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In Memoriam

JUSTICE ANTONIN SCALIA

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VOLUME 580

CASES ADJUDGED

IN

THE SUPREME COURT

AT

OCTOBER TERM, 2016

BEGINNING OF TERM

OCTOBER 3, 2016, THROUGH MARCH 27, 2017

CHRISTINE LUCHOK FALLON

REPORTER OF DECISIONS

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JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS*

JOHN G. ROBERTS, JR., CHIEF JUSTICE.
ANTHONY M. KENNEDY, ASSOCIATE 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.

RETIRED

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

OFFICERS OF THE COURT

LORETTA E. LYNCH, ATTORNEY GENERAL.[1]
JEFFERSON B. SESSIONS, III, ATTORNEY GENERAL.[2]
IAN GERSHENGORN, ACTING SOLICITOR GENERAL.[3]
NOEL J. FRANCISCO, ACTING SOLICITOR GENERAL.[4]
JEFFREY B. WALL, ACTING SOLICITOR GENERAL.[5]
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*For notes, see p. IV.

NOTES

[1] Attorney General Lynch resigned effective January 20, 2017, on which date Sally Q. Yates became Acting Attorney General, serving until January 30, 2017. Dana J. Boente served as Acting Attorney General from January 30 to February 9, 2017.

[2] The Honorable Jeff Sessions, of Alabama, was nominated by President Trump on January 20, 2017, to be Attorney General; the nomination was confirmed by the Senate on February 8, 2017; he was commissioned and took the oath of office on February 9, 2017. He was presented to the Court on February 21, 2017. See *post*, p. xxxix.

[3] Acting Solicitor General Gershengorn resigned effective January 20, 2017.

[4] Mr. Francisco became Acting Solicitor General effective January 20, 2017. He resigned effective March 10, 2017.

[5] Mr. Wall became Acting Solicitor General effective March 10, 2017.

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 February 25, 2016, 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, Clarence Thomas, Associate Justice.

For the Sixth Circuit, Elena Kagan, Associate Justice.

For the Seventh Circuit, Elena Kagan, Associate Justice.

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

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

For the Tenth Circuit, Sonia Sotomayor, Associate Justice.

For the Eleventh Circuit, Clarence Thomas, Associate Justice.

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

February 25, 2016.

(For next previous allotment, see 577 U. S., p. v.)

PROCEEDINGS IN THE SUPREME COURT OF THE UNITED STATES IN MEMORY OF JUSTICE SCALIA*

FRIDAY, NOVEMBER 4, 2016

Present: CHIEF JUSTICE ROBERTS, JUSTICE KENNEDY, JUSTICE THOMAS, JUSTICE GINSBURG, JUSTICE BREYER, JUSTICE ALITO, JUSTICE SOTOMAYOR, and JUSTICE KAGAN.

THE CHIEF JUSTICE said:

The Court is in Special Session this afternoon to receive the Resolutions of the Bar of the Supreme Court in tribute to Associate Justice Antonin Scalia.

The Court recognizes the Acting Solicitor General of the United States.

Acting Solicitor General Gershengorn addressed the Court as follows:

MR. CHIEF JUSTICE, and may it please the Court:

At a meeting of the Bar of this Court, Resolutions memorializing our deep respect and affection for Justice Scalia were adopted unanimously.

RESOLUTIONS

Today the bar of this Court convenes to pay respect to a towering figure in American law—a Justice of conviction, character, and courage; a treasured colleague; an irreplace-

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*Justice Scalia died in Shafter, Texas, on February 13, 2016 (577 U. S., p. v).

able mentor; and a man devoted to his country, its Constitution, and this Court. In his nearly 30-year tenure on this Court, Antonin Scalia displayed a forceful intellect, a remarkable wit, and an inimitable writing style. His ideas helped to shape the way we think about law. And for those blessed to know him, his compassion, humanity, and commitment to his family, friends, and faith will remain an inspiration.

On March 11, 1936, five months after this Court heard its first case in this building, Antonin Scalia was born in Trenton, New Jersey. His mother, Catherine Panaro, was the oldest of seven and born to parents who immigrated to the United States from Italy in 1904. His father, Salvatore Eugene Scalia, came to this country from Sicily in 1920 at age 17. Both became teachers—S. Eugene a professor of Romance Languages at Brooklyn College and Catherine an elementary school teacher.

Antonin—Nino to family and friends—was his parents' only child and the only child of his generation on either side of the large family. He grew up in Trenton and later in the diverse Elmhurst neighborhood of Queens in New York City, where his parents made "an education project" out of him. Antonin's curiosity and love of argument surfaced early. One aunt recalled that, "[w]hen [Antonin] wanted to do something" an adult had put off-limits, "you had to give him a very, very good argument about why he could not do it."[1] Through their example and, one suspects, occasional direction, Scalia's parents fostered his religious faith and character. He also inherited from them a lifelong love of music—especially opera—and the ability to play the piano, which he learned from his father.

After an uncharacteristically subpar showing on an entrance examination for his preferred high school—missing a grammar question of all things—Scalia attended Xavier High School in Manhattan. "One door closes, another door

[1] Joan Biskupic, American Original: The Life and Constitution of Supreme Court Justice Antonin Scalia 18, 20 (2009).

opens," as he would say. Faith was foremost at the Jesuit school at that point and military discipline a close second. Scalia graduated first in his class, collecting an array of awards along the way. He was a stand-out debater—even appearing on local television—and played the French horn for the marching band and starred in several school plays, including the title role in *Macbeth*. From a teacher at Xavier, Scalia learned what he often referred to as the "Shakespeare Principle": "When you read Shakespeare, Shakespeare's not on trial. You are."

Scalia continued the pursuit of a Jesuit education by attending Georgetown University, where he studied history and government and once again graduated first in his class. He and a teammate rose to national prominence in competitive debate, and he continued to perform on stage. Georgetown also made a mark on the Justice's faith. The "last lesson" he learned in college, imparted by a professor during his oral examinations, was "not to separate your religious life from your intellectual life." Scalia took that lesson to heart. In his commencement speech, he challenged his classmates to be courageous and to "carry and advance into all sections of our society this distinctively human life, of reason learned and faith believed." "If we will not lead," Scalia asked, "who will?"[2]

After Georgetown, Scalia attended Harvard Law School, where he relished debating cases with professors in the classroom and with classmates through his work as an editor of the Law Review. But however rich the academic environment, the signal event of his Harvard years occurred outside the classroom, when he met Maureen McCarthy, an undergraduate student from Radcliffe College, on a blind date. The two had much in common—sharp intellects and quick wits. Perhaps most importantly, Maureen recalled, they had shared convictions on "all the important things," includ-

[2] *Id.*, at 25; Jacob Gershman, 'If We Really Love the Truth'—Excerpts from Scalia's 1957 Graduation Speech, Wall St. J. (Feb. 16, 2016), http://on.wsj.com/1mFO4mb.

ing their Catholic faith. In Antonin's telling, Maureen was drawn by the Sheldon Fellowship he had won at Harvard to travel around Europe after graduation. Whatever the proximate cause, the marriage took place in September 1960 and was a blessing and a source of strength to both. Their 55-year union produced nine children and dozens of grandchildren. Antonin joked that the "secret" to their marriage's longevity was that "Maureen made it very clear early on that if we split up, [he] would get the children."[3] For her part, Maureen explained that she "would have been bored" with someone "wishy washy."[4]

Upon returning from their European travels, the Scalias moved to Cleveland, Ohio, where Antonin joined Jones, Day, Cockley & Reavis. During his six years there, his work covered a range of fields, from antitrust and real estate to labor law, contracts, and tax. Although Scalia enjoyed the practice of law and was well regarded at the firm, he had long aimed to follow his parents' path by becoming a teacher.

In 1967, Scalia accepted a post at the University of Virginia School of Law, where he taught contracts and comparative law. The focus of his scholarship, if not always his teaching, would become administrative law.[5] In the classroom he was energetic and engaging, posing inventive and often entertaining hypotheticals. He enjoyed encouraging students to consider legal problems from the standpoint of a layperson, asking classes, "What would Joe Sixpack say

[3] CNN Transcripts, Piers Morgan Tonight: Interview with Antonin Scalia, CNN.com (transcript of July 18, 2012 cable-television broadcast), http://www.cnn.com/TRANSCRIPTS/1207/18/pmt.01.html.

[4] Lesley Stahl, 60 Minutes: Interview with Antonin Scalia, Part 2, at 5:38-5:48, CBS News (recording of April 27, 2008 interview), http://www.cbsnews.com/videos/justice-scalia-on-60-minutes-part-2.

[5] See, *e. g.*, Antonin Scalia, Sovereign Immunity and Nonstatutory Review of Federal Administrative Action: Some Conclusions from the Public-Lands Cases, 68 Mich. L. Rev. 867 (1970); Antonin Scalia & Frank Goodman, Procedural Aspects of the Consumer Product Safety Act, 20 UCLA L. Rev. 899 (1973); Antonin Scalia, Vermont Yankee: The APA, the D. C. Circuit, and the Supreme Court, 1978 Sup. Ct. Rev. 345 (1978); Antonin Scalia, The ALJ Fiasco—A Reprise, 47 U. Chi. L. Rev. 57 (1979).

about this?" He often concluded the semester by quoting a line from Robert Bolt's *A Man for All Seasons*, which to Scalia was a "beautiful expression of the importance of the law." In the passage, Sir Thomas More boldly declares: "Whoever hunts for me, Roper, God or Devil, will find me hiding in the thickets of the law! And I'll hide my daughter with me! Not hoist her up to the mainmast of your seagoing principles! They put about too nimbly!"[6]

Several years into teaching, Scalia was appointed to the first of several Executive Branch positions. In 1971, he became the general counsel of the newly created Office of Telecommunications Policy, where he addressed legal and policy issues arising in the still-nascent cable industry. The following year, Scalia was asked to chair the Administrative Conference of the United States, a body composed of officials from various agencies, academics, and other experts in the field to study problems of administrative law and procedure and to recommend solutions to Congress or agencies. Scalia enjoyed the Conference's work, and was gratified when the Conference was revived in 2010 after a multi-year hiatus.

In 1974, Scalia became the Assistant Attorney General for the Office of Legal Counsel in the Department of Justice. Then-Deputy Attorney General Laurence Silberman explained that, in choosing a new head of OLC in the aftermath of Watergate, the Ford Administration "wanted a brilliant lawyer with steel nerves."[7] Scalia fit the bill. Confirmed just weeks after President Ford took office, Scalia confronted a litany of difficult constitutional and other issues, starting with the legal ownership of President Nixon's papers. The work entailed long hours. As Maureen recounted, Scalia "slept in the White House, and I don't mean the Lincoln bedroom."[8] But even through those trying and exhilarating professional days, family and faith remained priorities.

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[6] Biskupic, *supra*, n. 1, at 66–67, 76.

[7] Justice Scalia Memorial Service, at 15:45-15:49, C-SPAN (Mar. 1, 2016), https://www.c-span.org/video/?405460-1/memorial-service-supreme-court-justice-antonin-scaila&start=939.

[8] Biskupic, *supra*, n. 1, at 53.

In 1977, Scalia returned to academia, joining the University of Chicago faculty, where he remained, aside from a visit to Stanford, until 1982. In Chicago, Scalia continued to focus on administrative law and became head of the American Bar Association's Section of Administrative Law in 1981. He was particularly pleased with the amicus brief he wrote for the ABA in *INS* v. *Chadha*,[9] the landmark separation-of-powers case striking down a one-house legislative veto.

When President Reagan took office in 1981, he looked for a new Solicitor General, and before long Scalia and Rex Lee emerged as finalists. Scalia was crestfallen when he did not receive the appointment. The President had other ideas, however, nominating him to the U. S. Court of Appeals for the D. C. Circuit in 1982. In his four years on that court, Scalia encountered a range of constitutional and statutory questions. While there, he wrote what he considered one of the best openings in all of his opinions: "This case, involving legal requirements for the content and labeling of meat products such as frankfurters, affords a rare opportunity to explore simultaneously both parts of Bismarck's aphorism that 'No man should see how laws or sausages are made.' "[10]

When Chief Justice Burger announced his retirement in 1986, President Reagan nominated Justice Rehnquist to fill Burger's seat and tapped Scalia to fill Rehnquist's seat. At his confirmation hearing, Scalia was asked to explain the "success of the Constitution." While the Bill of Rights is "very important," he responded, its provisions standing alone "do not do anything." Other countries, even those with authoritarian regimes, have "at least as good guarantees of personal freedom." Instead, Scalia explained, "[w]hat makes it work, what assures that those words are not just hollow promises, is the structure of government that the original Constitution established, the checks and bal-

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[9] 462 U. S. 919 (1983).

[10] *Community Nutrition Inst.* v. *Block*, 749 F. 2d 50, 51 (D. C. Cir. 1984).

ances among the three branches."[11] When Senator Metzenbaum in jest criticized Scalia's "bad judgment in whipping" the Senator on the tennis court, Scalia confessed that "[i]t was a case of [his] integrity overcoming [his] judgment."[12] Scalia was confirmed 98–0 on September 17, 1986, the 199th anniversary of the Constitution's signing in Philadelphia.

Over the next three decades, Justice Scalia left his mark on the law in numerous ways, too many to recount in full here. His steadfast commitment to the idea that external legal principles rather than internal policy preferences should govern judicial decisionmaking made him deeply respectful of the Constitution's allocation of powers and vigilant in respecting legal texts. That commitment showed up first, and most often, in his views on statutory interpretation. Justice Scalia pressed the elementary proposition that, when interpreting a statutory text, judges must try to discern and enforce the meaning of words enacted by Congress to express its policies. In his view, courts should never rewrite a discernible statutory text to conform to a law's unenacted legislative purposes. This position challenged the practice of first divining and then enforcing the "spirit" rather than the "letter" of a law, an approach embodied by the *Holy Trinity* decision.[13] With characteristic energy, Justice Scalia contested that practice. The legislative process is opaque, path-dependent, and prone to "backroom deals" that do not make their way into the public eye. An awkwardly worded statute that falls short of its apparent policy aspirations thus might not be the product of legislative misstatement, but might instead be "the result of compromise among various interest groups, resulting in a decision to go so far and no farther."[14] Hence, when judges rewrote

[11] Nomination of Judge Antonin Scalia, to be Associate Justice of the Supreme Court of the United States: Hearings Before the S. Comm. on the Judiciary, 99th Cong. 32 (1986) (statement of Antonin Scalia).

[12] *Id.*, at 13.

[13] *Church of Holy Trinity* v. *United States*, 143 U. S. 457, 459 (1892).

[14] *Eastern Associated Coal Corp.* v. *Mine Workers*, 531 U. S. 57, 68–69 (2000) (Scalia, J., concurring in judgment).

a clear statute to conform its terms to what they perceived to be the law's underlying purposes, they risked upsetting whatever "legislative compromise [may have] enabled the law to be enacted" in the first place.[15] *Holy Trinity* was never the same after Justice Scalia joined the Court.

During his career, the Court moved a good way (though not as far as he would have liked) toward his rigorous emphasis on the enacted text.[16] The Court's citation of dictionaries has risen to levels previously unseen in the U. S. Reports.[17] After a post-New Deal judicial trend away from the use of semantic canons, they now play a visible, sometimes pivotal, role in the Court's determinations of statutory meaning.[18] And the Court became skeptical of *implied* statutory rights of action.[19] This new textualism[20] had an undeniable impact on the way the Court does business.

Perhaps most pronounced has been the Court's embrace of the idea, championed by Justice Scalia, that extrinsic indicia of statutory intention, such as legislative reports or floor statements, may not override a clear statutory text. In an opinion for the Court early in his tenure, Justice Scalia wrote that "[t]he best evidence of [a statute's] purpose is the statutory text adopted by both Houses of Congress and submitted to the President."[21] He added that where such a text is "unambiguous," the Court "do[es] not permit it to be expanded or contracted by the statements of individual legisla-

[15] *Artuz* v. *Bennett*, 531 U. S. 4, 10 (2000).

[16] See Philip P. Frickey, Revisiting the Revival of Theory in Statutory Interpretation: A Lecture in Honor of Irving Younger, 84 Minn. L. Rev. 199, 205 (1999).

[17] See, *e. g.*, Jeffrey L. Kirchmeier & Samuel A. Thumma, Scaling the Lexicon Fortress: The United States Supreme Court's Use of Dictionaries in the Twenty-First Century, 94 Marq. L. Rev. 77, 86 (2010).

[18] See, *e. g.*, *McDonnell* v. *United States*, 579 U. S. 550, 567–569 (2016) (*noscitur a sociis*); *Bruesewitz* v. *Wyeth LLC*, 562 U. S. 223, 233 (2011) (*expressio unius*).

[19] See, *e. g.*, *Alexander* v. *Sandoval*, 532 U. S. 275 (2001).

[20] See William N. Eskridge, Jr., The New Textualism, 37 UCLA L. Rev. 621 (1990).

[21] *West Virginia Univ. Hospitals, Inc.* v. *Casey*, 499 U. S. 83, 98 (1991).

tors or committees during the course of the enactment process."[22]

Before 1986, the Court frequently used legislative history in an effort to discern legislative intent. Often, the Court would treat the views of a statute's sponsor or a drafting committee as if they represented the intentions of Congress as a whole.[23] So strong was the acceptance of legislative history that a Burger Court opinion, in an unguarded moment, declared that because "[t]he legislative history . . . is ambiguous[,] . . . we must look primarily to the statutes themselves to find the legislative intent."[24]

Justice Scalia criticized the use of legislative history as a tool of construction every chance he got, all but affixing a badge of shame on it. In vivid prose informed by practical experience in government, he questioned whether rank-and-file legislators necessarily read, much less agreed with, floor statements or even the committee reports that had become a staple of interpretive practice. When the Court interpreted the Civil Rights Attorney's Fees Award Act by parsing lower court cases that the committee reports had cited, Justice Scalia wrote: "As anyone familiar with modern-day drafting of congressional committee reports is well aware, the references to the cases were inserted, at best by a committee staff member on his or her own initiative, and at worst by a committee staff member at the suggestion of a lawyer-lobbyist; and the purpose of those references was not primarily to inform the Members of Congress what the bill meant . . . , but rather to influence judicial construction."[25]

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[22] *Id.*, at 98–99.

[23] See, *e. g.*, *North Haven Bd. of Ed.* v. *Bell*, 456 U. S. 512, 526–527 (1982); *Steadman* v. *SEC*, 450 U. S. 91, 101 (1981); *J. W. Bateson Co.* v. *United States ex rel. Bd. of Trustees of Nat. Automatic Sprinkler Industry Pension Fund*, 434 U. S. 586, 591 (1978).

[24] *Citizens to Preserve Overton Park, Inc.* v. *Volpe*, 401 U. S. 402, 412, n. 29 (1971).

[25] *Blanchard* v. *Bergeron*, 489 U. S. 87, 98–99 (1989) (Scalia, J., concurring in part and concurring in judgment).

Ultimately, Justice Scalia's principal concern was less the accuracy of legislative reports than their legitimacy. The Constitution conditions Congress's power to legislate on a bill's passage by two Houses and either the assent of the President or the override of a presidential veto by two-thirds of each house.[26] According to Justice Scalia, even if most Members of Congress would want and expect the courts to treat legislative history as an authoritative indication of a statute's intended meaning, "the very first provision of the Constitution" precludes that arrangement by vesting "'[a]ll legislative Powers'" in *Congress* itself.[27] If legislative committees or bill sponsors could make pronouncements that specified the entire body's intended policies, then Members of Congress could make an end-run around the bicameralism and presentment requirements themselves. In Justice Scalia's words: "We are governed by laws, not by the intentions of legislators. . . . 'The law as it passed is the will of the majority of both houses, and the only mode in which that will is spoken is in the act itself.'"[28]

It is fair to say that the connection between statutory text and judicial interpretations of it has tightened substantially since Justice Scalia joined the Court. The Court has restored the primacy of statutory text and routinely declines to "resort to legislative history to cloud a statutory text that is clear," as Justice Ginsburg wrote for the Court.[29] Today, the Court instead "presume[s] that a legislature says in a statute what it means and means in a statute what it says there."[30] That is no small legacy.

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[26] U. S. Const., Art. I, § 7.

[27] *Bank One Chicago, N. A.* v. *Midwest Bank & Trust Co.*, 516 U. S. 264, 280 (1996) (Scalia, J., concurring in part and concurring in judgment) (quoting U. S. Const., Art. I, § 1).

[28] *Conroy* v. *Aniskoff*, 507 U. S. 511, 519 (1993) (Scalia, J., concurring in judgment) (emphasis omitted) (quoting *Aldridge* v. *Williams*, 3 How. 9, 24 (1844)).

[29] *Ratzlaf* v. *United States*, 510 U. S. 135, 147–148 (1994).

[30] *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 253–254 (1992). See also *Alabama* v. *North Carolina*, 560 U. S. 330, 351–352 (2010).

Just as Justice Scalia believed that courts should do their best to honor a statute's text, he thought the same should be true for the Constitution. And if it was essential to respect the language of the Constitution, it followed that its meaning should be fixed unless and until the People followed the process for ratifying amendments to the charter. As he saw it, the words of the Constitution, like all legal texts and documents, bear the same meaning today as they did when adopted, neither diminished nor augmented—though of course capable of application to new technologies and other features of modern society.[31]

He grounded this principle of interpretation in part in respect for democracy. To recognize constitutional rights that he could not locate in the Constitution, he believed, "prohibit[s] . . . acts of self-governance that 'We the people' never, ever, voted to outlaw."[32] "This practice of constitutional revision by an unelected committee of nine," he argued, "robs the People of the most important liberty they asserted in the Declaration of Independence and won in the Revolution of 1776: the freedom to govern themselves."[33] He thus voted against recognition of new rights that he believed lacked a foundation in the Constitution's original meaning—in areas ranging from abortion[34] and same-sex marriage[35] to punitive-damage caps[36] and retroactive taxation.[37]

Any other approach, he worried, placed at risk the guarantees of liberty actually enshrined in the Constitution. Just as he resisted imposing new restrictions on democratic self-

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[31] *Kyllo* v. *United States*, 533 U. S. 27 (2001).

[32] Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 88 (2012).

[33] *Obergefell* v. *Hodges*, 576 U. S. 644, 714 (2015) (Scalia, J., dissenting).

[34] *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833, 979 (1992) (Scalia, J., dissenting).

[35] *Obergefell*, 576 U. S., at 713 (Scalia, J., dissenting).

[36] *BMW of North America, Inc.* v. *Gore*, 517 U. S. 559, 598 (1996) (Scalia, J., dissenting).

[37] *United States* v. *Carlton*, 512 U. S. 26, 39 (1994) (Scalia, J., concurring in judgment).

government that the People did not vote to impose, he insisted on unyielding enforcement of those restrictions that the People *did* vote to impose.[38] An essential responsibility of the Court, he thought, was "to *preserve* our society's values" and "to prevent backsliding" from the limits prescribed by the Constitution.[39] That approach prompted him to dissent from decisions that he believed cut back on the original meaning of constitutional guarantees such as the Elections Clause,[40] the Ex Post Facto Clause,[41] the Fourth Amendment,[42] the Jury Clause,[43] and the Seventh Amendment.[44] His judicial philosophy also led him to recognize constitutional limitations upon the government's use of new technology where necessary to "assure[ ] preservation" of the same "degree" of liberty "that existed when the [Bill of Rights] was adopted."[45] That imperative prompted his opinions for the Court holding that the Fourth Amendment restricts the government's power to use thermal scanners to inspect houses,[46] and that the Confrontation Clause protects a criminal defendant's right to confront forensic analysts.[47]

Where the constitutional text did not answer the question at hand, history came to the fore, not for its own sake, but to shed light on the original public meaning of the text. It is doubtful that any Justice has done more for the cause of legal history or placed more light on once-obscure legal texts.

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[38] See *Texas* v. *Johnson*, 491 U. S. 397 (1989).

[39] *United States* v. *Virginia*, 518 U. S. 515, 568 (1996) (Scalia, J., dissenting).

[40] *Arizona State Legislature* v. *Arizona Independent Redistricting Comm'n*, 576 U. S. 787, 854 (2015) (Scalia, J., dissenting).

[41] *Rogers* v. *Tennessee*, 532 U. S. 451, 467 (2001) (Scalia, J., dissenting).

[42] *County of Riverside* v. *McLaughlin*, 500 U. S. 44, 59 (1991) (Scalia, J., dissenting).

[43] *Almendarez-Torres* v. *United States*, 523 U. S. 224, 248 (1998) (Scalia, J., dissenting).

[44] *Gasperini* v. *Center for Humanities, Inc.*, 518 U. S. 415, 448 (1996) (Scalia, J., dissenting).

[45] *Kyllo*, 533 U. S., at 34.

[46] *Ibid.*

[47] *Melendez-Diaz* v. *Massachusetts*, 557 U. S. 305 (2009).

His opinions are replete with references to Coke's Institutes and Blackstone's Commentaries, to Johnson's Dictionary and Publius' Federalist, and to statutes enacted by early Congresses and constitutions adopted by the original States. His lead opinion in *Harmelin* v. *Michigan*[48] canvassed everything from Lord Chief Justice Jeffreys' remarks during the Bloody Assizes to Patrick Henry's remarks during the Virginia ratification convention before concluding that disproportionality alone does not render a punishment cruel and unusual under the Eighth Amendment. And in *Hamdi* v. *Rumsfeld*,[49] he concluded in dissent that, in the absence of a suspension of the privilege of the writ of habeas corpus, the President lacked power to detain American citizens without charge as enemy combatants—though only after a reconnaissance of the Habeas Corpus Act of 1679, English treason prosecutions, and previous English and American statutes suspending the privilege.

He summed up his approach to text and tradition this way:

> "[A] venerable and accepted tradition is not to be laid on the examining table and scrutinized for its conformity to some abstract principle . . . devised by this Court. To the contrary, such traditions are themselves the stuff out of which the Court's principles are to be formed. They are, in these uncertain areas, the very points of reference by which the legitimacy or illegitimacy of other practices are to be figured out. When it appears that the latest 'rule,' or 'three-part test,' or 'balancing test' devised by the Court has placed us on a collision course with such a landmark practice, it is the former that must be recalculated by us, and not the latter that must be abandoned by our citizens."[50]

That meant that in Establishment Clause cases, to use one example, he voted to uphold prayer at public-school gradua-

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[48] 501 U. S. 957 (1991).

[49] 542 U. S. 507, 554 (2004) (Scalia, J., dissenting).

[50] *Rutan* v. *Republican Party of Ill.*, 497 U. S. 62, 95–96 (1990) (Scalia, J., dissenting).

tions,[51] accommodation of religious beliefs,[52] and public displays of religious monuments[53] because they enjoyed the validation of tradition—regardless of whether they comported with judge-devised metrics such as the *Lemon* test.

By the end of Justice Scalia's tenure, a focus on the original public meaning of the Constitution's text had become, if not orthodoxy, a thoroughly respectable and commonplace approach to constitutional interpretation. Two decisions—*District of Columbia* v. *Heller*[54] and *Crawford* v. *Washington*[55]—illustrate the point. In *Heller*, the Court held that the Second Amendment protects an individual right to keep and bear arms for self-defense. Justice Scalia's opinion for the Court showcases his meticulous approach to uncovering how the Constitution was understood by "ordinary citizens in the founding generation"[56]—starting with an analysis of the words of the Second Amendment, continuing with an examination of analogous provisions in early state constitutions, and turning to an analysis of how the Second Amendment was interpreted through the 18th and 19th centuries. This focus on text and history was hardly limited to the Justice's opinion for the Court. Justice Stevens' dissent emphasized the debates surrounding the ratification of the Constitution and the drafting history of the Second Amendment, while Justice Breyer's dissent stressed the prevalence of gun laws in colonial towns.

Crawford is of a piece. His 7–2 decision for the Court interpreted the Sixth Amendment's Confrontation Clause and turned on the public understanding of the guarantee at the time of ratification rather than on the Framers' broader interest in promoting the reliability of evidence in a criminal

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[51] *Lee* v. *Weisman*, 505 U. S. 577, 631 (1992) (Scalia, J., dissenting).

[52] *Board of Ed. of Kiryas Joel Village School Dist.* v. *Grumet*, 512 U. S. 687, 732 (1994).

[53] *McCreary County* v. *American Civil Liberties Union of Ky.*, 545 U. S. 844, 885 (2005) (Scalia, J., dissenting).

[54] 554 U. S. 570 (2008).

[55] 541 U. S. 36 (2004).

[56] *Id.*, at 576–577.

case. In a series of cases exemplified by *Ohio* v. *Roberts*,[57] the Court had employed a balancing test designed to identify reliable evidence. *Crawford* memorably dispatched the *Roberts* balancing test and the elevation of the Framers' broader interest in reliable evidence over the textual guarantee of confrontation. "By replacing categorical constitutional guarantees with open-ended balancing tests," Justice Scalia reasoned, "we do violence to [the Framers'] design."[58] And while Justice Scalia happily conceded that "the Clause's ultimate goal is reliable evidence," he was quick to remind that the Framers embraced a particular means to that end. The Clause "commands not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination."[59] "Dispensing with confrontation because the evidence is obviously reliable," he trenchantly concluded, "is akin to dispensing with jury trial because the defendant is obviously guilty. That is not what the Sixth Amendment prescribes."[60] He was proud of both decisions.

Justice Scalia may be best known for his views about the proper methodology for statutory and constitutional interpretation. But his first love was an area of substantive law—constitutional structure—which shaped his answers to the underlying questions that appear in every case: Who decides? And how? Even his methods of statutory and constitutional interpretation were informed by these considerations. He eschewed the use of legislative history, for example, because it empowered the Judiciary at the expense of Congress and because committee reports did not comply with the constitutional requirements of bicameralism and presentment. And he criticized judicial amendments of a living Constitution because they aggrandized the power of judges and disregarded the Constitution's explicit means of

[57] 448 U. S. 56 (1980).
[58] *Crawford*, 541 U. S., at 67–68.
[59] *Id.*, at 61.
[60] *Id.*, at 62.

amendment, all at the expense of the People and their representatives.

Throughout his tenure, Justice Scalia sought to honor the Constitution's structure—its distinct horizontal and vertical lines of power—realizing that they were as essential to the preservation of individual liberty as the provisions of the Bill of Rights. He appreciated that men and women were not "angels,"[61] and that electing (or appointing) them to government posts did not make it otherwise. By assigning three distinct kinds of government power (legislative, executive, and judicial) to three distinct branches of government, he believed, the Constitution prevented the concentration of government power in the same hands—considered by the Founders to be the epitome of tyranny.[62]

In his iconic dissent in *Morrison* v. *Olson*,[63] written early in his tenure, Justice Scalia put these principles to work. He objected that Congress's attempt to restrict the President's ability to remove an independent counsel—an officer who exercised executive power—violated Article II, which vests the executive power in the President and obligates him to take care that the laws be faithfully executed. As he saw it, the Constitution vested all—not some—of the executive power in the President. For Justice Scalia, this made *Morrison* an easy case: "Frequently an issue of this sort will come before the Court clad, so to speak, in sheep's clothing: the potential of the asserted principle to effect important change in the equilibrium of power is not immediately evident, and must be discerned by a careful and perceptive analysis. But this wolf comes as a wolf."[64]

Justice Scalia was no less vigilant in preventing legislative incursions on the judicial power, exemplified by his opinion for the Court in *Plaut* v. *Spendthrift Farm, Inc.*,[65] rejecting

[61] The Federalist No. 51 (James Madison).
[62] See The Federalist No. 47 (James Madison).
[63] 487 U. S. 654 (1988).
[64] *Id.*, at 699 (Scalia, J., dissenting).
[65] 514 U. S. 211 (1995).

an attempt by Congress to reopen final judgments of Article III courts. As Scalia explained, the Article III judicial power gave federal courts the power to decide cases with finality, and the statute in question trespassed on that assignment. "The Framers of the Constitution," he reasoned, built separation of powers into the structure because they had "lived among the ruins of a system of intermingled legislative and judicial powers," and they established "high walls and clear distinctions because low walls and vague distinctions will not be judicially defensible in the heat of interbranch conflict."[66]

At the same time Justice Scalia thought it essential that the Court stand sentinel over efforts by one branch to assume power allocated to another branch, he was insistent that the Judiciary not use its final say over the meaning of federal law to aggrandize power the Constitution never gave it. Throughout his career, he rejected attempts to expand the judicial power beyond the limits embedded in Article III. Witness *Lujan* v. *Defenders of Wildlife*,[67] where Justice Scalia wrote that "the Constitution's central mechanism of separation of powers depends largely upon common understanding of what activities are appropriate to legislatures, to executives, and to courts." The requirement of standing, he explained, helped to identify those disputes properly—and improperly—resolved through the judicial process. Absent a claim that alleged a particularized, imminent injury of the kind redressable by courts, Justice Scalia concluded that the federal courts had no warrant to referee the dispute.

