., ET AL. *v.* GEE, SECRETARY, LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS. Application for stay, presented to JUSTICE ALITO, and by him referred to the Court, granted, and the mandate of the United States Court of Appeals for the Fifth Circuit in case No. 17–30397 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 sending down of the judgment of this Court. JUSTICE THOMAS, JUSTICE ALITO, JUSTICE GORSUCH, and JUSTICE KAVANAUGH would deny the application.

JUSTICE KAVANAUGH, dissenting.

I respectfully dissent from the Court's stay order. In this case, the plaintiffs raised a pre-enforcement facial challenge to Louisiana's new admitting-privileges requirement for doctors who perform abortions. The Fifth Circuit rejected the plaintiffs' facial challenge based on that court's factual prediction that the new law would not affect the availability of abortions from, as relevant here, the four doctors who currently perform abortions at Louisiana's three abortion clinics. In particular, the Fifth Circuit determined that the four doctors likely could obtain admitting privi-

leges. The plaintiffs seek a stay of the Fifth Circuit's mandate. They argue that the Fifth Circuit's factual prediction is inaccurate because, according to the plaintiffs, three of those four doctors will not be able to obtain admitting privileges. As I explain below, even without a stay, the status quo will be effectively preserved for all parties during the State's 45-day regulatory transition period. I would deny the stay without prejudice to the plaintiffs' ability to bring a later as-applied complaint and motion for preliminary injunction at the conclusion of the 45-day regulatory transition period if the Fifth Circuit's factual prediction about the doctors' ability to obtain admitting privileges proves to be inaccurate.

Louisiana's new law requires doctors who perform abortions to have admitting privileges at a nearby hospital. The question presented to us at this time is whether the law imposes an undue burden under our decision in *Whole Woman's Health* v. *Hellerstedt*, 579 U. S. 582 (2016). All parties, including the State of Louisiana, agree that *Whole Woman's Health* is the governing precedent for purposes of this stay application. I therefore will analyze the stay application under that precedent.

Louisiana has three clinics that currently provide abortions. As relevant here, four doctors perform abortions at those three clinics. One of those four doctors has admitting privileges at a nearby hospital, as required by the new law. The question is whether the other three doctors—Doe 2, Doe 5, and Doe 6—can obtain the necessary admitting privileges. If they can, then the three clinics could continue providing abortions. And if so, then the new law would not impose an undue burden for purposes of *Whole Woman's Health*. By contrast, if the three doctors cannot obtain admitting privileges, then one or two of the three clinics would not be able to continue providing abortions. If so, then even the State acknowledges that the new law might be deemed to impose an undue burden for purposes of *Whole Woman's Health*.

The law has not yet taken effect, so the case comes to us in the context of a pre-enforcement facial challenge. That means that the parties have offered, in essence, competing *predictions* about whether those three doctors can obtain admitting privileges. The District Court concluded that the three doctors likely could not obtain admitting privileges. The District Court therefore enjoined the law. The Court of Appeals for the Fifth Circuit

concluded that the three doctors likely could obtain admitting privileges. The Fifth Circuit therefore lifted the injunction.

Before us, the case largely turns on the intensely factual question whether the three doctors—Doe 2, Doe 5, and Doe 6—can obtain admitting privileges. If we denied the stay, that question could be readily and quickly answered without disturbing the status quo or causing harm to the parties or the affected women, and without this Court's further involvement at this time. That is because the State's regulation provides that there will be a 45-day regulatory transition period before the new law is applied. The State represents, moreover, that Louisiana will not "move aggressively to enforce the challenged law" during the transition period, Objection to Emergency Application for Stay 2, and further represents that abortion providers will not "immediately be forced to cease operations," *id.*, at 25. Louisiana's regulation together with its express representations to this Court establish that even without admitting privileges, these three doctors (Doe 2, Doe 5, and Doe 6) could lawfully continue to perform abortions at the clinics during the 45-day transition period. Furthermore, during the 45-day transition period, both the doctors and the relevant hospitals could act expeditiously and in good faith to reach a definitive conclusion about whether those three doctors can obtain admitting privileges.

If the doctors, after good-faith efforts during the 45-day period, cannot obtain admitting privileges, then the Fifth Circuit's factual predictions, which were made in the context of a pre-enforcement facial challenge, could turn out to be inaccurate as applied. And if that turns out to be the case, then even the State acknowledges that the law as applied might be deemed to impose an undue burden for purposes of *Whole Woman's Health*. In that circumstance, the plaintiffs could file an as-applied complaint or motion for preliminary injunction in the District Court, and the District Court could consider under *Whole Woman's Health* whether to enter a preliminary or permanent injunction.

On the other hand, if the doctors can obtain necessary admitting privileges during the 45-day transition period, then the doctors could continue performing abortions at the three clinics both during and after the 45-day transition period, as envisioned and predicted by the Fifth Circuit. And in that circumstance, the Louisiana law as applied would not impose an undue burden under *Whole Woman's Health*.

In order to resolve the factual uncertainties presented in the stay application about the three doctors' ability to obtain admitting privileges, I would deny the stay without prejudice to the plaintiffs' ability to bring a later as-applied complaint and motion for preliminary injunction at the conclusion of the 45-day regulatory transition period. The Court adopts an approach—granting the stay and presumably then granting certiorari for plenary review next Term of the plaintiffs' pre-enforcement facial challenge—that will take far longer and be no more beneficial than the approach suggested here. I respectfully dissent from the Court's stay order.

No. 18A815. Dunn, Commissioner, Alabama Department of Corrections *v.* Ray. Application to vacate stay of execution of sentence of death, entered by the United States Court of Appeals for the Eleventh Circuit on February 6, 2019, presented to Justice Thomas, and by him referred to the Court, granted.

On November 6, 2018, the State scheduled Domineque Ray's execution date for February 7, 2019. Because Ray waited until January 28, 2019, to seek relief, we grant the State's application to vacate the stay entered by the Court of Appeals. See *Gomez* v. *United States Dist. Court for Northern Dist. of Cal.*, 503 U. S. 653, 654 (1992) (*per curiam*) ("A court may consider the last-minute nature of an application to stay execution in deciding whether to grant equitable relief").

Justice Kagan, with whom Justice Ginsburg, Justice Breyer, and Justice Sotomayor join, dissenting.

Holman Correctional Facility, the Alabama prison where Domineque Ray will be executed tonight, regularly allows a Christian chaplain to be present in the execution chamber. But Ray is Muslim. And the prison refused his request to have an imam attend him in the last moments of his life. Yesterday, the Eleventh Circuit concluded that there was a substantial likelihood that the prison's policy violates the First Amendment's Establishment Clause, and stayed Ray's execution so it could consider his claim on its merits. Today, this Court reverses that decision as an abuse of discretion and permits Mr. Ray's execution to go forward. Given the gravity of the issue presented here, I think that decision profoundly wrong.

"The clearest command of the Establishment Clause," this Court has held, "is that one religious denomination cannot be

officially preferred over another." *Larson* v. *Valente*, 456 U. S. 228, 244 (1982). But the State's policy does just that. Under that policy, a Christian prisoner may have a minister of his own faith accompany him into the execution chamber to say his last rites. But if an inmate practices a different religion—whether Islam, Judaism, or any other—he may not die with a minister of his own faith by his side. That treatment goes against the Establishment Clause's core principle of denominational neutrality. See, *e. g.*, *Epperson* v. *Arkansas*, 393 U. S. 97, 104 (1968) ("[Government] may not aid, foster, or promote one religion or religious theory against another"); *Zorach* v. *Clauson*, 343 U. S. 306, 314 (1952) ("The government must be neutral when it comes to competition between sects").

To justify such religious discrimination, the State must show that its policy is narrowly tailored to a compelling interest. I have no doubt that prison security is an interest of that kind. But the State has offered no evidence to show that its wholesale prohibition on outside spiritual advisers is necessary to achieve that goal. Why couldn't Ray's imam receive whatever training in execution protocol the Christian chaplain received? The State has no answer. Why wouldn't it be sufficient for the imam to pledge, under penalty of contempt, that he will not interfere with the State's ability to perform the execution? The State doesn't say. The only evidence the State has offered is a conclusory affidavit stating that its policy "is the least restrictive means of furthering" its interest in safety and security. Brief for Applicant, Exh. A, p. 2. That is not enough to support a denominational preference.

I also see no reason to reject the Eleventh Circuit's finding that Ray brought his claim in a timely manner. The warden denied Ray's request to have his imam by his side on January 23, 2019. And Ray filed his complaint five days later, on January 28. The State contends that Ray should have known to bring his claim earlier, when his execution date was set on November 6. But the relevant statute would not have placed Ray on notice that the prison would deny his request. To the contrary, that statute provides that both the chaplain of the prison and the inmate's spiritual adviser of choice "may be present at an execution." Ala. Code § 15–18–83(a) (2018). It makes no distinction between persons who may be present within the execution chamber and those who may enter only the viewing room. And the

prison refused to give Ray a copy of its own practices and procedures (which would have made that distinction clear). So there is no reason Ray should have known, prior to January 23, that his imam would be granted less access than the Christian chaplain to the execution chamber.

This Court is ordinarily reluctant to interfere with the substantial discretion Courts of Appeals have to issue stays when needed. See, *e. g.*, *Dugger* v. *Johnson*, 485 U. S. 945, 947 (1988) (O'Connor, J., joined by Rehnquist, C. J., dissenting). Here, Ray has put forward a powerful claim that his religious rights will be violated at the moment the State puts him to death. The Eleventh Circuit wanted to hear that claim in full. Instead, this Court short-circuits that ordinary process—and itself rejects the claim with little briefing and no argument—just so the State can meet its preferred execution date. I respectfully dissent.

Certiorari Denied

No. 18–7796 (18A813). Ray *v.* Alabama. Sup. Ct. Ala. Application for stay of execution of sentence of death, presented to Justice Thomas, and by him referred to the Court, denied. Certiorari denied.

February 15, 2019

Certiorari Granted

No. 18–966. Department of Commerce et al. *v.* New York et al. C. A. 2d Cir. Certiorari before judgment granted. Case will be set for argument in the second week of the April argument session.

February 19, 2019

Dismissal Under Rule 46

No. 18–626. Glen St. Andrew Living Community, LLC, et al. *v.* Wetzel. C. A. 7th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 901 F. 3d 856.

Certiorari Granted—Reversed and Remanded. (See *Moore* v. *Texas*, 586 U. S. 133 (2019) (*per curiam*).)

Certiorari Dismissed

No. 18–7073. Luh *v.* Fulton State Hospital et al. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pau-*

peris 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. 18–7090. MORALES *v.* FLORIDA. Sup. Ct. Fla. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition.

No. 18–7501. GWANJUN KIM *v.* GRAND VALLEY STATE UNIVERSITY 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. 17A612. SCHNEIDER *v.* BANK OF AMERICA, N. A., ET AL. Application for injunctive relief, addressed to JUSTICE GINSBURG and referred to the Court, denied.

No. 18A554. HARIHAR *v.* U. S. BANK N. A. ET AL. C. A. 1st Cir. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. 18A692. GOLZ *v.* CARSON, SECRETARY OF HOUSING AND URBAN DEVELOPMENT. D. C. Colo. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. D–3014. IN RE DISBARMENT OF WERTKIN. Disbarment entered. [For earlier order herein, see 584 U. S. 912.]

No. D–3028. IN RE DISBARMENT OF SACKS. Disbarment entered. [For earlier order herein, see 584 U. S. 929.]

No. D–3029. IN RE DISBARMENT OF SPEIGHTS. Disbarment entered. [For earlier order herein, see 586 U. S. 961.]

No. D–3031. In re disbarment of Roberts. Disbarment entered. [For earlier order herein, see 586 U. S. 961.]

No. D–3032. In re Disbarment of Powell. Disbarment entered. [For earlier order herein, see 586 U. S. 962.]

No. D–3033. In re Disbarment of Casale. Disbarment entered. [For earlier order herein, see 586 U. S. 962.]

No. D–3034. In re Disbarment of Jonas. Disbarment entered. [For earlier order herein, see 586 U. S. 962.]

No. D–3037. In re Disbarment of Cooper. Disbarment entered. [For earlier order herein, see 586 U. S. 962.]

No. D–3038. In re Disbarment of Hicks. Disbarment entered. [For earlier order herein, see 586 U. S. 962.]

No. D–3039. In re Disbarment of Marcin. Disbarment entered. [For earlier order herein, see 586 U. S. 963.]

No. D–3040. In re Disbarment of Mandelbaum. Disbarment entered. [For earlier order herein, see 586 U. S. 963.]

No. 18M91. Romain *v.* O'Connor 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. 18M92. Smith *v.* United States;
No. 18M95. Morales *v.* United States;
No. 18M96. Golden *v.* Pfister, Warden;
No. 18M97. Matthews *v.* Jones, Secretary, Florida Department of Corrections;
No. 18M99. Wong *v.* Lubetkin, Chapter 7 Trustee, et al.; and
No. 18M102. Thompson *v.* Uehara. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 18M94. In re Hudnall. Motion for leave to proceed as a veteran granted.

No. 18M98. A. R. *v.* Florida Department of Children and Families et al. Motion for leave to file petition for writ of certiorari under seal granted.

No. 18M100. RPX Corp. *v.* Applications in Internet Time, LLC; and

No. 18M101. RODRIGUEZ *v.* NEW JERSEY. Motions for leave to file petitions for writs of certiorari with supplemental appendixes under seal granted.

No. 17–1594. RETURN MAIL, INC. *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. Fed. Cir. [Certiorari granted, 586 U. S. 959.] Motion of Electronic Frontier Foundation for leave to file brief as *amicus curiae* granted.

No. 17–9107. GRIGSBY *v.* UNITED STATES. C. A. 10th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [586 U. S. 803] denied.

No. 18–281. VIRGINIA HOUSE OF DELEGATES ET AL. *v.* BETHUNE-HILL ET AL. D. C. E. D. Va. [Probable jurisdiction postponed, 586 U. S. 996.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted in part, and the time is divided as follows: 25 minutes for appellants, 10 minutes for the Solicitor General as *amicus curiae*, 10 minutes for appellee Virginia State Board of Elections et al., and 15 minutes for appellee Golden Bethune-Hill et al.

No. 18–431. UNITED STATES *v.* DAVIS ET AL. C. A. 5th Cir. [Certiorari granted, 586 U. S. 1063.] Motion of petitioner to dispense with printing joint appendix granted.

No. 18–948. IN RE GRAND JURY SUBPOENA. Motion of Reporters Committee for Freedom of the Press to intervene denied. Motion of respondent for leave to file redacted copies of the application for stay, response, and reply granted.

No. 18–6823. WILLIAMS *v.* COUNTY OF LOS ANGELES, CALIFORNIA, ET AL. C. A. 9th Cir.;

No. 18–6857. MUNT *v.* SCHNELL, COMMISSIONER, MINNESOTA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 8th Cir.;

No. 18–6907. KULICK *v.* LEISURE VILLAGE ASSN., INC. C. A. 9th Cir.;

No. 18–7013. IN RE ZIMMERMANN; and

No. 18–7241. KERRIGAN *v.* QBE INSURANCE CORP. C. A. 9th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 12, 2019, 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. 18–7247. IN RE BOLZE;
No. 18–7392. IN RE RUDNICK;
No. 18–7461. IN RE LEE;
No. 18–7507. IN RE CARTER; and
No. 18–7528. IN RE DOYLE. Petitions for writs of habeas corpus denied.

No. 18–7260. IN RE DANIELS. Petition for writ of habeas corpus denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 18–7526. IN RE HEFFERNAN. 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. 18–768. IN RE KELLOGG ET AL.; and
No. 18–6962. IN RE KOSTICH. Petitions for writs of mandamus denied.

No. 18–7001. IN RE KENNEDY; and
No. 18–7205. IN RE ARMSTRONG. 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. 18–7255. IN RE BARNES. Petition for writ of mandamus and/or prohibition denied.

No. 18–7207. IN RE JOHNSTON. Petition for writ of prohibition denied.

Certiorari Granted

No. 18–260. COUNTY OF MAUI, HAWAII *v.* HAWAII WILDLIFE FUND ET AL. C. A. 9th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 886 F. 3d 737.

Certiorari Denied

No. 17–1386. WILSON *v.* BRIDGES, INDIVIDUALLY AND AS THE SURVIVING SPOUSE OF BRIDGES, DECEASED, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 718 Fed. Appx. 636.

No. 18–99. BARNES *v.* GERHART ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 316.

No. 18–265. PATTERSON *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 18–295. ALIMANESTIANU ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 888 F. 3d 1374.

No. 18–306. LARRABEE *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 78 M. J. 107.

No. 18–377. MONTANANS FOR COMMUNITY DEVELOPMENT *v.* MANGAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 280.

No. 18–392. RICHARDSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 822.

No. 18–410. YATES *v.* UNITED STATES; and
No. 18–6336. WALKER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 167 A. 3d 1191.

No. 18–423. BARRELLA *v.* VILLAGE OF FREEPORT, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 714 Fed. Appx. 78.

No. 18–444. MONTANA *v.* TIPTON. Sup. Ct. Mont. Certiorari denied. Reported below: 392 Mont. 59, 421 P. 3d 780.

No. 18–546. FROSH, ATTORNEY GENERAL OF MARYLAND, ET AL. *v.* ASSOCIATION FOR ACCESSIBLE MEDICINES. C. A. 4th Cir. Certiorari denied. Reported below: 887 F. 3d 664.

No. 18–560. PEAJE INVESTMENTS LLC *v.* FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 899 F. 3d 1.

No. 18–580. NU IMAGE, INC. *v.* INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 893 F. 3d 636.

No. 18–597. LEE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 726 Fed. Appx. 589.

No. 18–622. WHOLE WOMAN'S HEALTH ET AL. *v.* TEXAS CATHOLIC CONFERENCE OF BISHOPS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 896 F. 3d 362.

No. 18–652. EL OMARI *v.* RAS AL KHAIMAH FREE TRADE ZONE AUTHORITY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 735 Fed. Appx. 30.

No. 18–669. GATES *v.* REED ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 885 F. 3d 874.

No. 18–681. NWOKE *v.* CONSULATE OF NIGERIA. C. A. 7th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 478.

No. 18–686. KING ET AL. *v.* CALIBER HOME LOANS, INC. C. A. 4th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 47.

No. 18–687. FRETT *v.* TERRITORY OF THE VIRGIN ISLANDS. Sup. Ct. V. I. Certiorari denied. Reported below: 66 V. I. 399.

No. 18–691. SNELLING *v.* SEGBERS ET AL. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 548 S. W. 3d 372.

No. 18–692. MYLAN PHARMACEUTICALS INC. ET AL. *v.* UCB, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 890 F. 3d 1313.

No. 18–695. CHUNG ET AL. *v.* SILVA, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HALECK, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 883.

No. 18–697. CARRUTHERS *v.* MAYS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 889 F. 3d 273.

No. 18–700. SAUNDERS-GOMEZ *v.* RUTLEDGE MAINTENANCE CORP. Sup. Ct. Del. Certiorari denied. Reported below: 189 A. 3d 1288.

No. 18–701. TANKSLEY *v.* DANIELS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 902 F. 3d 165.

No. 18–703. UNIVERSITY OF SOUTHERN CALIFORNIA ET AL. *v.* MUNRO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 896 F. 3d 1088.

No. 18–705. GRIFFEN, JUDGE, SIXTH JUDICIAL CIRCUIT, PULASKI COUNTY, ARKANSAS *v.* KEMP, CHIEF JUSTICE, ARKANSAS SUPREME COURT, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 894 F. 3d 900.

No. 18–707. BECTON *v.* SOCIAL SECURITY ADMINISTRATION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 180.

No. 18–712. ARTRIP *v.* BALL CORP. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 735 Fed. Appx. 708.

No. 18–713. WRIGHT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 892 F. 3d 963.

No. 18–718. YOUNG *v.* OVERLY ET AL. C. A. 6th Cir. Certiorari denied.

No. 18–720. DUHE ET AL. *v.* CITY OF LITTLE ROCK, ARKANSAS, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 902 F. 3d 858.

No. 18–721. BLOOM *v.* AFTERMATH PUBLIC ADJUSTERS, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 902 F. 3d 516.

No. 18–723. RODRIGUEZ *v.* BANK OF AMERICA, N. A. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 246 So. 3d 541.

No. 18–724. CITY OF SANDPOINT, IDAHO, ET AL. *v.* MADDOX, ON BEHALF OF MINOR CHILDREN D. M. ET AL., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 609.

No. 18–727. MANLEY *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 18–731. VEGA DURON, A MINOR, ET AL. *v.* JOHNSON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 898 F. 3d 644.

No. 18–732. COULTER *v.* TATANANNI ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 737 Fed. Appx. 613.

No. 18–734. SZMANIA *v.* E-LOAN, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 647.

No. 18–736. LAWSON ET UX. *v.* BELL SPORTS USA. Super. Ct. N. J., App. Div. Certiorari denied.

No. 18–741. ODERMATT *v.* WAY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 694 Fed. Appx. 842.

No. 18–743. WHITE OAK REALTY, LLC, ET AL. *v.* ARMY CORPS OF ENGINEERS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 746 Fed. Appx. 294.

No. 18–744. UNGER *v.* BERGH, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 55.

No. 18–748. WILSON *v.* OFFICE OF THE COMMISSIONER OF THE REVENUE OF STAFFORD COUNTY ET AL. Sup. Ct. Va. Certiorari denied.

No. 18–749. CROSSETT *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 18–751. METROPOLITAN INTERPRETERS & TRANSLATORS INC. *v.* BATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 268.

No. 18–752. TAUPIER *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 330 Conn. 149, 193 A. 3d 1.

No. 18–753. COUTURIER *v.* PRESIDING JUDGE, SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–754. RAMIREZ *v.* WALMART. Sup. Ct. N. D. Certiorari denied. Reported below: 2018 ND 179, 915 N. W. 2d 674.

No. 18–757. CHUANG *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 18–758. IVY ET AL. *v.* MORAN. C. A. 6th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 820.

No. 18–765. BRADY *v.* NEW YORK ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 158 App. Div. 3d 457, 67 N. Y. S. 3d 837.

No. 18–767. ANCIENT COIN COLLECTORS GUILD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 899 F. 3d 295.

No. 18–769. MINNESOTA LIVING ASSISTANCE, INC., DBA BAYWOOD HOME CARE *v.* PETERSON ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 899 F. 3d 548.

No. 18–770. WEBTRENDS, INC. *v.* IANCU, DIRECTOR, PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 725 Fed. Appx. 1010.