Justice Scalia likewise regarded the Constitution's vertical separation of powers—federalism—as a core feature of the Constitution's structure that needed to be preserved. He honored the States' "residuary and inviolable sovereignty"[68] under the Constitution by joining the Court's decisions rec-

[66] *Id.*, at 219, 239.

[67] 504 U. S. 555, 559–560 (1992).

[68] *Printz* v. *United States*, 521 U. S. 898, 918–919 (quoting The Federalist No. 39 (James Madison)).

ognizing limits on Congress's power to regulate interstate commerce[69] and upholding the States' sovereign immunity from suit.[70] Perhaps his most notable federalism opinion came in *Printz* v. *United States*,[71] in which the Court held that the Constitution prohibited Congress from commandeering state executive officials to enforce federal law. Permitting Congress to impress state executive officers into federal service, he reasoned, would threaten the States' separate sphere of constitutional authority by "immeasurably" augmenting the power of the federal government at the expense of the States and eventually individual liberty.[72] "Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch," he explained, "a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front."[73]

In view of Justice Scalia's appreciation of separation-of-powers principles and his scholarship as a professor, it should come as no surprise that the Court's administrative-law docket engaged him. His opinions touched many areas of administrative law, including the scope and limitations of *Chevron* deference.[74] He was a tireless defender of the proposition that judicial deference to agency interpretations should not depend on a case-by-case determination of whether Congress would want the Court to defer based on multiple unranked and unweighted factors.[75] At the same time, he made clear that *Chevron* does not permit courts

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[69] See *United States* v. *Morrison*, 529 U. S. 598 (2000); *United States* v. *Lopez*, 514 U. S. 549 (1995).

[70] See *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44 (1996).

[71] 521 U. S. 898 (1997).

[72] *Printz*, 521 U. S., at 922.

[73] *Id.*, at 921 (quoting *Gregory* v. *Ashcroft*, 501 U. S. 452, 458 (1991)).

[74] *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984).

[75] *United States* v. *Mead Corp.*, 533 U. S. 218, 241 (2001) (Scalia, J., dissenting).

reflexively to credit whatever reading of a statute an agency tenders and thus does not permit courts to abdicate their *Marbury* function to interpret the law.[76] His decisions underscore that, if an agency's interpretation is inconsistent with Congress's clear direction, courts need not—indeed cannot—disregard Congress's commands.[77] As he acknowledged early in his tenure, his commitment to giving primacy to the statutory text necessarily meant that *Chevron* deference will matter less often, and will affect fewer case outcomes, than if he "permit[ted] the apparent meaning of the statute to be impeached by legislative history" or other sources outside the text Congress enacted.[78] *Chevron*, he explained, does not compel courts to defer merely because a statute contains some ambiguity; the mere "presence of some uncertainty does not expand *Chevron* deference to cover virtually any interpretation" the agency advances.[79] "It does not matter," Justice Scalia memorably observed, "whether the word 'yellow' is ambiguous when the agency has interpreted it to mean 'purple.'"[80]

One other area of substantive law deserves mention. When people think of transformative criminal law opinions, *Mapp* v. *Ohio*,[81] *Miranda* v. *Arizona*,[82] and decisions restricting capital punishment come to mind. But to Justice Scalia, many of those Warren Court landmarks transformed the preexisting law precisely because they had no basis in the Consti-

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[76] *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803).

[77] See, *e. g.*, *Michigan* v. *EPA*, 576 U. S. 743, 747–760 (2015); *Utility Air Regulatory Group* v. *EPA*, 573 U. S. 302, 307–334 (2014); *Cuomo* v. *Clearing House Assn., L. L. C.*, 557 U. S. 519, 525 (2009); *Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457, 481–486 (2001).

[78] Antonin Scalia, Judicial Deference to Administrative Interpretations of Law, 38 Duke L. J. 511, 521 (1989).

[79] *Clearing House*, 557 U. S., at 525.

[80] *United States* v. *Home Concrete & Supply, LLC*, 566 U. S. 478, 493, n. 1 (2012) (Scalia, J., concurring in part and concurring in judgment).

[81] 367 U. S. 643 (1961).

[82] 384 U. S. 436 (1966).

tution. He thus led the charge to limit the reach of *Mapp*[83] and critiqued *Miranda*[84] and many death-penalty decisions.[85]

That is not to say he resisted the rights of criminal defendants. He just preferred to enforce a different set of rights—those protections that, in his view, were properly grounded in the Constitution's text and history. He became an uncompromising defender of those rights. Take the breathtaking impact of his commitment to the Sixth Amendment's trial by jury. When Justice Scalia dissented in *Almendarez-Torres* v. *United States*[86] to point out that laws that create new statutory maximum sentences on the basis of judicial factual findings violate the jury guarantee, he launched a wholesale shift in the Court's view of sentencing laws. A majority of the Court ultimately came around to his viewpoint through three system-changing decisions, one of which (*Blakely*) he wrote, all of which he joined.[87] Sentencing laws in the state and federal courts have shifted markedly ever since.

Justice Scalia led a similar transformation of the Sixth Amendment's Confrontation Clause.[88] That shift also began with a vigorous dissent (joined by Justices Brennan, Marshall, and Stevens), in which he maintained that the Court had "subordinat[ed]" the Constitution's textual demand that the defendant had a right "to be confronted with the witnesses

[83] See, *e. g.*, *Hudson* v. *Michigan*, 547 U. S. 586 (2006) (limiting the reach of the exclusionary rule).

[84] See, *e. g.*, *Dickerson* v. *United States*, 530 U. S. 428, 448 (2000) (Scalia, J., dissenting) (arguing that "*Miranda* was objectionable for innumerable reasons").

[85] See, *e. g.*, *Atkins* v. *Virginia*, 536 U. S. 304, 337–338 (2002) (Scalia, J., dissenting) (criticizing "death-is-different jurisprudence" that "find[s] no support in the text or history of the Eighth Amendment"); *Glossip* v. *Gross*, 576 U. S. 863, 894 (2015) (Scalia, J., concurring) (responding to the suggestion that the Eighth Amendment might preclude the death penalty, and arguing that "[i]t is impossible to hold unconstitutional that which the Constitution explicitly *contemplates*").

[86] 523 U. S. 224, 248 (1998) (Scalia, J., dissenting).

[87] See *Apprendi* v. *New Jersey*, 530 U. S. 466 (2000); *Blakely* v. *Washington*, 542 U. S. 296 (2004); *United States* v. *Booker*, 543 U. S. 220 (2005).

[88] U. S. Const., Amdt. 6.

against him" to "currently favored public policy" when it allowed a child witness to testify by one-way closed circuit television.[89] In *Crawford*, the Justice persuaded six colleagues to join his opinion for the Court insisting that out-of-court testimonial statements by witnesses are barred unless the defendant had a prior opportunity to examine the witness and the witness is currently unavailable.[90] This, too, led to a sea change in the handling of criminal cases.

Justice Scalia also was a stalwart defender of the Constitution's prohibition against vague criminal laws.[91] Consider his treatment of the residual clause of the Armed Career Criminal Act, which triggers higher penalties for those who commit violent felonies. The clause raised vexing questions about what crimes were included in its scope, prompting Justice Scalia to urge the Court to invalidate the clause as vague: "We face a Congress that puts forth an ever-increasing volume of laws in general, and of criminal laws in particular. It should be no surprise that as the volume increases, so do the number of imprecise laws. And no surprise that our indulgence of imprecisions that violate the Constitution encourages imprecisions that violate the Constitution."[92] While he initially raised these concerns in dissent, here too he persuaded a majority to see his point of view. In *Johnson* v. *United States*,[93] he wrote the opinion striking down the clause as unconstitutionally vague. The rule of law is indeed a law of rules,[94] as thousands of criminal defendants have come to appreciate.[95]

Justice Scalia not only took seriously the Constitution's many criminal procedure protections. He also respected

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[89] *Maryland* v. *Craig*, 497 U. S., 836, 860–861 (1990) (Scalia, J., dissenting).

[90] *Crawford*, 541 U. S., at 53–54.

[91] See, *e. g.*, *Skilling* v. *United States*, 561 U. S. 358, 415 (2010) (Scalia, J., concurring in part and concurring in judgment).

[92] *Sykes* v. *United States*, 564 U. S. 1, 35 (2011) (Scalia, J., dissenting).

[93] 576 U. S. 591 (2015).

[94] Antonin Scalia, The Rule of Law as a Law of Rules, 56 U. Chi. L. Rev. 1175 (1989).

[95] *Welch* v. *United States*, 578 U. S. 120 (2016) (making *Johnson* retroactive).

venerable canons of statutory construction that protected liberty. Exhibit A is the rule of lenity, which had no greater advocate on the Court than Justice Scalia.[96] That Justice Scalia, whose first stint in public service came in a Republican administration promising law-and-order judges, ended up where he did on so many matters of criminal law shows that he worked to follow his principles where they led him.

No account of Justice Scalia's contribution to this Court would be complete without mentioning his remarkably clear and vivid writing—qualities praised in the last three Justices to occupy his seat: Justices Jackson, Harlan, and Rehnquist. Scalia's writing stands out for its lucidity, poignant wit, and succinctness—and the inventive, memorable images sprinkled throughout.

The images were memorable precisely because they captured the substance of the legal point the Justice was making. Surely there was a separation-of-powers problem with the creation of "a sort of junior-varsity Congress,"[97] or a deep flaw in a dormant Commerce Clause test that asked judges to divine "whether a particular line is longer than a particular rock is heavy."[98] By the same token, who could argue with his observation that Congress "does not . . . hide elephants in mouseholes,"[99] or his injunction that no government has the "authority to license one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensbury Rules"?[100] The Justice could cut to the heart of a matter and

[96] See, *e. g.*, *Burrage* v. *United States*, 571 U. S. 204 (2014); *United States* v. *Santos*, 553 U. S. 507 (2008); *Holloway* v. *United States*, 526 U. S. 1, 20 (1999) (Scalia, J., dissenting); *United States* v. *O'Hagan*, 521 U. S. 642, 679 (1997) (Scalia, J., concurring in part and dissenting in part); *Smith* v. *United States*, 508 U. S. 223, 246–247 (1993) (Scalia, J., dissenting); *United States* v. *R. L. C.*, 503 U. S. 291, 307 (1992) (Scalia, J., concurring in part and concurring in judgment).

[97] *Mistretta* v. *United States*, 488 U. S. 361, 427 (1989) (Scalia, J., dissenting).

[98] *Bendix Autolite Corp.* v. *Midwesco Enterprises, Inc.*, 486 U. S. 888, 897 (1988) (Scalia, J., concurring in judgment).

[99] *Whitman*, 531 U. S., at 468.

[100] *R. A. V.* v. *St. Paul*, 505 U. S. 377, 391 (1992).

signal that a colorful opinion was coming just by reframing the question presented: "It ha[s] been rendered the solemn duty of the Supreme Court of the United States . . . to decide What Is Golf."[101] Other opinions would send the reader scurrying to the dictionary, though not to Webster's Third.[102] Think of his criticism of large-scale state-run DNA databases: "Perhaps the construction of such a genetic panopticon is wise"—he wanted you to look it up—but he "doubt[ed] that the proud men who wrote the charter of our liberties would have been so eager to open their mouths for royal inspection."[103]

In other cases, his sometimes playful language was aimed at the serious business of moving the Court's jurisprudence in his preferred direction. Has the *Lemon* test every fully recovered from Justice Scalia's critique in *Lamb's Chapel* v. *Center Moriches Union Free School Dist.*?

> Like some ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad, after being repeatedly killed and buried, *Lemon* stalks our Establishment Clause jurisprudence once again, frightening the little children and school attorneys of Center Moriches Union Free School District. Its most recent burial, only last Term, was, to be sure, not fully six feet under . . . . Over the years, however, no fewer than five of the currently sitting Justices have, in their own opinions, personally driven pencils through the creature's heart . . . , and a sixth has joined an opinion doing so.
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> The secret of the *Lemon* test's survival, I think, is that it is so easy to kill. It is there to scare us (and our audience) when we wish it to do so, but we can command it to return to the tomb at will. When we wish to strike down a practice it forbids, we invoke it; when we wish to uphold a practice it forbids, we ignore it entirely. Sometimes,

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[101] *PGA TOUR, Inc.* v. *Martin*, 532 U. S. 661, 700 (2001) (Scalia, J., dissenting).

[102] *MCI Telecommunications Corp.* v. *American Telephone & Telegraph Co.*, 512 U. S. 218, 225–228 (1994).

[103] *Maryland* v. *King*, 569 U. S. 435, 482 (2013) (Scalia, J., dissenting).

> we take a middle course, calling its three prongs "no more than helpful signposts." Such a docile and useful monster is worth keeping around, at least in a somnolent state; one never knows when one might need him.[104]

The lively wit, off-the-beaten-path imagery, and rigorous analysis that mark his opinions are all the more impressive given their quantity. By any measure, including the *Harvard Law Review*'s opinion count, his output was prodigious. Over 30 years, Justice Scalia authored 870 opinions, including 281 majority (or plurality) opinions. Many of Justice Scalia's most memorable contributions appear in separate writings. While a number of his 274 dissents are well and widely known, concurring opinions occupied an even larger share of his work. Over three decades, Justice Scalia authored 315 concurrences—the second most of any Justice who joined the Court since the *Harvard Law Review* began tabulating opinions by author in 1949.

Justice Scalia appreciated that vibrant debate today can lay the foundation for persuading readers tomorrow—himself included. More than once he acknowledged that new and better arguments had persuaded him to alter views he had expressed in prior cases.[105] And when an oversight in an earlier case was called to his attention, he confessed error, borrowing a page from Justice Jackson to explain: " 'I see no reason why I should be consciously wrong today because I was unconsciously wrong yesterday.' "[106] The North Star to Justice

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[104] 508 U. S. 384, 398–399 (1993) (Scalia, J., dissenting) (citations omitted).

[105] See *Ring* v. *Arizona*, 536 U. S. 584, 611 (2002) (Scalia, J., concurring) (explaining that, since *Walton* v. *Arizona*, 497 U. S. 639 (1990), he had "acquired new wisdom . . . or, to put it more critically, ha[d] discarded old ignorance"); *Talk America, Inc.* v. *Michigan Bell Telephone Co.*, 564 U. S. 50, 67–68 (2011) (Scalia, J., concurring) (acknowledging his prior acceptance of *Bowles* v. *Seminole Rock & Sand Co.*, 325 U. S. 410 (1945), including in his opinion for the Court in *Auer* v. *Robbins*, 519 U. S. 452 (1997), but expressing serious doubts about its validity).

[106] See *Dart Cherokee Basin Operating Co.* v. *Owens*, 574 U. S. 81, 102 (2014) (Scalia, J., dissenting) (quoting *Massachusetts* v. *United States*, 333 U. S. 611, 639–640 (1948) (Jackson, J., dissenting)).

Scalia was getting the reasoning right—an admonition he never ceased to urge on others and never desisted to accept for himself.

While Justice Scalia's writing frequently leapt off the page, advocates before the Court often confronted his tenacity and wit long before he unsheathed his pen. Before 1986, oral argument in the Court was more disquisition than dialogue. Counsel could lead the Court on a leisurely stroll through the facts, the procedural history, and the argument—interrupted by questions only a handful of times. During then-Assistant Attorney General Scalia's only argument before the Supreme Court, in *Alfred Dunhill of London, Inc.* v. *Republic of Cuba*,[107] he faced a total of 12 questions from two Justices; the other seven Justices said not a word. Scalia won the case. But he took a different approach to the Court's argument sessions once he arrived on the other side of the bench. He peppered lawyers with questions, sometimes posing 30 or 40 in a single argument. If he found an answer unsatisfactory, he pursued the point through short, often flinty-minded, follow-up inquiries. While his approach to oral argument was unique when he joined the Court, that is no longer so. Most Members of the Court have embraced an engaged style of questioning, and the advocates appreciate it (most of the time).

Even after Justice Scalia left the academy to start his judicial career, he maintained his connection with the law schools—nearly all of them—by accepting scores of invitations over the years to speak with students and professors. In one sense, he never left teaching; his classroom just got bigger. He often thought of the audience of his opinions as today's and tomorrow's law students, and relished opportunities to talk to students about his theories of judging and about the many useful ways to use a law degree.

Justice Scalia's productivity and many contributions to the law could leave the misimpression that he left little time for anything else—that he was all work and no play. Only someone who did not know him could make that mistake. This son

[107] 425 U. S. 682 (1976).

of Trenton and Queens became an avid hunter and fisherman, both of which allowed him to see and experience the Nation's breadth and diversity. He and Maureen looked forward to their annual visits to the Fifth Circuit, where he was the Circuit Justice, each year giving the "duck call award" to district court judges reversed by the Fifth Circuit only to be vindicated by the Supreme Court. He relished meals with friends, colleagues, and law clerks, often at the late but much-beloved A.V. Ristorante, replete with anchovy pizza and an occasional glass of red wine. He was an ever-present mentor to his many law clerks, often traveling to their cities to speak at local events, always taking time to give career advice. He found a way despite his many other commitments to write several books.[108] He took time to indulge his love of music, even appearing with one of his "best buddies," Justice Ginsburg, in a local opera production.[109] And of course he was deeply devoted to his large and remarkably close family. Stories about family trips were a staple of chambers conversations, including descriptions of summer trips to "Nag's End," the North Carolina beach house that Maureen named in honor of her own years of indefatigable advocacy. He loved to tell the story of his grandson, who, when told at a young age that his grandfather worked at the Supreme Court, exclaimed proudly, "Pop-Pop is the Court Jester." Through it all, the Justice did everything in his brim-filled life with unstinting vigor, curiosity, engagement, and a twinkle in his eye.

As Justice Scalia once observed, "[w]hen participating in programs such as this, consisting of brief memorial tributes, one sometimes fears that he will paint a portrait of his departed friend that others will not recognize—that perhaps he saw or thought he saw colorations of character or personality

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[108] Antonin Scalia, A Matter of Interpretation: Federal Courts and the Law (1997); Antonin Scalia & Bryan A. Garner, Making Your Case: The Art of Persuading Judges (2008); Scalia & Garner, Reading Law, *supra*, n. 32.

[109] Statement of Justice Ruth Bader Ginsburg, Supreme Court of the United States (Feb. 15, 2016), https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_02-14-16; see also Piers Morgan, *supra*, n. 3.

that others did not; rose where they saw pink, or violet where they saw purple." As was true of the colleague Justice Scalia was honoring then, "[t]hat is not a problem when one stands up to talk about" Antonin Scalia: "His colors were bright, and they neither changed nor were ever dissembled."[110] Carrying on our tradition dating to the days of Chief Justice Marshall,[111] it is accordingly:

RESOLVED that we, the members of the Bar of the Supreme Court of the United States, express our deepest respect for the late Justice Antonin Scalia; our loss at his passing from this life; our admiration for his commitment to the Nation, its charter, and this Court; and our enduring gratitude for the example he set in his life both within and beyond the law; and we have further

RESOLVED that the Acting Solicitor General be asked to present these resolutions to the Court, and that the Attorney General be asked to move that they be inscribed upon the permanent records of the Court.

THE CHIEF JUSTICE said:

Thank you, General Gershengorn. The Court recognizes the Attorney General of the United States.

Attorney General Lynch addressed the Court as follows:

MR. CHIEF JUSTICE, and may it please the Court:

The Bar of the Court met today to honor the memory of Antonin G. Scalia, Associate Justice of the Supreme Court from 1986 to 2016.

The passing of Justice Scalia has left an enormous void in this courtroom and in the life of the law throughout the United States. With his razor-sharp brilliance and unmatched eloquence, Justice Scalia transformed the way the

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[110] Antonin Scalia, Tribute to Emerson G. Spies, 77 Va. L. Rev. 427, 427 (1991).

[111] 10 Pet., at vii, viii (1836).

jurists and lawyers approach the law. He strode like a colossus through some of the most important opinions, concurrences, and dissents of our time, and he had a singular presence both in the courtroom and on the page. His penetrating questions at oral argument did not merely seek to clarify minor nuances; they cut to the heart of a position's flaws. And his writing did not merely state the law, it captivated all who treasure memorable and radiant prose. And even those who disagreed with Justice Scalia could appreciate his inspired wordsmithing, like his assertion that Congress does not hide elephants in mouseholes or his contention that the rule of law requires a law of rules.

Justice Scalia's life was a quintessentially American story. His father was a Sicilian immigrant who came through Ellis Island as a teenager, earned a doctorate from Columbia, and became a professor. His mother was an elementary schoolteacher, herself the daughter of Italian immigrants. By all accounts, Justice Scalia's talent was obvious from a young age: from Xavier High School in Manhattan to Georgetown, where he graduated first in his class, to Harvard Law School, where he edited the Harvard Law Review. He was a charismatic student who loved to debate. That charisma and his love of the clash of ideas would come to define him.

With these gifts, he could have gone anywhere and done anything. He could have conquered the worlds of commerce or found a home within the business of the law. But rather than pursue material wealth in the private sector, he chose the wealth of ideas to be found in academia. And instead of seeking public acclaim, he turned to public service. Law students at the University of Virginia, as well as the University of Chicago, Georgetown, and Stanford, benefited from his rigorous intellectualism and love of the law.

And we at the Department of Justice also benefited from his dedication to public service. From 1974 to 1977, he served as the head of the Office of Legal Counsel at the Department of Justice. The traits that would come to define Justice Scalia's judicial presence were apparent in that role as he provided written opinions that showcased his intellec-

tual rigor, his sharp pen, and his independent mind. He was also known for his fierce support of the independence of the Office of Legal Counsel and of the Department, traditions we are proud to uphold.

Justice Scalia's contributions to the Supreme Court cannot be overstated. Countless pages have been written about the textualist approach to statutory interpretation he championed. In his three decades on the bench, he succeeded in changing the very way that lawyers and judges determine the meaning of congressional enactments, and he fundamentally transformed legal argument. As Justice Kagan noted in her Scalia lecture at Harvard Law School, we're all textualists now.

Justice Scalia will also be remembered for his robust interpretations of the protections that the Constitution affords those who come in contact with the criminal justice system. His Fourth Amendment and Sixth Amendment decisions regarding searches, the right to a jury trial, and the Confrontation Clause fundamentally shaped the way law enforcement officers investigate potential wrongdoing, and the way prosecutors put on their cases. The opinions are noteworthy for their reliance on Justice Scalia's originalist approach to interpreting the Constitution, a philosophy that looks backwards in order to look forward. It looks back to the founding of this great Nation in an effort to understand the protections reserved in the Constitution, and it looks forward to demand that we uphold these protections despite changing times.

But Justice Scalia's greatest legacy may be that he brought unmatched conviction and enthusiasm to his jurisprudence. In doing so, he elevated our national legal discourse for all Americans. He challenged even those who agreed with him, and he earned the respect of those who did not. Lawyers who appeared before Justice Scalia found themselves compelled to clarify their positions and to sharpen their arguments. Readers of Justice Scalia's opinions could not disregard the strength of his reasoning and were forced to re-examine their own convictions.

Justice Scalia knew that this was the point of debate, and he also knew that debate was the essence of democracy. For decades, he had an outsized role in the debates over the meaning of our most fundamental principles: principles of liberty, justice, and equality. And because of the brilliance, the eloquence, and the unique passion he brought to that debate, he guaranteed that he will continue to shape it for decades to come.

MR. CHIEF JUSTICE, on behalf of the lawyers of this Nation, and in particular, the members of this Court's Bar, I respectfully request that the resolutions presented to you in honor of Antonin Scalia be accepted by the Court and that they, together with the chronicle of these proceedings, be ordered kept for all time in the records of this Court.

THE CHIEF JUSTICE said:

Thank you, General Lynch. Your request that the Bar resolutions be made part of the permanent record of the Court is granted,

The Court extends to the members of the Resolutions Committee, to the members of the Arrangements Committee, and to the Chairman of today's meeting of the Bar our appreciation for the resolutions adopted today.

Antonin Scalia was nominated to the U. S. Court of Appeals for the D. C. Circuit by President Reagan on July 15, 1982. He joined that court on August 17 that same year. And just four years later, President Reagan nominated him to be our 103rd Supreme Court Justice.

At the time of the White House announcement, he was not well-known to the public. The press had to ask Justice Scalia how to pronounce both his first and last names. Antonin Scalia was confirmed on Constitution Day in 1986 by a vote of 98–0. He took the oath of office as an Associate Justice of this Court on September 26, 1986. Today, every lawyer and journalist in this country, and most other citizens as well know how to pronounce Justice Antonin Scalia.

In nearly three decades on this Court, Justice Scalia wrote, by our count, 282 opinions for the Court, beginning with *O'Connor* v. *United States*, which he announced exactly 30 years ago today, and ending with *Kansas* v. *Carr*, which he announced on January 20 of this year. He was also known to write separately from time to time—authoring more than 300 concurrences and nearly as many dissents. He served with 17 other Justices during his long tenure on this Court.

You have already heard of Justice Scalia's extraordinary legacy. On matters of constitutional interpretation, he championed the judicial philosophy of originalism, a view that the Constitution means today what it meant when it was adopted. He espoused this approach in opinions, both for the Court and in dissent, that are now a central feature of every law school's constitutional curriculum.

His opinions explaining our Constitution's structural constraints on governmental power are among the most important intellectual contributions to the study of liberty since The Federalist Papers. Justice Scalia defended the President's power to appoint and remove executive officials, not to aggrandize presidential power, but to maintain the equilibrium between co-equal branches of government. He insisted that Congress perform the duties within its Constitutional charge and leave other matters alone, not to manage the legislative process, but to promote individual freedom through electoral accountability.

He approached the Judicial Branch with the same rigor. Justice Scalia demanded that federal courts stay within their constitutionally prescribed role of deciding only concrete cases and controversies. He did so not to avoid difficult issues, but to ensure that judges who are insulated from the political process resolve only those matters within Article III's grant of judicial power.

Justice Scalia applied originalist scrutiny to interpreting the Bill of Rights. His views were especially influential with respect to the First Amendment's religion clauses, the Second Amendment's right to bear arms, and the Sixth

Amendment's Confrontation Clause. He persuasively explained how the guarantees set forth 225 years ago continue to provide vital protections in our own age. Writing for the Court in cases involving the Fourth Amendment, he demonstrated how the centuries-old protections against unreasonable searches and seizures reach contemporary police investigatory tools, ranging from thermal imaging to electronic tracking devices to drug-sniffing dogs. He once commented that his opinions on the scope of criminal law safeguards in the Bill of Rights should make him the favorite Justice among criminal defendants across the country. Now, whether he wrote for the Court or in dissent, Justice Scalia's incisive analysis and unforgettable prose compelled jurists, lawyers, and citizens alike to think deeply about the meaning of the compact that binds us.

Justice Scalia left an equally enduring mark on statutory construction. His insistence on the primacy of a statute's text has enforced greater discipline on the task of construction. As he explained, reliance on the statutory text restrains judicial discretion and thereby promotes democracy.

Although Justice Scalia was a keen legal theorist, he was deeply concerned about the practical workings of government, and that intense focus is reflected in his contributions to administrative law. He made enduring contributions to that field as a teacher, scholar, and Chairman of the Administrative Conference of the United States, even before he became a judge. Whatever the discipline, whatever the role, Justice Scalia was committed to finding the right answer. And once he had settled upon what was right, he let the chips fall where they may, and cared not a whit what others thought about it.

Justice Scalia's voice is perhaps most deeply missed in this very chamber. From his first day on the bench, he was a vigorous participant in oral argument. His insightful inquiries enlivened debate and brought out the best in his colleagues and the attorneys who appeared before him, on many occasions also confirming that their best was not good enough.

Now, it would be a stretch to say that there was never a dull moment in this chamber—but often, just when things were getting a bit soporific, counsel would make some assertion that would trigger a reaction from Justice Scalia, ranging from explosive to subtle, and the game would be on. His comments in this room also included priceless sotto voce insights shared only with those fortunate enough to sit beside him on the bench.

Justice Scalia was not restrained in stating his views clearly and forcefully, but he never ceased being our dear friend and valued colleague. He wrestled with ideas, not people, and he knew the difference. He made our days warmer, livelier, and happier. He sang loudest and best at our traditional birthday celebrations. He raised his glass highest to toast others' happy occasions, and his rich laughter filled our halls and our hearts.

Justice Scalia's life reached far beyond the law. He would never have said that the law was what was most important to him. He was steadfast in his Roman Catholic faith, and he was devoted beyond measure to his beloved wife, Maureen, and the nine children they raised.

On occasions such as this, speakers often employ so many laudatory adjectives that the effect can be to sow doubt rather than admiration. But no one who knew Justice Scalia, however they viewed his work, would dispute for a moment that he was patriotic, principled, loyal, courageous, engaging, and brilliant.

Those of us on the Court will miss Nino, but we will continue to feel his presence throughout this building. Our ears will hear his voice in this courtroom when advocates invoke his words searching for powerful authority. Our minds will move to the measure of his reason in our chambers when we study his opinions. And our hearts will smile, even as our eyes glisten, when we walk the halls and recall how happy we were whenever we saw him rounding the corner.

PRESENTATION OF THE ATTORNEY GENERAL

Supreme Court of the United States

TUESDAY, FEBRUARY 21, 2017

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

The Chief Justice said:

The Court now recognizes the Acting Solicitor General of the United States.

Acting Solicitor General Francisco said:

Mr. Chief Justice, and may it please the Court. I have the privilege to present to the Court the Eighty-fourth Attorney General of the United States, the Honorable Jefferson B. Sessions, III, of Alabama.

The Chief Justice said:

General Sessions, on behalf of the Court, I welcome you as the Chief Legal Officer of the United States and as an officer of this Court. We recognize the very important responsibilities that are entrusted to you. Your commission as Attorney General of the United States will be noted in the records of the Court. We wish you well in the discharge of the duties of your new office.

Attorney General Sessions said:

Thank you, Mr. Chief Justice.

TABLE OF CASES REPORTED

NOTE: All undesignated references herein to the United States Code are to the 2012 edition, one of its supplements, or both.

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

CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 2016

BOSSE *v.* OKLAHOMA

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

No. 15–9173. Decided October 11, 2016

In *Payne* v. *Tennessee*, 501 U. S. 808, this Court held that *Booth* v. *Maryland*, 482 U. S. 496, wrongly concluded that the Eighth Amendment bans "'victim impact' evidence relating to the personal characteristics of the victim and the emotional impact of the crimes on the victim's family," 501 U. S., at 817. However, the Court had no occasion to reconsider *Booth*'s prohibition on considering victims' family members' "characterizations and opinions about the crime, the defendant, and the appropriate sentence," 501 U. S., at 830, n. 2, because no such evidence was presented in *Payne*. Nonetheless, the Oklahoma Court of Criminal Appeals has since held that this latter portion of *Booth* was also "implicitly overruled" by *Payne*.

Petitioner Bosse was convicted of three counts of first-degree murder. At the trial's penalty phase, the State asked three of the victims' relatives to recommend a sentence to the jury. All three recommended death, and the jury agreed. The Oklahoma Court of Criminal Appeals affirmed the sentence, rejecting Bosse's argument that the testimony about appropriate sentencing violated the Eighth Amendment under *Booth*.

Held: The Oklahoma Court of Criminal Appeals erred in concluding that *Payne* implicitly overruled *Booth* in its entirety. "[I]t is this Court's prerogative alone to overrule one of its precedents." *United States* v.

Hatter, 532 U. S. 557, 567. The Oklahoma court remains bound by *Booth*'s prohibition on characterizations and opinions from a victim's family members about the crime, the defendant, and the appropriate sentence unless this Court reconsiders that ban. See *Hohn* v. *United States*, 524 U. S. 236, 252–253. Whether this error affected the jury's sentencing determination and whether the defendant's rights were protected by the mandatory sentencing review in capital cases required under Oklahoma law may be addressed on remand.

Certiorari granted; 2015 OK CR 14, 360 P. 3d 1203, vacated and remanded.

PER CURIAM.

In *Booth* v. *Maryland*, 482 U. S. 496 (1987), this Court held that "the Eighth Amendment prohibits a capital sentencing jury from considering victim impact evidence" that does not "relate directly to the circumstances of the crime." *Id.*, at 501–502, 507, n. 10. Four years later, in *Payne* v. *Tennessee*, 501 U. S. 808 (1991), the Court granted certiorari to reconsider that ban on "'victim impact' evidence relating to the personal characteristics of the victim and the emotional impact of the crimes on the victim's family." *Id.*, at 817. The Court held that *Booth* was wrong to conclude that the Eighth Amendment required such a ban. *Payne*, 501 U. S., at 827. That holding was expressly "limited to" this particular type of victim impact testimony. *Id.*, at 830, n. 2. "*Booth* also held that the admission of a victim's family members' characterizations and opinions about the crime, the defendant, and the appropriate sentence violates the Eighth Amendment," but no such evidence was presented in *Payne*, so the Court had no occasion to reconsider that aspect of the decision. *Ibid.*

The Oklahoma Court of Criminal Appeals has held that *Payne* "*implicitly* overruled that portion of *Booth* regarding characterizations of the defendant and opinions of the sentence." *Conover* v. *State*, 933 P. 2d 904, 920 (1997) (emphasis added); see also *Ledbetter* v. *State*, 933 P. 2d 880, 890–891 (Okla. Crim. App. 1997). The decision below presents a straightforward application of that interpretation of *Payne*.

A jury convicted petitioner Shaun Michael Bosse of three counts of first-degree murder for the 2010 killing of Katrina Griffin and her two children. The State of Oklahoma sought the death penalty. Over Bosse's objection, the State asked three of the victims' relatives to recommend a sentence to the jury. All three recommended death, and the jury agreed. Bosse appealed, arguing that this testimony about the appropriate sentence violated the Eighth Amendment under *Booth*. The Oklahoma Court of Criminal Appeals affirmed his sentence, concluding that there was "no error." 2015 OK CR 14, ¶¶ 57–58, 360 P. 3d 1203, 1226–1227. We grant certiorari and the motion for leave to proceed *in forma pauperis*, and now vacate the judgment of the Oklahoma Court of Criminal Appeals.

"[I]t is this Court's prerogative alone to overrule one of its precedents." *United States* v. *Hatter*, 532 U. S. 557, 567 (2001) (quoting *State Oil Co.* v. *Khan*, 522 U. S. 3, 20 (1997); internal quotation marks omitted); see *Rodriguez de Quijas* v. *Shearson/American Express, Inc.*, 490 U. S. 477, 484 (1989). The Oklahoma Court of Criminal Appeals has recognized that *Payne* "specifically acknowledged its holding did not affect" *Booth*'s prohibition on opinions about the crime, the defendant, and the appropriate punishment. *Ledbetter*, 933 P. 2d, at 890–891. That should have ended its inquiry into whether the Eighth Amendment bars such testimony; the court was wrong to go further and conclude that *Payne* implicitly overruled *Booth* in its entirety. "Our decisions remain binding precedent until we see fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality." *Hohn* v. *United States*, 524 U. S. 236, 252–253 (1998).

The Oklahoma Court of Criminal Appeals remains bound by *Booth*'s prohibition on characterizations and opinions from a victim's family members about the crime, the defendant, and the appropriate sentence unless this Court reconsiders that ban. The state court erred in concluding otherwise.

The State argued in opposing certiorari that, even if the Oklahoma Court of Criminal Appeals was wrong in its victim impact ruling, that error did not affect the jury's sentencing determination, and the defendant's rights were in any event protected by the mandatory sentencing review in capital cases required under Oklahoma law. See Brief in Opposition 14–15. Those contentions may be addressed on remand to the extent the court below deems appropriate.

The judgment of the Oklahoma Court of Criminal Appeals is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE THOMAS, with whom JUSTICE ALITO joins, concurring.

We held in *Booth* v. *Maryland*, 482 U. S. 496 (1987), that the Eighth Amendment prohibits a court from admitting the opinions of the victim's family members about the appropriate sentence in a capital case. The Court today correctly observes that our decision in *Payne* v. *Tennessee*, 501 U. S. 808 (1991), did not expressly overrule this aspect of *Booth*. Because "it is this Court's prerogative alone to overrule one of its precedents," *State Oil Co.* v. *Khan*, 522 U. S. 3, 20 (1997), the Oklahoma Court of Criminal Appeals erred in holding that *Payne* invalidated *Booth* in its entirety. In vacating the decision below, this Court says nothing about whether *Booth* was correctly decided or whether *Payne* swept away its analytical foundations. I join the Court's opinion with this understanding.

Syllabus

BRAVO-FERNANDEZ ET AL. *v.* UNITED STATES

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

No. 15–537. Argued October 4, 2016—Decided November 29, 2016

The issue-preclusion component of the Double Jeopardy Clause bars a second contest of an issue of fact or law raised and necessarily resolved by a prior judgment. *Ashe* v. *Swenson*, 397 U. S. 436, 443. The burden is on the defendant to demonstrate that the issue he seeks to shield from reconsideration was actually decided by a prior jury's verdict of acquittal. *Schiro* v. *Farley*, 510 U. S. 222, 233. When the same jury returns irreconcilably inconsistent verdicts on the issue in question, a defendant cannot meet that burden. The acquittal, therefore, gains no preclusive effect regarding the count of conviction. *United States* v. *Powell*, 469 U. S. 57, 68–69. Issue preclusion does, however, attend a jury's verdict of acquittal if the same jury in the same proceeding fails to reach a verdict on a different count turning on the same issue of ultimate fact. *Yeager* v. *United States*, 557 U. S. 110, 121–122.

In this case, a jury convicted petitioners Juan Bravo-Fernandez (Bravo) and Hector Martínez-Maldonado (Martínez) of bribery in violation of 18 U. S. C. §666. Simultaneously, the jury acquitted them of conspiring to violate §666 and traveling in interstate commerce to violate §666. Because the only contested issue at trial was whether Bravo and Martínez had violated §666 (the other elements of the acquitted charges—agreement and travel—were undisputed), the jury's verdicts were irreconcilably inconsistent. Unlike the guilty verdicts in *Powell*, however, petitioners' convictions were later vacated on appeal because of error in the judge's instructions unrelated to the verdicts' inconsistency. In the First Circuit's view, §666 proscribes only *quid pro quo* bribery, yet the charge had permitted the jury to find petitioners guilty on a gratuity theory. On remand, Bravo and Martínez moved for judgments of acquittal on the standalone §666 charges. They argued that the issue-preclusion component of the Double Jeopardy Clause barred the Government from retrying them on those charges because the jury necessarily determined that they were not guilty of violating §666 when it acquitted them of the related conspiracy and Travel Act offenses. The District Court denied the motions, and the First Circuit affirmed, holding that the eventual invalidation of petitioners' §666 convictions did not undermine *Powell*'s instruction that issue preclusion does not apply when the same jury returns logically inconsistent verdicts.

Syllabus

Held: The issue-preclusion component of the Double Jeopardy Clause does not bar the Government from retrying defendants, like petitioners, after a jury has returned irreconcilably inconsistent verdicts of conviction and acquittal and the convictions are later vacated for legal error unrelated to the inconsistency. Pp. 18–24.

(a) Because petitioners' trial yielded incompatible jury verdicts, petitioners cannot establish that the jury necessarily resolved in their favor the question whether they violated § 666. In view of the Government's inability to obtain review of the acquittals, *Powell*, 469 U. S., at 68, the inconsistent jury findings weigh heavily against according those acquittals issue-preclusive effect. The subsequent vacatur of petitioners' bribery convictions does not alter this analysis. The critical inquiry is whether the jury actually decided that petitioners did not violate § 666. *Ashe* instructs courts to approach that task with "realism and rationality," 397 U. S., at 444, in particular, to examine the trial record "with an eye to all the circumstances of the proceedings," *ibid.* The jury's verdicts convicting petitioners of violating § 666 remain relevant to this practical inquiry, even if the convictions are later vacated on appeal for unrelated trial error.

Petitioners could not be retried if the Court of Appeals had vacated their § 666 bribery convictions because of insufficient evidence, see *Burks* v. *United States*, 437 U. S. 1, 10–11, or if the trial error could resolve the apparent inconsistency in the jury's verdicts. But the evidence here was sufficient to convict petitioners on the *quid pro quo* bribery theory the First Circuit approved. And the instructional error cannot account for the jury's inconsistent determinations, for the error applied equally to every § 666-related count. Pp. 18–21.

(b) Petitioners argue that vacated judgments should be excluded from the *Ashe* inquiry because vacated convictions, like the hung counts in *Yeager*, are legal nullities that "have never been accorded respect as a matter of law or history." *Yeager*, 557 U. S., at 124. That argument misapprehends the *Ashe* inquiry. Bravo and Martínez bear the burden of showing that the issue whether they violated § 666 has been "determined by a valid and final judgment of acquittal." 557 U. S., at 119 (internal quotation marks omitted). To judge whether they carried that burden, a court must realistically examine the record to identify the ground for the § 666-based *acquittals*. *Ashe*, 397 U. S., at 444. A conviction that contradicts those acquittals is plainly relevant to that determination, no less so simply because it is later overturned on appeal for unrelated legal error. See *Powell*, 469 U. S., at 65.

Petitioners further contend that, under *Yeager*, the § 666 convictions are meaningless because the jury was allowed to convict on the basis of conduct not criminal in the First Circuit—payment of a gratuity. But

Yeager did not rest on a court's inability to detect the basis for a decision the jury in fact rendered. Rather, when a jury hangs, there is *no decision*, hence no inconsistency. 557 U. S., at 124–125. By contrast, a verdict of guilt *is* a jury decision, even if subsequently vacated, and therefore can evince jury inconsistency. That is the case here. Petitioners gained a second trial on the standalone bribery charges, but they are not entitled to more. Issue preclusion is not a doctrine they can commandeer when inconsistent verdicts shroud in mystery what the jury necessarily decided. Pp. 22–24.

790 F. 3d 41, affirmed.

GINSBURG, J., delivered the opinion for a unanimous Court. THOMAS, J., filed a concurring opinion, *post*, p. 24.

Lisa S. Blatt argued the cause for petitioners. With her on the briefs were *Anthony J. Franze*, *R. Stanton Jones*, *Elizabeth S. Theodore*, *Abbe David Lowell*, and *Christopher D. Man*.

Elizabeth B. Prelogar argued the cause for the United States. With her on the brief were *Acting Solicitor General Gershengorn*, *Assistant Attorney General Caldwell*, *Deputy Solicitor General Dreeben*, and *Vijay Shanker*.*

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the issue-preclusion component of the Double Jeopardy Clause.[1] In criminal prosecutions, as in civil litigation, the issue-preclusion principle means that "when an issue of ultimate fact has once been determined by

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*Briefs of *amici curiae* urging reversal were filed for the Cato Institute by *David Debold*, *Ilya Shapiro*, and *Randal Meyer*; for Criminal Law Professors by *Jonathan D. Hacker*, *Deanna M. Rice*, and *Anton Metlitsky*; for the National Association for Public Defense by *David T. Goldberg*, *Sara B. Thomas*, *Daniel R. Ortiz*, *John P. Elwood*, and *Joshua S. Johnson*; and for the National Association of Criminal Defense Lawyers by *Jeffrey T. Green* and *David M. Porter*.

[1] The parties use the expression "collateral estoppel component," but as this Court has observed, "issue preclusion" is the more descriptive term. *Yeager* v. *United States*, 557 U. S. 110, 120, n. 4 (2009); see Restatement (Second) of Judgments § 27, Comment *b*, pp. 251–252 (1980).

a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." *Ashe* v. *Swenson*, 397 U. S. 436, 443 (1970).

Does issue preclusion apply when a jury returns inconsistent verdicts, convicting on one count and acquitting on another count, where both counts turn on the very same issue of ultimate fact? In such a case, this Court has held, both verdicts stand. The Government is barred by the Double Jeopardy Clause from challenging the acquittal, see *Green* v. *United States*, 355 U. S. 184, 188 (1957), but because the verdicts are rationally irreconcilable, the acquittal gains no preclusive effect, *United States* v. *Powell*, 469 U. S. 57, 68 (1984).

Does issue preclusion attend a jury's acquittal verdict if the same jury in the same proceeding fails to reach a verdict on a different count turning on the same critical issue? This Court has answered yes, in those circumstances, the acquittal has preclusive force. *Yeager* v. *United States*, 557 U. S. 110, 121–122 (2009). As "there is no way to decipher what a hung count represents," we reasoned, a jury's failure to decide "has no place in the issue-preclusion analysis." *Ibid.*; see *id.*, at 125 ("[T]he fact that a jury hangs is evidence of nothing—other than, of course, that it has failed to decide anything.").

In the case before us, the jury returned irreconcilably inconsistent verdicts of conviction and acquittal. Without more, *Powell* would control. There could be no retrial of charges that yielded acquittals but, in view of the inconsistent verdicts, the acquittals would have no issue-preclusive effect on charges that yielded convictions. In this case, however, unlike *Powell*, the guilty verdicts were vacated on appeal because of error in the judge's instructions unrelated to the verdicts' inconsistency. Petitioners urge that, just as a jury's failure to decide has no place in issue-preclusion analysis, so vacated guilty verdicts should not figure in that analysis.

We hold otherwise. One cannot know from the jury's report why it returned no verdict. "A host of reasons" could

account for a jury's failure to decide—"sharp disagreement, confusion about the issues, exhaustion after a long trial, to name but a few." *Yeager*, 557 U. S., at 121. But actual inconsistency in a jury's verdicts is a reality; vacatur of a conviction for unrelated legal error does not reconcile the jury's inconsistent returns. We therefore bracket this case with *Powell*, not *Yeager*, and affirm the judgment of the Court of Appeals, which held that issue preclusion does not apply when verdict inconsistency renders unanswerable "what the jury necessarily decided." 790 F. 3d 41, 47 (CA1 2015).

I

A

The doctrine of claim preclusion instructs that a final judgment on the merits "foreclos[es] successive litigation of the very same claim." *New Hampshire* v. *Maine*, 532 U. S. 742, 748 (2001); see Restatement (Second) of Judgments § 19, p. 161 (1980) (hereinafter Restatement). So instructing, the doctrine serves to "avoid multiple suits on identical entitlements or obligations between the same parties." 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4402, p. 9 (2d ed. 2002) (hereinafter Wright & Miller). Long operative in civil litigation, Restatement, at 2, claim preclusion is also essential to the Constitution's prohibition against successive criminal prosecutions. No person, the Double Jeopardy Clause states, shall be "subject for the same offence to be twice put in jeopardy of life or limb." Amdt. 5. The Clause "protects against a second prosecution for the same offense after conviction"; as well, "[i]t protects against a second prosecution for the same offense after acquittal." *North Carolina* v. *Pearce*, 395 U. S. 711, 717 (1969). "[A] verdict of acquittal [in our justice system] is final," the last word on a criminal charge, and therefore operates as "a bar to a subsequent prosecution for the same offence." *Green* v. *United States*, 355 U. S. 184, 188 (1957) (internal quotation marks omitted).

The allied doctrine of issue preclusion ordinarily bars relitigation of an issue of fact or law raised and necessarily resolved by a prior judgment. See Restatement §§ 17, 27, at 148, 250; Wright & Miller § 4416, at 386. It applies in both civil and criminal proceedings, with an important distinction. In civil litigation, where issue preclusion and its ramifications first developed, the availability of appellate review is a key factor. Restatement § 28, Comment *a*, at 274; see *id.*, § 28, Reporter's Note, at 284 (noting "the pervasive importance of reviewability in the application of preclusion doctrine"). In significant part, preclusion doctrine is premised on "an underlying confidence that the result achieved in the initial litigation was substantially correct." *Standefer* v. *United States*, 447 U. S. 10, 23, n. 18 (1980); see Restatement § 29, Comment *f*, at 295. "In the absence of appellate review," we have observed, "such confidence is often unwarranted." *Standefer*, 447 U. S., at 23, n. 18.

In civil suits, inability to obtain review is exceptional; it occurs typically when the controversy has become moot. In criminal cases, however, only one side (the defendant) has recourse to an appeal from an adverse judgment on the merits. The Government "cannot secure appellate review" of an acquittal, *id.*, at 22, even one "based upon an egregiously erroneous foundation," *Arizona* v. *Washington*, 434 U. S. 497, 503 (1978). Juries enjoy an "unreviewable power . . . to return a verdict of not guilty for impermissible reasons," for "the Government is precluded from appealing or otherwise upsetting such an acquittal by the Constitution's Double Jeopardy Clause." *United States* v. *Powell*, 469 U. S. 57, 63, 65 (1984). The absence of appellate review of acquittals, we have cautioned, calls for guarded application of preclusion doctrine in criminal cases. See *Standefer*, 447 U. S., at 22–23, and n. 18. Particularly where it appears that a jury's verdict is the result of compromise, compassion, lenity, or misunderstanding of the governing law, the Government's inability to gain review "strongly militates against giving an

acquittal [issue] preclusive effect." *Id.*, at 23. See also Restatement § 29, Comment *g*, at 295 (Where circumstances suggest that an issue was resolved on erroneous considerations, "taking the prior determination at face value for purposes of the second action would [impermissibly] extend the . . . imperfections in the adjudicative process."); *id.*, § 28, Comment *j*, at 283 (Issue preclusion may be denied where it is "evident from the jury's verdict that the verdict was the result of compromise."); Wright & Miller § 4423, at 617 (same).

B

This case requires us to determine whether an appellate court's vacatur of a conviction alters issue-preclusion analysis under the Double Jeopardy Clause. Three prior decisions guide our disposition.

This Court first interpreted the Double Jeopardy Clause to incorporate the principle of issue preclusion in *Ashe* v. *Swenson*, 397 U. S. 436 (1970).[2] *Ashe* involved a robbery of six poker players by a group of masked men. Ashe was charged with robbing one of the players, but a jury acquitted him "due to insufficient evidence." *Id.*, at 439. The State then tried Ashe again, this time for robbing another of the poker players. Aided by "substantially stronger" testimony from "witnesses [who] were for the most part the same," *id.*, at 439–440, the State secured a conviction. We held that the second prosecution violated the Double Jeopardy Clause. Because the sole issue in dispute in the first trial was whether Ashe had been one of the robbers, the jury's acquit-

[2] Though we earlier recognized that res judicata (which embraces both claim and issue preclusion) applies in criminal as well as civil proceedings, we did not link the issue-preclusion inquiry to the Double Jeopardy Clause. See *Sealfon* v. *United States*, 332 U. S. 575, 578 (1948); *Frank* v. *Mangum*, 237 U. S. 309, 334 (1915) (The principle that "a question of fact or of law distinctly put in issue and directly determined by a court of competent jurisdiction cannot afterwards be disputed between the same parties" applies to "the decisions of criminal courts.").

tal verdict precluded the State from trying to convince a different jury of that very same fact in a second trial. *Id.*, at 445.

Our decision in *Ashe* explained that issue preclusion in criminal cases must be applied with "realism and rationality." *Id.*, at 444. To identify what a jury in a previous trial necessarily decided, we instructed, a court must "examine the record of a prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter." *Ibid.* (quoting Mayers & Yarbrough, *Bis Vexari*: New Trials and Successive Prosecutions, 74 Harv. L. Rev. 1, 38 (1960)). This inquiry, we explained, "must be set in a practical frame and viewed with an eye to all the circumstances of the proceedings." 397 U. S., at 444 (quoting *Sealfon* v. *United States*, 332 U. S. 575, 579 (1948)). We have also made clear that "[t]he burden is on the defendant to demonstrate that the issue whose relitigation he seeks to foreclose was actually decided" by a prior jury's verdict of acquittal. *Schiro* v. *Farley*, 510 U. S. 222, 233 (1994) (internal quotation marks omitted); accord *Dowling* v. *United States*, 493 U. S. 342, 350 (1990).

In *United States* v. *Powell*, 469 U. S. 57, we held that a defendant cannot meet this burden when the same jury returns irreconcilably inconsistent verdicts on the question she seeks to shield from reconsideration. *Powell*'s starting point was our holding in *Dunn* v. *United States*, 284 U. S. 390 (1932), that a criminal defendant may not attack a jury's finding of guilt on one count as inconsistent with the jury's verdict of acquittal on another count. *Powell*, 469 U. S., at 58–59. The Court's opinion in *Dunn* stated no exceptions to this rule, and after *Dunn* the Court had several times "alluded to [the] rule as an established principle," 469 U. S., at 63. Nevertheless, several Courts of Appeals had "recogniz[ed] exceptions to the rule," *id.*, at 62, and Powell sought an exception for the verdicts of guilt she faced.

At trial, a jury had acquitted Powell of various substantive drug charges but convicted her of using a telephone in "caus-

ing and facilitating" those same offenses. *Id.*, at 59–60. She appealed, arguing that "the verdicts were inconsistent, and that she therefore was entitled to reversal of the telephone facilitation convictions." *Id.*, at 60. Issue preclusion, she maintained, barred "acceptance of [the] guilty verdict[s]" on the auxiliary offenses because the same jury had acquitted her of the predicate felonies. *Id.*, at 64.

Rejecting Powell's argument, we noted that issue preclusion is "predicated on the assumption that the jury acted rationally." *Id.*, at 68. When a jury returns irreconcilably inconsistent verdicts, we said, one can glean no more than that "either in the acquittal or the conviction the jury did not speak their real conclusions." *Id.*, at 64 (quoting *Dunn*, 284 U. S., at 393). Although it is impossible to discern which verdict the jurors arrived at rationally, we observed, "that does not show that they were not convinced of the defendant's guilt." *Powell*, 469 U. S., at 64–65 (quoting *Dunn*, 284 U. S., at 393). In the event of inconsistent verdicts, we pointed out, it is just as likely that "the jury, convinced of guilt, properly reached its conclusion on [one count], and then through mistake, compromise, or lenity, arrived at an inconsistent conclusion on the [related] offense." *Powell*, 469 U. S., at 65. Because a court would be at a loss to know which verdict the jury "really meant," we reasoned, principles of issue preclusion are not useful, for they are "predicated on the assumption that the jury acted rationally and found certain facts in reaching its verdict." *Id.*, at 68. Holding that the acquittals had no preclusive effect on the counts of conviction, we reaffirmed *Dunn*'s rule, under which both Powell's convictions and her acquittals, albeit inconsistent, remained undisturbed. 469 U. S., at 69.

Finally, in *Yeager* v. *United States*, 557 U. S. 110 (2009), we clarified that *Powell*'s holding on inconsistent verdicts does not extend to an apparent inconsistency between a jury's verdict of acquittal on one count and its inability to reach a verdict on another count. See 557 U. S., at 124 ("[I]nconsistent *verdicts*" present an "entirely different context" than one

involving "both *verdicts* and seemingly inconsistent *hung counts*."). Yeager was tried on charges of fraud and insider trading. *Id.*, at 114. The jury acquitted him of the fraud offenses, which the Court of Appeals concluded must have reflected a finding that he "did not have any insider information that contradicted what was presented to the public." *Id.*, at 116. Yet the jury failed to reach a verdict on the insider-trading charges, as to which "the possession of insider information was [likewise] a critical issue of ultimate fact." *Id.*, at 123. Arguing that the jury had therefore acted inconsistently, the Government sought to retry Yeager on the hung counts. We ruled that retrial was barred by the Double Jeopardy Clause.

A jury "speaks only through its verdict," we noted. *Id.*, at 121. Any number of reasons—including confusion about the issues and sheer exhaustion, we observed—could cause a jury to hang. *Ibid.* Accordingly, we said, only "a jury's decisions, not its failures to decide," identify "what a jury necessarily determined at trial." *Id.*, at 122. Because a hung count reveals nothing more than a jury's failure to reach a decision, we further reasoned, it supplies no evidence of the jury's irrationality. *Id.*, at 124–125. Hung counts, we therefore held, "ha[ve] no place in the issue-preclusion analysis," *id.*, at 122: When a jury acquits on one count while failing to reach a verdict on another count concerning the same issue of ultimate fact, the acquittal, and only the acquittal, counts for preclusion purposes. Given the preclusive effect of the acquittal, the Court concluded, Yeager could not be retried on the hung count. *Id.*, at 122–125.

C

With our controlling precedent in view, we turn to the inconsistent verdicts rendered in this case. The prosecution stemmed from an alleged bribe paid by petitioner Juan Bravo-Fernandez (Bravo), an entrepreneur, to petitioner Hector Martínez-Maldonado (Martínez), then a senator serving the Commonwealth of Puerto Rico. The alleged bribe

took the form of an all-expenses-paid trip to Las Vegas, including a $1,000 seat at a professional boxing match featuring a popular Puerto Rican contender. *United States* v. *Fernandez*, 722 F. 3d 1, 6 (CA1 2013). According to the Government, Bravo intended the bribe to secure Martínez' help in shepherding legislation through the Puerto Rico Senate that, if enacted, would "provid[e] substantial financial benefits" to Bravo's enterprise. *Ibid.* In the leadup to the Las Vegas trip, Martínez submitted the legislation for the Senate's consideration and issued a committee report supporting it; within a week of returning from Las Vegas, Martínez issued another favorable report and voted to enact the legislation. *Id.*, at 6–7.

Based on these events, a federal grand jury in Puerto Rico indicted petitioners for, *inter alia*, federal-program bribery, in violation of 18 U. S. C. § 666; conspiracy to violate § 666, in violation of § 371; and traveling in interstate commerce to further violations of § 666, in violation of the Travel Act, § 1952(a)(3)(A).[3] Following a three-week trial, a jury convicted Bravo and Martínez of the standalone § 666 bribery offense, but acquitted them of the related conspiracy and Travel Act charges. *Fernandez*, 722 F. 3d, at 7. Each received a sentence of 48 months in prison. *Id.*, at 8.

The Court of Appeals for the First Circuit vacated the § 666 convictions for instructional error. *Id.*, at 27. In the First Circuit's view, the jury had been erroneously charged on what constitutes criminal conduct under that statute. *Id.*, at 22–27. The charge permitted the jury to find Bravo and Martínez "guilty of offering and receiving a gratuity," *id.*, at 16, but, the appeals court held, § 666 proscribes only *quid pro quo* bribes, and not gratuities, *id.*, at 6, 22.[4] True, the court acknowledged, the jury was in-

[3] Petitioners were indicted on several other charges not relevant here. See *United States* v. *Fernandez*, 722 F. 3d 1, 7 (CA1 2013).

[4] As the First Circuit acknowledged, this holding is contrary to the rulings of "most circuits to have addressed th[e] issue." *Id.*, at 6. Three other Federal Courts of Appeals have considered the question; each has

structed on both theories of bribery, and the evidence at trial sufficed to support a guilty verdict on either theory. *Id.*, at 19–20. But the Court of Appeals could not say with confidence that the erroneous charge was harmless, so it vacated the § 666 convictions and remanded for further proceedings. *Id.*, at 27, 39.

On remand, relying on the issue-preclusion component of the Double Jeopardy Clause, Bravo and Martínez moved for judgments of acquittal on the standalone § 666 charges. 988 F. Supp. 2d 191 (PR 2013). They could not be retried on the bribery offense, they insisted, because the jury necessarily determined that they were not guilty of violating § 666 when it acquitted them of conspiring to violate § 666 and traveling in interstate commerce to further violations of § 666. *Id.*, at 193. That was so, petitioners maintained, because the only contested issue at trial was whether Bravo had offered, and Martínez had accepted, a bribe within the meaning of § 666. *Id.*, at 196; see Tr. of Oral Arg. 4 ("There was no dispute that they agreed to go to a boxing match together"; nor was there any dispute "that to get to Las Vegas from Puerto Rico, you have to travel" across state lines.). The District Court denied the motions for acquittal. 988 F. Supp. 2d, at 196–198. If the sole issue disputed at trial was whether Bravo and Martínez had violated § 666, the court explained, then "the jury [had] acted irrationally." *Id.*, at 196. Because the same jury had simultaneously *convicted* Bravo and Martínez on the standalone § 666 charges, "the verdict simply was inconsistent." *Ibid.*

The First Circuit affirmed the denial of petitioners' motions for acquittal, agreeing that the jury's inconsistent returns were fatal to petitioners' issue-preclusion plea. 790 F. 3d 41. The jury received the same bribery instructions

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held that § 666 prohibits gratuities as well as *quid pro quo* bribes. See *United States* v. *Bahel*, 662 F. 3d 610, 636 (CA2 2011); *United States* v. *Hawkins*, 777 F. 3d 880, 881 (CA7 2015); *United States* v. *Zimmerman*, 509 F. 3d 920, 927 (CA8 2007).

for each count involving § 666, the court noted, so the § 666-based verdicts—convicting on the standalone bribery charges but acquitting on the related Travel Act and conspiracy counts—could not be reconciled. *Id.*, at 54–55.[5]

The Court of Appeals rejected petitioners' argument that the eventual invalidation of the bribery convictions rendered *Powell*'s inconsistent-verdicts rule inapplicable. *Ashe*, the court reminded, calls for a practical appraisal based on the complete record of the prior proceeding; the § 666 bribery convictions, like the § 666-based acquittals, were part of that record. See 790 F. 3d, at 50. Nor are vacated convictions like hung counts for issue-preclusion purposes, the court continued. Informed by our decision in *Yeager*, the First Circuit recognized that a hung count reveals only a jury's failure to decide, and therefore cannot evidence actual inconsistency with a jury's decision. 790 F. 3d, at 50–51. In contrast, the court said, vacated convictions "*are* jury decisions, through which the jury *has* spoken." *Id.*, at 51. The later upset of a conviction on an unrelated ground, the court reasoned, does not undermine *Powell*'s recognition that "inconsistent verdicts make it impossible to determine what a jury necessarily decided." 790 F. 3d, at 51. The First Circuit therefore concluded that "vacated convictions, unlike hung counts, are relevant to the *Ashe* [issue-preclusion] inquiry." *Ibid.*

We granted certiorari to resolve a conflict among courts on this question: Does the issue-preclusion component of the Double Jeopardy Clause bar the Government from retrying defendants, like Bravo and Martínez, after a jury has re-

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[5] As just observed, see *supra*, at 16, petitioners urge that § 666 bribery was the sole issue in controversy, and that there was no dispute on other elements of the Travel Act and conspiracy counts. See Tr. of Oral Arg. 4. See also Brief for United States 13 (accepting that the jury "returned irreconcilably inconsistent verdicts"). If another element could explain the acquittals, then there would be no inconsistency and no argument against a new trial on bribery. See *infra*, at 19–20.

turned irreconcilably inconsistent verdicts of conviction and acquittal, and the convictions are later vacated for legal error unrelated to the inconsistency?[6] 577 U. S. 1234 (2016). Holding that the Double Jeopardy Clause does not bar retrial in these circumstances, we affirm the First Circuit's judgment.