No. 18–771. VAIGASI *v.* SOLOW MANAGEMENT CORP. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 750 Fed. Appx. 37.

No. 18–775. CHIEN *v.* LECLAIRRYAN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 63.

No. 18–777. BUENO-MUELA *v.* WHITAKER, ACTING ATTORNEY GENERAL (Reported below: 893 F. 3d 1073); and LEMUS MARTINEZ *v.* WHITAKER, ACTING ATTORNEY GENERAL (893 F. 3d 1067). C. A. 8th Cir. Certiorari denied.

No. 18–778. ST. LOUIS HEART CENTER, INC. *v.* NOMAX, INC. C. A. 8th Cir. Certiorari denied. Reported below: 899 F. 3d 500.

No. 18–780. KERR *v.* MARSHALL UNIVERSITY BOARD OF GOVERNORS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 827.

No. 18–787. RHOE *v.* MONTGOMERY COUNTY OFFICE OF CHILD SUPPORT ENFORCEMENT. Ct. Sp. App. Md. Certiorari denied. Reported below: 237 Md. App. 756 and 758.

No. 18–789. HYLTON *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 300.

No. 18–791. MOESCH *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 18–794. SHEA *v.* WINNEBAGO COUNTY SHERIFF'S OFFICE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 746 Fed. Appx. 541.

No. 18–795. BUSH *v.* DEPARTMENT OF AGRICULTURE, RISK MANAGEMENT AGENCY, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 607.

No. 18–796. ALEXANDER *v.* TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 753 Fed. Appx. 201.

No. 18–797. BURMASTER *v.* HERMAN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 737 Fed. Appx. 790.

No. 18–799. DAVIS *v.* BHATT. Ct. App. Ga. Certiorari denied.

No. 18–804. DRY, AS ADMINISTRATOR AD LITEM FOR THE ESTATE OF DRY *v.* STEELE ET AL. Ct. App. Tenn. Certiorari denied.

No. 18–806. HOHMAN ET AL. *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 894 F. 3d 776.

No. 18–808. WEBSTER *v.* SHANAHAN, ACTING SECRETARY OF DEFENSE. C. A. 4th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 214.

No. 18–818. THOMPSON *v.* ROVELLA, CHIEF OF POLICE, CITY OF HARTFORD, CONNECTICUT, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 734 Fed. Appx. 787.

No. 18–820. WEINACKER *v.* NATIONAL LOAN ACQUISITIONS CO. C. A. 11th Cir. Certiorari denied. Reported below: 743 Fed. Appx. 390.

No. 18–823. ZUP, LLC *v.* NASH MANUFACTURING, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 896 F. 3d 1365.

No. 18–825. SHUMPERT, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF SHUMPERT, ET AL. *v.* CITY OF TUPELO, MISSISSIPPI, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 905 F. 3d 310.

No. 18–826. SHELTON *v.* PATTERSON. Commw. Ct. Pa. Certiorari denied. Reported below: 175 A. 3d 442.

No. 18–828. GHIRINGHELLI ET AL. *v.* ASSURANCE GROUP, INC. C. A. 6th Cir. Certiorari denied. Reported below: 734 Fed. Appx. 970.

No. 18–833. STOKES *v.* COMMISSION FOR LAWYER DISCIPLINE. C. A. 5th Cir. Certiorari denied.

No. 18–839. COLON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2018 IL App (1st) 160120, 117 N. E. 3d 278.

No. 18–841. HOFFMAN *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 248 So. 3d 1107.

No. 18–846. ANDERTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 901 F. 3d 278.

No. 18–850. ALTSTATT *v.* FRUENDT, EXECUTIVE DIRECTOR, OKLAHOMA DEPARTMENT OF REHABILITATION SERVICES, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 904 F. 3d 1167.

No. 18–851. MARSHALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 747 Fed. Appx. 139.

No. 18–856. ANTONIN *v.* BALTIMORE POLICE DEPARTMENT. Ct. Sp. App. Md. Certiorari denied. Reported below: 237 Md. App. 348, 185 A. 3d 811.

No. 18–857. BOYD *v.* MISSISSIPPI DEPARTMENT OF PUBLIC SAFETY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 751 Fed. Appx. 444.

No. 18–858. MCCULLARS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 877 F. 3d 255.

No. 18–860. PARRISH *v.* BOARD OF PROFESSIONAL RESPONSIBILITY. Sup. Ct. Tenn. Certiorari denied. Reported below: 556 S. W. 3d 153.

No. 18–861. WESTERNGECO LLC *v.* ION GEOPHYSICAL CORP. C. A. Fed. Cir. Certiorari denied. Reported below: 889 F. 3d 1308.

No. 18–863. EDMOND *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 899 F. 3d 446.

No. 18–864. TATUM ET UX. *v.* DALLAS MORNING NEWS, INC., ET AL. Sup. Ct. Tex. Certiorari denied. Reported below: 554 S. W. 3d 614.

No. 18–872. DOLACINSKI ET AL. *v.* BANK OF AMERICA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 252 So. 3d 1188.

No. 18–874. HOUSTON AUTO M. IMPORTS GREENWAY, LTD., DBA MERCEDES-BENZ OF HOUSTON GREENWAY *v.* ZASTROW ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 496.

No. 18–878. STEVENS ET AL. *v.* CORELOGIC, INC. C. A. 9th Cir. Certiorari denied. Reported below: 899 F. 3d 666.

No. 18–884. JEFFREY *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 18–888. BENT *v.* STRANGE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 357.

No. 18–902. POUPART *v.* HOOPER, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 53.

No. 18–903. PERRY ET AL. *v.* COLES COUNTY, ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 906 F. 3d 583.

No. 18–931. HESSE *v.* HOWELL. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 18–6009. MYRTHIL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 480.

No. 18–6011. HAMIDULLIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 888 F. 3d 62.

No. 18–6061. ORTIZ-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–6096. JACKSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–6147. NETTLES *v.* HORTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–6157. SEALED APPELLEE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 887 F. 3d 707.

No. 18–6185. BECKMAN *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 230 So. 3d 77.

No. 18–6187. MARTINEZ-LOPEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 747 Fed. Appx. 326.

No. 18–6212. BURGESS *v.* ENGLISH, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 18–6258. LAZAR *v.* CAPOZZA, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 731 Fed. Appx. 119.

No. 18–6269. LLOYD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 570.

No. 18–6273. DAVIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 728 Fed. Appx. 165.

No. 18–6292. ROBINSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 18–6374. WELSH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 879 F. 3d 530.

No. 18–6385. BEEMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 871 F. 3d 1215.

No. 18–6409. MORROW *v.* FORD, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 886 F. 3d 1138.

No. 18–6563. GONZALEZ-NEGRON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 892 F. 3d 485.

No. 18–6588. WARREN *v.* THOMAS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 894 F. 3d 609.

No. 18–6608. O'NEIL *v.* WARDEN, FEDERAL CORRECTIONAL COMPLEX COLEMAN. C. A. 11th Cir. Certiorari denied.

No. 18–6679. GRAHAM *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2018 IL App (1st) 152413, 109 N. E. 3d 281.

No. 18–6716. WALKER, AKA RICHMOND *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 18–6741. MAMOU *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 820.

No. 18–6766. GULBRANDSON *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 18–6773. KNOX *v.* PLOWDEN. C. A. 4th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 263.

No. 18–6776. OWEN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 247 So. 3d 394.

No. 18–6779. HEFFINGTON *v.* PULEO ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 753 Fed. Appx. 572.

No. 18–6794. BRADSHAW *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 457.

No. 18–6796. MUCKLE *v.* WELLS FARGO BANK ET AL. C. A. 1st Cir. Certiorari denied.

No. 18–6799. NASH *v.* WACHOVIA BANK ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–6802. KITLAS *v.* HAWS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 158.

No. 18–6803. MCNEIL *v.* GRIM ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 736 Fed. Appx. 33.

No. 18–6805. RODRIGUEZ *v.* PARAMO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–6815. IBENYENWA *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–6835. SANCHEZ *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 172.

No. 18–6836. RIVAS *v.* SPEARMAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 163.

No. 18–6837. SWINTON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–6840. ROSKY *v.* BAKER, WARDEN, ET AL. Ct. App. Nev. Certiorari denied. Reported below: 134 Nev. 1004.

No. 18–6849. JAMES *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied.

No. 18–6850. ESPARZA *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–6866. SPERBER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 177 A. 3d 212.

No. 18–6876. JOSHLIN *v.* NEVEN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 477.

No. 18–6877. SHERE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 18–6878. DALEY *v.* MARYLAND ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 172.

No. 18–6881. ALSTON *v.* MISSISSIPPI DEPARTMENT OF EMPLOYMENT SECURITY. Ct. App. Miss. Certiorari denied. Reported below: 247 So. 3d 303.

No. 18–6883. CATERBONE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–6884. TRYON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 2018 OK CR 20, 423 P. 3d 617.

No. 18–6885. MARQUEZ *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–6886. JOHNSON *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 107.

No. 18–6887. WILSON *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 7th Cir. Certiorari denied. Reported below: 737 Fed. Appx. 286.

No. 18–6888. CLAY *v.* PAPIK. C. A. 9th Cir. Certiorari denied. Reported below: 704 Fed. Appx. 709.

No. 18–6899. URANGA *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 893 F. 3d 282.

No. 18–6902. MANSFIELD *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 248 So. 3d 59.

No. 18–6903. MCLAURIN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 160 App. Div. 3d 1438, 76 N. Y. S. 3d 691.

No. 18–6909. LUCERO *v.* HOLLAND, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 902 F. 3d 979.

No. 18–6921. STEVENSON *v.* RICHMAN, JUDGE, SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–6925. TARVER *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 249 So. 3d 641.

No. 18–6928. JOHNSON *v.* WYLIE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 733 Fed. Appx. 31.

No. 18–6929. JOHNSON *v.* QUEEN ELIZABETH. C. A. 3d Cir. Certiorari denied. Reported below: 733 Fed. Appx. 28.

No. 18–6930. JOHNSON *v.* ROTHSCHILD. C. A. 3d Cir. Certiorari denied. Reported below: 731 Fed. Appx. 87.

No. 18–6931. JOHNSON *v.* ROTHSCHILD. C. A. 3d Cir. Certiorari denied. Reported below: 741 Fed. Appx. 52.

No. 18–6932. JOHNSON *v.* GERMAN AEROSPACE CENTER. C. A. 3d Cir. Certiorari denied. Reported below: 739 Fed. Appx. 182.

No. 18–6933. JOHNSON *v.* OFFICE OF CHILDREN, YOUTH AND FAMILIES. C. A. 3d Cir. Certiorari denied. Reported below: 740 Fed. Appx. 17.

No. 18–6938. PHILLIPS *v.* WASHBURN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–6940. ANDREWS *v.* MONTGOMERY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 697.

No. 18–6942. ZAPATA *v.* PECO ENERGY CO. C. A. 3d Cir. Certiorari denied. Reported below: 712 Fed. Appx. 216.

No. 18–6944. VIZCAINO-RAMOS *v.* LINDAMOOD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–6946. TREVINO *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 18–6947. GILLARD *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2018 IL App (1st) 171121–U.

No. 18–6950. MCBRIDE *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 18–6953. JAIME JIMENEZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 18–6954. WELLS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 18–6956. WALTON *v.* FLORIDA ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 246 So. 3d 246.

No. 18–6957. SULTAANA *v.* HARRIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–6958. VELAYO *v.* TALAMAYAN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 734 Fed. Appx. 614.

No. 18–6959. KINGHAM *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–6960. MACK *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–6965. LEI YIN *v.* BIOGEN, INC., FKA BIOGEN-IDEC. C. A. 1st Cir. Certiorari denied.

No. 18–6966. WAGONER *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied.

No. 18–6968. QUINONES LEYVA *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 139.

No. 18–6975. VAN NORTRICK *v.* LOUISIANA. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 51,604 (La. App. 2 Cir. 1/10/18), 244 So. 3d 810.

No. 18–6976. EWALAN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 3 Wash. App. 2d 1041.

No. 18–6977. MITCHELL *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 18–6978. MASCARENA *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 392 Mont. 553, 416 P. 3d 180.

No. 18–6987. SANDERS *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL. C. A. 8th Cir. Certiorari denied.

No. 18–6988. SANDERS *v.* URIBE, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 747 Fed. Appx. 527.

No. 18–6991. RAMBO *v.* KANSAS. C. A. 10th Cir. Certiorari denied. Reported below: 743 Fed. Appx. 246.

No. 18–6997. T. H. -H. *v.* ALLEGHENY COUNTY OFFICE OF CHILDREN, YOUTH AND FAMILIES, ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 648 Pa. 236, 192 A. 3d 1080.

No. 18–6998. CLEVELAND *v.* SOUTH CAROLINA. Ct. App. S. C. Certiorari denied.

No. 18–6999. MCQUEEN *v.* FISHER. C. A. 6th Cir. Certiorari denied.

No. 18–7003. RAMIREZ *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–7006. REID *v.* WARDEN ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–7008. WHITE *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–7011. MYZER *v.* BUSH ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 750 Fed. Appx. 644.

No. 18–7014. COLLINS *v.* EPSTEIN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 734 Fed. Appx. 145.

No. 18–7015. WEST *v.* SPENCER, SECRETARY OF THE NAVY. C. A. 9th Cir. Certiorari denied.

No. 18–7016. WASHINGTON *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–7017. BLACK *v.* LINDSAY. Ct. App. D. C. Certiorari denied. Reported below: 189 A. 3d 712.

No. 18–7018. SANTOS LAGAITE *v.* FOLEY ET AL. C. A. 5th Cir. Certiorari denied.

No. 18–7019. JONES *v.* BYRNE, WARDEN. Ct. App. Nev. Certiorari denied. Reported below: 134 Nev. 965.

No. 18–7024. VILLAFANA *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 18–7025. BURT *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 18–7027. KURI *v.* ADDICTIVE BEHAVIORAL CHANGE HEALTH GROUP ET AL. Ct. App. Kan. Certiorari denied. Reported below: 55 Kan. App. 2d xiii, 408 P. 3d 1003.

No. 18–7030. S. R. *v.* WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES ET AL. Sup. Ct. App. W. Va. Certiorari denied.

No. 18–7031. LEWIS *v.* QUIROS ET AL. C. A. 2d Cir. Certiorari denied.

No. 18–7034. SADIK *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 181 A. 3d 1255.

No. 18–7040. PERRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 337.

No. 18–7041. DONALDSON *v.* MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES ET AL. Ct. App. Mich. Certiorari denied.

No. 18–7042. WARTERFIELD *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 18–7043. TUTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 893 F. 3d 562.

No. 18–7045. GILKERS *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 904 F. 3d 336.

No. 18–7046. CASTILLO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 742 Fed. Appx. 610.

No. 18–7047. CASANOVA *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 18–7049. MUNT *v.* LARSON ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 108.

No. 18–7051. TAYLOR *v.* CVS CAREMARK CORP. C. A. 4th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 704.

No. 18–7052. WILKERSON *v.* WOODS. Ct. Sp. App. Md. Certiorari denied.

No. 18–7053. VARNER *v.* CHRISTIANSEN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–7054. WHITE *v.* MATTHEWS ET AL. Sup. Ct. Mich. Certiorari denied. Reported below: 503 Mich. 863, 917 N. W. 2d 59.

No. 18–7055. WHITE *v.* SOUTHEAST MICHIGAN SURGICAL HOSPITAL ET AL. Sup. Ct. Mich. Certiorari denied. Reported below: 503 Mich. 862, 917 N. W. 2d 67.

No. 18–7056. JOHNSON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 18–7057. ROYSTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–7058. JOAQUIN RAMIREZ *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 18–7059. ROSKY *v.* BYRNE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–7062. CLEMENTS *v.* FLORIDA DEPARTMENT OF CORRECTIONS ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 255 So. 3d 818.

No. 18–7064. MACKENZIE *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–7068. FIGUEROA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–7069. LUDOVICI *v.* MARSH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT BENNER TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–7070. JACKSON *v.* GMAC MORTGAGE CORP. C. A. 11th Cir. Certiorari denied.

No. 18–7071. BREWER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 509.

No. 18–7075. MARTINEZ *v.* TEXAS. Ct. App. Tex., 8th Dist. Certiorari denied.

No. 18–7080. DANMOLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 514.

No. 18–7081. WILLIAMS *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–7082. ROSAS CUELLAR *v.* UNITED STATES (Reported below: 738 Fed. Appx. 320); and LARIOS-VILLATORO *v.* UNITED STATES (741 Fed. Appx. 269). C. A. 5th Cir. Certiorari denied.

No. 18–7083. WALTER-EZE, AKA OKAM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 869 F. 3d 891.

No. 18–7084. YOUNG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 754 Fed. Appx. 331.

No. 18–7085. MCGHEE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 18–7087. LOPEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 752 Fed. Appx. 614.

No. 18–7088. MORA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 271.

No. 18–7089. MILLINER *v.* LITTERAL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–7092. CAIN *v.* ATELIER ESTHETIQUE INSTITUTE OF ESTHETICS, INC. C. A. 2d Cir. Certiorari denied. Reported below: 733 Fed. Appx. 8.

No. 18–7093. CLARK *v.* ALLEN & OVERY, LLP. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 159 App. Div. 3d 478, 73 N. Y. S. 3d 144.

No. 18–7095. ROBINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 744 Fed. Appx. 277.

No. 18–7100. SIMMONS *v.* CAPRA, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 18–7101. GHOBRIAL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 5 Cal. 5th 250, 420 P. 3d 179.

No. 18–7102. HULING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 702.

No. 18–7103. GARCIA-MONTEJO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 94.

No. 18–7104. IRIZARRY-ROSARIO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 903 F. 3d 151.

No. 18–7106. PLASCENCIA-OROZCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–7107. ODUMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 175.

No. 18–7109. MILLER *v.* OHIO. Ct. App. Ohio, 7th App. Dist., Mahoning County. Certiorari denied. Reported below: 2018-Ohio-3430, 118 N. E. 3d 1094.

No. 18–7111. GUERRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–7114. WILLIAMS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 1. Certiorari denied.

No. 18–7116. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 906 F. 3d 1325.

No. 18–7117. MAYBERRY *v.* DITTMAN, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 904 F. 3d 525.

No. 18–7119. GRIGSBY *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied.

No. 18–7120. ZUNIGA HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–7121. HIGGS, AKA BEACHUM *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 18–7122. GOLA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 698 Fed. Appx. 602.

No. 18–7124. HERNANDEZ *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 18–7125. ABUL HOSN *v.* DEPARTMENT OF STATE ET AL. C. A. 6th Cir. Certiorari denied.

No. 18–7126. ABDULLAH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 905 F. 3d 739.

No. 18–7127. FRENCH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 836.

No. 18–7128. BEBO *v.* MEDEIROS, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT NORFOLK. C. A. 1st Cir. Certiorari denied. Reported below: 906 F. 3d 129.

No. 18–7129. CHRISTIAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 737 Fed. Appx. 165.

No. 18–7131. LOTT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–7133. BURKS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 746 Fed. Appx. 191.

No. 18–7134. LOWE *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 552 S. W. 3d 842.

No. 18–7141. REY GONZALEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 224.

No. 18–7142. TALLEY *v.* PRIDE MOBILITY PRODUCTS CORP. ET AL. Ct. App. N. C. Certiorari denied. Reported below: 259 N. C. App. 734, 816 S. E. 2d 533.

No. 18–7143. EIDSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 725 Fed. Appx. 453.

No. 18–7145. SADOWSKI *v.* GROUNDS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 311.

No. 18–7147. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 743 Fed. Appx. 943.

No. 18–7150. HOSTETLER *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 18–7153. J. E., AKA J. E. C. *v.* OREGON DEPARTMENT OF HUMAN SERVICES. Ct. App. Ore. Certiorari denied. Reported below: 285 Ore. App. 652, 402 P. 3d 783.

No. 18–7154. VISCONTI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 750 Fed. Appx. 543.

No. 18–7158. KNOX *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 18–7161. MARTIN *v.* WHITAKER, ACTING ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 729 Fed. Appx. 210.

No. 18–7162. JAMA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 896 F. 3d 295.

No. 18–7163. MAYFIELD ET AL. *v.* HARVEY COUNTY SHERIFF'S DEPARTMENT ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 685.

No. 18–7167. KIRSH *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 2017–0231 (La. App. 1 Cir. 11/1/17), 234 So. 3d 941.

No. 18–7169. WRIGHT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 902 F. 3d 868.

No. 18–7176. GARCIA-ORTIZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 904 F. 3d 102.

No. 18–7177. GONZALES *v.* SANTORO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 468.

No. 18–7178. TRAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–7180. URQUIA-MELENDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 739 Fed. Appx. 280.

No. 18–7181. WHITE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 739 Fed. Appx. 255.

No. 18–7183. MARTIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 739 Fed. Appx. 446.

No. 18–7184. CHAMBERS, AKA SEALED DEFENDANT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 751 Fed. Appx. 44.

No. 18–7185. DIAZ-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 830.

No. 18–7186. WEIDNER *v.* TAYLOR, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 782.

No. 18–7189. MANLOVE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 755 Fed. Appx. 630.

No. 18–7191. PENDERGRAFT ET AL. *v.* NETWORK OF NEIGHBORS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 745 Fed. Appx. 517.

No. 18–7192. PHILLIPS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 754 Fed. Appx. 891.

No. 18–7193. COLLINS *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 7th Cir. Certiorari denied. Reported below: 743 Fed. Appx. 21.

No. 18–7194. COLBERT *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 2. Certiorari denied.

No. 18–7195. GOMEZ *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2018 IL App (1st) 150605, 105 N. E. 3d 901.

No. 18–7196. MCELROY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 612.

No. 18–7197. LEWIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 247.

No. 18–7198. CRUZ *v.* HALLENBECK, SUPERINTENDENT, HALE CREEK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 18–7199. FAUNTLEROY *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 18–7200. RILEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 175.

No. 18–7206. KEGLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 572.

No. 18–7209. OBERACKER *v.* NOBLE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–7210. PRAILOW *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 237 Md. App. 757.

No. 18–7212. DAILEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–7214. MCLAUGHLIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 739 Fed. Appx. 270.

No. 18–7215. UCES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 745 Fed. Appx. 115.

No. 18–7216. DUHAMEL *v.* MILLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–7222. JIAU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 18–7227. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 747 Fed. Appx. 771.

No. 18–7228. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 959.

No. 18–7229. BLACKMAN *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 909 F. 3d 772.

No. 18–7230. ASHLEY *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–7231. AVERY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 747 Fed. Appx. 482.