II

When a conviction is overturned on appeal, "[t]he general rule is that the [Double Jeopardy] Clause does not bar reprosecution." *Justices of Boston Municipal Court* v. *Lydon*, 466 U. S. 294, 308 (1984). The ordinary consequence of vacatur, if the Government so elects, is a new trial shorn of the error that infected the first trial. This "continuing jeopardy" rule neither gives effect to the vacated judgment nor offends double jeopardy principles. Rather, it reflects the reality that the "criminal proceedings against an accused have not run their full course." *Ibid.* And by permitting a new trial post vacatur, the continuing-jeopardy rule serves both society's and criminal defendants' interests in the fair administration of justice. "It would be a high price indeed for society to pay," we have recognized, "were every accused

[6] Compare *United States* v. *Citron*, 853 F. 2d 1055, 1058–1061 (CA2 1988) (holding that retrial does not violate Double Jeopardy Clause under these circumstances); *United States* v. *Price*, 750 F. 2d 363, 366 (CA5 1985) (same); *Evans* v. *United States*, 987 A. 2d 1138, 1141–1142 (D. C. 2010) (same); and *State* v. *Kelly*, 201 N. J. 471, 493–494, 992 A. 2d 776, 789 (2010) (same), with *People* v. *Wilson*, 496 Mich. 91, 105–107, 852 N. W. 2d 134, 141–142 (2014) (holding that Double Jeopardy Clause bars retrial in this situation). As the First Circuit explained, "[a]lthough *Citron* and *Price* predate *Yeager*, both the Second and Fifth Circuits decided that vacated counts are relevant to the *Ashe* analysis at a time when those circuits had already ruled that hung counts should be disregarded for purposes of the *Ashe* inquiry." 790 F. 3d 41, 51, n. 7 (2015) (citing *United States* v. *Mespoulede*, 597 F. 2d 329, 332, 335–336 (CA2 1979); *United States* v. *Nelson*, 599 F. 2d 714, 716–717 (CA5 1979)). The Second Circuit, moreover, has adhered to *Citron* since *Yeager*. See *United States* v. *Bruno*, 531 Fed. Appx. 47, 49 (2013).

granted immunity from punishment because of any defect sufficient to constitute reversible error in the proceedings leading to conviction." *United States* v. *Tateo*, 377 U. S. 463, 466 (1964). And the rights of criminal defendants would suffer too, for "it is at least doubtful that appellate courts would be as zealous as they now are in protecting against the effects of improprieties at the trial or pretrial stage if they knew that reversal of a conviction would put the accused irrevocably beyond the reach of further prosecution." *Ibid.*

Bravo and Martínez ask us to deviate from the general rule that, post vacatur of a conviction, a new trial is in order. When a conviction is vacated on appeal, they maintain, an acquittal verdict simultaneously returned should preclude the Government from retrying the defendant on the vacated count. Our precedent, harmonious with issue-preclusion doctrine, opposes the foreclosure petitioners seek.

A

Bravo and Martínez bear the burden of demonstrating that the jury necessarily resolved in their favor the question whether they violated § 666. *Schiro*, 510 U. S., at 233. But, as we have explained, see *supra,* at 12–13, a defendant cannot meet that burden where the trial yielded incompatible jury verdicts on the issue the defendant seeks to insulate from relitigation. Here, the jury convicted Bravo and Martínez of violating § 666 but acquitted them of conspiring, and traveling with the intent, to violate § 666. The convictions and acquittals are irreconcilable because other elements of the Travel Act and conspiracy counts were not disputed. See *supra,* at 16, 17, n. 5. It is unknowable "which of the inconsistent verdicts—the acquittal[s] or the conviction[s]—'the jury really meant.'" 790 F. 3d, at 47 (quoting *Powell*, 469 U. S., at 68); see Restatement § 29, Comment *f*, at 295 ("Where a determination relied on as preclusive is itself inconsistent with some other adjudication of the same issue, . . . confidence [in that determination] is generally unwar-

ranted."). In view of the Government's inability to obtain review of the acquittals, *Powell*, 469 U. S., at 68, the inconsistent jury findings weigh heavily against according those acquittals issue-preclusive effect. See *Standefer*, 447 U. S., at 23, n. 17.

That petitioners' bribery convictions were later vacated for trial error does not alter our analysis. The critical inquiry is whether the jury actually decided that Bravo and Martínez did not violate § 666. *Ashe* counsels us to approach that task with "realism and rationality," 397 U. S., at 444, in particular, to examine the trial record "with an eye to all the circumstances of the proceedings," *ibid.* As the Court of Appeals explained, "the fact [that] the jury . . . convicted [Bravo and Martínez] of violating § 666 would seem to be of quite obvious relevance" to this practical inquiry, "even though the convictions were later vacated." 790 F. 3d, at 50. Because issue preclusion "depends on the jury's assessment of the facts in light of the charges as presented at trial," a conviction overturned on appeal is "appropriately considered in our assessment of [an acquittal] verdict's preclusive effect." *United States* v. *Citron*, 853 F. 2d 1055, 1061 (CA2 1988). Indeed, the jurors in this case might not have acquitted on the Travel Act and conspiracy counts absent their belief that the § 666 bribery convictions would stand. See *ibid.*

Bravo and Martínez could not be retried on the bribery counts, of course, if the Court of Appeals had vacated their § 666 convictions because there was insufficient evidence to support those convictions. For double jeopardy purposes, a court's evaluation of the evidence as insufficient to convict is equivalent to an acquittal and therefore bars a second prosecution for the same offense. See *Burks* v. *United States*, 437 U. S. 1, 10–11 (1978); cf. *Powell*, 469 U. S., at 67 (noting that defendants are "afforded protection against jury irrationality or error by [courts'] independent review of the sufficiency of the evidence"). But this is scarcely a case in which the

prosecution "failed to muster" sufficient evidence in the first proceeding. *Burks*, 437 U. S., at 11. Quite the opposite. The evidence presented at petitioners' trial, the Court of Appeals determined, supported a guilty verdict on the gratuity theory (which the First Circuit ruled impermissible) *as well as* the *quid pro quo* theory (which the First Circuit approved). 790 F. 3d, at 44. Vacatur was compelled for the sole reason that the First Circuit found the jury charge erroneous to the extent that it encompassed gratuities. See *supra*, at 15–16, and n. 4. Therefore, the general rule of "allowing a new trial to rectify trial error" applied. *Burks*, 437 U. S., at 14 (emphasis deleted).

Nor, as the Government acknowledges, would retrial be tolerable if the trial error could resolve the apparent inconsistency in the jury's verdicts. See Brief for United States 30 (If, for example, "a jury receives an erroneous instruction on the count of conviction but the correct instruction on the charge on which it acquits, the instructional error may reconcile the verdicts."). But the instructional error here cannot account for the jury's contradictory determinations because the error applied equally to every § 666-related count. See *supra*, at 16–17.

As in *Powell*, so in this case, "[t]he problem is that the same jury reached inconsistent results." 469 U. S., at 68. The convictions' later invalidation on an unrelated ground does not erase or reconcile that inconsistency: It does not bear on "the factual determinations actually and necessarily made by the jury," nor does it "serv[e] to turn the jury's otherwise inconsistent and irrational verdict into a consistent and rational verdict." *People* v. *Wilson*, 496 Mich. 91, 125, 852 N. W. 2d 134, 151 (2014) (Markman, J., dissenting). Bravo and Martínez, therefore, cannot establish the factual predicate necessary to preclude the Government from retrying them on the standalone § 666 charges—namely, that the jury in the first proceeding actually decided that they did not violate the federal bribery statute.

B

To support their argument for issue preclusion, Bravo and Martínez highlight our decision in *Yeager*. In *Yeager*, they point out, we recognized that hung counts "have never been accorded respect as a matter of law or history." 557 U. S., at 124. That is also true of vacated convictions, they urge, so vacated convictions, like hung counts, should be excluded from the *Ashe* inquiry into what the jury necessarily determined. Brief for Petitioners 20–24. Asserting that we have "never held an invalid conviction . . . relevant to or evidence of anything," Tr. of Oral Arg. 5, Bravo and Martínez argue that taking account of a vacated conviction in our issue-preclusion analysis would impermissibly give effect to "a legal nullity," Brief for Petitioners 39; see *Wilson*, 496 Mich., at 107, 852 N. W. 2d, at 142 (majority opinion) (considering a vacated count would impermissibly "bring that legally vacated conviction back to life").

This argument misapprehends the *Ashe* inquiry. It is undisputed that petitioners' convictions are invalid judgments that may not be used to establish their guilt. The question is whether issue preclusion stops the Government from prosecuting them anew. On that question, Bravo and Martínez bear the burden of showing that the issue whether they violated § 666 has been "determined by a valid and final judgment of acquittal." *Yeager*, 557 U. S., at 119 (internal quotation marks omitted). To judge whether they carried that burden, a court must realistically examine the record to identify the ground for the § 666-based *acquittals*. *Ashe*, 397 U. S., at 444. A conviction that contradicts those acquittals is plainly relevant to that determination, no less so simply because it is later overturned on appeal for unrelated legal error: The split verdict—finding § 666 violated on the standalone counts, but not violated on the related Travel Act and conspiracy counts—tells us that, on one count or the other, "the jury [did] not follo[w] the court's instructions," whether because of "mistake, compromise, or lenity." *Powell*, 469

U. S., at 65; see *supra*, at 13. Petitioners' acquittals therefore do not support the application of issue preclusion here.[7]

Further relying on *Yeager*, Bravo and Martínez contend that their vacated convictions should be ignored because, as with hung counts, "there is no way to decipher" what they represent. Brief for Petitioners 28 (quoting *Yeager*, 557 U. S., at 121). The § 666 convictions are meaningless, they maintain, because the jury was allowed to convict on the basis of conduct not criminal in the First Circuit—payment of a gratuity. Brief for Petitioners 24.

This argument trips on *Yeager*'s reasoning. *Yeager* did not rest on a court's inability to detect the basis for a jury's decision. Rather, this Court reasoned that, when a jury hangs, there is *no decision*, hence no evidence of irrationality. 557 U. S., at 124–125. A verdict of guilt, by contrast, *is* a jury decision, even if subsequently vacated on appeal. It therefore can evince irrationality.

That is the case here. Petitioners do not dispute that the Government's evidence at trial supported a guilty verdict on the *quid pro quo* theory, or that the gratuity instruction held erroneous by the Court of Appeals applied to every § 666-based offense. Because no rational jury could have reached conflicting verdicts on those counts, petitioners' § 666 convictions "reveal the jury's inconsistency—which is the relevant issue here—even if they do not reveal which theory of liability jurors relied upon in reaching those inconsistent verdicts." Brief for United States 31. In other words, because we do not know what the jury would have concluded

[7] Nor is this the first time we have looked to a vacated conviction to ascertain what a jury decided in a prior proceeding. Our holding in *Morris* v. *Mathews*, 475 U. S. 237 (1986), that a conviction vacated on double jeopardy grounds may be "reduced to a conviction for a lesser included offense which is not jeopardy barred," *id.*, at 246–247, rested on exactly that rationale. See *id.*, at 247 (relying on a jeopardy-barred vacated conviction for aggravated murder to conclude that the jury "necessarily found that the defendant's conduct satisfie[d] the elements of the lesser included offense" of simple murder).

had there been no instructional error, Brief for Petitioners 28–29, a new trial on the counts of conviction is in order. Bravo and Martínez have succeeded on appeal to that extent, but they are entitled to no more. The split verdict does not impede the Government from renewing the prosecution.[8]

The Double Jeopardy Clause, as the First Circuit explained, forever bars the Government from again prosecuting Bravo and Martínez on the § 666-based conspiracy and Travel Act offenses; "the acquittals themselves remain inviolate." 790 F. 3d, at 51, n. 6. Bravo and Martínez have also gained "the benefit of their appellate victory," *ibid.*: a second trial on the standalone bribery charges, in which the Government may not invoke a gratuity theory. But issue preclusion is not a doctrine they can commandeer when inconsistent verdicts shroud in mystery what the jury necessarily decided.

* * *

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

Affirmed.

JUSTICE THOMAS, concurring.

The question presented in this case is whether, under *Ashe* v. *Swenson*, 397 U. S. 436 (1970), and *Yeager* v. *United States*, 557 U. S. 110 (2009), a vacated conviction can nullify the pre-

[8] A number of lower courts have reached the same conclusion. See *Citron*, 853 F. 2d, at 1059 (If the defendant "was *convicted* of the offense that is the subject of the retrial," the case is materially different from one with "an acquittal accompanied by a failure to reach a verdict."); *Price*, 750 F. 2d, at 366 (a case in which "the jury returned no verdict of conviction" on the compound count, "but only a verdict of acquittal on the substantive count," is not instructive on whether the Government may retry a defendant after an inconsistent verdict has been vacated); *Evans*, 987 A. 2d, at 1142 ("*Yeager* does nothing to undermine" the conclusion that a defendant may be retried after an inconsistent verdict is overturned.); *Kelly*, 201 N. J., at 494, 992 A. 2d, at 789 (explaining in the context of retrial following vacatur that "*Yeager* has no application to a case . . . involving an inconsistent verdict of acquittals and convictions returned by the same jury").

clusive effect of an acquittal under the issue-preclusion prong of the Double Jeopardy Clause.

As originally understood, the Double Jeopardy Clause does not have an issue-preclusion prong. "The English common-law pleas of *auterfoits acquit* and *auterfoits convict*, on which the Clause was based, barred only repeated 'prosecution for the same identical act *and* crime.'" *Id.*, at 128 (Scalia, J., dissenting) (quoting 4 W. Blackstone, Commentaries on the Laws of England 330 (1769); emphasis added by dissent); see also *Grady* v. *Corbin*, 495 U. S. 508, 530–535 (1990) (Scalia, J., dissenting). But "[i]n *Ashe* the Court departed from the original meaning of the Double Jeopardy Clause, holding that it precludes successive prosecutions on distinct crimes when facts essential to conviction of the second crime have necessarily been resolved in the defendant's favor by a verdict of acquittal of the first crime." *Yeager*, *supra*, at 128 (Scalia, J., dissenting).

In *Yeager*, this Court erroneously and illogically extended *Ashe*. See 557 U. S., at 128–131. "*Ashe* held only that the Clause sometimes bars successive prosecution of facts found during 'a prior proceeding.'" *Id.*, at 129 (quoting *Ashe*, *supra*, at 444). *Yeager*, however, "bar[red] retrial on hung counts after what was not . . . a prior proceeding but simply an earlier stage of the same proceeding." 557 U. S., at 129 (Scalia, J., dissenting).

In an appropriate case, we should reconsider the holdings of *Ashe* and *Yeager*. Because the Court today properly declines to extend those cases, and indeed reaches the correct result under the Clause's original meaning, I join its opinion.

Syllabus

STATE FARM FIRE & CASUALTY CO. *v.* UNITED STATES EX REL. RIGSBY ET AL.

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

No. 15–513. Argued November 1, 2016—Decided December 6, 2016

The False Claims Act (FCA) authorizes private parties (known as relators) to seek recovery from persons who make false or fraudulent payment claims to the Federal Government, 31 U. S. C. §§3729–3730, and permits the Attorney General to intervene in a relator's action or bring an FCA suit in the first instance, §§3730(a)–(b). This system is designed to benefit both the relator and the Government. A relator who initiates a meritorious *qui tam* suit receives, *inter alia*, a percentage of the ultimate damages award, §3730(d), while "'encourag[ing] more private enforcement suits'" serves "'to strengthen the Government's hand in fighting false claims,'" *Graham County Soil and Water Conservation Dist.* v. *United States ex rel. Wilson*, 559 U. S. 280, 298. The FCA establishes specific procedures for relators to follow, including the requirement relevant here: "The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders." §3730(b)(2).

In the years before Hurricane Katrina, petitioner State Farm issued, as pertinent here, both Federal Government-backed flood insurance policies and petitioner's own general homeowner policies. Respondents Cori and Kerri Rigsby, former claims adjusters for one of petitioner's contractors, E. A. Renfroe & Co., filed a complaint under seal in April 2006, claiming that petitioner instructed them and other adjusters to misclassify wind damage as flood damage in order to shift petitioner's insurance liability to the Government. The District Court extended the length of the seal several times at the Government's request, but lifted the seal in part in January 2007, allowing disclosure of the action to another District Court hearing a suit by E. A. Renfroe against respondents. In August 2007, the District Court lifted the seal in full. The Government subsequently declined to intervene.

Petitioner moved to dismiss the suit on the grounds that respondents had violated the seal requirement. Specifically, it alleged, respondents' former attorney had disclosed the complaint's existence to several news outlets, which issued stories about the fraud allegations, but did not mention the existence of the FCA complaint; and respondents had met with a Congressman who later spoke out against the purported fraud.

Syllabus

The District Court applied the test for dismissal set out in *United States ex rel. Lujan* v. *Hughes Aircraft Co.*, 67 F. 3d 242, 245–247. Balancing three factors—actual harm to the Government, severity of the violations, and evidence of bad faith—the court decided against dismissal. Petitioner did not request a lesser sanction. The Fifth Circuit affirmed. It first concluded that a seal violation does not require mandatory dismissal of a relator's complaint. It then considered the same factors weighed by the District Court and reached a similar conclusion.

Held:

1. A seal violation does not mandate dismissal of a relator's complaint. Pp. 33–37.

(a) The FCA does not enact so harsh a rule. Section 3730(b)(2)'s requirement that a complaint "shall" be kept under seal is a mandatory rule for relators. But the statute says nothing about the remedy for violating that rule; and absent congressional guidance regarding a remedy, "the sanction for breach [of a mandatory duty] is not loss of all later powers to act." *United States* v. *Montalvo-Murillo*, 495 U. S. 711, 718. The FCA's structure supports this result. The FCA has a number of provisions requiring, in express terms, the dismissal of a relator's action. *E. g.*, §§3730(b)(5), (e)(1)–(2). It is thus proper to infer that Congress did not intend to require dismissal for a violation of the seal requirement. See *Marx* v. *General Revenue Corp.*, 568 U. S. 371, 384. This result is also consistent with the general purpose of §3730(b)(2), which was enacted as part of a set of reforms meant to "encourage more private enforcement suits," S. Rep. No. 99–345, pp. 23–24, and which was intended to protect the Government's interests, allaying its concern that a relator filing a civil complaint would alert defendants to a pending federal criminal investigation. It would thus make little sense to adopt a rigid interpretation that prejudices the Government by depriving it of needed assistance from private parties. Pp. 33–35.

(b) Petitioner's arguments to the contrary are unavailing. There is no textual indication that Congress conditioned the authority to file a private right of action on compliance with the seal requirement or that the relator's ability to bring suit depends on adherence to the seal requirement. And the Senate Committee Report's recitation of the FCA's general purpose is best understood to support respondents rather than a mandatory dismissal rule. Moreover, because the FCA's text and structure are clear, there is no need to accept petitioner's invitation to consider a few stray sentences from the legislative history. Pp. 35–37.

2. The District Court did not abuse its discretion by denying petitioner's motion to dismiss. The question whether dismissal is appropriate

should be left to the sound discretion of the district court. While the *Hughes Aircraft* factors appear to be appropriate, it is unnecessary to explore these and other relevant considerations, which can be discussed in the course of later cases. P. 37.

3. On this record, where petitioner requested no sanction other than dismissal, the question whether a lesser sanction—such as monetary penalties—is warranted is not preserved. Pp. 37–38.

794 F. 3d 457, affirmed.

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

Kathleen M. Sullivan argued the cause for petitioner. With her on the briefs were *Sheila L. Birnbaum*, *Douglas W. Dunham*, *Ellen P. Quackenbos*, *Bert L. Wolff*, and *Jeffrey B. Wall*.

Tejinder Singh argued the cause for respondents. With him on the brief were *William E. Copley*, *August J. Matteis, Jr.*, *Matthew S. Kraus*, and *Timothy M. Belknap*.

John F. Bash argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Acting Solicitor General Gershengorn*, *Principal Deputy Assistant Attorney General Mizer*, *Deputy Solicitor General Stewart*, *Douglas N. Letter*, *Michael S. Raab*, and *Thomas G. Pulham*.*

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*Briefs of *amici curiae* urging reversal were filed for the American Tort Reform Association et al. by *Jonathan L. Diesenhaus*, *Jessica L. Ellsworth*, *Frederick Liu*, and *Paul Tetrault*; for the Chamber of Commerce of the United States of America et al. by *Robert A. Long*, *Mark W. Mosier*, *David M. Zionts*, and *Kate Comerford Todd*; for the Coalition for Government Procurement by *Dan Himmelfarb* and *David F. Dowd*; for the National Association of Criminal Defense Lawyers by *Jeffrey T. Green* and *Barbara E. Bergman*; and for the Washington Legal Foundation et al. by *Cory L. Andrews*.

Briefs of *amici curiae* urging affirmance were filed for the National Whistleblower Center by *Stephen M. Kohn*, *Michael D. Kohn*, and *David K. Colapinto*; and for the Taxpayers Against Fraud Education Fund by *Frederick M. Morgan, Jr.*

Lawrence S. Ebner and *Laura E. Proctor* filed a brief for DRI–The Voice of The Defense Bar as *amicus curiae*.

JUSTICE KENNEDY delivered the opinion of the Court.

This case addresses the question of the proper remedy when there is a violation of the False Claims Act (FCA) requirement that certain complaints must be sealed for a limited time period. See 31 U. S. C. §3730(b)(2). There are two questions presented before this Court. First, do any and all violations of the seal requirement mandate dismissal of a private party's complaint with prejudice? Second, if dismissal is not mandatory, did the District Court here abuse its discretion by declining to dismiss respondents' complaint?

I

A

The FCA imposes civil liability on an individual who, *inter alia*, "knowingly presents . . . a false or fraudulent claim for payment or approval" to the Federal Government. §3729(a)(1)(A). Almost unique to the FCA are its *qui tam* enforcement provisions, which allow a private party known as a "relator" to bring an FCA action on behalf of the Government. §3730(b)(1); *Vermont Agency of Natural Resources* v. *United States ex rel. Stevens*, 529 U. S. 765, 768, n. 1 (2000) (listing three other *qui tam* statutes). The Attorney General retains the authority to intervene in a relator's ongoing action or to bring an FCA suit in the first instance. §§3730(a)–(b).

This system is designed to benefit both the relator and the Government. A relator who initiates a meritorious *qui tam* suit receives a percentage of the ultimate damages award, plus attorney's fees and costs. §3730(d). In turn, "'encourag[ing] more private enforcement suits'" serves "'to strengthen the Government's hand in fighting false claims.'" *Graham County Soil and Water Conservation Dist.* v. *United States ex rel. Wilson*, 559 U. S. 280, 298 (2010).

The FCA places a number of restrictions on suits by relators. For example, under the provision known as the "first-to-file bar," a relator may not "'bring a related action

based on the facts underlying [a] pending action.'" *Kellogg Brown & Root Services, Inc.* v. *United States ex rel. Carter*, 575 U. S. 650, 663 (2015) (quoting § 3730(b)(5); emphasis deleted). Other FCA provisions require compliance with statutory requirements as express conditions on the relators' ability to bring suit. The paragraph known as the "public disclosure bar," for instance, provided at the time this suit was filed that "'[n]o court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions . . . unless the action is brought by the Attorney General or . . . an original source of the information.'" *Graham County Soil and Water Conservation Dist.* v. *United States ex rel. Wilson*, *supra*, at 283, n. 1, 285–286 (quoting 31 U. S. C. § 3730(e)(4)(A) (2006 ed.); footnote omitted).

The FCA also establishes specific procedures for the relator to follow when filing the complaint. Among other things, the relator must serve on the Government "[a] copy of the complaint and written disclosure of substantially all material evidence and information the [relator] possesses." § 3730(b)(2). Most relevant here, the FCA provides: "The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders." *Ibid.*

B

Petitioner State Farm is an insurance company. In the years before Hurricane Katrina, petitioner issued two types of homeowner insurance policies that are relevant in this case: (1) Federal Government-backed flood insurance policies and (2) petitioner's own general homeowner insurance policies. The practical effect for homeowners who were affected by Hurricane Katrina and who purchased both policies was that petitioner would be responsible for paying for wind damage, while the Government would pay for flood damage. As the Court of Appeals noted, this arrangement created a

potential conflict of interest: Petitioner had "an incentive to classify hurricane damage as flood-related to limit its economic exposure." 794 F. 3d 457, 462 (CA5 2015).

Respondents Cori and Kerri Rigsby are former claims adjusters for one of petitioner's contractors, E. A. Renfroe & Co. Together with other adjusters, they were responsible for visiting the damaged homes of petitioner's customers to determine the extent to which a homeowner was entitled to an insurance payout. According to respondents, petitioner instructed them and other adjusters to misclassify wind damage as flood damage in order to shift petitioner's insurance liability to the Government. See *id.*, at 463–464 (summarizing trial evidence).

In April 2006, respondents filed their *qui tam* complaint under seal. At the Government's request, the District Court extended the length of the seal a number of times. In January 2007, the court lifted the seal in part, allowing disclosure of the *qui tam* action to another District Court hearing a suit by E. A. Renfroe against respondents for purported misappropriation of documents related to petitioner's alleged fraud. See *E. A. Renfroe & Co.* v. *Moran*, No. 2:06–cv–1752 (ND Ala.). In August 2007, the District Court lifted the seal in full. In January 2008, the Government declined to intervene.

In January 2011, petitioner moved to dismiss respondents' suit on the grounds that they had violated the seal requirement. The parties do not dispute the essential background. In the months before the seal was lifted in part, respondents' then-attorney, one Dickie Scruggs, e-mailed a sealed evidentiary filing that disclosed the complaint's existence to journalists at ABC, the Associated Press, and the New York Times. All three outlets issued stories discussing the fraud allegations, but none revealed the existence of the FCA complaint. Respondents themselves met with Mississippi Congressman Gene Taylor, who later spoke out in public against petitioner's purported fraud, although he did not mention the

existence of the FCA suit at that time. After the seal was lifted in part, Scruggs disclosed the existence of the suit to various others, including a public relations firm and CBS News.

At the time of the motion to dismiss in 2011, respondents were represented neither by Scruggs nor by any of the attorneys who had worked with him. In March 2008, Scruggs withdrew from respondents' case after he was indicted for attempting to bribe a state-court judge. Two months later, the District Court removed the remaining Scruggs-affiliated attorneys from the case, based on their alleged involvement in improper payments made from Scruggs to respondents. The District Court did not punish respondents themselves for the payments because they were not made "aware of the ethical implications" and, as laypersons, "are not bound by the rules of professional conduct that apply to" attorneys. App. 21.

In deciding petitioner's motion the District Court considered only the seal violations that occurred before the seal was lifted in part, reasoning the partial lifting in effect had mooted the seal. Applying the test for dismissal set out in *United States ex rel. Lujan* v. *Hughes Aircraft Co.*, 67 F. 3d 242, 245–247 (CA9 1995), the District Court balanced three factors: (1) the actual harm to the Government, (2) the severity of the violations, and (3) the evidence of bad faith. The court decided against dismissal. Petitioner did not request some lesser sanction. The case went to trial, resulting in a victory for respondents on what the Court of Appeals referred to as a "bellwether" claim regarding a single damaged home. 794 F. 3d, at 462.

The Court of Appeals for the Fifth Circuit affirmed the denial of petitioner's motion to dismiss. The court recognized that the case presented two related issues of the first impression under its case law: (1) whether a seal violation requires mandatory dismissal of a relator's complaint and, if not, (2) what standard governs a district court's decision to dismiss. The court noted that the Courts of Appeals for the

Second and Ninth Circuits had held that the FCA does not require automatic dismissal for a seal violation, while the Court of Appeals for the Sixth Circuit had held that dismissal is mandatory. See *United States ex rel. Pilon* v. *Martin Marietta Corp.*, 60 F. 3d 995, 998 (CA2 1995); *United States ex rel. Lujan* v. *Hughes Aircraft Co.*, *supra*, at 245; *United States ex rel. Summers* v. *LHC Group Inc.*, 623 F. 3d 287, 296 (CA6 2010); see also *United States ex rel. Smith* v. *Clark/Smoot/Russell*, 796 F. 3d 424, 430 (CA4 2015) (following *Pilon*).

After a careful analysis, the Court of Appeals for the Fifth Circuit held automatic dismissal is not required by the FCA. 794 F. 3d, at 470–471. It then considered the same factors the District Court had weighed and came to a similar conclusion. *Id.*, at 471–472. First, the Court of Appeals held the Government was in all likelihood not harmed by the disclosures because none of them led to the publication of the pendency of the suit before the seal was lifted in part. Second, the Court of Appeals determined the violations were not severe in their repercussions because respondents had complied with the seal requirement when they first filed their suit. Third, the Court of Appeals assumed, without deciding, that the bad behavior of respondents' then-attorney could be imputed to respondents; but it held that, even presuming the attribution of bad faith, the other factors favored respondents.

This Court granted certiorari, 578 U. S. 1011 (2016), and now affirms.

II

A

Petitioner's primary contention is that a violation of the seal provision necessarily requires a relator's complaint to be dismissed. The FCA does not enact so harsh a rule.

Section 3730(b)(2)'s text provides that a complaint "shall" be kept under seal. True, this language creates a mandatory rule the relator must follow. See *Rockwell Int'l Corp.*

v. *United States*, 549 U. S. 457, 464 (2007) ("As required under the Act, [the relator] filed his complaint under seal . . . "); see also *Kingdomware Technologies, Inc.* v. *United States*, 579 U. S. 162, 172 (2016) ("[T]he word 'shall' usually connotes a requirement"). The statute says nothing, however, about the remedy for a violation of that rule. In the absence of congressional guidance regarding a remedy, "[a]lthough the duty is mandatory, the sanction for breach is not loss of all later powers to act." *United States* v. *Montalvo-Murillo*, 495 U. S. 711, 718 (1990).

The FCA's structure is itself an indication that violating the seal requirement does not mandate dismissal. This Court adheres to the general principle that Congress' use of "explicit language" in one provision "cautions against inferring" the same limitation in another provision. *Marx* v. *General Revenue Corp.*, 568 U. S. 371, 384 (2013). And the FCA has a number of provisions that do require, in express terms, the dismissal of a relator's action. *Supra*, at 29–30 (citing § 3730(b)(5)); see also §§ 3730(e)(1)–(2) ("No court shall have jurisdiction" over certain FCA claims by relators against a member of the military or of the judicial, legislative, or executive branches). It is proper to infer that, had Congress intended to require dismissal for a violation of the seal requirement, it would have said so.

The Court's conclusion is consistent with the general purpose of § 3730(b)(2). The seal provision was enacted in the 1980's as part of a set of reforms that were meant to "encourage more private enforcement suits." S. Rep. No. 99–345, pp. 23–24 (1986). At the time, "perhaps the most serious problem plaguing effective enforcement" of the FCA was "a lack of resources on the part of Federal enforcement agencies." *Id.*, at 7. The Senate Committee Report indicates that the seal provision was meant to allay the Government's concern that a relator filing a civil complaint would alert defendants to a pending federal criminal investigation. *Id.*, at 24. Because the seal requirement was intended in main to

protect the Government's interests, it would make little sense to adopt a rigid interpretation of the seal provision that prejudices the Government by depriving it of needed assistance from private parties. The Federal Government agrees with this interpretation. It informs the Court that petitioner's test "would undermine the very governmental interests that the seal provision is meant to protect." Brief for United States as *Amicus Curiae* 10.

B

Petitioner's arguments to the contrary are unavailing. First, petitioner urges that because the seal provision appears in the subsection of the FCA creating the relator's private right of action, Congress intended to condition the right to bring suit on compliance with the seal requirement. It is true that, as discussed further below, the Court sometimes has concluded that Congress conditioned the authority to file a private right of action on compliance with a statutory mandate. *E. g.*, *Hallstrom* v. *Tillamook County*, 493 U. S. 20, 25–26 (1989). There is no textual indication, however, that Congress did so here.

Section 3730(b)(2) does not tie the seal requirement to the right to bring the *qui tam* suit in conditional terms. As noted above, the statute just provides: "The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders."

The text at issue in *Hallstrom*, by contrast, was quite different from the statutory language that controls here. The *Hallstrom* statute, part of the Resource Conservation and Recovery Act of 1976, provided: "'No action may be commenced . . . prior to sixty days after the plaintiff has given notice of the violation'" to the Government. 493 U. S., at 25.

Petitioner cites two additional cases to support its argument, but those decisions concerned statutes that used even clearer conditional words, like "if" and "unless." See

United States ex rel. Texas Portland Cement Co. v. *McCord*, 233 U. S. 157, 161 (1914) (statute allowed creditors of Government contractors to bring suit "'if no suit should be brought by the United States within six months from the completion and final settlement of said contract'"); *McNeil* v. *United States*, 508 U. S. 106, 107, n. 1 (1993) (statute provided that "'[a]n action shall not be instituted upon a claim against the United States for money damages . . . unless the claimant shall have first presented the claim to the appropriate Federal agency'").

Again, the FCA's structure shows that Congress knew how to draft the kind of statutory language that petitioner seeks to read into § 3730(b)(2). The applicable version of the public disclosure bar, for example, requires a district court to dismiss an action when the underlying information has already been made available to the public, "'unless'" the plaintiff is the Attorney General or an original source. *Graham County Soil and Water Conservation Dist.* v. *United States ex rel. Wilson*, 559 U. S., at 286.