No. 18–7236. STOUTAMIRE *v.* LA ROSE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–7238. EDWARDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 526.

No. 18–7239. CANNON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 18–7240. KING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 323.

No. 18–7243. ROJAS-CISNEROS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–7245. RODRIGUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 638.

No. 18–7249. DOE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 987 F. 3d 1216.

No. 18–7251. JORDAN *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 742 Fed. Appx. 514.

No. 18–7253. FORTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 207.

No. 18–7254. THOMAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 750 Fed. Appx. 120.

No. 18–7256. DE CASTRO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 905 F. 3d 676.

No. 18–7263. PATMON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 750 Fed. Appx. 902.

No. 18–7267. GREENE *v.* SEMPLE, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTION. Sup. Ct. Conn. Certiorari denied. Reported below: 330 Conn. 1, 190 A. 3d 851.

No. 18–7268. BERRY *v.* MCGINLEY, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–7269. ALLISON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–7270. BRYANT *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2018 IL App (1st) 143578–U.

No. 18–7272. PABLO ARREOLA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 723 Fed. Appx. 48.

No. 18–7274. SPEARS, AKA AZIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–7275. POWERS *v.* BLOCK ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 750 Fed. Appx. 480.

No. 18–7278. WILLIAMS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 6. Certiorari denied.

No. 18–7282. BRADLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 897 F. 3d 779.

No. 18–7284. BARLOW *v.* GARMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–7287. LaPrade *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 733 Fed. Appx. 592.

No. 18–7289. Bommerito *v.* Diaz, Acting Secretary, California Department of Corrections and Rehabilitation, et al. C. A. 9th Cir. Certiorari denied.

No. 18–7292. Whitley *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 18–7293. Walker *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied. Reported below: 286 So. 3d 18.

No. 18–7294. Antonio Zambrano *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 752 Fed. Appx. 775.

No. 18–7296. Cisneros *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 555.

No. 18–7297. Howard *v.* California. Ct. App. Cal., 1st App. Dist., Div. 5. Certiorari denied.

No. 18–7300. Millis *v.* Kallis, Warden. C. A. 6th Cir. Certiorari denied.

No. 18–7303. Rivera *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 901 F. 3d 896.

No. 18–7304. Rodriguez-Mantos *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 748 Fed. Appx. 591.

No. 18–7305. Hilts *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 757 Fed. Appx. 56.

No. 18–7306. Steele *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 18–7307. Rayo-Espinoza *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 739 Fed. Appx. 295.

No. 18–7308. Rodriguez *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 638.

No. 18–7309. Balfour *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 18–7310. Thomas *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 18–7313. TEMPLETON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 750 Fed. Appx. 685.

No. 18–7317. DAVIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 728 Fed. Appx. 125.

No. 18–7320. FORD *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 725 Fed. Appx. 785.

No. 18–7323. WILLIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–7325. ZINKAND *v.* HERNANDEZ, SUPERINTENDENT, AVERY-MITCHELL CORRECTIONAL INSTITUTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 128.

No. 18–7327. JOHNSON *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 18–7329. SELFA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 856.

No. 18–7330. GARRETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 898 F. 3d 811.

No. 18–7333. MOFFETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–7340. DILLON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 310.

No. 18–7341. BURTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 734 Fed. Appx. 361.

No. 18–7344. DICKINSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 18–7345. GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–7348. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 868.

No. 18–7350. FLORES-BOTELLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 674 Fed. Appx. 409.

No. 18–7351. GEDDES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–7352. ELLIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 739 Fed. Appx. 598.

No. 18–7355. HAYNES *v.* OREGON BOARD OF PAROLE AND POST-PRISON SUPERVISION ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–7356. GOSSETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 705 Fed. Appx. 337.

No. 18–7357. FORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–7360. MATHIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–7361. GIBBONS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–7365. DEVORE *v.* KELLY, SUPERINTENDENT, OREGON STATE PENITENTIARY. Sup. Ct. Ore. Certiorari denied.

No. 18–7367. HUGGANS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–7371. JOHNSON *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist., Div. 2. Certiorari denied.

No. 18–7372. CUEVAS *v.* KELLY, SUPERINTENDENT, OREGON STATE PRISON. C. A. 9th Cir. Certiorari denied.

No. 18–7374. MEJIA *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 906 F. 3d 307.

No. 18–7375. NICOLAISON *v.* COUNTY OF HENNEPIN, MINNESOTA. C. A. 8th Cir. Certiorari denied.

No. 18–7377. HARRIS *v.* EASTERLING, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–7387. LENIHAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–7388. ROMO *v.* ORMOND, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–7390. STANCIK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–7391. ROMERO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 906 F. 3d 196.

No. 18–7393. ROMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 739 Fed. Appx. 304.

No. 18–7400. SLEUGH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 896 F. 3d 1007.

No. 18–7417. ROBINSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2018 IL App (1st) 152703–U.

No. 18–7418. SEALS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 231.

No. 18–7419. BECERRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 213.

No. 18–7420. ALIRES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 739 Fed. Appx. 510.

No. 18–7424. VAIL *v.* LOUISIANA. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 2017–354 (La. App. 3 Cir. 12/28/17), 236 So. 3d 644.

No. 18–7434. GRAHAM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–7463. KOYLE *v.* SAND CANYON CORP. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 549.

No. 18–7466. BENNETT *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–7467. LAPOINTE *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2018 IL App (2d) 160903, 127 N. E. 3d 131.

No. 18–7469. VALENZUELA ARZATE *v.* ROBERTSON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–7484. NAPHAENG *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 906 F. 3d 173.

No. 18–7496. ALLAN *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 329 Conn. 815, 190 A. 3d 874.

No. 18–7506. TURNER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 897 F. 3d 1084.

No. 18–7512. JACKSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2018 IL App (1st) 150487, 105 N. E. 3d 996.

No. 18–7515. NEWTON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 2018 IL 122958, 120 N. E. 3d 948.

No. 18–7518. HOLT *v.* TERRIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–7555. GRAY *v.* DORETHY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 17–1542. MCKEE *v.* COSBY. C. A. 1st Cir. Certiorari denied. Reported below: 874 F. 3d 54.

JUSTICE THOMAS, concurring.

In December 2014, petitioner Kathrine McKee publicly accused actor and comedian Bill Cosby of forcibly raping her some 40 years earlier. McKee contends that Cosby's attorney responded on his behalf by writing and leaking a defamatory letter. According to McKee, the letter deliberately distorts her personal background to "damage her reputation for truthfulness and honesty, and further to embarrass, harass, humiliate, intimidate, and shame" her. App. to Pet. for Cert. 93a. She alleges that excerpts of the letter were disseminated via the Internet and published by news outlets around the world.

McKee filed suit in federal court for defamation under state law, but her case was dismissed. Applying *New York Times Co.* v. *Sullivan*, 376 U. S. 254 (1964), and its progeny, the Court of Appeals concluded that, by disclosing her accusation to a reporter, McKee had "'thrust' herself to the 'forefront'" of the public controversy over "sexual assault allegations implicating Cosby" and was therefore a "limited purpose public figure." 874 F. 3d 54, 61–62 (CA1 2017) (citing *Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323, 345 (1974)). Under this Court's First Amendment precedents, public figures are barred from recovering damages for defamation unless they can show that the statement at issue was made with "'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." *New York Times*, *supra*, at 280. Like many plaintiffs subject to this "al-

most impossible" standard, McKee was unable to make that showing. See *Dun & Bradstreet, Inc.* v. *Greenmoss Builders, Inc.*, 472 U. S. 749, 771 (1985) (White, J., concurring in judgment).

McKee asks us to review her classification as a limited-purpose public figure. I agree with the Court's decision not to take up that factbound question. I write to explain why, in an appropriate case, we should reconsider the precedents that require courts to ask it in the first place.

New York Times and the Court's decisions extending it were policy-driven decisions masquerading as constitutional law. Instead of simply applying the First Amendment as it was understood by the people who ratified it, the Court fashioned its own "'federal rule[s]'" by balancing the "competing values at stake in defamation suits." *Gertz*, *supra*, at 334, 348 (quoting *New York Times*, *supra*, at 279).

We should not continue to reflexively apply this policy-driven approach to the Constitution. Instead, we should carefully examine the original meaning of the First and Fourteenth Amendments. If the Constitution does not require public figures to satisfy an actual-malice standard in state-law defamation suits, then neither should we.

I

From the founding of the Nation until 1964, the law of defamation was "almost exclusively the business of state courts and legislatures." *Gertz*, *supra*, at 369–370 (White, J., dissenting). But beginning with *New York Times*, the Court "federalized major aspects of libel law by declaring unconstitutional in important respects the prevailing defamation law in all or most of the 50 States." *Gertz*, *supra*, at 370. These decisions made little effort to ground their holdings in the original meaning of the Constitution.

A

New York Times involved a full-page advertisement soliciting support for the civil-rights movement and the legal defense of Dr. Martin Luther King, Jr. 376 U. S., at 256–257. The advertisement asserted that the movement was facing an "'unprecedented wave of terror by those who would deny and negate'" the protections of the Constitution. *Id.*, at 256. As an example, the advertisement claimed that "'truckloads of police'" in Montgomery, Alabama, "'armed with shotguns and tear-gas,'" had surrounded

a college campus following a student demonstration. *Id.*, at 257. It further claimed that "'[w]hen the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission.'" *Ibid.* The advertisement also stated that "'the Southern violators'" had "'answered Dr. King's peaceful protests with intimidation and violence,'" "'bombed his home almost killing his wife and child,'" "'assaulted his person,'" "'arrested him seven times,'" and "'charged him with "perjury."'" *Id.*, at 257–258.

The Times made no independent effort to confirm the truth of these claims, and they contained numerous inaccuracies. *Id.*, at 261.[1] The Times eventually retracted the advertisement. *Ibid.*

L. B. Sullivan served as Montgomery's commissioner of public affairs when the advertisement was published. *Id.*, at 256. Although none of the "Southern violators" was identified in the advertisement, Sullivan filed a libel suit alleging that the statements implicating Montgomery police officers were made "'of and concerning'" him because his responsibilities included supervising the police department. *Id.*, at 256, 262. A jury awarded Sullivan $500,000, and the Supreme Court of Alabama affirmed. *Id.*, at 256.

This Court reversed. *Id.*, at 264. It held that the evidence in the record was "incapable of supporting the jury's finding" that the false statements were made about Sullivan, who was not mentioned "by name or official position" in the advertisement. *Id.*, at 288. The advertisement was an "impersonal attack on governmental operations" and could not by "legal alchemy" be transformed into "a libel of an official responsible for those operations." *Id.*, at 292. This holding was sufficient to resolve the case.

But the Court also addressed "the extent to which the constitutional protections for speech and press limit a State's power to award damages in a libel action brought by a public official against critics of his official conduct." *Id.*, at 256. The Court took it upon itself "to define the proper accommodation between" two

[1] For example, the police did not "at any time" surround the campus when deployed near it; the dining hall "was not padlocked on any occasion"; the student protesters had not "refus[ed] to register" but rather "boycott[ed] classes on a single day"; "Dr. King had not been arrested seven times, but only four"; and the police "were not only not implicated in the bombings, but had made every effort to apprehend those who were." *New York Times*, 376 U. S., at 259.

competing interests—"the law of defamation and the freedoms of speech and press protected by the First Amendment." *Gertz*, *supra*, at 325 (majority opinion). It consulted a variety of materials to assist it in its analysis: "general proposition[s]" about the value of free speech and the inevitability of false statements, *New York Times*, 376 U. S., at 269–272, and n. 13; judicial decisions involving criminal contempt and official immunity, *id.*, at 272–273, 282–283; public responses to the Sedition Act of 1798, *id.*, at 273–277; comparisons of civil libel damages to criminal fines, *id.*, at 277–278; policy arguments against "self-censorship," *id.*, at 278–279; the "consensus of scholarly opinion," *id.*, at 280, n. 20; and state defamation laws, *id.*, at 280–282. These materials led the Court to promulgate a "federal rule" that "prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." *Id.*, at 279–280. Although the Court held that its newly minted actual-malice rule was "required by the First and Fourteenth Amendments," *id.*, at 283, it made no attempt to base that rule on the original understanding of those provisions.

B

New York Times was "the first major step in what proved to be a seemingly irreversible process of constitutionalizing the entire law of libel and slander." *Dun & Bradstreet*, 472 U. S., at 766 (White, J., concurring in judgment). The Court promptly expanded the actual-malice rule to all defamed "'public figures,'" *Curtis Publishing Co.* v. *Butts*, 388 U. S. 130, 134 (1967), which it defined to include private persons who "thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved," *Gertz*, 418 U. S., at 345. The Court also extended the actual-malice rule to criminal libel prosecutions, *Garrison* v. *Louisiana*, 379 U. S. 64 (1964), and even restricted the situations in which private figures could recover for defamation against media defendants, *Gertz*, *supra*, at 347, 349; *Philadelphia Newspapers, Inc.* v. *Hepps*, 475 U. S. 767 (1986).

None of these decisions made a sustained effort to ground their holdings in the Constitution's original meaning. As the Court itself acknowledged, "the rule enunciated in the *New York Times* case" is "largely a judge-made rule of law," the "content" of which

is "given meaning through the evolutionary process of common-law adjudication." *Bose Corp.* v. *Consumers Union of United States, Inc.*, 466 U. S. 485, 501–502 (1984). Only Justice White grappled with the historical record, and he concluded that "there are wholly insufficient grounds for scuttling the libel laws of the States in such wholesale fashion, to say nothing of deprecating the reputation interest of ordinary citizens and rendering them powerless to protect themselves." *Gertz*, *supra*, at 370 (dissenting opinion).

II

The constitutional libel rules adopted by this Court in *New York Times* and its progeny broke sharply from the common law of libel, and there are sound reasons to question whether the First and Fourteenth Amendments displaced this body of common law.

A

The common law of libel at the time the First and Fourteenth Amendments were ratified did not require public figures to satisfy any kind of heightened liability standard as a condition of recovering damages. Typically, a defamed individual needed only to prove "a false written publication that subjected him to hatred, contempt, or ridicule." *Dun & Bradstreet*, *supra*, at 765 (White, J., concurring in judgment); see 4 W. Blackstone, Commentaries *150 (Blackstone); H. Folkard, Starkie on Slander and Libel *156 (4th Eng. ed., H. Wood ed. 1877) (Starkie). Malice was presumed in the absence of an applicable privilege, right, or duty. *Id.*, at *293–*294. General injury to reputation was also presumed, special damages could be recovered, and punitive damages were available if actual malice was established. *Dun & Bradstreet*, *supra*, at 765 (White, J., concurring in judgment); see Starkie *151, *322–*323; M. Newell, Defamation, Libel and Slander 842–843 (1890) (Newell). Truth was a defense to a civil libel claim. See Starkie *170, *528–*530; 4 Blackstone *150–*151. But where the publication was false, even if the defendant could show that no reputational injury occurred, the prevailing rule was that at least nominal damages were to be awarded. *Dun & Bradstreet*, *supra*, at 765 (White, J., concurring in judgment) (citing Restatement of Torts § 569, Comment *b*, p. 166 (1938)); see Starkie *492; Newell 839.

Libel was also a "common-law crime, and thus criminal in the colonies." *Beauharnais* v. *Illinois*, 343 U. S. 250, 254 (1952);

see 4 Blackstone *150–*153. The same principles generally applied, except that truth traditionally was not a defense to libel prosecutions—the crime was intended to punish provocations to a breach of the peace, not the falsity of the statement. See *id.*, at *150–*151; Starkie *712–*713. Laws authorizing the criminal prosecution of libel were both widespread and well established at the time of the founding. See *Roth* v. *United States*, 354 U. S. 476, 482, and n. 11 (1957); Newell 28–29 (describing colonial statutes dating back to 1645 and 1701). And they remained so when the Fourteenth Amendment was adopted, although many States by then allowed truth or good motives to serve as a defense to a libel prosecution. *Beauharnais*, *supra*, at 254–255, and n. 4.

Far from increasing a public figure's burden in a defamation action, the common law deemed libels against public figures to be, if anything, *more* serious and injurious than ordinary libels. See 3 Blackstone *124 ("Words also tending to scandalize a magistrate, or person in a public trust, are reputed more highly injurious than when spoken of a private man"); 4 *id.*, at *150 (defining libels as "malicious defamations of any person, *and especially a magistrate*, made public by either printing, writing, signs, or pictures, in order to provoke him to wrath, or expose him to public hatred, contempt, and ridicule" (emphasis added)). Libel of a public official was deemed an offense "'most dangerous to the people, and deserv[ing of] punishment, because the people may be deceived and reject the best citizens to their great injury, and it may be to the loss of their liberties.'" Newell 533 (quoting *Commonwealth* v. *Clap*, 4 Mass. 163, 169–170 (1808)); accord, *White* v. *Nicholls*, 3 How. 266, 290 (1845).[2]

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[2] In England, "[w]ords spoken in derogation of a peer, a judge, or other great officer of the realm" were called *scandalum magnatum* and were "held to be still *more* heinous"; such words could support a claim that "would not be actionable in the case of a common person." 3 Blackstone *123 (emphasis added); Starkie *142–*143. This action, recognized by English statutes dating back to 1275, had fallen into disuse by the 19th century and was not employed in the United States. See *id.*, at *142, n. 1 ("In this country, no distinction as to persons is recognized, and in practice, a person holding a high office is regarded as a target at whom any person may let fly his poisonous words"). Nevertheless, the action of *scandalum magnatum* confirms that the law of defamation historically did not impose a heightened burden on public figures as plaintiffs.

The common law did afford defendants a privilege to comment on public questions and matters of public interest. Starkie *237–*238. This privilege extended to the "public conduct of a public man," which was a "matter of public interest" that could "be discussed with the fullest freedom" and "made the subject of hostile criticism." *Id.*, at *242. Under this privilege, "criticism may reasonably be applied to a public man in a public capacity which might not be applied to a private individual." *Ibid.* And the privilege extended to the man's character "'so far as it may respect his fitness and qualifications for the office,'" which was in the interest of the people to know. *White*, *supra*, at 290 (quoting *Clap*, *supra*, at 169).

But the purposes underlying this privilege also defined its limits. Thus, the privilege applied only when the facts stated were true. Starkie *238, n. 4; *White*, *supra*, at 290. And the privilege did not afford the publisher an opportunity to defame the officer's private character. Starkie *238; see *id.*, at *242 ("The question for the jury is, whether the writer has transgressed the bounds within which comments upon the character of a public man ought to be confined . . . "); *ibid.* (distinguishing between criticism of public conduct and the "imputation of motives by which that conduct may be supposed to be actuated"). "One may in good faith publish the truth concerning a public officer, but if he states that which is false and aspersive, he is liable therefor however good his motives may be; and the same is true whether the party defamed be an officer or a candidate for an office, elective or appointive." Newell 533 (footnote omitted).

B

These common-law protections for the "core private righ[t]" of a person's "'uninterrupted enjoyment of . . . his reputation'" formed the backdrop against which the First and Fourteenth Amendments were ratified. Nelson, Adjudication in the Political Branches, 107 Colum. L. Rev. 559, 567 (2007) (quoting 1 Blackstone *129). Before our decision in *New York Times*, we consistently recognized that the First Amendment did not displace the common law of libel. As Justice Story explained:

> "The liberty of speech, or of the press, has nothing to do with this subject. They are not endangered by the punishment of libellous publications. The liberty of speech and the liberty of the press do not authorize malicious and injurious defama-

tion." *Dexter* v. *Spear*, 7 F. Cas. 624 (No. 3,867) (CC RI 1825).

The Court consistently listed libel among the "well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem." *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 571–572 (1942); see, *e. g.*, *Beauharnais*, *supra*, at 254–256, and nn. 4–5, 266 (libelous utterances are "not . . . within the area of constitutionally protected speech"); *Near* v. *Minnesota ex rel. Olson*, 283 U. S. 697, 715 (1931) ("[T]he common law rules that subject the libeler to responsibility for the public offense, as well as for the private injury, are not abolished by the protection extended in our constitutions").

New York Times marked a fundamental change in the relationship between the First Amendment and state libel law. Although the Court did not repudiate its earlier statements that libel is constitutionally unprotected, it nevertheless was unable to "accept the generality of this historic view." *Gertz*, 418 U. S., at 386 (White, J., dissenting). The Court instead observed that it had never upheld the use of libel law "to impose sanctions upon expression critical of the official conduct of public officials." *New York Times*, 376 U. S., at 268. In the Court's view, it was "writing upon a clean slate," *id.*, at 299 (Goldberg, J., concurring in result), and thus free to work a "substantial abridgement" of the common law of libel based on its balancing of competing interests, *Gertz*, *supra*, at 343 (majority opinion).

C

There are sound reasons to question whether either the First or Fourteenth Amendment, as originally understood, encompasses an actual-malice standard for public figures or otherwise displaces vast swaths of state defamation law.

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech, or of the press." See *Schneider* v. *State* (*Town of Irvington*), 308 U. S. 147, 160 (1939) (applying these protections against the States through the Fourteenth Amendment).[3] Justice White's dissenting opinion in *Gertz*

[3] By its terms, the First Amendment addresses only "law[s]" "ma[d]e" by "Congress." For present purposes, I set aside the question whether the speech and press rights incorporated against the States restrict common-law rights of action that are not codified by state legislatures.

provides a helpful starting point in interpreting these terms. Justice White had joined the majority opinion in *New York Times*. But after canvassing historical practice under similar state constitutions, treatises, scholarly commentary, the ratification debates, and our precedent, he concluded that "[s]cant, if any, evidence exists that the First Amendment was intended to abolish the common law of libel, at least to the extent of depriving ordinary citizens of meaningful redress against their defamers." *Gertz*, 418 U. S., at 381; see *id.*, at 380–388. Justice White later expressed "doubts about the soundness of the Court's approach" in *New York Times* "and about some of the assumptions underlying it." *Dun & Bradstreet*, 472 U. S., at 767 (concluding that the Court "struck an improvident balance in the *New York Times* case").