Second, petitioner contends that because this Court has described the FCA's *qui tam* provisions as "effecting a partial assignment of the Government's damages claim," *Vermont Agency of Natural Resources* v. *United States ex rel. Stevens*, 529 U. S., at 773, adherence to all of the FCA's mandatory requirements—no matter how small—is a condition of the assignment. This argument fails for the same reason as the one discussed above: Petitioner can show no textual indication in the statute suggesting that the relator's ability to bring suit depends on adherence to the seal requirement.

Third, petitioner points to a few stray sentences in the Senate Committee Report that it claims support the mandatory dismissal rule. As explained above, however, the Report's recitation of the general purpose of the statute is best understood to support respondents. *Supra*, at 34–35. And, furthermore, because the meaning of the FCA's text and structure is "plain and unambiguous, we need not accept

petitioner['s] invitation to consider the legislative history." *Whitfield* v. *United States*, 543 U. S. 209, 215 (2005).

III

Petitioner's secondary argument is that the District Court did not consider the proper factors when declining to dismiss respondents' complaint or, at a minimum, that it was plain error not to consider respondents' conduct after the seal was lifted in part. This Court holds the District Court did not abuse its discretion by denying petitioner's motion, much less commit plain error. In light of the questionable conduct of respondents' prior attorney, it well may not have been reversible error had the District Court granted the motion; that possibility, however, need not be considered here.

In general, the question whether dismissal is appropriate should be left to the sound discretion of the district court. While the factors articulated in *United States ex rel. Lujan* v. *Hughes Aircraft Co.* appear to be appropriate, it is unnecessary to explore these and other relevant considerations. These standards can be discussed in the course of later cases.

IV

Petitioner and its *amici* place great emphasis on the reputational harm FCA defendants may suffer when the seal requirement is violated. But even if every seal violation does not mandate dismissal, that sanction remains a possible form of relief. District courts have inherent power, moreover, to impose sanctions short of dismissal for violations of court orders. See *Chambers* v. *NASCO, Inc.*, 501 U. S. 32, 43–46 (1991). Remedial tools like monetary penalties or attorney discipline remain available to punish and deter seal violations even when dismissal is not appropriate.

Of note in this case, petitioner did not request any sanction other than dismissal. Tr. of Oral Arg. 3–4, 17. Had petitioner sought some lesser sanctions, the District Court might have taken a different course. Yet petitioner failed

to do so. On this record, the question whether a lesser sanction is warranted is not preserved.

The judgment of the Court of Appeals for the Fifth Circuit is

Affirmed.

Syllabus

SALMAN *v.* UNITED STATES

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

No. 15–628. Argued October 5, 2016—Decided December 6, 2016

Section 10(b) of the Securities Exchange Act of 1934 and the Securities and Exchange Commission's Rule 10b–5 prohibit undisclosed trading on inside corporate information by persons bound by a duty of trust and confidence not to exploit that information for their personal advantage. These persons are also forbidden from tipping inside information to others for trading. A tippee who receives such information with the knowledge that its disclosure breached the tipper's duty acquires that duty and may be liable for securities fraud for any undisclosed trading on the information. In *Dirks* v. *SEC*, 463 U. S. 646, this Court explained that tippee liability hinges on whether the tipper's disclosure breaches a fiduciary duty, which occurs when the tipper discloses the information for a personal benefit. The Court also held that a personal benefit may be inferred where the tipper receives something of value in exchange for the tip or "makes a gift of confidential information to a trading relative or friend." *Id.*, at 664.

Petitioner Salman was indicted for federal securities-fraud crimes for trading on inside information he received from a friend and relative-by-marriage, Michael Kara, who, in turn, received the information from his brother, Maher Kara, a former investment banker at Citigroup. Maher testified at Salman's trial that he shared inside information with his brother Michael to benefit him and expected him to trade on it, and Michael testified to sharing that information with Salman, who knew that it was from Maher. Salman was convicted.

While Salman's appeal to the Ninth Circuit was pending, the Second Circuit decided that *Dirks* does not permit a factfinder to infer a personal benefit to the tipper from a gift of confidential information to a trading relative or friend, unless there is "proof of a meaningfully close personal relationship" between tipper and tippee "that generates an exchange that is objective, consequential, and represents at least a potential gain of a pecuniary or similarly valuable nature," *United States* v. *Newman*, 773 F. 3d 438, 452, cert. denied, 577 U. S. 874. The Ninth Circuit declined to follow *Newman* so far, holding that *Dirks* allowed Salman's jury to infer that the tipper breached a duty because he made "'a gift of confidential information to a trading relative.'" 792 F. 3d 1087, 1092 (quoting *Dirks*, *supra*, at 664).

Syllabus

Held: The Ninth Circuit properly applied *Dirks* to affirm Salman's conviction. Under *Dirks*, the jury could infer that the tipper here personally benefited from making a gift of confidential information to a trading relative. Pp. 46–52.

(a) Salman contends that a gift of confidential information to a friend or family member alone is insufficient to establish the personal benefit required for tippee liability, claiming that a tipper does not personally benefit unless the tipper's goal in disclosing information is to obtain money, property, or something of tangible value. The Government counters that a gift of confidential information to anyone, not just a "trading relative or friend," is enough to prove securities fraud because a tipper personally benefits through any disclosure of confidential trading information for a personal (noncorporate) purpose. The Government argues that any concerns raised by permitting such an inference are significantly alleviated by other statutory elements prosecutors must satisfy. Pp. 46–48.

(b) This Court adheres to the holding in *Dirks*, which easily resolves the case at hand: "[W]hen an insider makes a gift of confidential information to a trading relative or friend . . . [t]he tip and trade resemble trading by the insider himself followed by a gift of the profits to the recipient," 463 U. S., at 664. In these situations, the tipper personally benefits because giving a gift of trading information to a trading relative is the same thing as trading by the tipper followed by a gift of the proceeds. Here, by disclosing confidential information as a gift to his brother with the expectation that he would trade on it, Maher breached his duty of trust and confidence to Citigroup and its clients—a duty acquired and breached by Salman when he traded on the information with full knowledge that it had been improperly disclosed. To the extent that the Second Circuit in *Newman* held that the tipper must also receive something of a "pecuniary or similarly valuable nature" in exchange for a gift to a trading relative, that rule is inconsistent with *Dirks*. Pp. 48–50.

(c) Salman's arguments to the contrary are rejected. Salman has cited nothing in this Court's precedents that undermines the gift-giving principle this Court announced in *Dirks*. Nor has he demonstrated that either § 10(b) itself or *Dirks*'s gift-giving standard "leav[e] grave uncertainty about how to estimate the risk posed by a crime" or are plagued by "hopeless indeterminacy." *Johnson* v. *United States*, 576 U. S. 591, 597, 598. Salman also has shown "no grievous ambiguity or uncertainty that would trigger" the rule of lenity. *Barber* v. *Thomas*, 560 U. S. 474, 492 (internal quotation marks omitted). To the contrary, his conduct is in the heartland of *Dirks*'s rule concerning gifts of confidential information to trading relatives. Pp. 50–52.

792 F. 3d 1087, affirmed.

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

Alexandra A. E. Shapiro argued the cause for petitioner. With her on the briefs were *Daniel J. O'Neill* and *John D. Cline*.

Deputy Solicitor General Dreeben argued the cause for the United States. With him on the brief were *Acting Solicitor General Gershengorn*, *Assistant Attorney General Caldwell*, *Elaine J. Goldenberg*, *Ross B. Goldman*, *Anne K. Small*, *Sanket J. Bulsara*, *Michael A. Conley*, *Jacob H. Stillman*, and *David D. Lisitza*.*

JUSTICE ALITO delivered the opinion of the Court.

Section 10(b) of the Securities Exchange Act of 1934 and the Securities and Exchange Commission's Rule 10b–5 prohibit undisclosed trading on inside corporate information by individuals who are under a duty of trust and confidence that prohibits them from secretly using such information for their personal advantage. 48 Stat. 891, as amended, 15 U. S. C. § 78j(b) (prohibiting the use, "in connection with the purchase or sale of any security," of "any manipulative or deceptive device or contrivance in contravention of such rules as the [Securities and Exchange Commission] may prescribe"); 17 CFR § 240.10b–5 (2016) (forbidding the use, "in connection with the purchase or sale of any security," of "any device,

*Briefs of *amici curiae* urging reversal were filed for the Cato Institute by *Bradley J. Bondi*, *Thaya Brook Knight*, and *Ilya Shapiro*; for the National Association of Criminal Defense Lawyers et al. by *Meir Feder*, *Ira M. Feinberg*, *Jeffrey L. Fisher*, and *Henry W. Asbill*; for Mark Cuban by *Ralph C. Ferrara*, *Ann M. Ashton*, and *Stephen A. Best*; and for Daryl M. Payton by *Sean Hecker* and *Katrina Teresa Farell*.

Briefs of *amicus curiae* urging affirmance were filed for Occupy the SEC by *Akshat Tewary*; and for Richard D. Freer by *Sarah M. Shalf*.

Briefs of *amici curiae* were filed for the NYU Center on the Administration of Criminal Law by *Stephen L. Ascher*, *Anthony S. Barkow*, and *Matthew S. Hellman*; and for the Securities Industry and Financial Markets Association by *Carter G. Phillips*, *Kwaku A. Akowuah*, *A. Robert Pietrzak*, *Joseph McLaughlin*, and *Daniel A. McLaughlin*.

scheme, or artifice to defraud," or any "act, practice, or course of business which operates . . . as a fraud or deceit"); see *United States* v. *O'Hagan*, 521 U. S. 642, 650–652 (1997). Individuals under this duty may face criminal and civil liability for trading on inside information (unless they make appropriate disclosures ahead of time).

These persons also may not tip inside information to others for trading. The tippee acquires the tipper's duty to disclose or abstain from trading if the tippee knows the information was disclosed in breach of the tipper's duty, and the tippee may commit securities fraud by trading in disregard of that knowledge. In *Dirks* v. *SEC*, 463 U. S. 646 (1983), this Court explained that a tippee's liability for trading on inside information hinges on whether the tipper breached a fiduciary duty by disclosing the information. A tipper breaches such a fiduciary duty, we held, when the tipper discloses the inside information for a personal benefit. And, we went on to say, a jury can infer a personal benefit—and thus a breach of the tipper's duty—where the tipper receives something of value in exchange for the tip or "makes a gift of confidential information to a trading relative or friend." *Id.*, at 664.

Petitioner Bassam Salman challenges his convictions for conspiracy and insider trading. Salman received lucrative trading tips from an extended family member, who had received the information from Salman's brother-in-law. Salman then traded on the information. He argues that he cannot be held liable as a tippee because the tipper (his brother-in-law) did not personally receive money or property in exchange for the tips and thus did not personally benefit from them. The Court of Appeals disagreed, holding that *Dirks* allowed the jury to infer that the tipper here breached a duty because he made a "'gift of confidential information to a trading relative.'" 792 F. 3d 1087, 1092 (CA9 2015) (quoting *Dirks*, *supra*, at 664). Because the Court of Appeals properly applied *Dirks*, we affirm the judgment below.

I

Maher Kara was an investment banker in Citigroup's healthcare investment banking group. He dealt with highly confidential information about mergers and acquisitions involving Citigroup's clients. Maher enjoyed a close relationship with his older brother, Mounir Kara (known as Michael). After Maher started at Citigroup, he began discussing aspects of his job with Michael. At first he relied on Michael's chemistry background to help him grasp scientific concepts relevant to his new job. Then, while their father was battling cancer, the brothers discussed companies that dealt with innovative cancer treatment and pain management techniques. Michael began to trade on the information Maher shared with him. At first, Maher was unaware of his brother's trading activity, but eventually he began to suspect that it was taking place.

Ultimately, Maher began to assist Michael's trading by sharing inside information with his brother about pending mergers and acquisitions. Maher sometimes used code words to communicate corporate information to his brother. Other times, he shared inside information about deals he was not working on in order to avoid detection. See, *e. g.*, App. 118, 124–125. Without his younger brother's knowledge, Michael fed the information to others—including Salman, Michael's friend and Maher's brother-in-law. By the time the authorities caught on, Salman had made over $1.5 million in profits that he split with another relative who executed trades via a brokerage account on Salman's behalf.

Salman was indicted on one count of conspiracy to commit securities fraud, see 18 U. S. C. §371, and four counts of securities fraud, see 15 U. S. C. §§78j(b), 78ff; 18 U. S. C. §2; 17 CFR §240.10b–5. Facing charges of their own, both Maher and Michael pleaded guilty and testified at Salman's trial.

The evidence at trial established that Maher and Michael enjoyed a "very close relationship." App. 215. Maher "love[d] [his] brother very much," Michael was like "a second

father to Maher," and Michael was the best man at Maher's wedding to Salman's sister. *Id.*, at 158, 195, 104–107. Maher testified that he shared inside information with his brother to benefit him and with the expectation that his brother would trade on it. While Maher explained that he disclosed the information in large part to appease Michael (who pestered him incessantly for it), he also testified that he tipped his brother to "help him" and to "fulfil[l] whatever needs he had." *Id.*, at 118, 82. For instance, Michael once called Maher and told him that "he needed a favor." *Id.*, at 124. Maher offered his brother money but Michael asked for information instead. Maher then disclosed an upcoming acquisition. *Ibid.* Although he instantly regretted the tip and called his brother back to implore him not to trade, Maher expected his brother to do so anyway. *Id.*, at 125.

For his part, Michael told the jury that his brother's tips gave him "timely information that the average person does not have access to" and "access to stocks, options, and what have you, that I can capitalize on, that the average person would never have or dream of." *Id.*, at 251. Michael testified that he became friends with Salman when Maher was courting Salman's sister and later began sharing Maher's tips with Salman. As he explained at trial, "any time a major deal came in, [Salman] was the first on my phone list." *Id.*, at 258. Michael also testified that he told Salman that the information was coming from Maher. See, *e. g.*, *id.*, at 286 ("'Maher is the source of all this information'").

After a jury trial in the Northern District of California, Salman was convicted on all counts. He was sentenced to 36 months of imprisonment, three years of supervised release, and over $730,000 in restitution. After his motion for a new trial was denied, Salman appealed to the Ninth Circuit. While his appeal was pending, the Second Circuit issued its opinion in *United States* v. *Newman*, 773 F. 3d 438 (2014), cert. denied, 577 U. S. 874 (2015). There, the Second Circuit reversed the convictions of two portfolio managers

who traded on inside information. The *Newman* defendants were "several steps removed from the corporate insiders" and the court found that "there was no evidence that either was aware of the source of the inside information." 773 F. 3d, at 443. The court acknowledged that *Dirks* and Second Circuit case law allow a factfinder to infer a personal benefit to the tipper from a gift of confidential information to a trading relative or friend. 773 F. 3d, at 452. But the court concluded that, "[t]o the extent" *Dirks* permits "such an inference," the inference "is impermissible in the absence of proof of a meaningfully close personal relationship that generates an exchange that is objective, consequential, and represents at least a potential gain of a pecuniary or similarly valuable nature." 773 F. 3d, at 452.[1]

Pointing to *Newman*, Salman argued that his conviction should be reversed. While the evidence established that Maher made a gift of trading information to Michael and that Salman knew it, there was no evidence that Maher received anything of "a pecuniary or similarly valuable nature" in exchange—or that Salman knew of any such benefit. The Ninth Circuit disagreed and affirmed Salman's conviction. 792 F. 3d 1087. The court reasoned that the case was governed by *Dirks*'s holding that a tipper benefits personally by making a gift of confidential information to a trading relative or friend. Indeed, Maher's disclosures to Michael were "precisely the gift of confidential information to a trading relative that *Dirks* envisioned." 792 F. 3d, at 1092 (internal quotation marks omitted). To the extent *Newman* went further and required additional gain to the tipper in cases involving gifts of confidential information to family and friends, the Ninth Circuit "decline[d] to follow it." 792 F. 3d, at 1093.

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[1] The Second Circuit also reversed the *Newman* defendants' convictions because the Government introduced no evidence that the defendants knew the information they traded on came from insiders or that the insiders received a personal benefit in exchange for the tips. 773 F. 3d, at 453–454. This case does not implicate those issues.

We granted certiorari to resolve the tension between the Second Circuit's *Newman* decision and the Ninth Circuit's decision in this case.[2] 577 U. S. 1101 (2016).

II

A

In this case, Salman contends that an insider's "gift of confidential information to a trading relative or friend," *Dirks*, 463 U. S., at 664, is not enough to establish securities fraud. Instead, Salman argues, a tipper does not personally benefit unless the tipper's goal in disclosing inside information is to obtain money, property, or something of tangible value. He claims that our insider-trading precedents, and the cases those precedents cite, involve situations in which the insider exploited confidential information for the insider's own "tangible monetary profit." Brief for Petitioner 31. He suggests that his position is reinforced by our criminal-fraud precedents outside of the insider-trading context, because those cases confirm that a fraudster must personally obtain

[2] *Dirks* v. *SEC*, 463 U. S. 646 (1983), established the personal-benefit framework in a case brought under the classical theory of insider-trading liability, which applies "when a corporate insider" or his tippee "trades in the securities of [the tipper's] corporation on the basis of material, nonpublic information." *United States* v. *O'Hagan*, 521 U. S. 642, 651–652 (1997). In such a case, the defendant breaches a duty to, and takes advantage of, the shareholders of his corporation. By contrast, the misappropriation theory holds that a person commits securities fraud "when he misappropriates confidential information for securities trading purposes, in breach of a duty owed to the source of the information" such as an employer or client. *Id.*, at 652. In such a case, the defendant breaches a duty to, and defrauds, the source of the information, as opposed to the shareholders of his corporation. The Court of Appeals observed that this is a misappropriation case, 792 F. 3d, 1087, 1092, n. 4 (CA9 2015), while the Government represents that both theories apply on the facts of this case, Brief for United States 15, n. 1. We need not resolve the question. The parties do not dispute that *Dirks*'s personal-benefit analysis applies in both classical and misappropriation cases, so we will proceed on the assumption that it does.

money or property. *Id.*, at 33–34. More broadly, Salman urges that defining a gift as a personal benefit renders the insider-trading offense indeterminate and overbroad: indeterminate, because liability may turn on facts such as the closeness of the relationship between tipper and tippee and the tipper's purpose for disclosure; and overbroad, because the Government may avoid having to prove a concrete personal benefit by simply arguing that the tipper meant to give a gift to the tippee. He also argues that we should interpret *Dirks*'s standard narrowly so as to avoid constitutional concerns. Brief for Petitioner 36–37. Finally, Salman contends that gift situations create especially troubling problems for remote tippees—that is, tippees who receive inside information from another tippee, rather than the tipper—who may have no knowledge of the relationship between the original tipper and tippee and thus may not know why the tipper made the disclosure. *Id.*, at 43, 48, 50.

The Government disagrees and argues that a gift of confidential information to anyone, not just a "trading relative or friend," is enough to prove securities fraud. See Brief for United States 27 ("*Dirks*'s personal-benefit test encompasses a gift to *any* person with the expectation that the information will be used for trading, not just to a 'trading relative or friend'" (quoting 463 U. S., at 664; emphasis in original)). Under the Government's view, a tipper personally benefits whenever the tipper discloses confidential trading information for a noncorporate purpose. Accordingly, a gift to a friend, a family member, or anyone else would support the inference that the tipper exploited the trading value of inside information for personal purposes and thus personally benefited from the disclosure. The Government claims to find support for this reading in *Dirks* and the precedents on which *Dirks* relied. See, *e. g.*, *id.*, at 654 ("fraud" in an insider-trading case "derives from the 'inherent unfairness involved where one takes advantage' of 'information intended to be available only for a corporate purpose and not

for the personal benefit of anyone'" (quoting *In re Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 43 S. E. C. 933, 936 (1968))).

The Government also argues that Salman's concerns about unlimited and indeterminate liability for remote tippees are significantly alleviated by other statutory elements that prosecutors must satisfy to convict a tippee for insider trading. The Government observes that, in order to establish a defendant's criminal liability as a tippee, it must prove beyond a reasonable doubt that the tipper expected that the information being disclosed would be used in securities trading. Brief for United States 23–24; Tr. of Oral Arg. 38. The Government also notes that, to establish a defendant's criminal liability as a tippee, it must prove that the tippee knew that the tipper breached a duty—in other words, that the tippee knew that the tipper disclosed the information for a personal benefit and that the tipper expected trading to ensue. Brief for United States 43; Tr. of Oral Arg. 36–37, 39.

B

We adhere to *Dirks*, which easily resolves the narrow issue presented here.

In *Dirks*, we explained that a tippee is exposed to liability for trading on inside information only if the tippee participates in a breach of the tipper's fiduciary duty. Whether the tipper breached that duty depends "in large part on the purpose of the disclosure" to the tippee. 463 U. S., at 662. "[T]he test," we explained, "is whether the insider personally will benefit, directly or indirectly, from his disclosure." *Ibid.* Thus, the disclosure of confidential information without personal benefit is not enough. In determining whether a tipper derived a personal benefit, we instructed courts to "focus on objective criteria, *i. e.*, whether the insider receives a direct or indirect personal benefit from the disclosure, such as a pecuniary gain or a reputational benefit that will translate into future earnings." *Id.*, at 663. This personal bene-

fit can "often" be inferred from "objective facts and circumstances," we explained, such as "a relationship between the insider and the recipient that suggests a *quid pro quo* from the latter, or an intention to benefit the particular recipient." *Id.*, at 664. In particular, we held that "[t]he elements of fiduciary duty and exploitation of nonpublic information also exist *when an insider makes a gift of confidential information to a trading relative or friend*." *Ibid.* (emphasis added). In such cases, "[t]he tip and trade resemble trading by the insider . . . followed by a gift of the profits to the recipient." *Ibid.* We then applied this gift-giving principle to resolve *Dirks* itself, finding it dispositive that the tippers "received no monetary or personal benefit" from their tips to Dirks, "*nor was their purpose to make a gift of valuable information to Dirks*." *Id.*, at 667 (emphasis added).

Our discussion of gift giving resolves this case. Maher, the tipper, provided inside information to a close relative, his brother Michael. *Dirks* makes clear that a tipper breaches a fiduciary duty by making a gift of confidential information to "a trading relative," and that rule is sufficient to resolve the case at hand. As Salman's counsel acknowledged at oral argument, Maher would have breached his duty had he personally traded on the information here himself then given the proceeds as a gift to his brother. Tr. of Oral Arg. 3–4. It is obvious that Maher would personally benefit in that situation. But Maher effectively achieved the same result by disclosing the information to Michael, and allowing him to trade on it. *Dirks* appropriately prohibits that approach, as well. Cf. 463 U. S., at 659 (holding that "insiders [are] forbidden" both "from personally using undisclosed corporate information to their advantage" and from "giv[ing] such information to an outsider for the same improper purpose of exploiting the information for their personal gain"). *Dirks* specifies that when a tipper gives inside information to "a trading relative or friend," the jury can infer that the tipper meant to provide the equivalent of a cash gift. In such situ-

ations, the tipper benefits personally because giving a gift of trading information is the same thing as trading by the tipper followed by a gift of the proceeds. Here, by disclosing confidential information as a gift to his brother with the expectation that he would trade on it, Maher breached his duty of trust and confidence to Citigroup and its clients—a duty Salman acquired, and breached himself, by trading on the information with full knowledge that it had been improperly disclosed.

To the extent the Second Circuit held that the tipper must also receive something of a "pecuniary or similarly valuable nature" in exchange for a gift to family or friends, *Newman*, 773 F. 3d, at 452, we agree with the Ninth Circuit that this requirement is inconsistent with *Dirks*.

C

Salman points out that many insider-trading cases—including several that *Dirks* cited—involved insiders who personally profited through the misuse of trading information. But this observation does not undermine the test *Dirks* articulated and applied. Salman also cites a sampling of our criminal-fraud decisions construing other federal fraud statutes, suggesting that they stand for the proposition that fraud is not consummated unless the defendant obtains money or property. *Sekhar* v. *United States*, 570 U. S. 729 (2013) (Hobbs Act); *Skilling* v. *United States*, 561 U. S. 358 (2010) (honest-services mail and wire fraud); *Cleveland* v. *United States*, 531 U. S. 12 (2000) (wire fraud); *McNally* v. *United States*, 483 U. S. 350 (1987) (mail fraud). Assuming that these cases are relevant to our construction of § 10(b) (a proposition the Government forcefully disputes), nothing in them undermines the commonsense point we made in *Dirks*. Making a gift of inside information to a relative like Michael is little different from trading on the information, obtaining the profits, and doling them out to the trading relative. The tipper benefits either way. The facts of this case illustrate

the point: In one of their tipper-tippee interactions, Michael asked Maher for a favor, declined Maher's offer of money, and instead requested and received lucrative trading information.

We reject Salman's argument that *Dirks*'s gift-giving standard is unconstitutionally vague as applied to this case. *Dirks* created a simple and clear "guiding principle" for determining tippee liability, 463 U. S., at 664, and Salman has not demonstrated that either § 10(b) itself or the *Dirks* gift-giving standard "leav[e] grave uncertainty about how to estimate the risk posed by a crime" or are plagued by "hopeless indeterminacy," *Johnson* v. *United States*, 576 U. S. 591, 597, 598 (2015). At most, Salman shows that in some factual circumstances assessing liability for gift giving will be difficult. That alone cannot render "shapeless" a federal criminal prohibition, for even clear rules "produce close cases." *Id.*, at 602, 601. We also reject Salman's appeal to the rule of lenity, as he has shown "no grievous ambiguity or uncertainty that would trigger the rule's application." *Barber* v. *Thomas*, 560 U. S. 474, 492 (2010) (internal quotation marks omitted). To the contrary, Salman's conduct is in the heartland of *Dirks*'s rule concerning gifts. It remains the case that "[d]etermining whether an insider personally benefits from a particular disclosure, a question of fact, will not always be easy for courts." 463 U. S., at 664. But there is no need for us to address those difficult cases today, because this case involves "precisely the 'gift of confidential information to a trading relative' that *Dirks* envisioned." 792 F. 3d, at 1092 (quoting 463 U. S., at 664).

III

Salman's jury was properly instructed that a personal benefit includes "the benefit one would obtain from simply making a gift of confidential information to a trading relative." App. 398–399. As the Court of Appeals noted, "the Government presented direct evidence that the disclosure was intended as a gift of market-sensitive information." 792 F. 3d,

at 1094. And, as Salman conceded below, this evidence is sufficient to sustain his conviction under our reading of *Dirks*. Appellant's Supplemental Brief in No. 14–10204 (CA9), p. 6 ("Maher made a gift of confidential information to a trading relative [Michael] . . . and, if [Michael's] testimony is accepted as true (as it must be for purposes of sufficiency review), Salman knew that Maher had made such a gift" (internal quotation marks, brackets, and citation omitted)). Accordingly, the Ninth Circuit's judgment is affirmed.

It is so ordered.

Syllabus

SAMSUNG ELECTRONICS CO., LTD., ET AL. *v.* APPLE INC.

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

No. 15–777. Argued October 11, 2016—Decided December 6, 2016

Section 289 of the Patent Act makes it unlawful to manufacture or sell an "article of manufacture" to which a patented design or a colorable imitation thereof has been applied and makes an infringer liable to the patent holder "to the extent of his total profit." 35 U. S. C. § 289. As relevant here, a jury found that various smartphones manufactured by petitioners (collectively, Samsung) infringed design patents owned by respondent Apple Inc. that covered a rectangular front face with rounded edges and a grid of colorful icons on a black screen. Apple was awarded $399 million in damages—Samsung's entire profit from the sale of its infringing smartphones. The Federal Circuit affirmed the damages award, rejecting Samsung's argument that damages should be limited because the relevant articles of manufacture were the front face or screen rather than the entire smartphone. The court reasoned that such a limit was not required because the components of Samsung's smartphones were not sold separately to ordinary consumers and thus were not distinct articles of manufacture.

Held: In the case of a multicomponent product, the relevant "article of manufacture" for arriving at a § 289 damages award need not be the end product sold to the consumer but may be only a component of that product. Pp. 58–62.

(a) The statutory text resolves the issue here. An "article of manufacture," which is simply a thing made by hand or machine, encompasses both a product sold to a consumer and a component of that product. This reading is consistent with § 171(a) of the Patent Act, which makes certain "design[s] for an article of manufacture" eligible for design patent protection, and which has been understood by the Patent Office and the courts to permit a design patent that extends to only a component of a multicomponent product, see, *e. g.*, *Ex parte Adams*, 84 Off. Gaz. Pat. Office 311; *Application of Zahn*, 617 F. 2d 261, 268 (CCPA). This reading is also consistent with the Court's reading of the term "manufacture" in § 101, which makes "any new and useful . . . manufacture" eligible for utility patent protection. See *Diamond* v. *Chakrabarty*, 447 U. S. 303, 308. Pp. 58–61.

Syllabus

(b) Because the term "article of manufacture" is broad enough to embrace both a product sold to a consumer and a component of that product, whether sold separately or not, the Federal Circuit's narrower reading cannot be squared with § 289's text. Absent adequate briefing by the parties, this Court declines to resolve whether the relevant article of manufacture for each design patent at issue here is the smartphone or a particular smartphone component. Doing so is not necessary to resolve the question presented, and the Federal Circuit may address any remaining issues on remand. Pp. 61–62.

786 F. 3d 983, reversed and remanded.

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

Kathleen M. Sullivan argued the cause for petitioners. With her on the briefs were *William B. Adams*, *Cleland B. Welton II*, *Michael T. Zeller*, *B. Dylan Proctor*, *Victoria P. Maroulis*, and *Brett J. Arnold*.

Brian H. Fletcher argued the cause for the United States as *amicus curiae* urging vacatur. On the brief were *Solicitor General Verrilli*, *Principal Deputy Assistant Attorney General Mizer*, *Deputy Solicitor General Stewart*, *Ginger D. Anders*, *Mark R. Freeman*, *Sarah T. Harris*, *Thomas W. Krause*, *Scott C. Weidenfeller*, and *William LaMarca*.

Seth P. Waxman argued the cause for respondent. With him on the brief were *William F. Lee*, *Mark C. Fleming*, *Lauren B. Fletcher*, *Eric F. Fletcher*, *Sarah R. Frazier*, *Steven J. Horn*, *Harold J. McElhinny*, *Rachel Krevans*, and *Erik Olson*.*

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*Briefs of *amici curiae* urging reversal were filed for the Computer & Communications Industry Association by *Matthew Levy*; for Engine Advocacy and Shapeways, Inc., by *Phillip R. Malone*; for the Hispanic Leadership Fund et al. by *J. Carl Cecere*, *Erik S. Jaffe*, and *Laura A. Lydigsen*; for the Internet Association et al. by *Kannon K. Shanmugam*, *David M. Krinsky*, and *Allison B. Jones*; for Public Knowledge et al. by *Charles Duan* and *Vera Ranieri*; for the Software Freedom Law Center by *Eben Moglen*; and for 50 Intellectual Property Professors by *Mark A. Lemley*.

Briefs of *amici curiae* urging affirmance were filed for ACT | The App Association by *Brian E. Scarpelli*; for the American Intellectual Property Law Association by *Jerry R. Selinger* and *Denise W. DeFranco*; for Bison

JUSTICE SOTOMAYOR delivered the opinion of the Court.

Section 289 of the Patent Act provides a damages remedy specific to design patent infringement. A person who manufactures or sells "any article of manufacture to which [a patented] design or colorable imitation has been applied shall be liable to the owner to the extent of his total profit." 35 U. S. C. § 289. In the case of a design for a single-component product, such as a dinner plate, the product is the "article of manufacture" to which the design has been applied. In the case of a design for a multicomponent product, such as a kitchen oven, identifying the "article of manufacture" to which the design has been applied is a more difficult task.

This case involves the infringement of designs for smartphones. The United States Court of Appeals for the Federal Circuit identified the entire smartphone as the only permissible "article of manufacture" for the purpose of calculating § 289 damages because consumers could not separately purchase components of the smartphones. The question before us is whether that reading is consistent with § 289. We hold that it is not.

I

A

The federal patent laws have long permitted those who invent designs for manufactured articles to patent their de-

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Designs, LLC, et al. by *Perry J. Saidman*; for the Boston Patent Law Association by *Daniel A. Lev*; for Crocs, Inc., by *Joel D. Sayres*; for Intellectual Property Professors by *Mark D. Janis* and *Jason J. Du Mont*; for Nordock, Inc., by *Jeffrey S. Sokol*; for Roger Cleveland Golf Co., Inc., by *Allen M. Sokal*, *John Murphy*, and *Michael J. Kline*; for Tiffany & Co. et al. by *Michael J. Gottlieb* and *Jessica E. Phillips*; and for 113 Distinguished Industrial Design Professionals et al. by *Mark S. Davies* and *Rachel Wainer Apter*.

Briefs of *amici curiae* were filed for the Association of the Bar of the City of New York by *Aaron L. J. Pereira*, *Philip L. Hirschhorn*, and *Yin Huang*; for BSA | The Software Alliance by *Andrew Pincus* and *Paul W. Hughes*; for Nike, Inc., by *Howard S. Hogan*, *Lucas C. Townsend*, and

signs. See Patent Act of 1842, § 3, 5 Stat. 543–544. Patent protection is available for a "new, original and ornamental design for an article of manufacture." 35 U. S. C. § 171(a). A patentable design "gives a peculiar or distinctive appearance to the manufacture, or article to which it may be applied, or to which it gives form." *Gorham Co.* v. *White*, 14 Wall. 511, 525 (1872). This Court has explained that a design patent is infringed "if, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same." *Id.*, at 528.

In 1885, this Court limited the damages available for design patent infringement. The statute in effect at the time allowed a holder of a design patent to recover "the actual damages sustained" from infringement. Rev. Stat. § 4919. In *Dobson* v. *Hartford Carpet Co.*, 114 U. S. 439 (1885), the lower courts had awarded the holders of design patents on carpets damages in the amount of "the entire profit to the [patent holders], per yard, in the manufacture and sale of carpets of the patented designs, and not merely the value which the designs contributed to the carpets." *Id.*, at 443. This Court reversed the damages award and construed the statute to require proof that the profits were "due to" the design rather than other aspects of the carpets. *Id.*, at 444; see also *Dobson* v. *Dornan*, 118 U. S. 10, 17 (1886) ("The plaintiff must show what profits or damages are attributable to the use of the infringing design").

In 1887, in response to the *Dobson* cases, Congress enacted a specific damages remedy for design patent infringement. See S. Rep. No. 206, 49th Cong., 1st Sess., 1–2 (1886); H. R. Rep. No. 1966, 49th Cong., 1st Sess., 1–2 (1886). The new provision made it unlawful to manufacture or sell an article of manufacture to which a patented design or a colorable imitation thereof had been applied. An act to amend the law relating to patents, trademarks, and copyright, § 1, 24

Jeanine Hayes; and for the Industrial Designers Society of America by *Robert S. Katz.*

Stat. 387. It went on to make a design patent infringer "liable in the amount of" $250 or "the total profit made by him from the manufacture or sale . . . of the article or articles to which the design, or colorable imitation thereof, has been applied." *Ibid.*

The Patent Act of 1952 codified this provision in § 289. 66 Stat. 813. That codified language now reads, in relevant part:

> "Whoever during the term of a patent for a design, without license of the owner, (1) applies the patented design, or any colorable imitation thereof, to any article of manufacture for the purpose of sale, or (2) sells or exposes for sale any article of manufacture to which such design or colorable imitation has been applied shall be liable to the owner to the extent of his total profit, but not less than $250 . . . ." 35 U. S. C. § 289.

B

Apple Inc. released its first-generation iPhone in 2007. The iPhone is a smartphone, a "cell phone with a broad range of other functions based on advanced computing capability, large storage capacity, and Internet connectivity." *Riley* v. *California*, 573 U. S. 373, 379 (2014). Apple secured many design patents in connection with the release. Among those patents were the D618,677 patent, covering a black rectangular front face with rounded corners, the D593,087 patent, covering a rectangular front face with rounded corners and a raised rim, and the D604,305 patent, covering a grid of 16 colorful icons on a black screen. App. 530–578.

Samsung Electronics Co., Samsung Electronics America, Inc., and Samsung Telecommunications America, LLC (collectively, Samsung), also manufacture smartphones. After Apple released its iPhone, Samsung released a series of smartphones that resembled the iPhone. *Id.*, at 357–358.

Apple sued Samsung in 2011, alleging, as relevant here, that various Samsung smartphones infringed Apple's

D593,087, D618,677, and D604,305 design patents. A jury found that several Samsung smartphones did infringe those patents. See *id.*, at 273–276. All told, Apple was awarded $399 million in damages for Samsung's design patent infringement, the entire profit Samsung made from its sales of the infringing smartphones. See *id.*, at 277–280, 348–350.

The Federal Circuit affirmed the design patent infringement damages award.[1] In doing so, it rejected Samsung's argument "that the profits awarded should have been limited to the infringing 'article of manufacture' "—for example, the screen or case of the smartphone—"not the entire infringing product"—the smartphone. 786 F. 3d 983, 1002 (2015). It reasoned that "limit[ing] the damages" award was not required because the "innards of Samsung's smartphones were not sold separately from their shells as distinct articles of manufacture to ordinary purchasers." *Ibid.*

We granted certiorari, 577 U. S. 1215 (2016), and now reverse and remand.

II

Section 289 allows a patent holder to recover the total profit an infringer makes from the infringement. It does so by first prohibiting the unlicensed "appli[cation]" of a "patented design, or any colorable imitation thereof, to any article of manufacture for the purpose of sale" or the unlicensed sale or exposure to sale of "any article of manufacture to which [a patented] design or colorable imitation has been applied." 35 U. S. C. § 289. It then makes a person who violates that prohibition "liable to the owner to the extent of his total profit, but not less than $250." *Ibid.* "Total," of

[1] Samsung raised a host of challenges on appeal related to other claims in the litigation between Apple and Samsung. The Federal Circuit affirmed in part—with respect to the design patent infringement finding, the validity of two utility patent claims, and the design and utility patent infringement damages awards—and reversed and remanded in part—with respect to trade dress dilution. Only the design patent infringement award is at issue here.

course, means all. See American Heritage Dictionary 1836 (5th ed. 2011) ("[t]he whole amount of something; the entirety"). The "total profit" for which § 289 makes an infringer liable is thus all of the profit made from the prohibited conduct, that is, from the manufacture or sale of the "article of manufacture to which [the patented] design or colorable imitation has been applied."

Arriving at a damages award under § 289 thus involves two steps. First, identify the "article of manufacture" to which the infringed design has been applied. Second, calculate the infringer's total profit made on that article of manufacture.

This case requires us to address a threshold matter: the scope of the term "article of manufacture." The only question we resolve today is whether, in the case of a multicomponent product, the relevant "article of manufacture" must always be the end product sold to the consumer or whether it can also be a component of that product. Under the former interpretation, a patent holder will always be entitled to the infringer's total profit from the end product. Under the latter interpretation, a patent holder will sometimes be entitled to the infringer's total profit from a component of the end product.[2]

A

The text resolves this case. The term "article of manufacture," as used in § 289, encompasses both a product sold to a consumer and a component of that product.

"Article of manufacture" has a broad meaning. An "article" is just "a particular thing." J. Stormonth, A Dictionary of the English Language 53 (1885) (Stormonth); see also

[2] In its petition for certiorari and in its briefing, Samsung challenged the decision below on a second ground. It argued that 35 U. S. C. § 289 contains a causation requirement, which limits a § 289 damages award to the total profit the infringer made *because of* the infringement. Samsung abandoned this theory at argument, and so we do not address it. See Tr. of Oral Arg. 6.

American Heritage Dictionary, at 101 ("[a]n individual thing or element of a class; a particular object or item"). And "manufacture" means "the conversion of raw materials by the hand, or by machinery, into articles suitable for the use of man" and "the articles so made." Stormonth 589; see also American Heritage Dictionary, at 1070 ("[t]he act, craft, or process of manufacturing products, especially on a large scale" or "[a] product that is manufactured"). An article of manufacture, then, is simply a thing made by hand or machine.

So understood, the term "article of manufacture" is broad enough to encompass both a product sold to a consumer as well as a component of that product. A component of a product, no less than the product itself, is a thing made by hand or machine. That a component may be integrated into a larger product, in other words, does not put it outside the category of articles of manufacture.

This reading of article of manufacture in § 289 is consistent with 35 U. S. C. § 171(a), which makes "new, original and ornamental design[s] for an article of manufacture" eligible for design patent protection.[3] The Patent Office and the courts have understood § 171 to permit a design patent for a design extending to only a component of a multicomponent product. See, *e. g.*, *Ex parte Adams*, 84 Off. Gaz. Pat. Office 311 (1898) ("The several articles of manufacture of peculiar shape which when combined produce a machine or structure having movable parts may each separately be patented as a design . . . "); *Application of Zahn*, 617 F. 2d 261, 268 (CCPA 1980) ("Sec-

[3] As originally enacted, the provision protected "any new and original design for a manufacture." § 3, 5 Stat. 544. The provision listed examples, including a design "worked into or worked on, or printed or painted or cast or otherwise fixed on, any article of manufacture" and a "shape or configuration of any article of manufacture." *Ibid.* A streamlined version enacted in 1902 protected "any new, original, and ornamental design for an article of manufacture." Ch. 783, 32 Stat. 193. The Patent Act of 1952 retained that language. See § 171, 66 Stat. 813.

tion 171 authorizes patents on ornamental designs for articles of manufacture. While the design must be *embodied* in some articles, the statute is not limited to designs for complete articles, or 'discrete' articles, and certainly not to articles separately sold . . . ").

This reading is also consistent with 35 U. S. C. § 101, which makes "any new and useful . . . manufacture . . . or any new and useful improvement thereof" eligible for utility patent protection. Cf. 8 D. Chisum, Patents § 23.03[2], pp. 23–12 to 23–13 (2014) (noting that "article of manufacture" in § 171 includes "what would be considered a 'manufacture' within the meaning of Section 101"). "[T]his Court has read the term 'manufacture' in § 101 . . . to mean 'the production of articles for use from raw or prepared materials by giving to these materials new forms, qualities, properties, or combinations, whether by hand-labor or by machinery.'" *Diamond* v. *Chakrabarty*, 447 U. S. 303, 308 (1980) (quoting *American Fruit Growers, Inc.* v. *Brogdex Co.*, 283 U. S. 1, 11 (1931)). The broad term includes "the parts of a machine considered separately from the machine itself." 1 W. Robinson, The Law of Patents for Useful Inventions § 183, p. 270 (1890).

B

The Federal Circuit's narrower reading of "article of manufacture" cannot be squared with the text of § 289. The Federal Circuit found that components of the infringing smartphones could not be the relevant article of manufacture because consumers could not purchase those components separately from the smartphones. See 786 F. 3d, at 1002 (declining to limit a § 289 award to a component of the smartphone because "[t]he innards of Samsung's smartphones were not sold separately from their shells as distinct articles of manufacture to ordinary purchasers"); see also *Nordock, Inc.* v. *Systems Inc.*, 803 F. 3d 1344, 1355 (CA Fed. 2015) (declining to limit a § 289 award to a design for a "'lip and hinge plate'" because it was "welded together" with a leveler

and "there was no evidence" it was sold "separate[ly] from the leveler as a complete unit"). But, for the reasons given above, the term "article of manufacture" is broad enough to embrace both a product sold to a consumer and a component of that product, whether sold separately or not. Thus, reading "article of manufacture" in § 289 to cover only an end product sold to a consumer gives too narrow a meaning to the phrase.

The parties ask us to go further and resolve whether, for each of the design patents at issue here, the relevant article of manufacture is the smartphone, or a particular smartphone component. Doing so would require us to set out a test for identifying the relevant article of manufacture at the first step of the § 289 damages inquiry and to parse the record to apply that test in this case. The United States as *amicus curiae* suggested a test, see Brief for United States as *Amicus Curiae* 27–29, but Samsung and Apple did not brief the issue. We decline to lay out a test for the first step of the § 289 damages inquiry in the absence of adequate briefing by the parties. Doing so is not necessary to resolve the question presented in this case, and the Federal Circuit may address any remaining issues on remand.

III

The judgment of the United States Court of Appeals for the Federal Circuit is therefore reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

SHAW *v.* UNITED STATES

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

No. 15–5991. Argued October 4, 2016—Decided December 12, 2016

Petitioner Shaw used identifying numbers of a bank account belonging to bank customer Hsu in a scheme to transfer funds from that account to accounts at other institutions from which Shaw was able to obtain Hsu's funds. Shaw was convicted of violating 18 U. S. C. § 1344(1), which makes it a crime to "knowingly execut[e] a scheme . . . to defraud a financial institution." The Ninth Circuit affirmed.

Held:

1. Subsection (1) of the bank fraud statute covers schemes to deprive a bank of money in a customer's deposit account. Shaw's arguments in favor of his claim that subsection (1) does not apply to him because he intended to cheat only a bank depositor, not a bank, are unpersuasive.

First, the bank did have property rights in Hsu's bank deposits: When a customer deposits funds, the bank ordinarily becomes the owner of the funds, which the bank has a right to use as a source of loans that help the bank earn profits. Sometimes, the contract between the customer and the bank provides that the customer retains ownership of the funds and the bank only assumes possession; even then, the bank has a property interest in the funds because its role is akin to that of a bailee. Hence, for purposes of the bank fraud statute, a scheme fraudulently to obtain funds from a bank depositor's account normally is also a scheme fraudulently to obtain property from a "financial institution," at least where, as here, the defendant knew that the bank held the deposits, the funds obtained came from the deposit account, and the defendant misled the bank in order to obtain those funds.

Second, Shaw may not have intended to cause the bank financial harm, but the statute, while insisting upon "a scheme to defraud," demands neither a showing that the bank suffered ultimate financial loss nor a showing that the defendant intended to cause such loss. This Court has found no case that interprets the statute as Shaw does. Cf. *Carpenter* v. *United States*, 484 U. S. 19, 26.

Third, that Shaw may have been ignorant of relevant bank-related property law is no defense to criminal prosecution for bank fraud. Shaw knew that the bank possessed Hsu's account, Shaw made false statements to the bank, Shaw believed that those false statements would lead the bank to release from that account funds that ultimately

and wrongfully ended up with Shaw, and the bank in fact possessed a property interest in the account. These facts are sufficient to show that Shaw knew that he was entering into a scheme to defraud the bank even if he was not aware of the niceties of bank-related property law. Cf. *Pasquantino* v. *United States*, 544 U. S. 349, 355–356.

Fourth, Shaw mistakenly contends that the statute requires the Government to prove not just that he acted with the *knowledge* that he would likely harm the bank's property interest but also that such was his *purpose.* This Court has found no relevant authority supporting the view that a statute making criminal the "*knowin[g]* execut[ion of] a scheme . . . to defraud" requires something more than knowledge. *Allison Engine Co.* v. *United States ex rel. Sanders*, 553 U. S. 662, 665–668; *Tanner* v. *United States*, 483 U. S. 107, 110–112; *United States* v. *Cohn*, 270 U. S. 339, 343; and *Bridges* v. *United States*, 346 U. S. 209, 221–222, distinguished.

Fifth, subsection (2) of the bank fraud statute, which makes criminal the use of "false or fraudulent pretenses" to obtain "property . . . under the custody or control of" a bank, may overlap with subsection (1), but it does not do so completely. Thus, it should not be read as excluding from subsection (1) applications that would otherwise fall within the scope of subsection (1), such as the conduct at issue in this case. See *Loughrin* v. *United States*, 573 U. S. 351, 358, n. 4.

Finally, because the bank fraud statute is clear enough, the rule of lenity is not implicated. Pp. 66–72.

2. With regard to the parties' dispute over whether the District Court improperly instructed the jury that a scheme to defraud a bank must be one to deceive the bank *or* deprive it of something of value, instead of one to deceive *and* deprive, the Ninth Circuit is left to determine whether that question was properly presented and, if so, whether the instruction given is lawful, and, if not, whether any error was harmless in this case. P. 72.

781 F. 3d 1130, vacated and remanded.

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

Koren L. Bell argued the cause for petitioner. With her on the briefs were *Hilary L. Potashner* and *James H. Locklin*.

Anthony A. Yang argued the cause for the United States. With him on the brief were *Acting Solicitor General Ger-*

shengorn, Assistant Attorney General Caldwell, Deputy Solicitor General Dreeben, and *Scott A. C. Meisler.**

JUSTICE BREYER delivered the opinion of the Court.

A federal statute makes it a crime "knowingly [to] execut[e] a scheme . . . to defraud a financial institution," 18 U. S. C. § 1344(1), for example, a federally insured bank, 18 U. S. C. § 20. The petitioner, Lawrence Shaw, was convicted of violating this provision. He argues here that the provision does not apply to him because he intended to cheat only a bank depositor, not a bank. We do not accept his arguments.

I

The relevant criminal statute makes it a crime:

> "knowingly [to] execut[e] a scheme . . .
>
> "(1) to defraud a financial institution; or
>
> "(2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises." § 1344.

Shaw obtained the identifying numbers of a Bank of America account belonging to a bank customer, Stanley Hsu. Shaw used those numbers (and other related information) to transfer funds from Hsu's account to other accounts at other institutions from which Shaw could obtain (and eventually did obtain) Hsu's funds. Shaw was convicted of violating the first clause of the statute, namely, the prohibition against "defraud[ing] a financial institution." The Ninth Circuit affirmed his conviction. 781 F. 3d 1130 (2015). Shaw then filed a petition for certiorari arguing that the words "scheme to defraud a financial institution" require the Government to

*A brief of *amicus curiae* was filed for the National Association of Criminal Defense Lawyers by *John D. Cline* and *Jeffrey L. Fisher*.

prove that the defendant had "a specific intent not only to deceive, but also to cheat, a *bank*," rather than "a *non-bank* third party." Pet. for Cert. i (emphasis added). We granted review.

II

Shaw makes several related arguments in favor of his basic claim, namely, that the statute does not cover schemes to deprive a bank of customer deposits. First, he says that subsection (1) requires "an intent to wrong a victim bank [a 'financial institution'] *in its property rights* . . . ." Brief for Petitioner 23. He adds that the property he took, money in Hsu's bank account, belonged to Hsu, the bank's customer, and that Hsu is not a "financial institution." *Id.*, at 25, 45. Hence Shaw's was a scheme "designed" to obtain only "a bank *customer's* property," not "a bank's *own* property." *Id.*, at 24–25.

The basic flaw in this argument lies in the fact that the bank, too, had property rights in Hsu's bank account. When a customer deposits funds, the bank ordinarily becomes the owner of the funds and consequently has the right to use the funds as a source of loans that help the bank earn profits (though the customer retains the right, for example, to withdraw funds). 5A Michie, Banks and Banking, ch. 9, § 1, pp. 1–7 (2014) (Michie); *id.*, § 4b, at 54–58; *id.*, § 38, at 162; *Phoenix Bank* v. *Risley*, 111 U. S. 125, 127 (1884). Sometimes, the contract between the customer and the bank provides that the customer retains ownership of the funds and the bank merely assumes possession. Michie, ch. 9, § 38, at 162; *Phoenix Bank*, *supra*, at 127. But even then the bank is like a bailee, say, a garage that stores a customer's car. Michie, ch. 9, § 38, at 162. And as bailee, the bank can assert the right to possess the deposited funds against all the world but for the bailor (or, say, the bailor's authorized agent). 8A Am. Jur. 2d, Bailment § 166, pp. 685–686 (2009). This right, too, is a property right. 2 W. Blackstone, Commentaries on the Laws of England 452–454 (1766) (referring to a bailee's

right in a bailment as a "special qualified property"). Thus, Shaw's scheme to cheat Hsu was also a scheme to deprive the bank of certain bank property rights.

Hence, for purposes of the bank fraud statute, a scheme fraudulently to obtain funds from a bank depositor's account normally is also a scheme fraudulently to obtain property from a "financial institution," at least where, as here, the defendant knew that the bank held the deposits, the funds obtained came from the deposit account, and the defendant misled the bank in order to obtain those funds.

Second, Shaw says he did not intend to cause the bank financial harm. Indeed, the parties appear to agree that, due to standard banking practices in place at the time of the fraud, no bank involved in the scheme ultimately suffered any monetary loss. Brief for Petitioner 4; Brief for United States 4, 27–28. But the statute, while insisting upon "a scheme to defraud," demands neither a showing of ultimate financial loss nor a showing of intent to cause financial loss. Many years ago Judge Learned Hand pointed out that "[a] man is none the less cheated out of his property, when he is induced to part with it by fraud," even if "he gets a quid pro quo of equal value." *United States* v. *Rowe*, 56 F. 2d 747, 749 (CA2 1932). That is because "[i]t may be impossible to measure his loss by the gross scales available to a court, but he has suffered a wrong; he has lost," for example, "his chance to bargain with the facts before him." *Ibid.* Cf. O. Holmes, The Common Law 132 (1881) ("[A] man is liable to an action for deceit if he makes a false representation to another, knowing it to be false, but intending that the other should believe and act upon it"); *Neder* v. *United States*, 527 U. S. 1, 21–25 (1999) (bank fraud statute's definition of fraud reflects the common law).

It is consequently not surprising that, when interpreting the analogous mail fraud statute, we have held it "sufficient" that the victim (here, the bank) be "deprived of its right" to use of the property, even if it ultimately did not suffer

unreimbursed loss. *Carpenter* v. *United States*, 484 U. S. 19, 26–27 (1987). Lower courts have explained that, where cash is taken from a bank "but the bank [is] fully insured[,] [t]he theft [is] complete when the cash [i]s taken; the fact that the bank ha[s] a contract with an insurance company enabling it to shift the loss to that company [is] immaterial." *United States* v. *Kucik*, 844 F. 2d 493, 495 (CA7 1988). And commentators have made clear that "on the criminal side, it is generally held that the lack of financial loss is no defense to false pretenses." 2 W. LaFave & A. Scott, Substantive Criminal Law § 8.7(i)(3), p. 404 (1986). We have found no case from this Court interpreting the bank fraud statute as requiring that the victim bank ultimately suffer financial harm, or that the defendant intend that the victim bank suffer such harm.

Third, Shaw appears to argue that, whatever the true state of property law, he did not *know* that the bank had a property interest in Hsu's account; hence he could not have intended to cheat the bank of its property. Shaw did know, however, that the bank possessed Hsu's account. He did make false statements to the bank. He did correctly believe that those false statements would lead the bank to release from that account funds that ultimately and wrongfully ended up in Shaw's pocket. And the bank did in fact possess a property interest in the account. These facts are sufficient to show that Shaw knew he was entering into a scheme to defraud the bank even if he was not aware of the niceties of bank-related property law. To require more, *i. e.*, to require actual knowledge of those bank-related property-law niceties, would free (or convict) equally culpable defendants depending upon their property-law expertise—an arbitrary result. We have found no case from this Court requiring legal knowledge of the kind Shaw suggests he lacked. But we have found cases in roughly similar fraud-related contexts where this Court has asked only whether the targeted property was in fact property in the hands of the victim, not

whether the defendant knew that the law would characterize the items at issue as "property." See *Pasquantino* v. *United States*, 544 U. S. 349, 355–356 (2005) (Canada's right to uncollected excise taxes on imported liquor counted as "property" for purposes of the wire fraud statute); *Carpenter*, *supra*, at 25–26 (a newspaper's interest in the confidentiality of the contents and timing of a news column counted as property for the purposes of the mail and wire fraud statutes). We conclude that the legal ignorance that Shaw claims here is no defense to criminal prosecution for bank fraud.

Fourth, Shaw argues that the bank fraud statute requires the Government to prove more than his simple *knowledge* that he would likely harm the bank's property interest; in his view, the Government must prove that such was his *purpose*. See *Voisine* v. *United States*, 579 U. S. 686, 691–692 (2016) ("knowingly" committing an assault requires an awareness "'that [harm] is practically certain,'" whereas "purposefully" committing an assault is "to have that result as a 'conscious object'" (quoting ALI, Model Penal Code §§ 2.02(2)(a)–(b) (1962))). Shaw adds that his purpose was to take money from Hsu; taking property from the bank was not his *purpose*.

But the statute itself makes criminal the "*knowin[g]* execut[ion of] a scheme . . . to defraud." (Emphasis added.) To hold that something other than knowledge is required would assume that Congress intended to distinguish, in respect to states of mind, between (1) the fraudulent scheme, and (2) its fraudulent elements. Why would Congress wish to do so? Shaw refers us to a number of cases involving fraud against the Government and points to language in those cases suggesting that the relevant statutes required that the defendant's purpose be to harm the statutorily protected target and not a third party. Brief for Petitioner 25–29. But in two of those cases, the fraudulent statement was made not to the Government but to the third party—a cir-

cumstance not present here. See *Allison Engine Co.* v. *United States ex rel. Sanders*, 553 U. S. 662, 665–668 (2008); *Tanner* v. *United States*, 483 U. S. 107, 110–112 (1987). In the third, the relevant portion of the statute expressly required a false statement " 'for the *purpose* . . . of . . . defrauding the Government of the United States.' " *United States* v. *Cohn*, 270 U. S. 339, 343 (1926) (emphasis added). As for the fourth case, the language Shaw cites states the uncontroversial proposition that "defrauding or attempting to defraud the United States" means "fraud against the Government." *Bridges* v. *United States*, 346 U. S. 209, 221–222 (1953). In any event, these cases all involved crimes of fraud targeting the Government—an area of the law with its own special rules and protections. We have found no relevant authority in the area of mail fraud, wire fraud, financial frauds, or the like supporting Shaw's view.

Fifth, Shaw, reading the bank fraud statute as a whole, urges us to compare subsection (1) with subsection (2). *Supra,* at 65. Subsection (2), he points out, makes criminal the use of "false or fraudulent pretenses" to obtain "property . . . under the custody or control of" a bank. And in his view that fact means that we should read subsection (1) not to apply to those circumstances. That is to say, given the language of subsection (2), efforts such as his effort fraudulently to obtain money deposited in a bank account should not fall within the scope of the subsection (1) phrase "scheme . . . to defraud a financial institution." Brief for Petitioner 30–33.

As we read the two subsections, however, they do not demand that interpretation. The two subsections overlap substantially but not completely. Subsection (2) makes criminal the use of a scheme

> "to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises."

This language covers much that subsection (1) also covers, for example, making a false representation to a bank in order to obtain property belonging to that bank. See *Loughrin* v. *United States*, 573 U. S. 351, 358, n. 4 (2014) (recognizing the "substantial" overlap between the two subsections and noting that such overlap "is not uncommon in criminal statutes"). At the same time, it applies to a circumstance in which a shopper makes a false statement to a department store cashier in order to pay for goods with money "under the custody or control of a financial institution," say, Bank A. The shopper's false statement, though designed to obtain Bank A's property, might well not amount to an effort (under subsection (1)) to defraud Bank A (since the statement was made not to Bank A but to an agent of the department store). Given, on the one hand, the overlap and, on the other hand, a plausible reading of the language that applies it to circumstances significantly different from those at issue here, we have no good reason to read subsection (2) as excluding from subsection (1) applications that would otherwise fall within the scope of subsection (1), such as conduct of the kind before us.

Finally, Shaw asks us to apply the rule of lenity. Brief for Petitioner 40–41. We have said that the rule applies if "at the end of the process of construing what Congress has expressed," *Callanan* v. *United States*, 364 U. S. 587, 596 (1961), there is "'a grievous ambiguity or uncertainty in the statute,'" *Muscarello* v. *United States*, 524 U. S. 125, 138–139 (1998) (quoting *Staples* v. *United States*, 511 U. S. 600, 619, n. 17 (1994)). The statute is clear enough that we need not rely on the rule of lenity. As we have said, a deposit account at a bank counts as bank property for purposes of subsection (1). *Supra*, at 66–67. The defendant, in circumstances such as those present here, need not know that the deposit account is, as a legal matter, characterized as bank property. *Supra*, at 68–69. Moreover, in those circumstances, the Government need not prove that the defendant

intended that the bank ultimately suffer monetary loss. *Supra,* at 67–68. Finally, the statute as applied here requires a state of mind equivalent to knowledge, not purpose. *Supra*, at 69–70.

III

Shaw further argues that the instructions the District Court gave the jury were erroneous. He points out that the District Court told the jury that the

> "phrase 'scheme to defraud' means any deliberate plan of action or course of conduct by which someone intends to deceive, cheat, *or* deprive a financial institution of something of value." App. 18 (emphasis added).

This instruction, Shaw says, could be understood as permitting the jury to find him guilty if it found no more than that his scheme was one to deceive the bank but not to "*deprive*" the bank of anything of value. Brief for Petitioner 22–23 (emphasis added). The parties agree, as do we, that the scheme must be one to deceive the bank *and* deprive it of something of value.

For reasons previously pointed out, we have held that a plan to deprive a bank of money in a customer's deposit account is a plan to deprive the bank of "something of value" within the meaning of the bank fraud statute. The parties dispute whether the jury instruction is nonetheless ambiguous or otherwise improper. We leave to the Ninth Circuit to determine whether that question was fairly presented to that court and, if so, whether the instruction is lawful, and, if not, whether any error was harmless in this case.

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

It is so ordered.

Syllabus

WHITE ET AL. *v.* PAULY, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF PAULY, DECEASED, ET AL.

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

No. 16–67. Decided January 9, 2017

Officers Truesdale and Mariscal went to the residence of Daniel and Samuel Pauly to interview Daniel about a reported road-rage incident earlier that evening. Finding a house with the lights on, two men inside, and Daniel's truck parked outside, the officers covertly approached the house on foot and radioed Officer White to join them. The Paulys demanded to know who was outside. Officers Truesdale and Mariscal shouted several responses and Officer Truesdale identified them as "State Police." The Paulys heard yelling but did not hear the officers identify themselves as State Police. Just as Officer White arrived, he heard one brother exclaim, "We have guns." All three officers took cover. A few seconds later, Daniel stepped out of the back door and fired two shotgun blasts. After that, Samuel opened a front window and pointed a handgun in Officer White's direction. Officer Mariscal fired at Samuel but missed. Officer White then shot and killed Samuel. Samuel's estate and Daniel sued claiming, *inter alia*, that the officers were liable under 42 U. S. C. §1983 for violating Samuel's Fourth Amendment right to be free from excessive force. All three officers moved for summary judgment on qualified immunity grounds, which the District Court denied. A divided panel of the Tenth Circuit affirmed. On the issue of whether Samuel had a clearly established Fourth Amendment right to be free from deadly force under the circumstances, the panel majority analyzed Officer White's qualified immunity defense separately from the defense raised by the other officers given Officer White's later arrival on the scene. The panel majority denied qualified immunity to Officers Truesdale and Mariscal, concluding that reasonable officers in their position would have understood that the officers' conduct would cause the Paulys to defend their home and could result in the use of deadly force against Samuel. As to Officer White, the panel majority denied qualified immunity because, in the panel majority's view, clearly established law required a reasonable officer in Officer White's position to issue a warning prior to firing his weapon.

Held: On the record described by the Tenth Circuit panel, Officer White did not violate clearly established law. 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.'" *Mullenix* v. *Luna*, 577 U. S. 1, 11. Clearly established law should not be defined "at a high level of generality," *Ashcroft* v. *al-Kidd*, 563 U. S. 731, 742, but must be "particularized" to the facts of the case, *Anderson* v. *Creighton*, 483 U. S. 635, 640. The panel majority did not identify a case where an officer acting under similar circumstances as Officer White was held to have violated the Fourth Amendment. The panel majority instead relied on general excessive-force principles set forth in *Tennessee* v. *Garner*, 471 U. S. 1, and *Graham* v. *Connor*, 490 U. S. 386, which by themselves do not create clearly established law outside "an obvious case," *Brosseau* v. *Haugen*, 543 U. S. 194, 199. This is not a case where it is obvious that there was a violation of clearly established law as set forth in *Garner* and *Graham*. The Court expresses no opinion on the question whether—in light of the Court's holding today—Officers Truesdale and Mariscal are entitled to qualified immunity.

Certiorari granted; 814 F. 3d 1060, vacated and remanded.