Historical practice further suggests that protections for free speech and a free press—whether embodied in state constitutions, the First Amendment, or the Fourteenth Amendment—did not abrogate the common law of libel. See generally Chase, Criticism of Public Officers and Candidates for Office, 23 Am. L. Rev. 346 (1889) (surveying American defamation decisions). Public officers and public figures continued to be able to bring civil libel suits for unprivileged statements without showing proof of actual malice as a condition for liability. See, *e. g.*, *Root* v. *King*, 7 Cow. 613, 628 (N. Y. 1827) (lieutenant governor); *White*, 3 How., at 291 (customs collector); *Hamilton* v. *Eno*, 81 N. Y. 116, 126 (1880) (assistant health inspector) (citing *Lewis* v. *Few*, 5 Johns. 1 (N. Y. 1809) (Governor)); *Royce* v. *Maloney*, 58 Vt. 437, 447–448, 5 A. 395, 400 (1886) (chief judge and chancellor); *Wheaton* v. *Beecher*, 66 Mich. 307, 309–310, 33 N. W. 503, 505–506 (1887) (candidate for city comptroller); *Prosser* v. *Callis*, 117 Ind. 105, 108–109, 19 N. E. 735, 737 (1889) (county auditor). The States continued to criminalize libel, including of public figures. *E. g.*, *People* v. *Croswell*, 3 Johns. Cas. 337, 377–378, 393–394 (N. Y. 1804) (opinion of Kent, J.), and *id.*, at 403–404, 410 (opinion of Lewis, J.) (President Jefferson); *Clap*, 4 Mass., at 169–170 (auctioneer); see also *Commonwealth* v. *Blanding*, 20 Mass. 304, 311–314 (1825) (elaborating on legal standard); *Beauharnais*, 343 U. S., at 254–255 (noting that many States in the first decades after the founding began to allow truth or good motives to serve as a defense, but "nowhere was there any suggestion that the crime of libel be abolished"). As of 1952, "every American jurisdiction . . . punish[ed] libels directed

at individuals." *Id.*, at 255, and n. 5. And "Congresses, during the period while [the Fourteenth] Amendment was being considered or was but freshly adopted, approved Constitutions of 'Reconstructed' States that expressly mentioned state libel laws, and also approved similar Constitutions for States erected out of the federal domain." *Id.*, at 293–294, and nn. 7–8 (Jackson, J., dissenting). Criticism of the public actions of public figures remained privileged, allowing latitude for public discourse and disagreement on matters of public concern.

As against this body of historical evidence, *New York Times* pointed only to opposition surrounding the Sedition Act of 1798, which prohibited "any false, scandalous and malicious writing" against "the government of the United States, or either house of the Congress . . . , or the President." §2, 1 Stat. 596; see *New York Times*, 376 U. S., at 273–277. Most prominently, the opinion discusses a report written by James Madison in support of the Virginia Resolutions of 1798, which protested the Act. *Id.*, at 274–275. The opinion highlights Madison's view that the press in every State had "'exerted a freedom in canvassing the merits and measures of public men, of every description, which has not been confined to the strict limits of the common law.'" *Id.*, at 275 (quoting 4 Debates on the Constitution 570 (J. Elliot ed. 1876) (Elliot's Debates)). It also emphasizes Madison's point that "'[s]ome degree of abuse is inseparable from the proper use of every thing; and in no instance is this more true than in that of the press.'" 376 U. S., at 271 (quoting 4 Elliot's Debates 571). After discussing other opposition to the Act, the Court concluded that "the attack upon its validity has carried the day in the court of history." 376 U. S., at 276; see *id.*, at 273–277.

The Court gleaned from this evidence a "broad consensus" that the First Amendment protects "criticism of government and public officials." *Id.*, at 276. And the Court further inferred that because the Act allowed truth to be offered as a defense and applied to defamatory statements, a libel law prohibiting only false defamation could still fail First Amendment scrutiny. *Id.*, at 273–274. But constitutional opposition to the Sedition Act—a federal law directly criminalizing criticism of the Government—does not necessarily support a constitutional actual-malice rule in all civil libel actions brought by public figures. Madison did not contend that the Constitution abrogated the common law applica-

ble to these private actions. Instead, he seemed to contemplate that "those who administer [the Federal Government]" retain "a remedy, for their injured reputations, under the same laws, and in the same tribunals, which protect their lives, their liberties, and their properties." 4 Elliot's Debates 573. Moreover, a central assumption of Madison's view was the historical absence of a national common law "pervading and operating through" each Colony "as one society." *Id.*, at 561. Yet the Court elevated just such a rule to constitutional status in *New York Times*.

It is certainly true that defamation law did not remain static after the founding. For example, many States acted "by judicial decision, statute or constitution" during the early 19th century to allow truth or good motives to serve as a defense to a libel prosecution. *Beauharnais*, *supra*, at 254–255, and n. 4. Eventually, changing views led to the "virtual disappearance" of criminal libel prosecutions involving individuals. *Garrison*, 379 U. S., at 69. But these changes appear to have reflected changing policy judgments, not a sense that existing law violated the original meaning of the First or Fourteenth Amendment.

In short, there appears to be little historical evidence suggesting that the *New York Times* actual-malice rule flows from the original understanding of the First or Fourteenth Amendment.

III

Like Justice White, I assume that *New York Times* and our other constitutional decisions displacing state defamation law have been popular in some circles, "but this is not the road to salvation for a court of law." *Gertz*, 418 U. S., at 370 (dissenting opinion). We did not begin meddling in this area until 1964, nearly 175 years after the First Amendment was ratified. The States are perfectly capable of striking an acceptable balance between encouraging robust public discourse and providing a meaningful remedy for reputational harm. We should reconsider our jurisprudence in this area.

No. 18–404. Colorado Independent *v.* District Court for the 18th Judicial District of Colorado et al. Sup. Ct. Colo. Motion of respondent Sir Mario Owens for leave to proceed *in forma pauperis* granted. Motion of respondent District Court of Colorado for leave to file supplemental appendix under seal granted. Certiorari denied. Reported below: 420 P. 3d 257.

No. 18–406. SCHOCK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 891 F. 3d 334.

Statement of JUSTICE SOTOMAYOR respecting the denial of certiorari.

Petitioner Aaron Schock, a former Congressman from Illinois, asks us to decide whether he may immediately appeal, as a collateral order, the denial of his motion to dismiss part of a criminal indictment against him for running afoul of the Constitution's Rulemaking Clause. See Art. I, § 5. He argues that certain charges against him would require the District Court for the Central District of Illinois to interpret internal rules adopted by the House of Representatives to govern its own Members, and thus would violate separation-of-powers doctrine. The Court of Appeals for the Seventh Circuit held that denials of such Rulemaking Clause challenges are not collateral orders subject to immediate appeal, 891 F. 3d 334 (2018), in disagreement with at least one other Court of Appeals, see *United States* v. *Rostenkowski*, 59 F. 3d 1291, 1297 (CADC 1995). Although this question does not arise frequently—presumably because criminal charges against Members of Congress are rare—the sensitive separation-of-powers questions that such prosecutions raise ought to be handled uniformly.

It is not clear, however, that this case cleanly presents the question whether such orders are, as a general matter, immediately appealable. The District Court here denied the motion to dismiss on Rulemaking Clause grounds only provisionally, stating that it would revisit the matter "if at any time it becomes apparent that the prosecution will rely upon evidence that requires the interpretation of House Rules." 2017 WL 4780614, *7, and n. 6 (CD Ill., Oct. 23, 2017). Indeed, the District Court dismissed the only count of the indictment that did, in its view, necessarily turn on an interpretation of the House Rules. *Id.*, at *8–*11. As a result, the District Court's order may have been insufficiently "conclusive" to support collateral-order appellate jurisdiction, whether or not such jurisdiction would otherwise have been proper. See *Swint* v. *Chambers County Comm'n*, 514 U. S. 35, 42 (1995). The Court of Appeals did not address that alternative ground for affirmance, the presence of which might complicate our review.

I therefore concur in the Court's decision to deny certiorari. I do so on the understanding, however, that Schock remains free to

reassert his Rulemaking Clause challenge in the District Court should subsequent developments warrant.*

No. 18–446. City of Taunton, Massachusetts *v.* Environmental Protection Agency. C. A. 1st Cir. Motion of City of Dover, New Hampshire, for leave to file brief as *amicus curiae* out of time denied. Certiorari denied. Reported below: 895 F. 3d 120.

No. 18–462. Gunderson et vir *v.* Indiana et al. Sup. Ct. Ind. Motions of Minnesota Association of Realtors and Cato Institute et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 90 N. E. 3d 1171.

No. 18–548. Adorers of the Blood of Christ, United States Province, et al. *v.* Federal Energy Regulatory Commission et al. C. A. 3d Cir. Motion of The Rutherford Institute for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 897 F. 3d 187.

No. 18–717. PMCM TV, LLC *v.* Federal Communications Commission et al. C. A. D. C. Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. The Chief Justice and Justice Kavanaugh took no part in the consideration or decision of this motion and this petition. Reported below: 731 Fed. Appx. 1.

No. 18–747. Ritter *v.* Brady, Chapter 7 Trustee. C. A. 9th Cir. Motions of the Honorable Eugene Wedoff et al. and Professor Margaret Howard for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 730 Fed. Appx. 529.

No. 18–6901. Hall *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 246 So. 3d 210.

Justice Sotomayor, dissenting.

I dissent for the reasons set out in *Reynolds* v. *Florida*, 586 U. S. 1004, 1011 (2018) (Sotomayor, J., dissenting from denial of certiorari).

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*In its briefing to the Court of Appeals, the Government argued that the House regulations were, in fact, "'necessary'" and "important" to prove other charges still pending. Brief for Appellee in No. 17–3277 (CA7), p. 55. Those representations may be pertinent to the District Court's further consideration of Schock's arguments.

No. 18–6982. WALDEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 18–6990. STURDZA *v.* UNITED ARAB EMIRATES. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition.

No. 18–7002. DIAZ *v.* WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition. Reported below: 726 Fed. Appx. 1.

No. 18–7086. HERNANDEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 743 Fed. Appx. 156.

No. 18–7112. HILL *v.* ASSOCIATES FOR RENEWAL IN EDUCATION, INC. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition. Reported below: 897 F. 3d 232.

No. 18–7132. BRIGHT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, dissenting.

I dissent for the reasons set out in *Brown* v. *United States*, 586 U. S. 953 (2018) (SOTOMAYOR, J., dissenting from denial of certiorari).

No. 18–7148. RAY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 899 F. 3d 852.

No. 18–7264. MILLER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 891 F. 3d 1220.

No. 18–7266. BROWN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE GORSUCH took no part in the consideration or decision of this petition. Reported below: 731 Fed. Appx. 827.

No. 18–7286. MASTERS *v.* KENTUCKY. Ct. App. Ky. Motion of Student Press Law Center et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 551 S. W. 3d 458.

No. 18–7346. FORD, AKA GREEN, AKA WRAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 18–7421. ALLEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, dissenting.

I dissent for the reasons set out in *Brown* v. *United States*, 586 U. S. 953 (2018) (SOTOMAYOR, J., dissenting from denial of certiorari).

No. 18–7432. BARBER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition. Reported below: 731 Fed. Appx. 5.

Rehearing Denied

No. 16–8635. DEAN *v.* UNITED STATES, 581 U. S. 983;

No. 17–1641. THOMAS ET VIR *v.* WILLIAMS, 586 U. S. 1050;

No. 17–7345. GREEN *v.* MCGILL-JOHNSTON ET AL., 583 U. S. 1185;

No. 17–8355. ISMAY *v.* UNITED STATES, 584 U. S. 985;

No. 17–8719. DE VERA *v.* UNITED AIRLINES, INC., 586 U. S. 996;

No. 17–8845. EASON *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, 586 U. S. 834;

No. 17–8959. GIBSON *v.* UNITED STATES, 585 U. S. 1009;

No. 17–9085. WESTINE *v.* UNITED STATES, 586 U. S. 841;

No. 17–9118. WILLIAMS *v.* CALIFORNIA, 586 U. S. 843;

No. 17–9138. HILL *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, 586 U. S. 844;

No. 17–9319. GIVENS *v.* ALLEN, WARDEN, 586 U. S. 854;

No. 17–9383. MITCHELL *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, 586 U. S. 857;

No. 18–331. Pabon Ortega *v.* Llompart Zeno et al., 586 U. S. 1069;

No. 18–393. Moody *v.* National Football League, 586 U. S. 1036;

No. 18–399. Fink *v.* Kirchner et al., 586 U. S. 1036;

No. 18–413. Bosch *v.* Arizona Department of Revenue, 586 U. S. 1022;

No. 18–538. Nora *v.* Wisconsin Office of Lawyer Regulation, 586 U. S. 1037;

No. 18–541. Deol *v.* Depreta et al., 586 U. S. 1037;

No. 18–569. Shao *v.* Tsan-Kuen Wang, 586 U. S. 1073;

No. 18–577. Netzer *v.* Shell Oil Co. et al., 586 U. S. 1073;

No. 18–5200. Kruskal *v.* Meltzer et al., 586 U. S. 888;

No. 18–5425. Joaquin Ramirez *v.* Aponte et al., 586 U. S. 922;

No. 18–5537. Opengeym *v.* Heartland Employment Services, LLC, 586 U. S. 999;

No. 18–5584. Thompson *v.* Copeland et al., 586 U. S. 947;

No. 18–5591. Mason *v.* Polster, Judge, United States District Court for the Northern District of Ohio, et al., 586 U. S. 947;

No. 18–5621. Torkornoo *v.* Helwig et al., 586 U. S. 1038;

No. 18–5628. Tacquard *v.* Arizona, 586 U. S. 948;

No. 18–5718. Campbell *v.* Virginia, 586 U. S. 970;

No. 18–5722. Lugo *v.* California, 586 U. S. 970;

No. 18–5742. Roberts *v.* Florida, 586 U. S. 971;

No. 18–5765. Russell *v.* Redstone Federal Credit Union et al.; and Russell *v.* Ingegneri et al., 586 U. S. 989.

No. 18–5888. Morrison *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division, 586 U. S. 1000;

No. 18–5931. Laschkewitsch *v.* Legal & General America, Inc., dba Banner Life Insurance Co., 586 U. S. 1001;

No. 18–6020. Rodgers *v.* Miller, Warden, 586 U. S. 951;

No. 18–6055. Triplett *v.* Vannoy, Warden, 586 U. S. 1024;

No. 18–6093. Tate *v.* Maryland, 586 U. S. 991;

No. 18–6106. Miller *v.* Kashani et al., 586 U. S. 1039;

No. 18–6134. Peters *v.* Baldwin et al., 586 U. S. 1039;

No. 18–6164. Laschkewitsch *v.* ReliaStar Life Insurance Co., 586 U. S. 1040;

No. 18–6168. Soon Young Kim *v.* California, 586 U. S. 1040;
No. 18–6228. Laschkewitsch *v.* American National Life Insurance Co., 586 U. S. 1041;
No. 18–6288. Cooley *v.* Director, Office of Workers' Compensation Programs, Department of Labor, et al., 586 U. S. 1053;
No. 18–6386. Adkins *v.* Whole Foods Market Group, Inc., 586 U. S. 1053;
No. 18–6486. In re Hernandez, 586 U. S. 1020;
No. 18–6526. In re Yonamine, 586 U. S. 1067;
No. 18–6630. In re Gullett, 586 U. S. 1050;
No. 18–6652. Lowe *v.* Roy, Commissioner, Minnesota Department of Corrections, 586 U. S. 1088; and
No. 18–6743. Kulick *v.* Leisure Village Assn., Inc., 586 U. S. 1128. Petitions for rehearing denied.

No. 18–5538. Gieswein *v.* United States, 586 U. S. 911. Petition for rehearing denied. Justice Kagan and Justice Gorsuch took no part in the consideration or decision of this petition.

No. 18–6003. Kavandi *v.* Time Warner Cable, Inc., et al., 586 U. S. 1017. Petition for rehearing denied. The Chief Justice took no part in the consideration or decision of this petition.

February 21, 2019

Miscellaneous Order

No. 18–966. Department of Commerce et al. *v.* New York et al. C. A. 2d Cir. [Certiorari granted, 586 U. S. 1140.] Petitioners' brief on the merits, and any *amicus curiae* briefs in support of petitioners or in support of neither party, are to be filed on or before Wednesday, March 6, 2019. Respondents' briefs on the merits, and any *amicus curiae* briefs in support of respondents, are to be filed on or before Monday, April 1, 2019. Reply brief on the merits is to be filed in accordance with this Court's Rule 25.3.

February 25, 2019

Certiorari Granted—Vacated and Remanded. (See also *Yovino* v. *Rizo*, 586 U. S. 181 (2019) (*per curiam*).)

No. 17–5018. Klikno *v.* United States. C. A. 7th Cir.;
No. 17–8740. Van Sach *v.* United States. C. A. 7th Cir.;

No. 17–9399. SHIELDS *v.* UNITED STATES. C. A. 7th Cir. Reported below: 885 F. 3d 1020;

No. 18–6177. LIPSCOMB *v.* UNITED STATES. C. A. 7th Cir. Reported below: 721 Fed. Appx. 518; and

No. 18–6369. BROWNING *v.* UNITED STATES. C. A. 7th Cir. Reported below: 723 Fed. Appx. 343. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Stokeling* v. *United States*, 586 U. S. 73 (2019).

No. 17–8401. FRANKLIN *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of the position asserted by the Solicitor General in his brief for the United States filed on July 6, 2018.

No. 18–5213. BAKER *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Washington* v. *Commissioner of Social Security*, 906 F. 3d 1353 (CA11 2018). Reported below: 729 Fed. Appx. 870.

Certiorari Dismissed

No. 18–7608. WHITNEY *v.* CHANCELLOR. Sup. Ct. Ark. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 2018 Ark. 259.

Miscellaneous Orders

No. 18M103. HOM *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari out of time under this Court's Rule 14.5 denied.

No. 18M104. GRIGSBY *v.* BALTAZAR, WARDEN. Motion for leave to proceed as a veteran denied. JUSTICE GORSUCH took no part in the consideration or decision of this motion.

No. 17–1606. SMITH *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 6th Cir. [Certiorari granted, 586 U. S. 985.] Motion for divided argument filed by the Solicitor General granted, and the time is divided as follows: 15 minutes for peti-

tioner, 15 minutes for the Solicitor General, and 30 minutes for Court-appointed *amicus curiae* in support of the judgment below.

No. 18–315. COCHISE CONSULTANCY, INC., ET AL. *v.* UNITED STATES EX REL. HUNT. C. A. 11th Cir. [Certiorari granted, 586 U. S. 1018.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 18–7681. IN RE AGUINAGA. Petition for writ of habeas corpus denied.

Certiorari Granted

No. 18–328. ROTKISKE *v.* KLEMM ET AL. C. A. 3d Cir. Certiorari granted. Reported below: 890 F. 3d 422.

Certiorari Denied

No. 17–5239. RAZZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 679 Fed. Appx. 950.

No. 17–5543. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–5745. PHELPS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–5772. CONDE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 686 Fed. Appx. 755.

No. 17–6026. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 700 Fed. Appx. 895.

No. 17–6054. EVERETTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 694 Fed. Appx. 760.

No. 17–6140. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–6276. MIDDLETON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–6357. REEVES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–6374. RIVERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–6540. SHOTWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 989.

No. 17–6664. MAYS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–6829. HARDY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–6887. WRIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 868.

No. 17–6991. BAXTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 572.

No. 17–7140. PACE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 698 Fed. Appx. 577.

No. 17–7391. REPRESS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 713 Fed. Appx. 826.

No. 17–7563. COTTMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–7716. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–7747. BEVERLY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–7762. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 704 Fed. Appx. 911.

No. 17–7952. WRIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–8272. BANNISTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–8289. WRIGHT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–8431. CASAMAYOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 890.

No. 17–8544. ROBINETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 886 F. 3d 689.

No. 17–8663. HALL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 877 F. 3d 800.

No. 17–8676. KING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 721 Fed. Appx. 913.

No. 17–8678. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 954.

No. 17–8745. WILLIAMS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 712 Fed. Appx. 50.

No. 17–8766. DESHAZIOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 882 F. 3d 1352.

No. 17–8860. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 948.

No. 17–8951. LEWIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 619.

No. 17–9097. LEWIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 17–9128. JOYNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 882 F. 3d 1369.

No. 17–9151. GODBEE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 711 Fed. Appx. 588.

No. 17–9353. WALKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 968.

No. 17–9378. DIEMER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 654.

No. 17–9589. HARRIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 704 Fed. Appx. 919.

No. 18–192. J. B. R. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–323. EVANS, INDIVIDUALLY AND AS WIFE AND NEXT OF KIN OF EVANS, DECEASED *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 554.

No. 18–340. IN-N-OUT BURGER, INC. *v.* NATIONAL LABOR RELATIONS BOARD. C. A. 5th Cir. Certiorari denied. Reported below: 894 F. 3d 707.

No. 18–566. MENENDEZ *v.* GARBER. C. A. 6th Cir. Certiorari denied. Reported below: 888 F. 3d 839.

No. 18–578. PENDER ET AL. *v.* BANK OF AMERICA CORP. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 359.

No. 18–642. ZUKERMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 897 F. 3d 423.

No. 18–651. MONTGOMERY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 746 Fed. Appx. 381.

No. 18–674. MURPHY *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 901 F. 3d 578.

No. 18–680. HUSS, WARDEN *v.* ROBINSON. C. A. 6th Cir. Certiorari denied. Reported below: 901 F. 3d 710.

No. 18–742. WASHINGTON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied.

No. 18–773. SULLIVAN *v.* CITY OF FREDERICK, MARYLAND, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 198.

No. 18–779. POWER INTEGRATIONS INC. *v.* FAIRCHILD SEMICONDUCTOR INTERNATIONAL, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 904 F. 3d 965.

No. 18–783. BARONE *v.* WELLS FARGO BANK, N. A. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 244 So. 3d 277.

No. 18–784. BUGG *v.* HONEY ET AL. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 542 S. W. 3d 367.

No. 18–785. ALSTON *v.* ADMINISTRATIVE OFFICE OF THE COURTS, DELAWARE JUDICIARY, ET AL. Sup. Ct. Del. Certiorari denied. Reported below: 181 A. 3d 614.

No. 18–786. BLAIR *v.* MCCLINTON ET AL. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 18–792. SATTERLEE *v.* MILLER-DEGASE, ASSESSOR OF DOUGLAS COUNTY, MISSOURI, ET AL. Ct. App. Mo., Southern Dist. Certiorari denied.

No. 18–800. Shao *v.* McManis Faulkner, LLP. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 18–802. DeHoog et al. *v.* Anheuser-Busch InBev SA/NV et al. C. A. 9th Cir. Certiorari denied. Reported below: 899 F. 3d 758.

No. 18–812. Teamsters Local 210 Affiliated Health and Insurance Fund *v.* Silverman, as Trustee of the Union Mutual Medical Fund, et al. C. A. 2d Cir. Certiorari denied. Reported below: 725 Fed. Appx. 79.

No. 18–816. Davis *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 18–822. Cohen *v.* Grievance Administrator, Attorney Grievance Commission of Michigan. Sup. Ct. Mich. Certiorari denied. Reported below: 503 Mich. 875, 917 N. W. 2d 666.

No. 18–829. Davis *v.* Anderson, Judge, United States Court of Appeals for the Seventh Circuit, et al. C. A. 7th Cir. Certiorari denied.

No. 18–836. Miranda Luna *v.* Florida. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 252 So. 3d 1196.

No. 18–844. Chavez-Juarez *v.* Barr, Attorney General. C. A. 9th Cir. Certiorari denied. Reported below: 734 Fed. Appx. 509.

No. 18–849. HTC Corp. *v.* 3G Licensing, S. A., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 889 F. 3d 1349.

No. 18–871. Jarmuth *v.* International Club Homeowners Assn., Inc. C. A. 4th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 155.

No. 18–875. Hill et al. *v.* PBL Multi-Strategy Fund, L. P. C. A. 5th Cir. Certiorari denied. Reported below: 744 Fed. Appx. 192.

No. 18–892. Kirsch *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 903 F. 3d 213.

No. 18–904. King Law Group, PLLC, et al. *v.* M2 Technology, Inc. C. A. 5th Cir. Certiorari denied. Reported below: 748 Fed. Appx. 588.

No. 18–914. Bove *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 888 F. 3d 606.

No. 18–919. Davies *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 746 Fed. Appx. 86.

No. 18–924. Bullock *v.* North Carolina. Ct. App. N. C. Certiorari denied. Reported below: 258 N. C. App. 72, 811 S. E. 2d 713.

No. 18–945. TLSL, Inc. *v.* Snead, as Administrator ad Litem of the Estate of Estrada, et al. Sup. Ct. Ala. Certiorari denied. Reported below: 288 So. 3d 418.

No. 18–960. Nationwide Biweekly Administration, Inc. *v.* BMO Harris Bank, N. A. C. A. 9th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 564.

No. 18–961. Swartz *v.* United States Patent and Trademark Office et al. C. A. Fed. Cir. Certiorari denied. Reported below: 743 Fed. Appx. 426.

No. 18–991. Huebner *v.* Midland Credit Management et al. C. A. 2d Cir. Certiorari denied. Reported below: 897 F. 3d 42.

No. 18–993. Young Adult Institute, Inc., dba YAI National Institute for People with Disabilities, et al. *v.* Levy et al. C. A. 2d Cir. Certiorari denied. Reported below: 744 Fed. Appx. 12.

No. 18–1002. Davis et al. *v.* Valsamis, Inc. C. A. 11th Cir. Certiorari denied. Reported below: 752 Fed. Appx. 688.

No. 18–5092. Anderson *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 833.

No. 18–5232. Pettis *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 888 F. 3d 962.

No. 18–5288. Serrano *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 659.

No. 18–5384. Rivera-Ruperto *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 846 F. 3d 417 and 852 F. 3d 1.

No. 18–5612. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–5838. SWOPES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 886 F. 3d 668.

No. 18–5940. PEREZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 885 F. 3d 984.

No. 18–6025. BORRERO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 719 Fed. Appx. 990.

No. 18–6092. ABLES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 394.

No. 18–6257. MCCRANIE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 889 F. 3d 677.

No. 18–6410. MCKINZY *v.* GASTON (MCKINZY). Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 555 S. W. 3d 479.

No. 18–6411. REED *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 4 Cal. 5th 989, 416 P. 3d 68.

No. 18–6715. EDSTROM *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 916 N. W. 2d 512.

No. 18–6727. STOJETZ *v.* SHOOP, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 892 F. 3d 175.

No. 18–6752. MCGUIRE *v.* OHIO. Ct. App. Ohio, 8th App. Dist., Cuyahoga County. Certiorari denied. Reported below: 2018-Ohio-1390.

No. 18–6772. GRANT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 18–6781. FARR *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 10th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 969.

No. 18–6813. GHOSH *v.* CITY OF BERKELEY, CALIFORNIA. Ct. App. Cal., 1st App. Dist., Div. 5. Certiorari denied.

No. 18–6818. RANGEL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 5 Cal. 5th 442, 420 P. 3d 902.

No. 18–7026. COATS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 257.

No. 18–7099. RATUSHNY *v.* KAUFFMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 739 Fed. Appx. 104.

No. 18–7118. LYNCH *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 254 So. 3d 312.

No. 18–7136. HANNA *v.* LEBLANC, SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 265.

No. 18–7137. MADRIGAL *v.* OHIO. Ct. App. Ohio, 6th App. Dist., Lucas County. Certiorari denied.

No. 18–7146. SAGE *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 1 Wash. App. 2d 685, 407 P. 3d 359.

No. 18–7149. DANIELAK *v.* BREWER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 747 Fed. Appx. 339.

No. 18–7151. MULHERN *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 179 A. 3d 576.

No. 18–7155. PROVENCIO *v.* LIZARRAGA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–7157. MAYFIELD *v.* MARTIN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 747 Fed. Appx. 722.

No. 18–7159. LAMAR *v.* O'DELL, COLORADO PAROLE BOARD MEMBER. C. A. 10th Cir. Certiorari denied. Reported below: 750 Fed. Appx. 714.

No. 18–7160. ARANOFF *v.* ARANOFF. Ct. App. N. Y. Certiorari denied. Reported below: 32 N. Y. 3d 1052, 113 N. E. 3d 463.

No. 18–7164. KNUTH *v.* ARP, JUDGE, DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF COLORADO, ET AL. Ct. App. Colo. Certiorari denied.

No. 18–7165. JONES *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 18–7168. WILLIAMS *v.* SOTO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–7170. YANCEY *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 286 So. 3d 34.

No. 18–7171. YOUNG *v.* VOONG ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 509.

No. 18–7172. KEEN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 18–7173. LOFGREN *v.* HARDIN. Ct. App. Wash. Certiorari denied. Reported below: 3 Wash. App. 2d 1024.

No. 18–7174. EVERSON *v.* NEW YORK (two judgments). App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 158 App. Div. 3d 1119, 70 N. Y. S. 3d 301 (first judgment); 158 App. Div. 3d 1123, 67 N. Y. S. 3d 877 (second judgment).

No. 18–7175. LIPSEY *v.* COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT. C. A. 9th Cir. Certiorari denied.

No. 18–7179. TAYLOR *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 300 Neb. 629, 915 N. W. 2d 568.

No. 18–7182. GATES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 18–7202. RIOS SOTO *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 18–7234. EDWARDS ET AL. *v.* GENE SALTER PROPERTIES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 739 Fed. Appx. 357.

No. 18–7237. SAUNDERS *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 733.

No. 18–7244. LICEA MORALES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 713.

No. 18–7250. JONES *v.* SAMSON RESOURCES CORP. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 734 Fed. Appx. 177.

No. 18–7276. Francisco Vega et al. *v.* Kapusta, Interim Secretary, Florida Department of Children and Families. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 253 So. 3d 1072.

No. 18–7298. Moore *v.* Florida. Dist. Ct. App. Fla., 2d Dist. Certiorari denied.

No. 18–7311. Wilkins, aka Brown *v.* Gonzalez et al. C. A. 9th Cir. Certiorari denied.

No. 18–7337. Martin *v.* Terry, Acting Warden. Sup. Ct. App. W. Va. Certiorari denied.

No. 18–7354. Johnson *v.* Bradley, Warden. C. A. 6th Cir. Certiorari denied.

No. 18–7368. Howard *v.* McCready et al. C. A. 4th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 219.

No. 18–7385. Cheng Le *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 902 F. 3d 104.

No. 18–7394. Brown *v.* Tanner, Warden. C. A. 5th Cir. Certiorari denied.

No. 18–7395. Wilfred H. *v.* West Virginia. Sup. Ct. App. W. Va. Certiorari denied.

No. 18–7397. Breeden *v.* Kelley, Director, Arkansas Department of Correction. Sup. Ct. Ark. Certiorari denied. Reported below: 2018 Ark. 299, 557 S. W. 3d 264.

No. 18–7404. Laake *v.* Turning Stone Resort Casino. C. A. 2d Cir. Certiorari denied. Reported below: 740 Fed. Appx. 744.

No. 18–7410. Kott *v.* Vannoy, Warden. C. A. 5th Cir. Certiorari denied.

No. 18–7412. Kennedy *v.* Louisiana Department of Public Safety and Corrections. Sup. Ct. La. Certiorari denied. Reported below: 2018–1489 (La. 12/17/18), 258 So. 3d 596.

No. 18–7427. Daud *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 899 F. 3d 608.

No. 18–7430. FARAH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 899 F. 3d 608.

No. 18–7436. AASE *v.* SCHNELL, COMMISSIONER, MINNESOTA DEPARTMENT OF CORRECTIONS. C. A. 8th Cir. Certiorari denied.

No. 18–7440. WHITMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 887 F. 3d 1240.

No. 18–7443. THORNTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 737 Fed. Appx. 991.

No. 18–7445. GEORGE *v.* KENT, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 18–7447. LEMON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 444.

No. 18–7452. GARCIA-CARILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 743 Fed. Appx. 767.

No. 18–7454. ST. VALLIER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 750 Fed. Appx. 135.

No. 18–7456. SEBERT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 899 F. 3d 639.

No. 18–7462. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–7468. JONES *v.* PALMER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 127.

No. 18–7473. ALBRIGHT *v.* KANSAS. Sup. Ct. Kan. Certiorari denied.

No. 18–7498. HALL *v.* TERRIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–7522. KENNEDY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 743 Fed. Appx. 649.

No. 18–7523. JAMES *v.* KRUEGER, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 18–7537. SALDIERNA *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 371 N. C. 407, 817 S. E. 2d 174.

No. 18–7550. REYES-RUIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 747 Fed. Appx. 496.

No. 18–7556. HORTON *v.* DUCART, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–7562. ISAIAH *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 18–7565. FULLER *v.* EPPINGER, WARDEN. Sup. Ct. Ohio. Certiorari denied. Reported below: 153 Ohio St. 3d 269, 2018-Ohio-2629, 104 N. E. 3d 762.

No. 18–7578. HOWARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–7579. PRICE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 906 F. 3d 685.

No. 18–7585. GAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 746 Fed. Appx. 886.

No. 18–7587. HUDSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–7588. ODOM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 317.

No. 18–7593. SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–7598. MORRIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 737 Fed. Appx. 221.

No. 18–7600. HOLT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 751 Fed. Appx. 820.

No. 18–7602. DEMERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 228.

No. 18–7605. DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–7607. WHITE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 18–7609. ALSTON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 899 F. 3d 135.

No. 18–7615. BACON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 900 F. 3d 1234.

No. 18–7619. MORRIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 753 Fed. Appx. 607.

No. 18–7623. GOOLSBY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–7638. WILLIAMS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 736 Fed. Appx. 267.

No. 18–7644. BENITEZ *v.* KEY, SUPERINTENDENT, AIRWAY HEIGHTS CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 18–7654. FAUSNAUGHT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 18–7662. LEWIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 296.

No. 18–7664. GREER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–7666. DE JESUS VASQUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 753 Fed. Appx. 800.

No. 18–7667. TAYLOR *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 18–7713. GRIMSLEY *v.* MCGINLEY, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied.

No. 17–6271. JAMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 17–6577. ORR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 685 Fed. Appx. 263.

No. 17–8739. DORVILUS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 17–9469. ANGEL GARCIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN took no part in the con-

sideration or decision of this petition. Reported below: 877 F. 3d 944.

No. 18–551. PHILIP MORRIS USA INC. *v.* JORDAN. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition. Reported below: 243 So. 3d 929.

No. 18–552. PHILIP MORRIS USA INC. *v.* BROWN, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF BROWN. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition. Reported below: 243 So. 3d 521.

No. 18–621. R. J. REYNOLDS TOBACCO CO. ET AL. *v.* PARDUE, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF FARICY. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition. Reported below: 247 So. 3d 415.

No. 18–649. R. J. REYNOLDS TOBACCO CO. ET AL. *v.* SEARCY, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF LASARD. C. A. 11th Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition. Reported below: 902 F. 3d 1342.

No. 18–653. PHILIP MORRIS USA INC. *v.* MCKEEVER, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF MCKEEVER. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition. Reported below: 207 So. 3d 907.

No. 18–654. PHILIP MORRIS USA INC. ET AL. *v.* BOATRIGHT ET UX. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition. Reported below: 217 So. 3d 166.

No. 18–798. BLAUCH *v.* COLORADO. Dist. Ct. Colo., Adams County. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied.

No. 18–897. R. J. REYNOLDS TOBACCO CO. *v.* NALLY, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF NALLY, DECEASED. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition. Reported below: 253 So. 3d 576.

No. 18–898. R. J. Reynolds Tobacco Co. *v.* Johnston, Personal Representative of Johnston. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Justice Kavanaugh took no part in the consideration or decision of this petition. Reported below: 253 So. 3d 576.

No. 18–900. Zodhiates *v.* United States. C. A. 2d Cir. Motion of Foundation for Moral Law for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 901 F. 3d 137.

No. 18–7448. Foxx *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 253.

Justice Sotomayor, with whom Justice Ginsburg joins, dissenting.

I dissent for the reasons set out in *Brown* v. *United States*, 586 U. S. 953 (2018) (Sotomayor, J., dissenting from denial of certiorari).

No. 18–7453. Sterling *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 752 Fed. Appx. 848.

Justice Sotomayor, with whom Justice Ginsburg joins, dissenting.

I dissent for the reasons set out in *Brown* v. *United States*, 586 U. S. 953 (2018) (Sotomayor, J., dissenting from denial of certiorari).

No. 18–7495. Boyd *v.* Quintana, Warden. C. A. 6th Cir. Certiorari denied. Justice Kagan took no part in the consideration or decision of this petition.

No. 18–7614. Jacoby *v.* United States. C. A. 10th Cir. Certiorari denied. Justice Gorsuch took no part in the consideration or decision of this petition. Reported below: 750 Fed. Appx. 689.

No. 18–7656. Garcia *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. 17–8786. Deveaux *v.* Caldwell, Warden, 586 U. S. 832;
No. 17–8963. Herbert *v.* CVS Pharmacy et al., 586 U. S. 837;

No. 17–9058. Carter *v.* Berryhill, Acting Commissioner of Social Security, 586 U. S. 840;

No. 17–9108. Hurd *v.* Lizarraga, Warden, 586 U. S. 842;

No. 17–9144. Honish *v.* United States, 586 U. S. 844;

No. 17–9322. Haffer *v.* New Hampshire, 586 U. S. 854;

No. 17–9563. Ingram *v.* Diaz, Acting Secretary, California Department of Corrections and Rehabilitation, 586 U. S. 867;

No. 18–223. In re Dawson, 586 U. S. 1034;

No. 18–375. Alexander *v.* Bayview Loan Servicing, LLC, 586 U. S. 1070;

No. 18–458. Pellegrini *v.* Fresno County, California, et al., 586 U. S. 1070;

No. 18–598. Chien *v.* Clark et al., 586 U. S. 1074;

No. 18–683. Stark *v.* United States, 586 U. S. 1076;

No. 18–5128. In re Fairchild-Littlefield, 586 U. S. 811;

No. 18–5886. Mitchell *v.* Taylor et al., 586 U. S. 990;

No. 18–6160. Carmody *v.* Board of Trustees of the University of Illinois et al., 586 U. S. 1079;

No. 18–6230. Shoate *v.* Lewis, Warden, 586 U. S. 1052;

No. 18–6294. Walcott *v.* Terrebonne Parish Jail Medical Department et al., 586 U. S. 1080;

No. 18–6298. Fratta *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division, 586 U. S. 1080;

No. 18–6326. Coxe *v.* White, Superintendent, Washington State Corrections Center, 586 U. S. 1053;

No. 18–6354. Jossie *v.* CVS Pharmacy, 586 U. S. 1081;

No. 18–6383. Kulick *v.* Rein, 586 U. S. 1081;

No. 18–6507. Brown *v.* Del Norte County, California, et al., 586 U. S. 1084;

No. 18–6647. Sharma *v.* United States, 586 U. S. 1088; and

No. 18–6654. In re Debolt, 586 U. S. 1034. Petitions for rehearing denied.

February 26, 2019

Dismissal Under Rule 46

No. 18–995. Crunch San Diego, LLC *v.* Marks. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 904 F. 3d 1041.

February 28, 2019

Certiorari Denied

No. 18–8070 (18A845). Coble *v.* Texas. Ct. Crim. App. Tex. Application for stay of execution of sentence of death, presented to Justice Alito, and by him referred to the Court, denied. Certiorari denied.

March 4, 2019

Certiorari Granted—Vacated and Remanded

No. 17–9044. Fabian-Baltazar *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 *Garza* v. *Idaho*, 586 U. S. 232 (2019). Reported below: 707 Fed. Appx. 477.

Certiorari Dismissed

No. 18–7225. Gillespie *v.* Reverse Mortgage Solutions, Inc. Sup. Ct. Fla. 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. 18–7544. Williams *v.* California. Ct. App. Cal., 2d App. Dist., Div. 6. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 18–7545. Williams *v.* California. Ct. App. Cal., 2d App. Dist., Div. 6. 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–3030. In re Disbarment of Reiner. Disbarment entered. [For earlier order herein, see 586 U. S. 961.]

No. 18M105. Caldwell *v.* Roberts, Warden;

No. 18M107. Cox et al. *v.* United States et al.;
No. 18M108. Dyson *v.* Brennan, Postmaster General;
No. 18M109. Katz *v.* National Board of Medical Examiners et al.;
No. 18M110. Jennifer A. *v.* Gregory M. et al.; and
No. 18M111. Lebron *v.* United States. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 18M106. Shampine *v.* Lee 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. 17–1705. PDR Network, LLC, et al. *v.* Carlton & Harris Chiropractic, Inc. C. A. 4th Cir. [Certiorari granted, 586 U. S. 996.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 18–7856. In re Alexander; and
No. 18–7890. In re Joaquin Ramirez. Petitions for writs of habeas corpus denied.

Certiorari Granted

No. 18–801. Iancu, Under Secretary of Commerce for Intellectual Property and Director, Patent and Trademark Office *v.* NantKwest, Inc. C. A. Fed. Cir. Certiorari granted. Reported below: 898 F. 3d 1177.

Certiorari Denied

No. 18–384. Papierfabrik August Koehler SE *v.* United States et al. C. A. Fed. Cir. Certiorari denied. Reported below: 710 Fed. Appx. 889.

No. 18–450. Utah Republican Party *v.* Cox, Lieutenant Governor of Utah, et al. C. A. 10th Cir. Certiorari denied. Reported below: 892 F. 3d 1066.

No. 18–534. Well Luck Co., Inc. *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 887 F. 3d 1106.

No. 18–555. Marquette County Road Commission *v.* Environmental Protection Agency et al. C. A. 6th Cir. Certiorari denied. Reported below: 726 Fed. Appx. 461.

No. 18–648. SEARCEY ET AL. *v.* DEAN ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 893 F. 3d 504.

No. 18–746. COUNTY OF LOS ANGELES, CALIFORNIA, ET AL. *v.* MENDEZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 897 F. 3d 1067.

No. 18–815. T. B., BY AND THROUGH HIS PARENTS, T. B. ET UX. *v.* PRINCE GEORGE'S COUNTY BOARD OF EDUCATION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 897 F. 3d 566.

No. 18–819. VASCONCELLOS *v.* HAMLIN. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2018 IL App (2d) 160715–U.

No. 18–840. BANKS *v.* GORE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 766.

No. 18–862. DAUGHERTY ET AL. *v.* SHEER ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 891 F. 3d 386.

No. 18–883. LEDESMA-CONCHAS *v.* BARR, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 744.

No. 18–885. KENNEDY ET AL. *v.* SCHNEIDER ELECTRIC, FKA SQUARE D CO. C. A. 7th Cir. Certiorari denied. Reported below: 893 F. 3d 414.

No. 18–920. VELTRE *v.* FIFTH THIRD BANK. C. A. 3d Cir. Certiorari denied. Reported below: 732 Fed. Appx. 171.

No. 18–927. MEKOWULU *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–967. MICHEO-ACEVEDO *v.* STERICYCLE OF PUERTO RICO, INC. C. A. 1st Cir. Certiorari denied. Reported below: 897 F. 3d 360.

No. 18–977. ANDERSON *v.* WALRATH, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 294.

No. 18–1005. ZELL *v.* KLINGELHAFER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 751 Fed. Appx. 641.

No. 18–1009. UNITED STATES EX REL. CODY *v.* MANTECH INTERNATIONAL CORP. C. A. 4th Cir. Certiorari denied. Reported below: 746 Fed. Appx. 166.

No. 18–1011. Rodriguez Lopez *v.* ReadyOne Industries, Inc. Ct. App. Tex., 8th Dist. Certiorari denied. Reported below: 551 S. W. 3d 305.

No. 18–1018. Bennett et al. *v.* Jefferson County, Alabama. C. A. 11th Cir. Certiorari denied. Reported below: 899 F. 3d 1240.

No. 18–1021. Hawkins *v.* Inch, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 18–6207. Paiz Guevara *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 894 F. 3d 593.

No. 18–6306. Hebert *v.* Rogers, Warden. C. A. 5th Cir. Certiorari denied. Reported below: 890 F. 3d 213.

No. 18–6482. Anchundia-Espinoza *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 897 F. 3d 629.

No. 18–6569. Murray *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 18–6780. Farr *v.* Davis et al. C. A. 10th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 961.

No. 18–6807. Slusser *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 895 F. 3d 437.

No. 18–6845. Mitchell *v.* Mahally, Superintendent, State Correctional Institution at Dallas, et al. C. A. 3d Cir. Certiorari denied. Reported below: 902 F. 3d 156.

No. 18–6869. McNeill *v.* North Carolina. Sup. Ct. N. C. Certiorari denied. Reported below: 371 N. C. 198, 813 S. E. 2d 797.

No. 18–6916. Powell *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 5 Cal. 5th 921, 422 P. 3d 973.

No. 18–7190. Wicks *v.* Radnothy et al. Sup. Ct. Fla. Certiorari denied.

No. 18–7211. Monte *v.* Kessling et al. C. A. 3d Cir. Certiorari denied. Reported below: 745 Fed. Appx. 471.

No. 18–7213. Dixit *v.* Brasher, Judge, Superior Court of Georgia, Atlanta Judicial Circuit. Ct. App. Ga. Certiorari denied.

No. 18–7218. BERHE *v.* OLESEHA. Ct. App. D. C. Certiorari denied.