PER CURIAM.

This case addresses the situation of an officer who—having arrived late at an ongoing police action and having witnessed shots being fired by one of several individuals in a house surrounded by other officers—shoots and kills an armed occupant of the house without first giving a warning.

According to the District Court and the Court of Appeals, the record, when viewed in the light most favorable to respondents, shows the following. Respondent Daniel Pauly was involved in a road-rage incident on a highway near Santa Fe, New Mexico. 814 F. 3d 1060, 1064–1065 (CA10 2016). It was in the evening, and it was raining. The two women involved called 911 to report Daniel as a "'drunk driver'" who was "'swerving all crazy.'" *Id.*, at 1065. The women then followed Daniel down the highway, close behind him and with their bright lights on. Daniel, feeling threatened, pulled his truck over at an off-ramp to confront them. After a brief, nonviolent encounter, Daniel drove a short distance to a secluded house where he lived with his brother, Samuel Pauly.

Sometime between 9 p.m. and 10 p.m., Officer Kevin Truesdale was dispatched to respond to the women's 911 call. Truesdale, arriving after Daniel had already left the scene, interviewed the two women at the off-ramp. The women told Truesdale that Daniel had been driving recklessly and gave his license plate number to Truesdale. The state police dispatcher identified the plate as being registered to the Pauly brothers' address.

After the women left, Officer Truesdale was joined at the off-ramp by Officers Ray White and Michael Mariscal. The three agreed there was insufficient probable cause to arrest Daniel. Still, the officers decided to speak with Daniel to (1) get his side of the story, (2) "'make sure nothing else happened,'" and (3) find out if he was intoxicated. *Ibid.* The officers split up. White stayed at the off-ramp in case Daniel returned. Truesdale and Mariscal drove in separate patrol cars to the Pauly brothers' address, less than a half mile away. Record 215. Neither officer turned on his flashing lights.

When Officers Mariscal and Truesdale arrived at the address they had received from the dispatcher, they found two different houses, the first with no lights on inside and a second one behind it on a hill. *Id.*, at 217, 246. Lights were on in the second one. The officers parked their cars near the first house. They examined a vehicle parked near that house but did not find Daniel's truck. *Id.*, at 310.

Officers Mariscal and Truesdale noticed the lights on in the second house and approached it in a covert manner to maintain officer safety. Both used their flashlights in an intermittent manner. Truesdale alone turned on his flashlight once they got close to the house's front door. Upon reaching the house, the officers found Daniel's pickup truck and spotted two men moving around inside the residence. Truesdale and Mariscal radioed White, who left the off-ramp to join them.

At approximately 11 p.m., the Pauly brothers became aware of the officers' presence and yelled out "'Who are

you?'" and "'What do you want?'" 814 F. 3d, at 1066. In response, Officers Mariscal and Truesdale laughed and responded: "'Hey, (expletive), we got you surrounded. Come out or we're coming in.'" *Ibid.* Truesdale shouted once: "'Open the door, State Police, open the door.'" *Ibid.* Mariscal also yelled: "'Open the door, open the door.'" *Ibid.*

The Pauly brothers heard someone yelling, "'We're coming in. We're coming in.'" *Ibid.* Neither Samuel nor Daniel heard the officers identify themselves as state police. Record 81–82. The brothers armed themselves, Samuel with a handgun and Daniel with a shotgun. One of the brothers yelled at the police officers that "'We have guns.'" 814 F. 3d, at 1066. The officers saw someone run to the back of the house, so Officer Truesdale positioned himself behind the house and shouted "'Open the door, come outside.'" *Ibid.*

Officer White had parked at the first house and was walking up to its front door when he heard shouting from the second house. He half-jogged, half-walked to the Paulys' house, arriving "just as one of the brothers said: 'We have guns.'" *Ibid.*; see also Civ. No. 12–1311 (D NM, Feb. 5, 2014), App. to Pet. for Cert. 75–78. When White heard that statement, he drew his gun and took cover behind a stone wall 50 feet from the front of the house. Officer Mariscal took cover behind a pickup truck.

Just "a few seconds" after the "We have guns" statement, Daniel stepped part way out of the back door and fired two shotgun blasts while screaming loudly. 814 F. 3d, at 1066–1067. A few seconds after those shots, Samuel opened the front window and pointed a handgun in Officer White's direction. Officer Mariscal fired immediately at Samuel but missed. "'Four to five seconds'" later, White shot and killed Samuel. *Id.*, at 1067.

The District Court denied the officers' motions for summary judgment, and the facts are viewed in the light most favorable to the Paulys. *Mullenix* v. *Luna*, 577 U. S. 7, 9, n. (2015) (*per curiam*). Because this case concerns

the defense of qualified immunity, however, the Court considers only the facts that were knowable to the defendant officers. *Kingsley* v. *Hendrickson*, 576 U. S. 389, 399 (2015).

Samuel's estate and Daniel filed suit against, *inter alios*, Officers Mariscal, Truesdale, and White. One of the claims was that the officers were liable under Rev. Stat. § 1979, 42 U. S. C. § 1983, for violating Samuel's Fourth Amendment right to be free from excessive force. All three officers moved for summary judgment on qualified immunity grounds. White in particular argued that the Pauly brothers could not show that White's use of force violated the Fourth Amendment and, regardless, that Samuel's Fourth Amendment right to be free from deadly force under the circumstances of this case was not clearly established.

The District Court denied qualified immunity. A divided panel of the Court of Appeals for the Tenth Circuit affirmed. As to Officers Mariscal and Truesdale, the Court held that "[a]ccepting as true plaintiffs' version of the facts, a reasonable person in the officers' position should have understood their conduct would cause Samuel and Daniel Pauly to defend their home and could result in the commission of deadly force against Samuel Pauly by Officer White." 814 F. 3d, at 1076. The panel majority analyzed Officer White's claim separately from the other officers because "Officer White did not participate in the events leading up to the armed confrontation, nor was he there to hear the other officers ordering the brothers to 'Come out or we're coming in.'" *Ibid.* Despite the fact that "Officer White . . . arrived late on the scene and heard only 'We have guns' . . . before taking cover behind a stone wall," the majority held that a jury could have concluded that White's use of deadly force was not reasonable. *Id.*, at 1077, 1082. The majority also decided that this rule—that a reasonable officer in White's position would believe that a warning was required despite the threat of serious harm—was clearly established at the time of Samuel's death. The Court of Appeals' ruling relied on general

statements from this Court's case law that (1) "the reasonableness of an officer's use of force depends, in part, on whether the officer was in danger at the precise moment that he used force" and (2) "if the suspect threatens the officer with a weapon[,] deadly force may be used if necessary to prevent escape, and if[,] where feasible, some warning has been given." *Id.*, at 1083 (citing, *inter alia*, *Tennessee* v. *Garner*, 471 U. S. 1 (1985), and *Graham* v. *Connor*, 490 U. S. 386 (1989); emphasis deleted; internal quotation marks and alterations omitted). The court concluded that a reasonable officer in White's position would have known that, since the Paulys could not have shot him unless he moved from his position behind a stone wall, he could not have used deadly force without first warning Samuel Pauly to drop his weapon.

Judge Moritz dissented, contending that the "majority impermissibly second-guesses" Officer White's quick choice to use deadly force. 814 F. 3d, at 1084. Judge Moritz explained that the majority also erred by defining the clearly established law at too high a level of generality, in contravention of this Court's precedent.

The officers petitioned for rehearing en banc, which 6 of the 12 judges on the Court of Appeals voted to grant. In a dissent from denial of rehearing, Judge Hartz noted that he was "unaware of any clearly established law that suggests . . . that an officer . . . who faces an occupant pointing a firearm in his direction must refrain from firing his weapon but, rather, must identify himself and shout a warning while pinned down, kneeling behind a rock wall." 817 F. 3d 715, 718 (CA10 2016). Judge Hartz expressed his hope that "the Supreme Court can clarify the governing law." *Id.*, at 719.

The officers petitioned for certiorari. The petition is now granted, and the judgment is vacated: Officer White did not violate clearly established law on the record described by the Court of Appeals panel.

Qualified immunity attaches when an official's conduct "'does not violate clearly established statutory or constitu-

tional rights of which a reasonable person would have known.'" *Mullenix* v. *Luna*, 577 U. S., at 11. While this Court's case law "'do[es] not require a case directly on point'" for a right to be clearly established, "'existing precedent must have placed the statutory or constitutional question beyond debate.'" *Id.*, at 12. In other words, immunity protects "'all but the plainly incompetent or those who knowingly violate the law.'" *Ibid.*

In the last five years, this Court has issued a number of opinions reversing federal courts in qualified immunity cases. See, *e. g.*, *City and County of San Francisco* v. *Sheehan*, 575 U. S. 600, 611, n. 3 (2015) (collecting cases). The Court has found this necessary both because qualified immunity is important to "'society as a whole,'" *ibid.*, and because as "'an immunity from suit,'" qualified immunity "'is effectively lost if a case is erroneously permitted to go to trial,'" *Pearson* v. *Callahan*, 555 U. S. 223, 231 (2009).

Today, it is again necessary to reiterate the longstanding principle that "clearly established law" should not be defined "at a high level of generality." *Ashcroft* v. *al-Kidd*, 563 U. S. 731, 742 (2011). As this Court explained decades ago, the clearly established law must be "particularized" to the facts of the case. *Anderson* v. *Creighton*, 483 U. S. 635, 640 (1987). Otherwise, "[p]laintiffs would be able to convert the rule of qualified immunity . . . into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights." *Id.*, at 639.

The panel majority misunderstood the "clearly established" analysis: It failed to identify a case where an officer acting under similar circumstances as Officer White was held to have violated the Fourth Amendment. Instead, the majority relied on *Graham*, *Garner*, and their Court of Appeals progeny, which—as noted above—lay out excessive-force principles at only a general level. Of course, "general statements of the law are not inherently incapable of giving fair and clear warning" to officers, *United States* v. *Lanier*, 520

U. S. 259, 271 (1997), but "in the light of pre-existing law the unlawfulness must be apparent," *Anderson* v. *Creighton*, *supra*, at 640. For that reason, we have held that *Garner* and *Graham* do not by themselves create clearly established law outside "an obvious case." *Brosseau* v. *Haugen*, 543 U. S. 194, 199 (2004) (*per curiam*); see also *Plumhoff* v. *Rickard*, 572 U. S. 765, 779 (2014) (emphasizing that *Garner* and *Graham* "are 'cast at a high level of generality' ").

This is not a case where it is obvious that there was a violation of clearly established law under *Garner* and *Graham*. Of note, the majority did not conclude that White's conduct—such as his failure to shout a warning—constituted a run-of-the-mill Fourth Amendment violation. Indeed, it recognized that "this case presents a unique set of facts and circumstances" in light of White's late arrival on the scene. 814 F. 3d, at 1077. This alone should have been an important indication to the majority that White's conduct did not violate a "clearly established" right. Clearly established federal law does not prohibit a reasonable officer who arrives late to an ongoing police action in circumstances like this from assuming that proper procedures, such as officer identification, have already been followed. No settled Fourth Amendment principle requires that officer to second-guess the earlier steps already taken by his or her fellow officers in instances like the one White confronted here.

On the record described by the Court of Appeals, Officer White did not violate clearly established law. The Court notes, however, that respondents contend Officer White arrived on the scene only two minutes after Officers Truesdale and Mariscal and more than three minutes before Daniel's shots were fired. On the assumption that the conduct of Officers Truesdale and Mariscal did not adequately alert the Paulys that they were police officers, respondents suggest that a reasonable jury could infer that White witnessed the other officers' deficient performance and should have realized that corrective action was necessary before using deadly

force. Brief in Opposition 11, 22, n. 5. This Court expresses no position on this potential alternative ground for affirmance, as it appears that neither the District Court nor the Court of Appeals panel addressed it. The Court also expresses no opinion on the question whether this ground was properly preserved or whether—in light of this Court's holding today—Officers Truesdale and Mariscal are entitled to qualified immunity.

For the foregoing reasons, the petition for certiorari is granted; 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.

JUSTICE GINSBURG, concurring.

I join the Court's opinion on the understanding that it does not foreclose the denial of summary judgment to Officers Truesdale and Mariscal. See 814 F. 3d 1060, 1068, 1073, 1074 (CA10 2016) (Court of Appeals emphasized, repeatedly, that fact disputes exist on question whether Truesdale and Mariscal "adequately identified themselves" as police officers before shouting "Come out or we're coming in" (internal quotation marks omitted)). Further, as to Officer White, the Court, as I comprehend its opinion, leaves open the propriety of denying summary judgment based on fact disputes over when Officer White arrived at the scene, what he may have witnessed, and whether he had adequate time to identify himself and order Samuel Pauly to drop his weapon before Officer White shot Pauly. Compare *id.*, at 1080, with *ante*, at 80 and this page. See also Civ. No. 12–1311 (D NM, Feb. 5, 2014), pp. 7, and n. 5, 9, App. to Pet. for Cert. 75–76, and n. 5, 77 (suggesting that Officer White may have been on the scene when Officers Truesdale and Mariscal threatened to invade the Pauly home).

Syllabus

LIGHTFOOT ET AL. *v.* CENDANT MORTGAGE CORP., DBA PHH MORTGAGE, ET AL.

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

No. 14–1055. Argued November 8, 2016—Decided January 18, 2017

The Federal National Mortgage Association (Fannie Mae) is a federally chartered corporation that participates in the secondary mortgage market. By statute, Fannie Mae has the power "to sue and to be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal." 12 U. S. C. § 1723a(a). When petitioners Beverly Ann Hollis-Arrington and her daughter Crystal Lightfoot filed suit in state court alleging deficiencies in the refinancing, foreclosure, and sale of their home, Fannie Mae removed the case to federal court, relying on its sue-and-be-sued clause as the basis for jurisdiction. The District Court denied a motion to remand the case to state court and later entered judgment against petitioners. The Ninth Circuit affirmed. In concluding that the District Court had jurisdiction under Fannie Mae's sue-and-be-sued clause, the court relied on *American Nat. Red Cross* v. *S. G.*, 505 U. S. 247, which it read as establishing a rule that when a sue-and-be-sued clause in a federal charter expressly authorizes suit in federal court, it confers jurisdiction on the federal courts.

Held: Fannie Mae's sue-and-be-sued clause does not grant federal courts jurisdiction over all cases involving Fannie Mae. Pp. 88–99.

(a) This Court has addressed the jurisdictional reach of sue-and-be-sued clauses in five federal charters. Three clauses were held to grant jurisdiction—*Osborn* v. *Bank of United States*, 9 Wheat. 738; *D'Oench, Duhme & Co.* v. *FDIC*, 315 U. S. 447; *American Nat. Red Cross* v. *S. G.*, 505 U. S. 247—while two were found wanting—*Bank of United States* v. *Deveaux*, 5 Cranch 61; *Bankers Trust Co.* v. *Texas & Pacific R. Co.*, 241 U. S. 295. Describing the earlier decisions as this Court's "best efforts at divining congressional intent retrospectively," 505 U. S., at 252, the Court in *Red Cross* concluded that those decisions "support the rule that a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts," *id.*, at 255.

In specifically mentioning the federal courts, Fannie Mae's sue-and-be-sued clause resembles the three clauses this Court has held confer jurisdiction. But unlike those clauses, Fannie Mae's clause adds the qualification "any court of competent jurisdiction," 12 U. S. C. § 1723a(a).

Thus, the outcome here turns on the meaning of "court of competent jurisdiction."

A court of competent jurisdiction is a court with the power to adjudicate the case before it, Black's Law Dictionary 431, and a court's subject-matter jurisdiction defines its power to hear cases, see *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 89. It follows that a court of competent jurisdiction is a court with a grant of subject-matter jurisdiction covering the case before it. This Court has understood that phrase as a reference to a court with an existing source of subject-matter jurisdiction. See, *e. g.*, *Ex parte Phenix Ins. Co.*, 118 U. S. 610. On this understanding, Fannie Mae's sue-and-be-sued clause is most naturally read not to grant federal courts subject-matter jurisdiction over all cases involving Fannie Mae but to permit suit in any state or federal court already endowed with subject-matter jurisdiction.

Red Cross does not require a different result. It did not set out a rule that an express reference to the federal courts suffices to make a sue-and-be-sued clause a grant of federal jurisdiction. Rather, it restated "the basic rule" of *Deveaux* and *Osborn* that a sue-and-be-sued clause conferring only a general right to sue does not grant jurisdiction to the federal courts. 505 U. S., at 253. Pp. 88–94.

(b) Fannie Mae's arguments against reading its sue-and-be-sued clause as merely capacity conferring are unpersuasive. Its alternative readings of "court of competent jurisdiction" are premised on the already rejected reading of *Red Cross*. The prior construction canon of statutory interpretation does not apply because none of the cases on which Fannie Mae relies suggest that Congress in 1954 would have surveyed the jurisprudential landscape and necessarily concluded that the courts had already settled the question whether a sue-and-be-sued clause containing the phrase "court of competent jurisdiction" confers jurisdiction on the federal courts. Finally, Fannie Mae's appeals to congressional purpose do not call into question the plain text reading of its sue-and-be-sued clause. Pp. 94–99.

769 F. 3d 681, reversed.

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

E. Joshua Rosenkranz argued the cause for petitioners. With him on the briefs were *Thomas M. Bondy*, *Matthew L. Bush*, *Andrew H. Friedman*, and *Gregory D. Helmer*.

Ann O'Connell argued the cause for the United States as *amicus curiae*. With her on the brief were *Deputy Solicitor General Kneedler*, *Principal Deputy Assistant Attorney*

General Mizer, *Deputy Solicitor General Stewart*, and *Mark B. Stern*.

Brian P. Brooks argued the cause for respondents. With him on the brief were *Jonathan D. Hacker*, *Anton Metlitsky*, *Julie E. Katzman*, and *Mai Pham Robertson*.*

JUSTICE SOTOMAYOR delivered the opinion of the Court.

The corporate charter of the Federal National Mortgage Association, known as Fannie Mae, authorizes Fannie Mae "to sue and to be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal." 12 U. S. C. § 1723a(a). This case presents the question whether this sue-and-be-sued clause grants federal district courts jurisdiction over cases involving Fannie Mae. We hold that it does not.

I

A

During the Great Depression, the Federal Government worked to stabilize and strengthen the residential mortgage market. Among other things, it took steps to increase liquidity (reasonably available funding) in the mortgage market. These efforts included the creation of the Federal Home Loan Banks, which provide credit to member institutions to finance affordable housing and economic development projects, and the Federal Housing Administration (FHA), which insures residential mortgages. See Dept. of Housing and Urban Development, Background and History of the Federal National Mortgage Association 1–7, A4 (1966).

Also as part of these efforts, Title III of the National Housing Act (1934 Act) authorized the Administrator of the

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**Jeffrey R. White* filed a brief for the American Association for Justice as *amicus curiae* urging reversal.

Kenneth S. Geller and *Brian D. Netter* filed a brief for the American Red Cross as *amicus curiae*.

newly created FHA to establish "national mortgage associations" that could "purchase and sell [certain] first mortgages and such other first liens" and "borrow money for such purposes." § 301(a), 48 Stat. 1252–1253. The associations were endowed with certain powers, including the power to "sue and be sued, complain and defend, in any court of law or equity, State or Federal." § 301(c), *id.*, at 1253.

In 1938, the FHA Administrator exercised that authority and chartered the Federal National Mortgage Association. Avoiding a mouthful of an acronym (FNMA), it went by Fannie Mae. See, *e. g.*, Washington Post, July 14, 1940, p. P2 ("'Fanny May'"); N. Y. Times, Mar. 23, 1950, p. 48 ("'Fannie Mae'"). As originally chartered, Fannie Mae was wholly owned by the Federal Government and had three objectives: to "establish a market for [FHA-insured] first mortgages" covering new housing construction, to "facilitate the construction and financing of economically sound rental housing projects," and to "make [the bonds it issued] available to . . . investors." Fed. Nat. Mortgage Assn. Information Regarding the Activities of the Assn. 1 (Circular No. 1, 1938).

Fannie Mae was rechartered in 1954. Housing Act of 1954 (1954 Act), § 201, 68 Stat. 613. No longer wholly Government owned, Fannie Mae had mixed ownership: Private shareholders held its common stock and the Department of the Treasury held its preferred stock. The 1954 Act required the Secretary of the Treasury to allow Fannie Mae to repurchase that stock. See *id.*, at 613–615. It expected that Fannie Mae would repurchase all of its preferred stock and that legislation would then be enacted to turn Fannie Mae over to the private stockholders. From then on, Fannie Mae's duties would "be carried out by a privately owned and privately financed corporation." *Id.*, at 615. Along with these structural changes, the 1954 Act replaced Fannie Mae's initial set of powers with a more detailed list. In doing so, it revised the sue-and-be-sued clause to give Fannie Mae the power "to sue and to be sued, and to complain and to defend,

in any court of competent jurisdiction, State or Federal." *Id.*, at 620.

In 1968, Fannie Mae became fully privately owned and relinquished part of its portfolio to its new spinoff, the Government National Mortgage Association (known as Ginnie Mae). See Housing and Urban Development Act of 1968 (1968 Act), 82 Stat. 536. Fannie Mae "continue[d] to operate the secondary market operations" but became "a Government-sponsored private corporation." 12 U. S. C. § 1716b. Ginnie Mae "remain[ed] in the Government" and took over "the special assistance functions and management and liquidating functions." *Ibid.* Ginnie Mae received the same set of powers as Fannie Mae. See § 1723(a); see also 1968 Act, § 802(z), 82 Stat. 540 (minor revisions to § 1723a(a)).

This general structure remains in place. Fannie Mae continues to participate in the secondary mortgage market. It purchases mortgages that meet its eligibility criteria, packages them into mortgage-backed securities, and sells those securities to investors, and it invests in mortgage-backed securities itself. One of those mortgage purchases led to Fannie Mae's entanglement in this case.

B

Beverly Ann Hollis-Arrington refinanced her mortgage with Cendant Mortgage Corporation (Cendant) in the summer of 1999. Fannie Mae then bought the mortgage, while Cendant continued to service it. Unable to make her payments, Hollis-Arrington pursued a forbearance arrangement with Cendant. No agreement materialized, and the home entered foreclosure. Around this time, Cendant repurchased the mortgage from Fannie Mae because it did not meet Fannie Mae's credit standards.

To stave off the foreclosure, Hollis-Arrington and her daughter, Crystal Lightfoot, pursued bankruptcy and transferred the property between themselves. These efforts failed, and the home was sold at a trustee's sale in 2001.

The two then took to the courts to try to undo the foreclosure and sale.

After two unsuccessful federal suits, the pair filed this suit in state court. They alleged that deficiencies in the refinancing, foreclosure, and sale of their home entitled them to relief against Fannie Mae. Their claims against other defendants are not relevant here.

Fannie Mae removed the case to federal court under 28 U. S. C. § 1441(a), which permits a defendant to remove from state to federal court "any civil action" over which the federal district courts "have original jurisdiction." It relied on its sue-and-be-sued clause as the basis for jurisdiction. The District Court denied a motion to remand the case to state court.

The District Court then dismissed the claims against Fannie Mae on claim preclusion grounds. After a series of motions, rulings, and appeals not related to the issue here, the District Court entered final judgment. Hollis-Arrington and Lightfoot immediately moved to set aside the judgment under Federal Rule of Civil Procedure 60(b), alleging "fraud upon the court." App. 95–110. The District Court denied the motion.

The Ninth Circuit affirmed the dismissal of the case and the denial of the Rule 60(b) motion. 465 Fed. Appx. 668 (2012). After Hollis-Arrington and Lightfoot sought rehearing, the Ninth Circuit withdrew its opinion and ordered briefing on the question whether the District Court had jurisdiction over the case under Fannie Mae's sue-and-be-sued clause. 769 F. 3d 681, 682–683 (2014).

A divided panel affirmed the District Court's judgment. The majority relied on *American Nat. Red Cross* v. *S. G.*, 505 U. S. 247 (1992). It read that decision to have established a "rule [that] resolves this case": When a sue-and-be-sued clause in a federal charter expressly authorizes suit in federal courts, it confers jurisdiction on the federal courts. 769 F. 3d, at 684. The dissent instead read *Red Cross* as setting out only a " 'default rule' " that provides a "starting point for

[the] analysis." 769 F. 3d, at 692 (opinion of Stein, J.). It read "any court of competent jurisdiction" in Fannie Mae's sue-and-be-sued clause to overcome that default rule by requiring an independent source for jurisdiction in cases involving Fannie Mae. *Ibid.*

Two Circuits have likewise concluded that the language in Fannie Mae's sue-and-be-sued clause grants jurisdiction to federal courts. See *Federal Home Loan Bank of Boston* v. *Moody's Corp.*, 821 F. 3d 102 (CA1 2016) (Federal Home Loan Bank of Boston's identical sue-and-be-sued clause); *Pirelli Armstrong Tire Corp. Retiree Medical Benefits Trust ex rel. Fed. Nat. Mortgage Assn.* v. *Raines*, 534 F. 3d 779 (CADC 2008) (Fannie Mae's sue-and-be-sued clause). Four Circuits have disagreed, finding that similar language did not grant jurisdiction. See *Western Securities Co.* v. *Derwinski*, 937 F. 2d 1276 (CA7 1991) (under 38 U. S. C. § 1820(a)(1) (1988 ed.), Secretary of Veterans Affairs' authority to "sue and be sued . . . in any court of competent jurisdiction, State or Federal"); *C. H. Sanders Co.* v. *BHAP Housing Development Fund Co.*, 903 F. 2d 114 (CA2 1990) (under 12 U. S. C. § 1702 (1988 ed.), Secretary of Housing and Urban Development's authority "in his official capacity, to sue and be sued in any court of competent jurisdiction, State or Federal"); *Industrial Indemnity, Inc.* v. *Landrieu*, 615 F. 2d 644 (CA5 1980) (*per curiam*) (similar); *Lindy* v. *Lynn*, 501 F. 2d 1367 (CA3 1974) (similar).

We granted certiorari, 579 U. S. 940 (2016), and now reverse.

II

Fannie Mae's sue-and-be-sued clause authorizes it "to sue and to be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal." 12 U. S. C. § 1723a(a). As in other federal corporate charters, this language serves the uncontroversial function of clarifying Fannie Mae's capacity to bring suit and to be sued. See *Bank of United States* v. *Deveaux*, 5 Cranch 61, 85–86 (1809). The

question here is whether Fannie Mae's sue-and-be-sued clause goes further and grants federal courts jurisdiction over all cases involving Fannie Mae.

A

In answering this question, "we do not face a clean slate." *Red Cross*, 505 U. S., at 252. This Court has addressed the jurisdictional reach of sue-and-be-sued clauses in five federal charters. Three clauses were held to grant jurisdiction, while two were found wanting.

The first discussion of sue-and-be-sued clauses came in a pair of opinions by Chief Justice Marshall. The charter of the first Bank of the United States allowed it "'to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in courts of record, or any other place whatsoever.'" *Deveaux*, 5 Cranch, at 85. Another provision allowed suits in federal court against certain bank officials, suggesting "the right to sue does not imply a right to sue in the courts of the union, unless it be expressed." *Id.*, at 86. In light of this language, the Court held that the first Bank of the United States had "no right . . . to sue in the federal courts." *Ibid.* The Court concluded that the second Bank of the United States was not similarly disabled. Its charter allowed it "'to sue and be sued, plead and be impleaded, answer and be answered, defend and be defended, in all State Courts having competent jurisdiction, and in any Circuit Court of the United States.'" *Osborn* v. *Bank of United States*, 9 Wheat. 738, 817 (1824). The Court took from *Deveaux* "that a general capacity in the Bank to sue, without mentioning the Courts of the Union, may not give a right to sue in those Courts." 9 Wheat., at 818. By contrast, the second Bank's charter did grant jurisdiction to the federal circuit courts because it used "words expressly conferring a right to sue in those Courts." *Ibid.*

A mortgage dispute between a railroad and its creditor led to the next consideration of this issue. The Texas and Pa-

cific Railway Company's federal charter authorized it "'to sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity within the United States.'" *Bankers Trust Co.* v. *Texas & Pacific R. Co.*, 241 U. S. 295, 302 (1916). This Court held that the clause had "the same generality and natural import as" the clause in *Deveaux*. 241 U. S., at 304. Thus, "all that was intended was to render this corporation capable of suing and being sued by its corporate name in any court . . . whose jurisdiction as otherwise competently defined was adequate to the occasion." *Id.*, at 303.

Another lending dispute, involving defaulted bonds, led to the next statement on this issue. The Federal Deposit Insurance Corporation's (FDIC) sue-and-be-sued clause authorized it "[t]o sue and be sued, complain and defend, in any court of law or equity, State or Federal." 12 U. S. C. § 264(j) (1940 ed.). In *D'Oench, Duhme & Co.* v. *FDIC*, 315 U. S. 447, 455 (1942), this Court held that federal jurisdiction over the case was based on the FDIC's sue-and-be-sued clause. See *Red Cross*, 505 U. S., at 254 (expressing no "doubt that the Court held federal jurisdiction to rest on the" sue-and-be-sued clause).

This Court's most recent discussion of a sue-and-be-sued clause came in *Red Cross*, which involved a state-law tort suit related to a contaminated blood transfusion. It described the previous quartet of decisions as reflecting this Court's "best efforts at divining congressional intent retrospectively," efforts that had put "Congress on prospective notice of the language necessary and sufficient to confer jurisdiction." *Id.*, at 252. Those decisions "support the rule that a congressional charter's 'sue and be sued' provision may be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts." *Id.*, at 255. Under that rule, the Court explained, the result was "clear." *Id.*, at 257. The Red Cross' sue-and-be-sued clause, which permits it to "sue and be sued in courts of law and equity,

State or Federal, within the jurisdiction of the United States," 36 U. S. C. § 300105(a)(5), confers jurisdiction. *Red Cross*, 505 U. S., at 257. "In expressly authorizing [suits] in federal courts, using language . . . in all relevant respects identical to [the clause in *D'Oench*] on which [the Court] based a holding of federal jurisdiction just five years before [its enactment], the provision extends beyond a mere grant of general corporate capacity to sue, and suffices to confer federal jurisdiction." *Ibid.*

Armed with these earlier cases, as synthesized by *Red Cross*, we turn to the sue-and-be-sued clause at issue here.

B

Fannie Mae's sue-and-be-sued clause resembles the clauses this Court has held confer jurisdiction in one important respect. In authorizing Fannie Mae "to sue and to be sued, and to complain and to defend, in any court of competent jurisdiction, State or Federal," 12 U. S. C. § 1723a(a), it "specifically mentions the federal courts." *Red Cross*, 505 U. S., at 255. This mention of the federal courts means that Fannie Mae's charter clears a hurdle that the clauses in *Deveaux* and *Bankers Trust* did not.

But Fannie Mae's clause differs in a material respect from the three clauses the Court has held sufficient to grant federal jurisdiction. Those clauses referred to suits in the federal courts without qualification. In contrast, Fannie Mae's sue-and-be-sued clause refers to "any *court of competent jurisdiction*, State or Federal." § 1723a(a) (emphasis added).

Because this sue-and-be-sued clause is not "in all relevant respects identical" to a clause already held to grant federal jurisdiction, *Red Cross*, 505 U. S., at 257, this case cannot be resolved by a simple comparison. The outcome instead turns on the meaning of "court of competent jurisdiction" in Fannie Mae's sue-and-be-sued clause.

A court of competent jurisdiction is a court with the power to adjudicate the case before it. See Black's Law Dictionary 431 (10th ed. 2014) ("[a] court that has the power and author-

ity to do a particular act; one recognized by law as possessing the right to adjudicate a controversy"). And a court's subject-matter jurisdiction defines its power to hear cases. See *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 89 (1998) (Subject-matter jurisdiction is "the courts' statutory or constitutional power to adjudicate the case" (emphasis deleted)); *Wachovia Bank, N. A.* v. *Schmidt*, 546 U. S. 303, 316 (2006) ("Subject-matter jurisdiction . . . concerns a court's competence to adjudicate a particular category of cases"). It follows that a court of competent jurisdiction is a court with a grant of subject-matter jurisdiction covering the case before it. Cf. *Pennoyer* v. *Neff*, 95 U. S. 714, 733 (1878) ("[T]here must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject-matter of the suit").