No. 18–7220. FAROOQI *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 18–7221. GILBERT *v.* WASHINGTON DEPARTMENT OF CORRECTIONS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 673.

No. 18–7223. HALL *v.* PARAMO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 734 Fed. Appx. 519.

No. 18–7295. BARNES *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 254 So. 3d 397.

No. 18–7316. HOWELL *v.* NUCAR CONNECTION, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 784.

No. 18–7319. GREENE *v.* ALABAMA DEPARTMENT OF REVENUE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 746 Fed. Appx. 929.

No. 18–7339. REYES *v.* DUGGAN ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 723 Fed. Appx. 3.

No. 18–7347. FREER *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 710 Fed. Appx. 41.

No. 18–7362. DANIELS *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 18–7402. SHAPIRO *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied.

No. 18–7405. BEASON *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 102 N. E. 3d 346.

No. 18–7415. SCOTT *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 8. Certiorari denied.

No. 18–7479. HAYCRAFT *v.* INDIANA. Ct. App. Ind. Certiorari denied.

No. 18–7505. PINA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 413.

No. 18–7511. ORTIZ-FAGOT *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 18–7541. RANGEL *v.* TIPPECANOE COUNTY, INDIANA, ET AL. C. A. 7th Cir. Certiorari denied.

No. 18–7557. HYPPOLITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 329.

No. 18–7560. FREEMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 333.

No. 18–7561. GUZMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 240.

No. 18–7563. FOSTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–7566. GORIS, AKA GORIZ, AKA ABREU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 709 Fed. Appx. 107.

No. 18–7567. COLLINS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 18–7611. EVERETT *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 186 A. 3d 1224.

No. 18–7612. BOWENS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 907 F. 3d 347.

No. 18–7621. BURNS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 243.

No. 18–7627. HOUPE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 704 Fed. Appx. 276.

No. 18–7632. GRANT *v.* KELLY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. Sup. Ct. Ark. Certiorari denied. Reported below: 2018 Ark. 204, 548 S. W. 3d 814.

No. 18–7642. LASSEND *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 898 F. 3d 115.

No. 18–7645. SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 440.

No. 18–7646. SAWYER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 907 F. 3d 121.

No. 18–7649. BAZAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 747 Fed. Appx. 454.

No. 18–7660. HARRIS *v.* DEAL, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 18–7663. FORD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 888 F. 3d 922.

No. 18–7668. PALADIN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 18–7669. MORENO-ALVAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 255.

No. 18–7675. HAYES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 18–7678. HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 124.

No. 18–7679. CURRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 744 Fed. Appx. 784.

No. 18–7682. DEMERS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 740 Fed. Appx. 750.

No. 18–7692. HORN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 262.

No. 18–7699. RUIZ-RUIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 253.

No. 18–7700. RAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 452.

No. 18–7707. ANGUIANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 699.

No. 18–7711. FITZGERALD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 754 Fed. Appx. 351.

No. 18–7712. MIMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–7715. FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 505.

No. 18–7716. INGRAM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 714 Fed. Appx. 982.

No. 18–7717. FERGUSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 314.

No. 18–7737. SIMMONS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 18–7740. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–7742. SERNA *v.* COUNTY OF HENNEPIN, MINNESOTA. C. A. 8th Cir. Certiorari denied.

No. 18–7745. EVANS *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 329 Conn. 770, 189 A. 3d 1184.

No. 18–7750. MORROBEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 754 Fed. Appx. 867.

No. 18–7759. BUCKNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 750 Fed. Appx. 905.

No. 18–7766. REEDER *v.* REYNOLDS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 81.

No. 18–7773. ESPINOZA-MENDOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 263.

No. 18–7794. KROTT *v.* MAY, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 649.

No. 18–364. MORRIS COUNTY BOARD OF CHOSEN FREEHOLDERS ET AL. *v.* FREEDOM FROM RELIGION FOUNDATION ET AL.; and No. 18–365. PRESBYTERIAN CHURCH IN MORRISTOWN ET AL. *v.* FREEDOM FROM RELIGION FOUNDATION ET AL. Sup. Ct. N. J. Certiorari denied. Reported below: 232 N. J. 543, 181 A. 3d 992.

Statement of JUSTICE KAVANAUGH, with whom JUSTICE ALITO and JUSTICE GORSUCH join, respecting the denial of certiorari.

Morris County, New Jersey, distributes historic preservation funds to help preserve local buildings such as libraries, schoolhouses, performing arts centers, and museums. As part of that program, Morris County also distributes funds to help preserve

religious buildings such as synagogues, temples, churches, and mosques. But it turns out that New Jersey law, as recently interpreted by the New Jersey Supreme Court, prohibits Morris County from awarding grants to preserve religious buildings.

The petitioners here argue that the State's exclusion of religious buildings—because they are religious—from Morris County's historic preservation program constitutes unconstitutional discrimination against religion in violation of the First and Fourteenth Amendments to the United States Constitution. The New Jersey Supreme Court concluded that the State's discrimination did not violate the First and Fourteenth Amendments.

In my view, the decision of the New Jersey Supreme Court is in serious tension with this Court's religious equality precedents.

As this Court has repeatedly held, governmental discrimination against religion—in particular, discrimination against religious persons, religious organizations, and religious speech—violates the Free Exercise Clause and the Equal Protection Clause. In the words of Justice Brennan, the "government may not use religion as a basis of classification for the imposition of duties, penalties, privileges or benefits." *McDaniel* v. *Paty*, 435 U. S. 618, 639 (1978) (opinion concurring in judgment). Under the Constitution, the government may not discriminate against religion generally or against particular religious denominations. See *Larson* v. *Valente*, 456 U. S. 228, 244 (1982).

The principle of religious equality eloquently articulated by Justice Brennan in *McDaniel* is now firmly rooted in this Court's jurisprudence. As Justice Kennedy later wrote for the Court, a law may not discriminate against "some or all religious beliefs," and "a law targeting religious beliefs as such is never permissible." *Church of Lukumi Babalu Aye, Inc.* v. *Hialeah*, 508 U. S. 520, 532, 533 (1993). Put another way, the government may not "impose special disabilities on the basis of . . . religious status." *Employment Div., Dept. of Human Resources of Ore.* v. *Smith*, 494 U. S. 872, 877 (1990).

We have applied that bedrock principle of religious equality in numerous cases. See, *e. g.*, *Trinity Lutheran Church of Columbia, Inc.* v. *Comer*, 582 U. S. 449 (2017); *Good News Club* v. *Milford Central School*, 533 U. S. 98 (2001); *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819 (1995); *Lamb's Chapel* v. *Center Moriches Union Free School Dist.*, 508 U. S. 384 (1993); *McDaniel*, 435 U. S. 618.

For example, in *McDaniel*, a Tennessee statute disqualified ministers from serving as delegates to Tennessee's constitutional convention. The Court ruled the statute unconstitutional, explaining that the Constitution does not allow the government to discriminate against religious persons by prohibiting their service in a public office. See *id.*, at 629.

In *Good News*, a school district in New York allowed residents to use the local public high school for social, civic, and recreational events. But the school district prohibited a religious organization from using the school, simply because the organization was religious. This Court held that the school district's exclusion of the religious organization was unconstitutional discrimination against religion. See 533 U. S., at 109.

That same principle of religious equality applies to governmental benefits or grants programs in which religious organizations or people seek benefits or grants on the same terms as secular organizations or people—at least, our precedents say, so long as the government does not fund the training of clergy, for example. See *Trinity Lutheran*, 582 U. S., at 464–465; *Locke* v. *Davey*, 540 U. S. 712, 721, 725 (2004).

In *Trinity Lutheran*, Missouri barred a religious school from obtaining a state funding grant for the school's playground. By contrast, Missouri allowed secular private schools to obtain state funding grants for their schools' playgrounds. This Court held that Missouri's law was unconstitutional. The Court stated that the Constitution "protects religious observers against unequal treatment." 582 U. S., at 458 (alterations omitted). In the Court's description, Missouri's law reflected an unconstitutional policy of "No churches need apply." *Id.*, at 465. The Court minced no words: Discriminating against religious schools because the schools are religious "is odious to our Constitution." *Id.*, at 467.

In this case, New Jersey's "No religious organizations need apply" for historic preservation grants appears similar to, for example, Missouri's "No religious schools need apply" for school playground grants and New York's "No religious clubs need apply" for use of school facilities and Tennessee's "No ministers need apply" for state office.

To be clear, this is not a case like *Lee* v. *Weisman*, 505 U. S. 577 (1992); *Marsh* v. *Chambers*, 463 U. S. 783 (1983); or *County of Allegheny* v. *American Civil Liberties Union, Greater Pitts-*

burgh Chapter, 492 U. S. 573 (1989), where the government itself is engaging in religious speech, such as a government-sponsored prayer or a government-sponsored religious display. Nor is this a case like *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U. S. 682 (2014), or *Smith*, 494 U. S. 872, where a religious group or person is asking for an accommodation or exemption from a generally applicable law. Under the Court's precedents, both of those categories of cases can pose difficult questions. This kind of case, by contrast, should not be as difficult: Barring religious organizations because they are religious from a general historic preservation grants program is pure discrimination against religion.

* * *

At some point, this Court will need to decide whether governments that distribute historic preservation funds may deny funds to religious organizations simply because the organizations are religious. But at this point and in this case, it is appropriate to deny certiorari, for two main reasons. First, the factual details of the Morris County program are not entirely clear. In particular, it is not evident precisely what kinds of buildings can be funded under the Morris County program. That factual uncertainty about the scope of the program could hamper our analysis of petitioners' religious discrimination claim. Second, this Court decided *Trinity Lutheran* only recently, and there is not yet a robust post-*Trinity Lutheran* body of case law in the lower courts on the question whether governments may exclude religious organizations from general historic preservation grants programs.

For those reasons, denial of certiorari is appropriate. As always, a denial of certiorari does not imply agreement or disagreement with the decision of the relevant federal court of appeals or state supreme court. In my view, prohibiting historic preservation grants to religious organizations simply because the organizations are religious would raise serious questions under this Court's precedents and the Constitution's fundamental guarantee of equality.

No. 18–684. Stevens-Rucker, Administrator of the Estate of White, Deceased *v.* Frenz et al. C. A. 6th Cir. Motion of The Rutherford Institute for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 739 Fed. Appx. 834.

No. 18–704. ABBOTT ET AL. *v.* PASTIDES ET AL. C. A. 4th Cir. Motions of First Amendment Clinics at Duke Law et al. and American Civil Liberties Union of South Carolina et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 900 F. 3d 160.

No. 18–7538. RUSSO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 902 F. 3d 880.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, dissenting.

I dissent for the reasons set out in *Brown* v. *United States*, 586 U. S. 953 (2018) (SOTOMAYOR, J., dissenting from denial of certiorari).

No. 18–7616. TOVAR PUPO *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition. Reported below: 715 Fed. Appx. 11.

No. 18–7674. GORBEY *v.* MCCALL, WARDEN. C. A. 4th Cir. Certiorari denied. THE CHIEF JUSTICE and JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 722 Fed. Appx. 327.

Rehearing Denied

No. 17–8059. BEAVERS, AKA STOKES, AKA WEST *v.* UNITED STATES, 586 U. S. 827;

No. 17–8685. BELL *v.* INOVA HEALTH CARE, DBA INOVA FAIRFAX HOSPITAL (two judgments), 585 U. S. 1022;

No. 18–5057. BAGBY *v.* HYATTE, WARDEN, 586 U. S. 880;

No. 18–5120. NELSON *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY, 586 U. S. 883;

No. 18–5355. SANDERS *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, 586 U. S. 896;

No. 18–5896. BAKER *v.* UNITED STATES, 586 U. S. 929;

No. 18–5989. BILBO *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, 586 U. S. 1001;

No. 18–6038. VILLAVICENCIO *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, 586 U. S. 1023;

No. 18–6239. Reilly *v.* Herrera et al., 586 U. S. 1079;
No. 18–6365. Bartlett *v.* Michigan et al., 586 U. S. 1081;
No. 18–6509. Tedesco *v.* Monroe County, Pennsylvania, et al., 586 U. S. 1084;
No. 18–6517. Brown *v.* Elite Modeling Agency, 586 U. S. 1085;
No. 18–6575. Stokes *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division, 586 U. S. 1086;
No. 18–6661. Samuel *v.* United States, 586 U. S. 1088;
No. 18–6676. Wilmore *v.* United States, 586 U. S. 1088;
No. 18–6841. Stewart *v.* North Carolina, 586 U. S. 1093; and
No. 18–6941. Chapman *v.* Lampert, Director, Wyoming Department of Corrections, et al., 586 U. S. 1120. Petitions for rehearing denied.

No. 18–5578. Akel *v.* United States, 586 U. S. 911. Petition for rehearing denied. Justice Kagan took no part in the consideration or decision of this petition.

No. 18–5704. Austin *v.* District Attorney of Philadelphia County, Pennsylvania, et al., 586 U. S. 938. Petition for rehearing denied. Justice Alito took no part in the consideration or decision of this petition.

No. 18–6291. Cook *v.* Jones, Secretary, Florida Department of Corrections, et al., 586 U. S. 1024. Motion for leave to file petition for rehearing denied.

No. 18–6376. Albra *v.* Board of Trustees of Miami Dade College et al., 586 U. S. 1109. Petition for rehearing denied. Justice Kavanaugh took no part in the consideration or decision of this petition.

March 5, 2019

Dismissal Under Rule 46

No. 18–788. R. J. Reynolds Tobacco Co. *v.* Odom, as Personal Representative of the Estate of Thurston. Sup. Ct. Fla. Certiorari dismissed under this Court's Rule 46.1. Reported below: 254 So. 3d 268.

March 15, 2019

Miscellaneous Orders

No. 18–422. Rucho et al. *v.* Common Cause et al. D. C. M. D. N. C. [Probable jurisdiction postponed, 586 U. S. 1062.] Joint motion of appellees for enlargement of time for oral argument and for divided argument granted in part, and the time is divided as follows: 35 minutes for appellants, 20 minutes for appellee Common Cause et al., and 15 minutes for appellee League of Women Voters of North Carolina et al.

No. 18–966. Department of Commerce et al. *v.* New York et al. C. A. 2d Cir. [Certiorari granted, 586 U. S. 1140.] The parties are directed to brief and argue the following additional question: "Whether the Secretary of Commerce's decision to add a citizenship question to the Decennial Census violated the Enumeration Clause of the U. S. Constitution, Art. I, § 2, cl. 3." Respondents are allowed an additional 2,000 words in aggregate to address this question in their briefs on the merits. Petitioners are allowed an additional 1,000 words to address this question in their reply brief on the merits.

March 18, 2019

Certiorari Granted—Vacated and Remanded

No. 18–6612. Pinkney *v.* United States. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Stokeling* v. *United States*, 586 U. S. 73 (2019). Reported below: 734 Fed. Appx. 986.

Certiorari Dismissed

No. 18–7697. Yates *v.* Iowa. Dist. Ct. North Lee County, Iowa. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 18–7705. Yates *v.* Iowa. Ct. App. Iowa. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 924 N. W. 2d 532.

Miscellaneous Orders

No. 18M112. ALFETLAWI *v.* KLEE, WARDEN;

No. 18M115. WEBB-EL *v.* HURWITZ, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL.; and

No. 18M116. PRICE *v.* VANNOY, WARDEN. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 18M113. IN RE TWELVE GRAND JURY SUBPOENAS; and

No. 18M114. RUNNELS *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. Motions for leave to file petitions for writs of certiorari under seal with redacted copies for the public record granted.

No. 18–349. PATTERSON *v.* WALGREEN CO. C. A. 11th Cir.; and

No. 18–817. HIKMA PHARMACEUTICALS USA INC. ET AL. *v.* VANDA PHARMACEUTICALS INC. C. A. Fed. Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 18–6321. NGUYEN *v.* NIELSEN, SECRETARY OF HOMELAND SECURITY. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [586 U. S. 1034] denied.

No. 18–6907. KULICK *v.* LEISURE VILLAGE ASSN., INC. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [586 U. S. 1143] denied.

No. 18–7369. GHOSH *v.* CITY OF BERKELEY, CALIFORNIA, ET AL. Ct. App. Cal., 1st App. Dist.; and

No. 18–7695. WILLIAMS *v.* WILKIE, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until April 8, 2019, 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. 18–1064. IN RE WILLIAMS;

No. 18–7063. IN RE DREAD;

No. 18–8080. IN RE JOHNSON;

No. 18–8098. IN RE HANSON; and

No. 18–8110. IN RE ANDERSON. Petitions for writs of habeas corpus denied.

No. 18–8006. IN RE EVANS. 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. 18–7754. IN RE CABELLO; and
No. 18–7949. IN RE WATSON. Petitions for writs of mandamus denied.

No. 18–7777. IN RE BRICE. 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. 18–6927. IN RE URBINA. Petition for writ of prohibition denied.

Certiorari Granted

No. 18–217. MATHENA, WARDEN *v.* MALVO. C. A. 4th Cir. Certiorari granted. Reported below: 893 F. 3d 265.

No. 17–834. KANSAS *v.* GARCIA (Reported below: 306 Kan. 1113, 401 P. 3d 588); KANSAS *v.* MORALES (306 Kan. 1100, 401 P. 3d 155); and KANSAS *v.* OCHOA-LARA (306 Kan. 1107, 401 P. 3d 159). Sup. Ct. Kan. Certiorari granted limited to Question 1 presented by the petition and the following question: "Whether the Immigration Reform and Control Act impliedly pre-empts Kansas' prosecution of respondents."

No. 18–5924. RAMOS *v.* LOUISIANA. Ct. App. La., 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 2016–1199 (La. App. 4 Cir. 11/2/17), 231 So. 3d 44.

No. 18–6135. KAHLER *v.* KANSAS. Sup. Ct. Kan. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 307 Kan. 374, 410 P. 3d 105.

Certiorari Denied

No. 18–234. CHAIDEZ CAMPOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 888 F. 3d 724.

No. 18–292. LEWIS *v.* ENGLISH, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 749.

No. 18–442. BENTON *v.* UNITED STATES;
No. 18–601. TATE *v.* UNITED STATES; and
No. 18–606. KESARI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 890 F. 3d 697.

No. 18–461. HINOJOSA ET AL. *v.* HORN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 896 F. 3d 305.

No. 18–472. BEHR DAYTON THERMAL PRODUCTS LLC ET AL. *v.* MARTIN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 896 F. 3d 405.

No. 18–499. GRIFFIOEN ET AL. *v.* CEDAR RAPIDS AND IOWA CITY RAILWAYS CO. ET AL. Sup. Ct. Iowa. Certiorari denied. Reported below: 914 N. W. 2d 273.

No. 18–503. N. E. L. ET AL. *v.* DOUGLAS COUNTY, COLORADO, ET AL. (Reported below: 740 Fed. Appx. 920), certiorari denied; and N. E. L. ET AL. *v.* GILDNER ET AL., certiorari before judgment denied. C. A. 10th Cir.

No. 18–530. CONGREGATION JESHUAT ISRAEL *v.* CONGREGATION SHEARITH ISRAEL. C. A. 1st Cir. Certiorari denied. Reported below: 866 F. 3d 53.

No. 18–539. HAWES *v.* REILLY. Sup. Ct. R. I. Certiorari denied. Reported below: 184 A. 3d 661.

No. 18–576. WRIGHT *v.* WATSON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 739 Fed. Appx. 981.

No. 18–596. NEBA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 901 F. 3d 260.

No. 18–617. SPIRIT AIRLINES, INC. *v.* MAIZES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 899 F. 3d 1230.

No. 18–656. HALL, DIRECTOR, KENTUCKY DEPARTMENT OF CORRECTIONS, DIVISION OF PROBATION AND PAROLE *v.* AYERS. C. A. 6th Cir. Certiorari denied. Reported below: 900 F. 3d 829.

No. 18–689. MOYA ET AL. *v.* GARCIA, SHERIFF, SANTA FE COUNTY, NEW MEXICO, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 895 F. 3d 1229.

No. 18–699. Brookdale Senior Living Communities, Inc., et al. *v.* United States ex rel. Prather. C. A. 6th Cir. Certiorari denied. Reported below: 892 F. 3d 822.

No. 18–716. Petroleo Brasileiro S. A. *v.* EIG Energy Fund XIV, L. P., et al. C. A. D. C. Cir. Certiorari denied. Reported below: 894 F. 3d 339.

No. 18–760. Saunders *v.* Ivey, Sheriff, Brevard County, Florida, et al. C. A. 11th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 559.

No. 18–763. Fattah *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 914 F. 3d 112.

No. 18–805. Strohmeyer *v.* Surface Transportation Board et al. C. A. 3d Cir. Certiorari denied.

No. 18–834. Sheikh et al. *v.* San Joaquin General Hospital. C. A. 9th Cir. Certiorari denied.

No. 18–835. Lozano *v.* Superior Court of Massachusetts, Suffolk County, et al. C. A. 1st Cir. Certiorari denied.

No. 18–845. Seidel *v.* Century Surety Co. C. A. 5th Cir. Certiorari denied. Reported below: 893 F. 3d 328.

No. 18–848. Bisbee *v.* Ryan, Director, Arizona Department of Corrections, et al. C. A. 9th Cir. Certiorari denied.

No. 18–859. Peel *v.* H. E. Butt Grocery Co. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 18–865. Vella *v.* Barr, Attorney General. C. A. 3d Cir. Certiorari denied. Reported below: 742 Fed. Appx. 623.

No. 18–867. Jackson et al. *v.* Jackson. C. A. 11th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 905.

No. 18–869. Lecuona *v.* Lecuona. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 18–870. Ibragimov *v.* Wisconsin. Ct. App. Wis. Certiorari denied.

No. 18–876. Almond et al. *v.* Singing River Health System et al. C. A. 5th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 846.

No. 18–880. SureShot Golf Ventures, Inc. *v.* Topgolf International, Inc. C. A. 5th Cir. Certiorari denied. Reported below: 754 Fed. Appx. 235.

No. 18–886. Jones *v.* Hawaii Residency Programs, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 423.

No. 18–887. California Trucking Assn. *v.* Su. C. A. 9th Cir. Certiorari denied. Reported below: 903 F. 3d 953.

No. 18–889. Smith et al. *v.* Weber. Sup. Ct. Ill. Certiorari denied.

No. 18–890. D'Addario et al. *v.* D'Addario. C. A. 2d Cir. Certiorari denied. Reported below: 901 F. 3d 80.

No. 18–901. Simmons *v.* Texas. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 18–905. Mastrogiovanni Schorsch & Mersky, P. C., et al. *v.* Mandel. C. A. 5th Cir. Certiorari denied. Reported below: 747 Fed. Appx. 955.

No. 18–906. Kinney *v.* Cantil-Sakauye et al. C. A. 9th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 562.

No. 18–907. Kinney *v.* Three Arch Bay Community Services District et al. C. A. 9th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 553.

No. 18–908. Kinney *v.* Rothschild et al. C. A. 9th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 555.

No. 18–909. Davis *v.* Fiat Chrysler Automobiles U. S., LLC. C. A. 6th Cir. Certiorari denied. Reported below: 747 Fed. Appx. 309.

No. 18–912. AmeriCare MedServices, Inc. *v.* City of Anaheim, California, et al. C. A. 9th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 473.

No. 18–915. Christian *v.* Payne et al. C. A. 4th Cir. Certiorari denied. Reported below: 748 Fed. Appx. 504.

No. 18–917. Bent *v.* Talkin, Marshal, Supreme Court of the United States, et al. C. A. D. C. Cir. Certiorari denied.

No. 18–922. FISCH *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 537 S. W. 3d 207.

No. 18–925. A–1 PREMIUM ACCEPTANCE, INC. *v.* HUNTER. Sup. Ct. Mo. Certiorari denied. Reported below: 557 S. W. 3d 923.

No. 18–934. PROSTERMAN ET AL. *v.* AMERICAN AIRLINES INC. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 747 Fed. Appx. 458.

No. 18–939. ORTEGA-MORALES *v.* BARR, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 752 Fed. Appx. 839.

No. 18–947. BARTH *v.* TOWNSHIP OF BERNARDS, NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–950. FREEMAN *v.* AMERICAN K–9 DETECTION SERVICES, LLC, ET AL. Sup. Ct. Tex. Certiorari denied. Reported below: 556 S. W. 3d 246.

No. 18–951. T&T ROCK DISTRIBUTION, LLC *v.* VELASCO. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 18–955. FERNANDEZ *v.* SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 898 F. 3d 1324.

No. 18–985. BMP FAMILY L. P. ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 764.

No. 18–986. HUCKABY ET AL. *v.* HALLEY, AS NEXT FRIEND OF J. H., A MINOR CHILD. C. A. 10th Cir. Certiorari denied. Reported below: 902 F. 3d 1136.

No. 18–988. RPD HOLDINGS, L. L. C. *v.* TECH PHARMACY SERVICES, DBA ADVANCED PHARMACY SERVICES. C. A. 5th Cir. Certiorari denied. Reported below: 907 F. 3d 845.

No. 18–994. WILLIAMS *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–997. WILLIAMS ET AL. *v.* NATIONAL GALLERY, LONDON, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 749 Fed. Appx. 13.

No. 18–1001. SIBLEY *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 18–1003. SLONE ET AL. *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 896 F. 3d 1083.

No. 18–1016. BEAM *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 18–1029. GHOSH *v.* DISH NETWORK L. L. C. C. A. 10th Cir. Certiorari denied. Reported below: 752 Fed. Appx. 589.

No. 18–1075. RPX CORP. *v.* APPLICATIONS IN INTERNET TIME, LLC. C. A. Fed. Cir. Certiorari denied. Reported below: 897 F. 3d 1336.

No. 18–5773. DELANCY *v.* PASTRANA, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 18–5781. DUSENBERY *v.* HOLT, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 720 Fed. Appx. 102.

No. 18–5969. FUENTES-CANALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 902 F. 3d 468.

No. 18–6237. SMITH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 710.

No. 18–6265. SILVA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 889 F. 3d 704.

No. 18–6310. LAWSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 663.

No. 18–6319. REID *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 888 F. 3d 256.

No. 18–6377. WOODSIDE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 895 F. 3d 894.

No. 18–6481. FONTANEZ *v.* COAKLEY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 698 Fed. Appx. 150.

No. 18–6533. LEWALLYN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 737 Fed. Appx. 471.

No. 18–6550. THOMAS *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 898 F. 3d 561.

No. 18–6667. ELBEBLAWY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 899 F. 3d 925.

No. 18–6671. MALONE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 889 F. 3d 310.

No. 18–6771. GARDNER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 734 Fed. Appx. 311.

No. 18–6904. ROBERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 87.

No. 18–6913. SOWELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 18–6914. ROJAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 748 Fed. Appx. 777.

No. 18–6979. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 152.

No. 18–6989. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 749 Fed. Appx. 827.

No. 18–7000. BUENO JIMENEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 756 Fed. Appx. 933.

No. 18–7022. ZATER *v.* ATKINSON, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 178.

No. 18–7224. ACUNA VALENZUELA *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 245 Ariz. 197, 426 P. 3d 1176.

No. 18–7242. SANDERS *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 245 Ariz. 113, 425 P. 3d 1056.

No. 18–7246. SIMS *v.* KING ET AL. C. A. 8th Cir. Certiorari denied.

No. 18–7248. ANTHONY *v.* BOYD, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 903.

No. 18–7252. WIESE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 896 F. 3d 720.

No. 18–7257. DIAKITE *v.* ASUNCION, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–7258. THOMASON *v.* JACKSON ET AL. Sup. Ct. Ala. Certiorari denied.

No. 18–7259. ALLEN *v.* SMITH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE. Sup. Ct. Pa. Certiorari denied.

No. 18–7261. CUMBEE *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 726 Fed. Appx. 238.

No. 18–7265. ARMSTRONG *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 18–7271. JOHNSON *v.* MCDOWELL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 588.

No. 18–7273. BLAKE *v.* FISH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 206.

No. 18–7279. THOMAS *v.* DISTRICT ATTORNEY OF LANCASTER COUNTY, PENNSYLVANIA. C. A. 3d Cir. Certiorari denied.

No. 18–7280. WAPPLER *v.* IVEY ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–7281. WORKMAN *v.* VANDERMOSTEN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 379.

No. 18–7283. BARTLETT *v.* KALAMAZOO COUNTY COMMUNITY MENTAL HEALTH BOARD ET AL. C. A. 6th Cir. Certiorari denied.

No. 18–7285. BURCH *v.* ATLANTA CITY COURT ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 914.

No. 18–7288. HARRISON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 18–7290. AJVAZI *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–7291. THOMPSON *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–7299. PARKER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 18–7301. J. C. *v.* TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 18–7302. BARTLETT *v.* GORSALITZ ET AL. C. A. 6th Cir. Certiorari denied.

No. 18–7312. TRAN *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 54 Kan. App. 2d xxx, 399 P. 3d 290.

No. 18–7314. THOMAS *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 252 So. 3d 164.

No. 18–7315. ARMISTEAD *v.* BOWEN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 69.

No. 18–7318. GOMEZ *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist., Div. 4. Certiorari denied.

No. 18–7321. YOUNG *v.* CHAPDELAINE, WARDEN; YOUNG *v.* CHAPDELAINE, WARDEN; and YOUNG *v.* CHAPDELAINE, WARDEN, ET AL. C. A. 2d Cir. Certiorari denied.

No. 18–7322. YERTON *v.* BRYANT, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 737 Fed. Appx. 902.

No. 18–7324. GIL *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 239 So. 3d 69.

No. 18–7328. SHEELY ET UX. *v.* BANK OF AMERICA, N. A., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 603.

No. 18–7332. DELLINGER *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 18–7334. PEREZ *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2018 IL App (3d) 160114–U.

No. 18–7335. MCKAY *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 127.

No. 18–7336. HILL *v.* MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 18–7338. JONES *v.* OFFICE OF ADMINISTRATIVE HEARINGS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 757 Fed. Appx. 692.

No. 18–7342. GROSS *v.* DANNATT. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 18–7343. ISRAEL, ON BEHALF OF MINOR CHILDREN A. I. ET AL. *v.* CITY OF NORTH MIAMI, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–7349. HICKS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 18–7353. JACKSON *v.* OHIO. Ct. App. Ohio, 11th App. Dist., Trumbull County. Certiorari denied. Reported below: 2018-Ohio-2146.

No. 18–7357. FRAZIER *v.* CRUMP ET AL. C. A. 6th Cir. Certiorari denied.

No. 18–7359. GREENWOOD *v.* TENNESSEE BOARD OF PAROLE. Ct. App. Tenn. Certiorari denied. Reported below: 547 S. W. 3d 207.

No. 18–7363. KROHE *v.* STEINHARDT. C. A. 9th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 452.

No. 18–7364. CHAMBERS *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–7366. GRAY *v.* SORRELS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 744 Fed. Appx. 563.

No. 18–7370. GIPSON *v.* TAMPKINS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–7373. PATTON *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 18–7380. GLOVER *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 18–7381. HERNANDEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 18–7382. HERBIN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 18–7383. FELDMAN *v.* ADOPTION STAR AGENCY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 915.

No. 18–7384. DEUSCHEL *v.* USC FACULTY DENTAL PRACTICE ET AL. Ct. App. Cal., 2d App. Dist., Div. 5. Certiorari denied.

No. 18–7386. ARMANDO, AKA SARRES MENDOZA *v.* WHITFIELD ET AL. C. A. 5th Cir. Certiorari denied.

No. 18–7389. SMITH *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–7396. FISHBACK *v.* PARRIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–7398. KRUSKAL *v.* SPRUNT. Ct. App. N. M. Certiorari denied.

No. 18–7399. CARTER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 185 A. 3d 1129.

No. 18–7401. SHAPIRO *v.* UNITED STATES (two judgments). C. A. 7th Cir. Certiorari denied.

No. 18–7403. BLACKWELL *v.* DOOLEY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 709 Fed. Appx. 424.

No. 18–7406. BOATMAN *v.* DIAZ, ACTING SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 18–7407. BLANKUMSEE *v.* CIRCUIT COURT OF MARYLAND, WASHINGTON COUNTY, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 744 Fed. Appx. 844.

No. 18–7409. LEONARD *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–7411. JACOB *v.* COTTON, CHAIRPERSON, NEBRASKA BOARD OF PAROLE, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 509.

No. 18–7413. SMITH *v.* CORCORAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 656.

No. 18–7416. SOLIS *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 886.

No. 18–7422. WILLIAMS *v.* VANNOY, WARDEN. Sup. Ct. La. Certiorari denied. Reported below: 2018–1540 (La. 10/15/18), 253 So. 3d 1295.

No. 18–7423. WASHINGTON *v.* BOUGHTON, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 884 F. 3d 692.

No. 18–7425. COOPER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 130884–U.

No. 18–7428. JONES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 256 So. 3d 801.

No. 18–7429. LOPEZ *v.* MONTGOMERY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 211.

No. 18–7433. ARDANEH *v.* MASSACHUSETTS ET AL. C. A. 1st Cir. Certiorari denied.

No. 18–7435. BIGGINS *v.* DANBERG ET AL. C. A. 3d Cir. Certiorari denied.

No. 18–7437. ANIMASHAUN *v.* SCHMIDT ET AL. C. A. 2d Cir. Certiorari denied.

No. 18–7438. VILLA *v.* KOWALSKI. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 18–7442. UNDERWOOD *v.* CARPENTER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 894 F. 3d 1154.

No. 18–7446. HOPKINS *v.* WARDEN, VENTRESS CORRECTIONAL FACILITY. C. A. 11th Cir. Certiorari denied.

No. 18–7450. MILLER *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari denied.

No. 18–7457. CASE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 5 Cal. 5th 1, 418 P. 3d 360.

No. 18–7458. TAYLOR *v.* MILLER ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 392.

No. 18–7459. GREENE *v.* HUFFMAN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 119.

No. 18–7460. HORVATT *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 18–7464. GARY *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 241 So. 3d 100.

No. 18–7465. BOYKIN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2018 IL App (1st) 151347–U.

No. 18–7480. WILEY *v.* CARTLEDGE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 319.

No. 18–7483. FRANK *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 237 So. 3d 985.

No. 18–7492. FEREBEE *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 18–7508. BROOKS *v.* PINNACLE FINANCIAL CORP. ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–7517. JOHNSON *v.* MCDERMOTT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 18–7519. DUNCAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 33.

No. 18–7521. KING *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 18–7525. HARRIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 886 F. 3d 1120.

No. 18–7535. CHALFANT *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 3d Cir. Certiorari denied. Reported below: 737 Fed. Appx. 625.

No. 18–7558. HAWKINS *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 246 So. 3d 354.

No. 18–7559. DALEY *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 963.

No. 18–7570. HARDEMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–7577. CASTRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 755 Fed. Appx. 371.

No. 18–7586. FREY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 752 Fed. Appx. 878.

No. 18–7592. HUBBARD *v.* BROWN ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–7601. CHHIM *v.* GOLDEN NUGGETT LAKE CHARLES, L. L. C. C. A. 5th Cir. Certiorari denied. Reported below: 730 Fed. Appx. 255.

No. 18–7606. DAVIS *v.* FLORENCE ET AL. C. A. 2d Cir. Certiorari denied.

No. 18–7617. HINTON *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 18–7626. HAYNES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2017 IL App (1st) 150590–U.

No. 18–7628. BEVAN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 18–7634. FOX *v.* TURNER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–7635. HALL *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 266 So. 3d 759.

No. 18–7672. MOODY *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 238 Md. App. 733.

No. 18–7684. BROWN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 18–7689. JAMES *v.* KAPUSTA, INTERIM SECRETARY, FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 260 So. 3d 241.

No. 18–7698. INGRAM *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 798.

No. 18–7702. REESE *v.* ZATECKY, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 18–7706. Ali *v.* Interactive Brokers LLC. C. A. 9th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 450.

No. 18–7714. Grandison *v.* Maryland. Ct. Sp. App. Md. Certiorari denied. Reported below: 234 Md. App. 564, 174 A. 3d 388.

No. 18–7720. Webber *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 511.

No. 18–7722. Escobedo-Coronado *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 36.

No. 18–7723. Dempsey *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 18–7726. Williams *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 898 F. 3d 323.

No. 18–7727. Hatt *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 710 Fed. Appx. 585.

No. 18–7734. Cannon *v.* Iowa District Court, Des Moines County. Sup. Ct. Iowa. Certiorari denied.

No. 18–7735. Davis *v.* Andrews, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 782.

No. 18–7736. Davis *v.* New York. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 153 App. Div. 3d 1673, 60 N. Y. S. 3d 907.

No. 18–7738. Farrish *v.* Navy Federal Credit Union. C. A. 4th Cir. Certiorari denied. Reported below: 711 Fed. Appx. 189.

No. 18–7741. Sills *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 18–7746. Davis *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 909 F. 3d 9.

No. 18–7748. Freeman *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 18–7751. Bolton *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 18–7755. GARCIA *v.* WILKIE, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 908 F. 3d 728.

No. 18–7758. CUMMINS *v.* LOLLAR. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 18–7760. GISH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–7762. FAUCONIER *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 709 Fed. Appx. 174.

No. 18–7763. ADAMS *v.* DEPARTMENT OF DEFENSE. C. A. 4th Cir. Certiorari denied. Reported below: 709 Fed. Appx. 200.

No. 18–7764. FRENCH *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2017 IL App (1st) 141815, 72 N. E. 3d 1214.

No. 18–7765. MASSEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 895 F. 3d 248.

No. 18–7768. STRAUSS *v.* KENTUCKY BOARD OF MEDICAL LICENSURE. Sup. Ct. Ky. Certiorari denied. Reported below: 558 S. W. 3d 443.

No. 18–7776. OLVERA-CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 16.

No. 18–7778. ZEMLYANSKY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 908 F. 3d 1.

No. 18–7779. KIRKLAND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 909 F. 3d 1049.

No. 18–7781. LOPEZ *v.* NOBLE, WARDEN. Sup. Ct. Ohio. Certiorari denied. Reported below: 154 Ohio St. 3d 192, 2018-Ohio-4061, 112 N. E. 3d 905.

No. 18–7783. CANNADY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–7784. DAVID *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–7788. ROBINSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 861.

No. 18–7790. Simpson *v.* Cooper, Judge, Court of Common Pleas, Hamilton County, Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 154 Ohio St. 3d 320, 2018-Ohio-4068, 114 N. E. 3d 172.

No. 18–7792. Donato *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 18–7795. Lanieux *v.* Louisiana. Sup. Ct. La. Certiorari denied. Reported below: 2018–1410 (La. 11/5/18), 255 So. 3d 1038.

No. 18–7799. Cutulle *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 18–7800. Antonio Aguilar *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 522.

No. 18–7801. Tannehill *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 18–7802. Hopson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 754 Fed. Appx. 153.

No. 18–7804. Watson *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 18–7812. Wilcox *v.* New Jersey. Super. Ct. N. J., App. Div. Certiorari denied.

No. 18–7814. Brown *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 18–7817. Ceballos *v.* California. Ct. App. Cal., 1st App. Dist., Div. 2. Certiorari denied.

No. 18–7818. Castaneda *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 906 F. 3d 691.

No. 18–7821. Mixon *v.* Mississippi. Sup. Ct. Miss. Certiorari denied.

No. 18–7823. Norwood *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 387.

No. 18–7824. Killingbeck *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 18–7830. JOHNSON *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 54 Kan. App. 2d xxiii, 404 P. 3d 362.

No. 18–7836. MOORE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–7838. MOORE *v.* UNITED STATES (two judgments). C. A. 9th Cir. Certiorari denied.

No. 18–7839. BYERS *v.* WHITE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 254.

No. 18–7841. ADETILOYE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–7842. BURTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–7843. GIBSON *v.* BOE, SUPERINTENDENT, CLALLAM BAY CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 18–7844. HARTLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 112.

No. 18–7846. HOUGH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–7848. FISHER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 690 Fed. Appx. 108.

No. 18–7849. PACHECO ESTUDILLO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–7858. MAJID *v.* NOBLE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 751 Fed. Appx. 735.

No. 18–7859. MONSEGUE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–7861. GRAVES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 908 F. 3d 137.

No. 18–7862. BEATTY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 754 Fed. Appx. 166.

No. 18–7863. BURRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 183.

No. 18–7871. VENNINGS *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 419.

No. 18–7874. BOOZE *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 18–7878. CANNON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 785.

No. 18–7880. CLARKE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 972.

No. 18–7882. GATES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 755 Fed. Appx. 649.

No. 18–7883. CARTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–7884. VILLALVA-PATRICIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 289.

No. 18–7886. OCEAN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 904 F. 3d 25.

No. 18–7898. REID EL BEY *v.* NORTH CAROLINA ET AL. Gen. Ct. Justice, Super. Ct. Div., Wilson County, N. C. Certiorari denied.

No. 18–7900. BLANCO-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 755 Fed. Appx. 339.

No. 18–7903. ARRINGTON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 18–7905. HALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 731 Fed. Appx. 218.

No. 18–7910. FUENTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 906 F. 3d 322.

No. 18–7911. KUN *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 18–7913. THOMAS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 750 Fed. Appx. 129.

No. 18–7914. THARPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 141.

No. 18–7915. WARNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 701 Fed. Appx. 288.

No. 18–7916. WREN *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 18–7918. HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 715 Fed. Appx. 433.

No. 18–7920. HABECK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 953.

No. 18–7921. LOOMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–7922. LAFLEUR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 983.

No. 18–7927. ANDERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 507.

No. 18–7930. BUTTON *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 702 Fed. Appx. 936.

No. 18–7947. GARDEN *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 93 Mass App. 1108, 103 N. E. 3d 1237.

No. 18–7954. BLANTON *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 328.

No. 18–7960. MARSHALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 754 Fed. Appx. 157.

No. 18–7968. RAGLAND *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 371 N. C. 572, 818 S. E. 2d 638.

No. 18–7969. SMITH *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 18–7983. LAURSON *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 18–7993. Bedford *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 914 F. 3d 422.

No. 18–8033. Montalvo Borgos *v.* Medeiros, Superintendent, Massachusetts Correctional Institution at Norfolk. C. A. 1st Cir. Certiorari denied.

No. 18–8100. Franklin *v.* Mississippi. Sup. Ct. Miss. Certiorari denied.

No. 18–285. Missouri *v.* Douglass et al. Sup. Ct. Mo. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 544 S. W. 3d 182.

No. 18–420. United States *v.* Wheeler. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 886 F. 3d 415.

No. 18–451. Aloha Bed & Breakfast *v.* Cervelli et al. Int. Ct. App. Haw. Motions of Foundation for Moral Law and Ethics & Religious Liberty Commission of the Southern Baptist Convention for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 142 Haw. 177, 415 P. 3d 919.

No. 18–545. First Advantage Background Services Corp. *v.* Superior Court of California, San Mateo County, et al. Ct. App. Cal., 1st App. Dist., Div. 4. Motion of Washington Legal Foundation et al. for leave to file brief as *amici curiae* granted. Certiorari denied.

No. 18–661. Zank *v.* Lopez Moreno. C. A. 6th Cir. Motion of Reunite International Child Abduction Centre for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 895 F. 3d 917.

No. 18–910. City of San Diego, California *v.* Public Employment Relations Board. Sup. Ct. Cal. Motion of Pacific Legal Foundation for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 5 Cal. 5th 898, 422 P. 3d 552.

No. 18–6819. Tharpe *v.* Ford, Warden. C. A. 11th Cir. Certiorari denied.

Statement of Justice Sotomayor respecting the denial of certiorari.

Petitioner Keith Tharpe is a Georgia inmate on death row. For years, Tharpe, who is black, has asked state and federal courts

to consider his claim that a white member of the jury that sentenced him to death was biased against him because of his race. Tharpe has presented a signed affidavit from the juror in question, who stated, among other things, that "'there are two types of black people: 1. Black folks and 2. Niggers,'" and that Tharpe, "'who wasn't in the "good" black folks category in [his] book, should get the electric chair for what he did.'" *Tharpe* v. *Sellers*, 583 U. S. 33, 34 (2018) (*per curiam*). Nevertheless, Tharpe has never received a hearing on the merits of his racial-bias claim.

The petition that the Court denies today does not turn on the merits of that claim, and I concur in the denial of Tharpe's petition. I write because I am profoundly troubled by the underlying facts of this case.

I

More than seven years after he was sentenced to death, Tharpe's attorneys uncovered evidence that a white member of his jury, Barney Gattie, harbored racist views at the time of the trial. In a sworn statement, Gattie made "repugnant comments . . . rife with racial slurs . . . and even an explicit statement that [his] decision to sentence Tharpe to death was[,] at leas[t] in part, based on race." *Tharpe* v. *Warden*, 898 F. 3d 1342, 1348 (CA11 2018) (Wilson, J., concurring). Tharpe sought postconviction relief in state court, arguing that racial bias tainted the jury's deliberations in his case.

To this day, Tharpe's racial-bias claim has never been adjudicated on its merits. The Georgia state court and the Federal District Court denied Tharpe's requests for postconviction relief on procedural grounds. Tharpe moved to reopen the federal proceedings in light of "'extraordinary circumstances,'" *Gonzalez* v. *Crosby*, 545 U. S. 524, 536 (2005), but the District Court denied that motion. Tharpe requested a certificate of appealability (COA) from the United States Court of Appeals for the Eleventh Circuit, but the court denied his request after concluding that he had not made an adequate showing that Gattie's racial bias affected the jury's verdict. *Tharpe*, 583 U. S., at 34. This Court disagreed, explaining that Tharpe had "present[ed] a strong factual basis for the argument that Tharpe's race affected Gattie's vote for a death verdict." *Id.*, at 34–35. We remanded for further consideration.

On remand, the Court of Appeals again denied Tharpe's request for a COA. It held that the District Court did not arguably

abuse its discretion in denying Tharpe's motion to reopen because two different threshold obstacles barred Tharpe's claim. First, the court held that Tharpe's juror-bias claim could not go forward because the claim relied on a later decided case, *Pena-Rodriguez* v. *Colorado*, 580 U. S. 206 (2017), which the court concluded does not apply retroactively. 898 F. 3d, at 1345–1346. Second, the court decided that Tharpe had not established cause for his procedural default in state court—*i. e.*, he had not given a sufficient justification for failing to raise the juror-bias claim in a motion for a new trial or in his direct appeal. Specifically, the court rejected as unsubstantiated Tharpe's allegation that counsel's ineffectiveness was to blame for his not having raised the racial-bias claim sooner. *Id.*, at 1347. Tharpe seeks this Court's review.

II

Tharpe's petition for a writ of certiorari asks us to decide only whether the Court of Appeals' procedural rulings were correct, not whether his juror-bias claim has merit. Tharpe "faces a high bar in showing that jurists of reason could disagree whether the District Court abused its discretion in denying his motion" to reopen. *Tharpe*, 583 U. S., at 35. And for Tharpe's claim to proceed, he must overcome both of the Court of Appeals' independent reasons for denying him a COA. In other words, even setting aside whether *Pena-Rodriguez* is retroactive, he would have to establish that he arguably showed sufficient cause to excuse his procedural default.

I see little likelihood that we would reverse the Court of Appeals' factbound conclusion that Tharpe did not make that showing. Before this Court, Tharpe argues that he could not have raised his racial-bias claim in a motion for new trial or on direct appeal because he did not know—indeed, could not have known—of the predicate facts of the claim at that time. Pet. for Cert. 35. If preserved, that argument would have force. But Tharpe did not make this argument before the District Court until a footnote in his reply brief in the Federal Rule of Civil Procedure 60(b)(6) proceedings, see Reply to Brief in Opposition 12–13 (listing the reply brief as the earliest point at which this argument was made), and the District Court did not address it, see App. D to Pet. for Cert. Given this preservation issue and the deference due to the District Court, the Court of Appeals reasonably focused on the ineffective-assistance argument that Tharpe did pre-

viously present to the District Court in deciding that Tharpe had not made the requisite showing of cause. See 898 F. 3d, at 1347.

I therefore concur in the Court's decision to deny Tharpe's petition for certiorari. As this may be the end of the road for Tharpe's juror-bias claim, however, we should not look away from the magnitude of the potential injustice that procedural barriers are shielding from judicial review.

Tharpe has uncovered truly striking evidence of juror bias. Gattie, the juror at issue, signed an affidavit reflecting his "view that 'there are two types of black people: 1. Black folks and 2. Niggers'; that Tharpe, 'who wasn't in the "good" black folks category in [his] book, should get the electric chair for what he did'; that '[s]ome of the jurors voted for death because they felt that Tharpe should be an example to other blacks who kill blacks, but that wasn't [his] reason'; and that, '[a]fter studying the Bible, [he] ha[d] wondered if black people even have souls.'" *Tharpe*, 583 U. S., at 34 (quoting App. B to Pet. for Cert. 15–16).

These racist sentiments, expressed by a juror entrusted with a vote over Tharpe's fate, suggest an appalling risk that racial bias swayed Tharpe's sentencing. The danger of race determining any criminal punishment is intolerable and endangers public confidence in the law. See *Buck* v. *Davis*, 580 U. S. 100, 124 (2017). That risk is especially grave here, where it may have yielded a punishment that is unique in its "complete finality." *Turner* v. *Murray*, 476 U. S. 28, 35 (1986). When Tharpe went on trial for his crimes, the Constitution promised him the "fundamental 'protection of life and liberty against race or color prejudice.'" *McCleskey* v. *Kemp*, 481 U. S. 279, 310 (1987) (quoting *Strauder* v. *West Virginia*, 100 U. S. 303, 309 (1880)). There is strong evidence that this promise went unfulfilled.

It may be tempting to dismiss Tharpe's case as an outlier, but racial bias is "a familiar and recurring evil." *Pena-Rodriguez*, 580 U. S., at 224. That evil often presents itself far more subtly than it has here. Yet Gattie's sentiments—and the fact that they went unexposed for so long, evading review on the merits—amount to an arresting demonstration that racism can and does seep into the jury system. The work of "purg[ing] racial prejudice from the administration of justice," *id.*, at 221, is far from done.

No. 18–7408. Leonard *v.* George Washington University Hospital et al. C. A. D. C. Cir. Certiorari denied. Justice

KAVANAUGH took no part in the consideration or decision of this petition.

No. 18–7441. WHEELER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 18–7687. LEE *v.* MUNIZ, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 18–7769. HILL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 18–7840. TELFAIR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

Rehearing Denied

No. 17–5617. MORELAND *v.* LYNCHBURG DEPARTMENT OF SOCIAL SERVICES, 583 U. S. 935;

No. 17–8213. BREWER *v.* UNITED STATES, 584 U. S. 955;

No. 17–8593. BROOKS *v.* RAEMISCH, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL., 585 U. S. 1021;

No. 17–8818. BAKER *v.* UNITED STATES, 584 U. S. 1019;

No. 17–8962. DE MIN GU *v.* FEDERAL BUREAU OF INVESTIGATION ET AL., 586 U. S. 837;

No. 17–9392. GRANT *v.* WHITE ET AL., 586 U. S. 857;

No. 17–9477. GRANT *v.* ALPEROVICH ET AL., 586 U. S. 862;

No. 18–497. COULTER *v.* BISSOON, JUDGE, UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA, ET AL., 586 U. S. 1037;

No. 18–586. KOCH *v.* ESTRELLA ET AL., 586 U. S. 1074;

No. 18–611. TATAR *v.* UNITED STATES, 586 U. S. 1074;

No. 18–659. MASOMI *v.* MADADI, 586 U. S. 1127;

No. 18–702. YADAV ET UX. *v.* NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, 586 U. S. 1076;

No. 18–6245. KIRKLAND *v.* PROGRESSIVE INSURANCE CO. ET AL., 586 U. S. 1079;

No. 18–6272. STESHENKO *v.* MCKAY ET AL., 586 U. S. 1080;

No. 18–6388. BLACKMON *v.* EATON CORP., 586 U. S. 1081;

No. 18–6688. LEONARD *v.* FLORIDA, 586 U. S. 1118; and

No. 18–7065. LOBO *v.* UNITED STATES, 586 U. S. 1121. Petitions for rehearing denied.

No. 17–8011. BLOUNT *v.* UNITED STATES, 584 U. S. 941. Petition for rehearing denied. JUSTICE KAVANAUGH took no part in the consideration or decision of this petition.

No. 18–5428. BARRAQUIAS *v.* WILKIE, SECRETARY OF VETERANS AFFAIRS, 586 U. S. 911. Petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

MARCH 25, 2019

Certiorari Dismissed

No. 18–7709. LASCHKEWITSCH, AS ADMINISTRATOR FOR THE ESTATE OF LASCHKEWITSCH *v.* LINCOLN LIFE & ANNUITY DISTRIBUTORS, INC., DBA LINCOLN FINANCIAL GROUP. 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: 729 Fed. Appx. 261.

Miscellaneous Orders

No. 18A738. DRESSLER *v.* CIRCUIT COURT OF WISCONSIN, RACINE COUNTY. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. 18M117. REED *v.* FLORISSANT COUNTY, MISSOURI, ET AL.;
No. 18M118. LOCKHART *v.* GEORGIA; and
No. 18M119. WANG *v.* CALIFORNIA. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 18M120. BUENO-SIERRA *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. 18–7499. BIDA *v.* JOHNSON. C. A. 3d Cir.;
No. 18–7542. HARNDEN *v.* ST. CLAIR COUNTY, MICHIGAN, ET AL. C. A. 6th Cir.; and
No. 18–7584. MARBERRY *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until April 15, 2019, 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. 18–8246. In re Jackson. Petition for writ of habeas corpus denied.

No. 18–8243. In re Leffebre. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 18–973. In re Chatfield et al.;
No. 18–8015. In re Agbonifo; and
No. 18–8099. In re Bryant. Petitions for writs of mandamus denied.

Certiorari Denied

No. 17–1351. Greer *v.* Green Tree Servicing LLC et al. C. A. 9th Cir. Certiorari denied. Reported below: 708 Fed. Appx. 371.

No. 18–225. Zappos.com, Inc. *v.* Stevens et al. C. A. 9th Cir. Certiorari denied. Reported below: 888 F. 3d 1020.

No. 18–498. Maricopa County, Arizona *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 889 F. 3d 648.

No. 18–533. Travis *v.* Exel, Inc., dba DHL Supply Chain (USA), et al. C. A. 11th Cir. Certiorari denied. Reported below: 884 F. 3d 1326.

No. 18–640. Acklin *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied. Reported below: 266 So. 3d 89.

No. 18–657. Grimsrud *v.* Department of Transportation. C. A. Fed. Cir. Certiorari denied. Reported below: 718 Fed. Appx. 987.

No. 18–728. Rentmeester *v.* Nike, Inc. C. A. 9th Cir. Certiorari denied. Reported below: 883 F. 3d 1111.

No. 18–729. MAXWELL & MORGAN, P. C., ET AL. *v.* MCNAIR. C. A. 9th Cir. Certiorari denied. Reported below: 893 F. 3d 680.

No. 18–774. ANDERSON NEWS, L. L. C., ET AL. *v.* AMERICAN MEDIA, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 899 F. 3d 87.

No. 18–831. PRESLEY ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 895 F. 3d 1284.

No. 18–930. BRANDON *v.* BRANDON. Ct. App. Cal., 2d App. Dist., Div. 5. Certiorari denied.

No. 18–933. PATEL *v.* PATEL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 727 Fed. Appx. 52.

No. 18–943. FAIRFIELD COUNTY, OHIO, ET AL. *v.* MORGAN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 903 F. 3d 553.

No. 18–946. ARROYO *v.* TORRES-SANCHEZ ET AL. C. A. 1st Cir. Certiorari denied.

No. 18–958. MITRANO *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 723 Fed. Appx. 518.

No. 18–971. HOBSON *v.* MATTIS, FORMER SECRETARY OF DEFENSE. C. A. 6th Cir. Certiorari denied.

No. 18–980. TORKORNOO *v.* MARYLAND ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 123.

No. 18–998. WAITE, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF WAITE *v.* UNION CARBIDE CORP. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 901 F. 3d 1307.

No. 18–1006. ADAMS *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 18–1007. ABULKHAIR *v.* GOOGLE LLC ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 738 Fed. Appx. 754.

No. 18–1025. LEON *v.* NEW YORK CITY DEPARTMENT OF EDUCATION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 740 Fed. Appx. 759.

No. 18–1047. WADE *v.* FLORIDA DEPARTMENT OF JUVENILE JUSTICE. C. A. 11th Cir. Certiorari denied. Reported below: 745 Fed. Appx. 894.

No. 18–1082. GUZALL *v.* CITY OF ROMULUS, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 743 Fed. Appx. 574.

No. 18–1090. BECKMAN *v.* MATCH.COM, LLC. C. A. 9th Cir. Certiorari denied. Reported below: 743 Fed. Appx. 142.

No. 18–1119. RICHMAN GROUP OF FLORIDA, INC. *v.* PINELLAS COUNTY, FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 253 So. 3d 662.

No. 18–6413. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 975.

No. 18–6706. DAVIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 900 F. 3d 733.

No. 18–6728. QUINTANA *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 18–6789. MCLEAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 891 F. 3d 1308.

No. 18–6822. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 737 Fed. Appx. 741.

No. 18–6834. JOHNSON *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 746 Fed. Appx. 375.

No. 18–7098. SCOTT *v.* TELLEZ, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–7113. HYLOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 896 F. 3d 1219.

No. 18–7140. HULL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 313.

No. 18–7152. BONET *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 737 Fed. Appx. 988.

No. 18–7376. PETERS *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 7th Cir. Certiorari denied.

No. 18–7455. ISRAEL SANCHEZ *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 18–7472. YODER *v.* GOOD WILL STEAM FIRE ENGINE COMPANY NO. 1 ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 740 Fed. Appx. 27.

No. 18–7474. GONZALEZ *v.* FERGUSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 655 Fed. Appx. 96.

No. 18–7475. ALDONA B. *v.* NICHOLAS S. Sup. Ct. App. W. Va. Certiorari denied.

No. 18–7476. ZIRUS *v.* KELLER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 44.

No. 18–7477. WILLIAMS *v.* MINOR, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 18–7478. BLAIR *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 18–7481. WORKMAN *v.* PERRY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 365.

No. 18–7487. HOKENSTROM *v.* NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS ET AL. C. A. 1st Cir. Certiorari denied.

No. 18–7491. CROW *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 18–7493. JACKSON *v.* EQUIFAX WORKFORCE SOLUTIONS, DBA LABOR READY SOUTHWEST, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 116.

No. 18–7494. BOZELL *v.* SKIPPER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–7497. WELLBORN *v.* JACKSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–7502. PAYNE *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2018 IL App (3d) 160105, 116 N. E. 3d 965.

No. 18–7503. AMBROSE *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 254 So. 3d 77.

No. 18–7504. HAMILTON *v.* ALLBAUGH, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 709 Fed. Appx. 525.

No. 18–7509. MIXON *v.* NEVADA ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–7510. PEREZ *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 18–7513. COBAS *v.* LINDSEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–7514. PALMER *v.* KAISER FOUNDATION HOSPITALS TECHNOLOGY RISK OFFICE. C. A. 10th Cir. Certiorari denied. Reported below: 753 Fed. Appx. 590.

No. 18–7516. MORA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 5 Cal. 5th 442, 420 P. 3d 902.

No. 18–7520. LEE *v.* PIRKO ET AL. C. A. 9th Cir. Certiorari denied.

No. 18–7524. HARRISON ET AL. *v.* HUGGINS ET AL. Sup. Ct. Ill. Certiorari denied.

No. 18–7529. DENNISON *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 18–7531. GALBRAITH *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 391.

No. 18–7532. GREEN *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 256 So. 3d 872.

No. 18–7533. CANADA *v.* MILES, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 18–7534. HUDSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2017 IL App (1st) 143125–U.

No. 18–7539. ROSSI *v.* THE CROWN. C. A. D. C. Cir. Certiorari denied.

No. 18–7547. MULDER *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 134 Nev. 986, 422 P. 3d 1231.

No. 18–7551. GOMEZ *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–7552. HAYES *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 18–7553. HOPKINS *v.* DOOLEY, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 18–7554. FERM *v.* OFFICE OF THE ATTORNEY GENERAL OF NEVADA. Ct. App. Nev. Certiorari denied. Reported below: 134 Nev. 936.

No. 18–7564. HOWARD *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 250 So. 3d 618.

No. 18–7571. CERVANTES VALENCIA *v.* DAVEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–7574. HAINES-MARCHEL *v.* WASHINGTON STATE LIQUOR AND CANNABIS BOARD. Ct. App. Wash. Certiorari denied. Reported below: 1 Wash. App. 2d 712, 406 P. 3d 1199.

No. 18–7580. NEAL *v.* WAYNE COUNTY TREASURER. Ct. App. Mich. Certiorari denied.

No. 18–7582. CANETE *v.* KEETON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 18–7589. JUDY *v.* WILLIAMS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 357.

No. 18–7661. JONES *v.* INCH, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 906 F. 3d 1339.

No. 18–7728. HAYNESWORTH *v.* SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 733 Fed. Appx. 122.

No. 18–7732. CURRY *v.* SUPREME COURT OF THE UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 707 Fed. Appx. 210.

No. 18–7756. CHAMBERS *v.* SARCONE. C. A. 8th Cir. Certiorari denied.

No. 18–7770. BRADLEY *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 18–7780. LEMOINE *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 18–7787. GOLDER *v.* CHAPDELAINE, WARDEN, ET AL. C. A. 2d Cir. Certiorari denied.

No. 18–7805. BOHANNAN *v.* GRIFFIN. C. A. 5th Cir. Certiorari denied. Reported below: 709 Fed. Appx. 283.

No. 18–7808. WILSON *v.* LEGRAND, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 750 Fed. Appx. 566.

No. 18–7829. MARK *v.* RABEAU. C. A. 9th Cir. Certiorari denied.

No. 18–7847. HOWLETT *v.* RICHARDSON, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 461.

No. 18–7869. DEORIO *v.* FLOURNOY, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 18–7875. CANNON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 721 Fed. Appx. 227.

No. 18–7876. CALLAHAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–7877. DECKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–7881. ELLISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 732 Fed. Appx. 207.

No. 18–7887. ROBERTS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 429.

No. 18–7895. ANDERSON *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 18–7896. MONTANEZ-QUINONES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 911 F. 3d 59.

No. 18–7904. ALCEQUIECZ *v.* RYAN, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 18–7923. JONES *v.* LEBLANC, SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied.

No. 18–7928. CARRASCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–7931. HENLEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–7938. QUINTANA-TORRES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 749 Fed. Appx. 734.

No. 18–7941. LITTLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 735 Fed. Appx. 87.

No. 18–7943. WATSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 18–7946. HAWKINS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 18–7948. CARAPIA HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 28.

No. 18–7950. WALKER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–7951. MCCLURE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 741 Fed. Appx. 155.

No. 18–7952. PARTMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 738 Fed. Appx. 197.

No. 18–7958. LOHMEIER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 18–7964. SANTOS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 18–7965. STEWART *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 902 F. 3d 664.

No. 18–7966. SMITH *v.* TERRIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 18–7971. CHIVOSKI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 299.

No. 18–7973. VILLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 740 Fed. Appx. 586.

No. 18–7974. CRUZ-RIVERA, AKA LLORENS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 904 F. 3d 63.

No. 18–7975. WOLF *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–7977. MOWERY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 863.

No. 18–7978. AMERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–7979. WATKINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–7981. MURILLO, AKA SANTOS MURILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 744 Fed. Appx. 378.

No. 18–7984. ERVIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 729 Fed. Appx. 268.

No. 18–7986. CHACON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 901 F. 3d 1322.

No. 18–7989. GUERRERO *v.* ENGLISH, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 743 Fed. Appx. 207.

No. 18–7994. KING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 736 Fed. Appx. 56.

No. 18–7995. MARTIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 751 Fed. Appx. 873.

No. 18–7997. ALLEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 859.

No. 18–8010. BARRIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 720 Fed. Appx. 158.

No. 18–8011. KERR *v.* BARR, ATTORNEY GENERAL. C. A. 8th Cir. Certiorari denied.

No. 18–8012. BLACKBURN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–8019. AUSTIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–8025. St. Hubert *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 909 F. 3d 335.

No. 18–8026. Ramirez *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 18–8028. Reel *v.* Vannoy, Warden. C. A. 5th Cir. Certiorari denied.

No. 18–8031. Bolden *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 168 A. 3d 294.

No. 18–8034. Brewer *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 18–8036. Boyle *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 18–8038. Burke *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 712 Fed. Appx. 441.

No. 18–8040. Bannister *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 18–8041. Johnson *v.* United States. Ct. App. D. C. Certiorari denied.

No. 18–8042. Blaylock *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 18–8043. Alanis *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 18–8044. Brooks *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 756 Fed. Appx. 52.

No. 18–8047. Pope *v.* Franke. C. A. 9th Cir. Certiorari denied.

No. 18–8048. Owens *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 750 Fed. Appx. 415.

No. 18–8049. Montero *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 892.

No. 18–8051. Valencia Torres *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 493.

No. 18–8053. ALLEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 717 Fed. Appx. 340.

No. 18–8054. YOUNG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 751 Fed. Appx. 381.

No. 18–8056. GLICK *v.* PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 18–8058. ELIAS SANCHEZ *v.* BEARD, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 334.

No. 18–8059. SIMMONS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 742 Fed. Appx. 879.

No. 18–8065. MAXWELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 743 Fed. Appx. 255.

No. 18–8066. MAGANA *v.* CREDIO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 744 Fed. Appx. 390.

No. 18–8067. LEW *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist., Div. 1. Certiorari denied.

No. 18–8068. HILL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 18–8075. ORIAKHI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 728 Fed. Appx. 386.

No. 18–8079. BENTLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 756 Fed. Appx. 957.

No. 18–8083. MAGNIFICENT-EL, AKA PHILLIPS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 743 Fed. Appx. 726.

No. 18–8091. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 753 Fed. Appx. 167.

No. 18–8094. GROS *v.* KENT, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 18–8096. HALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 716 Fed. Appx. 223.

No. 18–8101. FOLTZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 724 Fed. Appx. 237.

No. 18–8104. FRAZIER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 18–8106. CRUMP *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 194 A. 3d 16.

No. 18–8111. BLACK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–8112. BROWN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 18–8113. ARNAUD *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 18–8114. BOYD *v.* DRIVER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 722 Fed. Appx. 367.

No. 18–8115. BARRIOS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 18–8116. MICHEL *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 257 So. 3d 3.

No. 18–8130. SEGOVIANO-BRISENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 746 Fed. Appx. 399.

No. 18–8254. PHILLIPS *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 18–948. IN RE GRAND JURY SUBPOENA. C. A. D. C. Cir. Motion of respondent for leave to file a supplemental brief under seal granted. Motion of petitioner for leave to file a supplemental reply brief under seal with redacted copies for the public record granted in part; the supplemental reply brief will be filed under seal. Certiorari denied. Reported below: 749 Fed. Appx. 1.

No. 18–990. RAGHAVENDRA *v.* BOOTH ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

Rehearing Denied

No. 17–7818. IN RE WEST, 583 U. S. 1178;
No. 17–9227. GERAY *v.* MUNIZ, WARDEN, 586 U. S. 849;

No. 18–6051. BENDER *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, 586 U. S. 991;

No. 18–6218. LINDEN *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, 586 U. S. 1052;

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