As a result, this Court has understood the phrase "court of competent jurisdiction" as a reference to a court with an existing source of subject-matter jurisdiction. *Ex parte Phenix Ins. Co.*, 118 U. S. 610 (1886), provides an example. There, the Court explained that a statute "providing for the transfer to a trustee of the interest of the owner in the vessel and freight, provides only that the trustee may 'be appointed by any court of competent jurisdiction,' leaving the question of such competency to depend on other provisions of law." *Id.*, at 617. See also *Shoshone Mining Co.* v. *Rutter*, 177 U. S. 505, 506–507 (1900) (statute authorizing suit " 'in a court of competent jurisdiction' . . . unquestionably meant that the competency of the court should be determined by rules theretofore prescribed in respect to the jurisdiction of the Federal courts"). *Califano* v. *Sanders*, 430 U. S. 99 (1977), provides another. It held that § 10 of the Administrative Procedure Act, codified in 5 U. S. C. §§ 701–704, did not contain "an implied grant of subject-matter jurisdiction to review agency actions." 430 U. S., at 105. In noting that "the actual text . . . nowhere contains an explicit grant of jurisdiction," the Court pointed to two clauses requiring "ju-

dicial review . . . to proceed 'in a court specified by statute' or 'in a court of competent jurisdiction' " and stated that both "seem to look to outside sources of jurisdictional authority." *Id.*, at 105–106, and n. 6.

On this understanding, Fannie Mae's sue-and-be-sued clause is most naturally read not to grant federal courts subject-matter jurisdiction over all cases involving Fannie Mae. In authorizing Fannie Mae to sue and be sued "in any court of competent jurisdiction, State or Federal," it permits suit in any state or federal court already endowed with subject-matter jurisdiction over the suit.

C

Red Cross does not require a different result. Some, including the lower courts here, have understood it to set out a rule that an express reference to the federal courts suffices to make a sue-and-be-sued clause a grant of federal jurisdiction. *Red Cross* contains no such rule.

By its own terms, the rule *Red Cross* restates is "the basic rule" drawn in *Deveaux* and *Osborn* that a sue-and-be-sued clause conferring only a general right to sue does not grant jurisdiction to the federal courts. *Red Cross*, 505 U. S., at 253. Each mention of a "rule" refers back to this principle. See *id.*, at 255 (reading this Court's sue-and-be-sued clause cases to "support the rule that a . . . 'sue and be sued' provision *may* be read to confer federal court jurisdiction if, but only if, it specifically mentions the federal courts" (emphasis added)); *id.*, at 256 (*Bankers Trust* applied "the rule thus established" to hold that the railroad's sue-and-be-sued clause did not confer jurisdiction); *id.*, at 257 (finding the result "clear" under the "rule established in these cases" because the charter "expressly authoriz[es]" suits in federal courts in a clause "in all relevant respects identical" to one already found to confer jurisdiction).

True enough, the dissent thought *Red Cross* established a broad rule. See *id.*, at 271–272 (opinion of Scalia, J.) (de-

scribing *Red Cross* as announcing a "rule . . . that any grant of a general capacity to sue with mention of federal courts will suffice to confer jurisdiction" (emphasis deleted)). The certainty of the dissent may explain the lower court decisions adopting a broader reading of *Red Cross*. But *Red Cross* itself establishes no such rule. And such a rule is hard to square with the opinion's thorough consideration of the contrary arguments based in text, purpose, and legislative history. See *id.*, at 258–263.

Nothing in *Red Cross* suggests that courts should ignore "the ordinary sense of the language used," *id.*, at 263, when confronted with a federal charter's sue-and-be-sued clause that expressly references the federal courts, but only those that are courts "of competent jurisdiction."

III

Fannie Mae, preferring to be in federal court, raises several arguments against reading its sue-and-be-sued clause as merely capacity conferring. None are persuasive.

A

Fannie Mae first offers several alternative readings of "court of competent jurisdiction." It suggests that the phrase might refer to a court with personal jurisdiction over the parties before it, a court of proper venue, or a court of general, rather than specialized, jurisdiction. Brief for Respondents 41–45.

At bottom, Fannie Mae's efforts on this front are premised on the reading of *Red Cross* rejected above. In its view, an express reference to the federal courts suffices to confer subject-matter jurisdiction on federal courts. It sees its only remaining task as explaining why that would not render "court of competent jurisdiction" superfluous. See Tr. of Oral Arg. 29–30. But the fact that a sue-and-be-sued clause references the federal courts does not resolve the jurisdictional question. Thus, arguments as to why the phrase

"court of competent jurisdiction" could still have meaning if it does not carry its ordinary meaning are beside the point.

Moreover, even if the phrase carries additional meaning, that would not further Fannie Mae's argument. Take its suggestion that a "court of competent jurisdiction" is a court with personal jurisdiction. A court must have the power to decide the claim before it (subject-matter jurisdiction) and power over the parties before it (personal jurisdiction) before it can resolve a case. See *Ruhrgas AG* v. *Marathon Oil Co.*, 526 U. S. 574, 583–585 (1999). Recognizing as much, this Court has stated that the phrase "court of competent jurisdiction," while "usually used to refer to subject-matter jurisdiction, has also been used on occasion to refer to a court's jurisdiction over the defendant's person." *United States* v. *Morton*, 467 U. S. 822, 828 (1984) (footnote omitted). See also *Blackmar* v. *Guerre*, 342 U. S. 512, 516 (1952). But nothing in Fannie Mae's sue-and-be-sued clause suggests that the reference to "court of competent jurisdiction" refers only to a court with personal jurisdiction over the parties before it. At most then, this point might support reading the phrase to refer to both subject-matter and personal jurisdiction. That does not help Fannie Mae. So long as the sue-and-be-sued clause refers to an outside source of subject-matter jurisdiction, it does not confer subject-matter jurisdiction.

B

Fannie Mae next claims that, by the time its sue-and-be-sued clause was enacted in 1954, courts had interpreted provisions containing the phrase "court of competent jurisdiction" to grant jurisdiction and that Congress was entitled to rely on those interpretations. This argument invokes the prior construction canon of statutory interpretation. The canon teaches that if courts have settled the meaning of an existing provision, the enactment of a new provision that mirrors the existing statutory text indicates, as a general

matter, that the new provision has that same meaning. See *Bragdon* v. *Abbott*, 524 U. S. 624, 645 (1998).

Fannie Mae points to cases discussing three types of statutory provisions that, in its view, show that the phrase "court of competent jurisdiction" had acquired a settled meaning by 1954.

The first pair addresses the FHA's sue-and-be-sued clause. See 12 U. S. C. § 1702 ("sue and be sued in any court of competent jurisdiction, State or Federal"). Two Court of Appeals decisions in the 1940's concluded that the FHA sue-and-be-sued clause overrode the general rule, today found in 28 U. S. C. §§ 1346(a)(2), 1491, that monetary claims against the United States exceeding $10,000 must be brought in the Court of Federal Claims, rather than the federal district courts. See *Ferguson* v. *Union Nat. Bank of Clarksburg*, 126 F. 2d 753, 755–757 (CA4 1942); *George H. Evans & Co.* v. *United States*, 169 F. 2d 500, 502 (CA3 1948). These courts did not state that their jurisdiction was founded on the sue-and-be-sued clause, as opposed to statutes governing the original jurisdiction of the federal district courts. See, *e. g.*, 28 U. S. C. § 41(a) (1946 ed.). Thus, even assuming that two appellate court cases can "'settl[e]'" an issue, A. Scalia & B. Garner, Reading Law 325 (2012), these two cases did not because they did not speak to the question here.

The second set of cases addresses provisions authorizing suit for a violation of a statute. One arose under the Fair Labor Standards Act of 1938, which authorizes employees to sue for violations of the Act in "any . . . court of competent jurisdiction." § 6(d)(1), 88 Stat. 61, 29 U. S. C. § 216(b). This Court, in its description of the facts, stated that "[j]urisdiction of the action was conferred by . . . 28 U. S. C. § 41(8), and . . . 29 U. S. C. § 216(b)." *Williams* v. *Jacksonville Terminal Co.*, 315 U. S. 386, 390 (1942). This brief, ambiguous statement did not settle the meaning of § 216(b), and thus did not settle the meaning of the phrase "court of competent jurisdiction." The other cases in this set dealt with

the Housing and Rent Act of 1947. As enacted, the statute permitted suit in "any Federal, State, or Territorial court of competent jurisdiction." § 206(b), 61 Stat. 199. Some courts read § 206 not to confer jurisdiction and instead assessed their jurisdiction under the federal-question jurisdiction statute. See, *e. g.*, *Schuman* v. *Greenberg*, 100 F. Supp. 187, 189 (NJ 1951) (collecting cases). At the time, that statute carried an amount-in-controversy requirement, 28 U. S. C. § 41(1) (1946 ed.), and so some cases were dismissed or remanded to state court for lack of federal jurisdiction. Congress later amended § 206 to permit suit "in any Federal court of competent jurisdiction regardless of the amount involved." Defense Production Act Amendments of 1951, § 204, 65 Stat. 147. Congress' elimination of the amount-in-controversy requirement suggests, if anything, it understood that "court of competent jurisdiction" could be read to require an outside source of jurisdiction.

The third set of cases interpreted provisions making federal jurisdiction over certain causes of action exclusive. Brief for Respondents 36–37. Those cases confirm that the provisions require suit to be brought in federal courts but do not discuss the basis for federal jurisdiction.

In sum, none of the cases on which Fannie Mae relies suggest that Congress in 1954 would have surveyed the jurisprudential landscape and necessarily concluded that the courts had already settled the question whether a sue-and-be-sued clause containing the phrase "court of competent jurisdiction" confers jurisdiction on the federal courts.

C

Fannie Mae ends with an appeal to congressional purpose, or, more accurately, a lack of congressional purpose.

It argues that its original sue-and-be-sued clause, enacted in 1934, granted jurisdiction to federal courts and that there is no indication that Congress wanted to change the status quo in 1954. The addition in 1954 of "court of competent

jurisdiction," a phrase that, as discussed, carries a clear meaning, means that the current sue-and-be-sued clause does not confer jurisdiction. An indication whether that meaning was understood as a change from the 1934 Act is not required.*

Fannie Mae next points to its sibling rival, the Federal Home Loan Mortgage Corporation, known as Freddie Mac. The two share parallel authority to compete in the secondary mortgage market. Compare 12 U. S. C. §§ 1717(b)(2)–(6) (Fannie Mae) with § 1454(a) (Freddie Mac). Suits involving Freddie Mac may be brought in federal court. See § 1452(c) ("to sue and be sued, complain and defend, in any State, Federal, or other court"); § 1452(f) (providing that Freddie Mac is a federal agency under 28 U. S. C. §§ 1345, 1442, that civil actions to which Freddie Mac is a party arise under federal law, and that Freddie Mac may remove cases to federal district court before trial).

Fannie Mae argues there is no good reason to think that Congress gave Freddie Mac fuller access to the federal courts than it has. Leaving aside the clear textual indications suggesting Congress did just that, a plausible reason does exist. In 1970, when Freddie Mac's sue-and-be-sued clause and related jurisdictional provisions were enacted, Freddie Mac was a Government-owned corporation. See Emergency Home Finance Act of 1970, § 304(a), 84 Stat. 454. Fannie Mae, on the other hand, had already transitioned into a privately owned corporation. Fannie Mae's argument on this front, moreover, contains a deeper flaw. The doors to federal court remain open to Fannie Mae through diversity

*The legislative history of the 1934 Act provides some reason to question Fannie Mae's premise about Congress' view of the status quo under the 1934 Act. During debate on this provision, Senator Logan asked Senator Bulkley, the chair of the subcommittee with authority over the bill, about the original sue-and-be-sued clause. Senator Bulkley explained that it merely conferred a capacity to sue and be sued "and [did] not confe[r] a right to go into a Federal court where it would not otherwise exist." 78 Cong. Rec. 12008 (1934).

and federal-question jurisdiction. Fannie Mae provides no reason to think that in other cases, involving only state-law claims, access to the federal courts gives Freddie Mac an unintended competitive advantage over Fannie Mae that Congress would have wanted to avoid. Indeed, the usual assumption is that state courts are up to the task of adjudicating their own laws. Cf. *Gulf Offshore Co.* v. *Mobil Oil Corp.*, 453 U. S. 473, 483–484 (1981).

IV

The judgment of the Ninth Circuit is reversed.

It is so ordered.

Syllabus

BUCK *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION

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

No. 15–8049. Argued October 5, 2016—Decided February 22, 2017

Petitioner Duane Buck was convicted of capital murder in a Texas court. Under state law, the jury was permitted to impose a death sentence only if it found unanimously and beyond a reasonable doubt that Buck was likely to commit acts of violence in the future. Buck's attorney called a psychologist, Dr. Walter Quijano, to offer his opinion on that issue. Dr. Quijano had been appointed to evaluate Buck by the presiding judge and had prepared a report setting out his conclusions. To determine the likelihood that Buck would act violently in the future, Dr. Quijano had considered a number of statistical factors, including Buck's race. Although Dr. Quijano ultimately concluded that Buck was unlikely to be a future danger, his report also stated that Buck was statistically more likely to act violently because he is black. The report read, in relevant part: "**Race.** Black: Increased probability." App. 19a. Despite knowing the contents of the report, Buck's counsel called Dr. Quijano to the stand, where he testified that race is a factor "know[n] to predict future dangerousness." *Id.*, at 146a. Dr. Quijano's report was admitted into evidence at the close of his testimony. The prosecution questioned Dr. Quijano about his conclusions on race and violence during cross-examination, and it relied on his testimony in summation. During deliberations, the jury requested and received the expert reports admitted into evidence, including Dr. Quijano's. The jury returned a sentence of death.

Buck contends that his attorney's introduction of this evidence violated his Sixth Amendment right to the effective assistance of counsel. Buck failed to raise this claim in his first state postconviction proceeding. While that proceeding was pending, this Court received a petition for certiorari in *Saldano* v. *Texas*, 530 U. S. 1212, a case in which Dr. Quijano had testified that the petitioner's Hispanic heritage weighed in favor of a finding of future dangerousness. Texas confessed error on that ground, and this Court vacated the judgment below. Soon afterward, the Texas Attorney General issued a public statement identifying six similar cases in which Dr. Quijano had testified. Buck's was one of them. In the other five cases, the Attorney General confessed error

and consented to resentencing. But when Buck filed a second state habeas petition alleging that his attorney had been ineffective in introducing Dr. Quijano's testimony, the State did not confess error, and the court dismissed the petition as an abuse of the writ on the ground that Buck had failed to raise the claim in his first petition.

Buck then sought federal habeas relief under 28 U. S. C. § 2254. The State again declined to confess error, and Buck's ineffective assistance claim was held procedurally defaulted and unreviewable under *Coleman* v. *Thompson*, 501 U. S. 722. This Court's later decisions in *Martinez* v. *Ryan*, 566 U. S. 1, and *Trevino* v. *Thaler*, 569 U. S. 413, modified the rule of *Coleman*. Had they been decided before Buck filed his federal habeas petition, Buck's claim could have been heard on the merits provided he had demonstrated that (1) state postconviction counsel had been constitutionally ineffective in failing to raise the claim, and (2) the claim had some merit. Following the decision in *Trevino*, Buck sought to reopen his § 2254 case under Federal Rule of Civil Procedure 60(b)(6). To demonstrate the "extraordinary circumstances" required for relief, *Gonzalez* v. *Crosby*, 545 U. S. 524, 535, Buck cited the change in law effected by *Martinez* and *Trevino*, as well as ten other factors, including the introduction of expert testimony linking Buck's race to violence and the State's confession of error in similar cases. The District Court denied relief. Reasoning that "the introduction of any mention of race" during Buck's sentencing was "*de minimis*," the court concluded, first, that Buck had failed to demonstrate extraordinary circumstances; and second, that even if the circumstances were extraordinary, Buck had failed to demonstrate ineffective assistance under *Strickland* v. *Washington*, 466 U. S. 668. Buck sought a certificate of appealability (COA) from the Fifth Circuit to appeal the denial of his Rule 60(b)(6) motion. The Fifth Circuit denied his application, concluding that he had not shown extraordinary circumstances justifying relief from the District Court's judgment.

Held:

1. The Fifth Circuit exceeded the limited scope of the COA analysis. The COA statute sets forth a two-step process: an initial determination whether a claim is reasonably debatable, and, if so, an appeal in the normal course. 28 U. S. C. § 2253. At the first stage, the only question is whether the applicant has shown that "jurists of reason could disagree with the district court's resolution of his constitutional claims or . . . could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El* v. *Cockrell*, 537 U. S. 322, 327. Here, the Fifth Circuit phrased its determination in proper terms. But it reached its conclusion only after essentially deciding the case on the

merits, repeatedly faulting Buck for having failed to demonstrate extraordinary circumstances. The question for the Court of Appeals was not whether Buck had shown that his case is extraordinary; it was whether jurists of reason could debate that issue. The State points to the Fifth Circuit's thorough consideration of the merits to defend that court's approach, but this hurts rather than helps its case. Pp. 115–118.

2. Buck has demonstrated ineffective assistance of counsel under *Strickland*. Pp. 118–122.

(a) To satisfy *Strickland*, a defendant must first show that counsel performed deficiently. 466 U. S., at 687. Buck's trial counsel knew that Dr. Quijano's report reflected the view that Buck's race predisposed him to violent conduct and that the principal point of dispute during the penalty phase was Buck's future dangerousness. Counsel nevertheless called Dr. Quijano to the stand, specifically elicited testimony about the connection between race and violence, and put Dr. Quijano's report into evidence. No competent defense attorney would introduce evidence that his client is liable to be a future danger because of his race. Pp. 118–119.

(b) *Strickland* further requires a defendant to demonstrate prejudice—"a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." 466 U. S., at 694. It is reasonably probable that without Dr. Quijano's testimony on race and violence, at least one juror would have harbored a reasonable doubt on the question of Buck's future dangerousness. This issue required the jury to make a predictive judgment inevitably entailing a degree of speculation. But Buck's race was not subject to speculation, and according to Dr. Quijano, that immutable characteristic carried with it an increased probability of future violence. Dr. Quijano's testimony appealed to a powerful racial stereotype and might well have been valued by jurors as the opinion of a medical expert bearing the court's imprimatur. For these reasons, the District Court's conclusion that any mention of race during the penalty phase was *de minimis* is rejected. So is the State's argument that Buck was not prejudiced by Dr. Quijano's testimony because it was introduced by his own counsel, rather than the prosecution. Jurors understand that prosecutors seek convictions and may reasonably be expected to evaluate the government's evidence in light of its motivations. When damaging evidence is introduced by a defendant's own lawyer, it is in the nature of an admission against interest, more likely to be taken at face value. Pp. 119–122.

3. The District Court's denial of Buck's Rule 60(b)(6) motion was an abuse of discretion. Pp. 122–128.

(a) Relief under Rule 60(b)(6) is available only in "extraordinary circumstances." *Gonzalez*, 545 U. S., at 535. Determining whether

such circumstances are present may include consideration of a wide range of factors, including "the risk of injustice to the parties" and "the risk of undermining the public's confidence in the judicial process." *Liljeberg* v. *Health Services Acquisition Corp.*, 486 U. S. 847, 863–864. The District Court's denial of Buck's motion rested largely on its determination that race played only a *de minimis* role in his sentencing. But there is a reasonable probability that Buck was sentenced to death in part because of his race. This is a disturbing departure from the basic premise that our criminal law punishes people for what they do, not who they are. That it concerned race amplifies the problem. Relying on race to impose a criminal sanction "poisons public confidence" in the judicial process, *Davis* v. *Ayala*, 576 U. S. 257, 285, a concern that supports Rule 60(b)(6) relief. The extraordinary nature of this case is confirmed by the remarkable steps the State itself took in response to Dr. Quijano's testimony in other cases. Although the State attempts to justify its decision to treat Buck differently from the other five defendants identified in the Attorney General's public statement, its explanations for distinguishing Buck's case from *Saldano* have nothing to do with the Attorney General's stated reasons for confessing error in that case. Pp. 122–126.

(b) Unless *Martinez* and *Trevino*, rather than *Coleman*, would govern Buck's case were it reopened, his claim would remain unreviewable and Rule 60(b)(6) relief would be inappropriate. The State argues that *Martinez* and *Trevino* would not govern Buck's case because they announced a "new rule" under *Teague* v. *Lane*, 489 U. S. 288, that does not apply retroactively to cases (like Buck's) on collateral review. This argument, however, has been waived: The State failed to advance it in District Court, before the Fifth Circuit, or in its brief in opposition to Buck's petition for certiorari. Pp. 126–128.

623 Fed. Appx. 668, reversed and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which KENNEDY, GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed a dissenting opinion, in which ALITO, J., joined, *post*, p. 128.

Christina A. Swarns argued the cause for petitioner. With her on the briefs were *Sherrilyn Ifill*, *Janai Nelson*, *Jin Hee Lee*, *Natasha M. Korgaonkar*, *Raymond Audain*, *Natasha Merle*, *Kathryn M. Kase*, *Katherine C. Black*, and *Samuel Spital*.

Scott A. Keller, Solicitor General of Texas, argued the cause for respondent. With him on the brief were *Ken Pax-*

ton, Attorney General, *Jeffrey C. Mateer*, First Assistant Attorney General, *J. Campbell Barker*, Deputy Solicitor General, and *Bill Davis* and *Ari Cuenin*, Assistant Solicitors General.*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

A Texas jury convicted petitioner Duane Buck of capital murder. Under state law, the jury could impose a death sentence only if it found that Buck was likely to commit acts of violence in the future. Buck's attorney called a psychologist to offer his opinion on that issue. The psychologist testified that Buck probably would not engage in violent conduct. But he also stated that one of the factors pertinent in assessing a person's propensity for violence was his race, and that Buck was statistically more likely to act violently because he is black. The jury sentenced Buck to death.

Buck contends that his attorney's introduction of this evidence violated his Sixth Amendment right to the effective assistance of counsel. This claim has never been heard on the merits in any court, because the attorney who represented Buck in his first state postconviction proceeding failed to raise it. In 2006, a Federal District Court relied on that failure—properly, under then-governing law—to hold that Buck's claim was procedurally defaulted and unreviewable.

In 2014, Buck sought to reopen that 2006 judgment by filing a motion under Federal Rule of Civil Procedure 60(b)(6).

*Briefs of *amici curiae* urging reversal were filed for Constitutional Accountability Center by *Elizabeth B. Wydra*, *Brianne J. Gorod*, *David H. Gans*, and *Brian R. Frazelle*; for Former Prosecutors by *Michael J. Gottlieb* and *Randall W. Jackson*; for the Lawyers' Committee for Civil Rights Under Law by *Brian J. Murray*, *Kenton J. Skarin*, *Kristen Clarke*, *Jon Greenbaum*, and *Charlotte H. Taylor*; for the National Association of Criminal Defense Lawyers et al. by *Hilary Sheard* and *Barbara E. Bergman*; for the National Black Law Students Association by *Deborah N. Archer* and *Aderson B. Francois*; and for David Boyle by *Mr. Boyle*, *pro se*.

He argued that this Court's decisions in *Martinez* v. *Ryan*, 566 U. S. 1 (2012), and *Trevino* v. *Thaler*, 569 U. S. 413 (2013), had changed the law in a way that provided an excuse for his procedural default, permitting him to litigate his claim on the merits. In addition to this change in the law, Buck's motion identified ten other factors that, he said, constituted the "extraordinary circumstances" required to justify reopening the 2006 judgment under the Rule. See *Gonzalez* v. *Crosby*, 545 U. S. 524, 535 (2005).

The District Court below denied the motion, and the Fifth Circuit declined to issue the certificate of appealability (COA) requested by Buck to appeal that decision. We granted certiorari, and now reverse.

I

A

On the morning of July 30, 1995, Duane Buck arrived at the home of his former girlfriend, Debra Gardner. He was carrying a rifle and a shotgun. Buck entered the home, shot Phyllis Taylor, his stepsister, and then shot Gardner's friend Kenneth Butler. Gardner fled the house, and Buck followed. So did Gardner's young children. While Gardner's son and daughter begged for their mother's life, Buck shot Gardner in the chest. Gardner and Butler died of their wounds. Taylor survived.

Police officers arrived soon after the shooting and placed Buck under arrest. An officer would later testify that Buck was laughing at the scene. He remained "happy" and "upbeat" as he was driven to the police station, "[s]miling and laughing" in the back of the patrol car. App. 134a–135a, 252a.

Buck was tried for capital murder, and the jury convicted. During the penalty phase of the trial, the jury was charged with deciding two issues. The first was what the parties term the "future dangerousness" question. At the time of Buck's trial, a Texas jury could impose the death penalty

only if it found—unanimously and beyond a reasonable doubt—"a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society." Tex. Code Crim. Proc. Ann., Art. 37.071, §2(b)(1) (Vernon Cum. Supp. 1998). The second issue, to be reached only if the jury found Buck likely to be a future danger, was whether mitigating circumstances nevertheless warranted a sentence of life imprisonment instead of death. See §2(e).

The parties focused principally on the first question. The State called witnesses who emphasized the brutality of Buck's crime and his evident lack of remorse in its aftermath. The State also called another former girlfriend, Vivian Jackson. She testified that, during their relationship, Buck had routinely hit her and had twice pointed a gun at her. Finally, the State introduced evidence of Buck's criminal history, including convictions for delivery of cocaine and unlawfully carrying a weapon. App. 125a–127a, 185a.

Defense counsel answered with a series of lay witnesses, including Buck's father and stepmother, who testified that they had never known him to be violent. Counsel also called two psychologists to testify as experts. The first, Dr. Patrick Lawrence, observed that Buck had previously served time in prison and had been held in minimum custody. From this he concluded that Buck "did not present any problems in the prison setting." Record in No. 4:04–cv–03965 (SD Tex.), Doc. 5–116, pp. 12–13. Dr. Lawrence further testified that murders within the Texas penal system tend to be gang related (there was no evidence Buck had ever been a member of a gang) and that Buck's offense had been a "crime of passion" occurring within the context of a romantic relationship. *Id.*, at 4, 19, 21. Based on these considerations, Dr. Lawrence determined that Buck was unlikely to be a danger if he were sentenced to life in prison. *Id.*, at 20–21.

Buck's second expert, Dr. Walter Quijano, had been appointed by the presiding judge to conduct a psychological evaluation. Dr. Quijano had met with Buck in prison prior to trial and shared a report of his findings with defense counsel.

Like Dr. Lawrence, Dr. Quijano thought it significant that Buck's prior acts of violence had arisen from romantic relationships with women; Buck, of course, would not form any such relationships while incarcerated. And Dr. Quijano likewise considered Buck's behavioral record in prison a good indicator that future violence was unlikely. App. 36a, 39a–40a.

But there was more to the report. In determining whether Buck was likely to pose a danger in the future, Dr. Quijano considered seven "statistical factors." The fourth factor was "race." His report read, in relevant part: "4. **Race.** Black: Increased probability. There is an overrepresentation of Blacks among the violent offenders." *Id.*, at 19a.

Despite knowing Dr. Quijano's view that Buck's race was competent evidence of an increased probability of future violence, defense counsel called Dr. Quijano to the stand and asked him to discuss the "statistical factors" he had "looked at in regard to this case." *Id.*, at 145a–146a. Dr. Quijano responded that certain factors were "know[n] to predict future dangerousness" and, consistent with his report, identified race as one of them. *Id.*, at 146a. "It's a sad commentary," he testified, "that minorities, Hispanics and black people, are over represented in the Criminal Justice System." *Ibid.* Through further questioning, counsel elicited testimony concerning factors Dr. Quijano thought favorable to Buck, as well as his ultimate opinion that Buck was unlikely to pose a danger in the future. At the close of Dr. Quijano's testimony, his report was admitted into evidence. *Id.*, at 150a–152a.

After opening cross-examination with a series of general questions, the prosecutor likewise turned to the report. She asked first about the statistical factors of past crimes and age, then questioned Dr. Quijano about the roles of sex and race: "You have determined that the sex factor, that a male is more violent than a female because that's just the way it is, and that the race factor, black, increases the future dangerousness for various complicated reasons; is that correct?" *Id.*, at 170a. Dr. Quijano replied, "Yes." *Ibid.*

During closing arguments, defense counsel emphasized that Buck had proved to be "controllable in the prison population," and that his crime was one of "jealousy, . . . passion and emotion" unlikely to be repeated in jail. *Id.*, at 189a–191a. The State stressed the crime's brutal nature and Buck's lack of remorse, along with the inability of Buck's own experts to guarantee that he would not act violently in the future—a point it supported by reference to Dr. Quijano's testimony. See *id.*, at 198a–199a ("You heard from Dr. Quijano, . . . who told you that . . . the probability did exist that [Buck] would be a continuing threat to society.").

The jury deliberated over the course of two days. During that time it sent out four notes, one of which requested the "psychology reports" that had been admitted into evidence. *Id.*, at 209a. These reports—including Dr. Quijano's—were provided. The jury returned a sentence of death.

B

Buck's conviction and sentence were affirmed on direct appeal. *Buck* v. *State*, No. 72,810 (Tex. Crim. App., Apr. 28, 1999). His case then entered a labyrinth of state and federal collateral review, where it has wandered for the better part of two decades.

Buck filed his first petition for a writ of habeas corpus in Texas state court in 1999. The four claims advanced in his petition, however, were all frivolous or noncognizable. See *Ex parte Buck*, No. 699684–A (Dist. Ct. Harris Cty., Tex.,

July 11, 2003), pp. 6–7. The petition failed to mention defense counsel's introduction of expert testimony that Buck's race increased his propensity for violence.

But Dr. Quijano had testified in other cases, too, and in 1999, while Buck's first habeas petition was pending, one of those cases reached this Court. The petitioner, Victor Hugo Saldano, argued that his death sentence had been tainted by Dr. Quijano's testimony that Saldano's Hispanic heritage "was a factor weighing in the favor of future dangerousness." App. 302a. Texas confessed error on that ground and asked this Court to grant Saldano's petition for certiorari, vacate the state court judgment, and remand the case. In June 2000, the Court did so. *Saldano* v. *Texas*, 530 U. S. 1212.

Within days, the Texas Attorney General, John Cornyn, issued a public statement concerning the cases in which Dr. Quijano had testified. The statement affirmed that "it is inappropriate to allow race to be considered as a factor in our criminal justice system." App. 213a. In keeping with that principle, the Attorney General explained that his office had conducted a "thorough audit" and "identified eight more cases in which testimony was offered by Dr. Quijano that race should be a factor for the jury to consider in making its determination about the sentence in a capital murder trial." *Ibid.* Six of those cases were "similar to that of Victor Hugo Saldano"; in those cases, letters had been sent to counsel apprising them of the Attorney General's findings. *Id.*, at 213a–214a. The statement closed by identifying the defendants in those six cases. Buck was one of them. *Id.*, at 215a–217a. By the close of 2002, the Attorney General had confessed error, waived any available procedural defenses, and consented to resentencing in the cases of five of those six defendants. See *Alba* v. *Johnson*, 232 F. 3d 208 (CA5 2000) (Table); Memorandum and Order in *Blue* v. *Johnson*, No. 4:99–cv–00350 (SD Tex.), pp. 15–17; Order in *Garcia* v. *Johnson*, No. 1:99–cv–00134 (ED Tex.), p. 1; Order in *Broxton* v. *Johnson*, No. 4:00–cv–01034 (SD Tex.), pp. 10–11; Final

Judgment in *Gonzales* v. *Cockrell*, No. 7:99–cv–00072 (WD Tex.), p. 1.

Not, however, in Buck's. In 2002, Buck's attorney filed a new state habeas petition alleging that trial counsel had rendered ineffective assistance by introducing Dr. Quijano's testimony. The State was not represented by the Attorney General in this proceeding—the Texas Attorney General represents state respondents in federal habeas cases, but not state habeas cases—and it did not confess error. Because Buck's petition was successive, the Texas Court of Criminal Appeals dismissed it as an abuse of the writ. *Ex parte Buck*, Nos. 57,004–01, 57,004–02 (Oct. 15, 2003) (*per curiam*).

Buck turned to the federal courts. He filed a petition for habeas corpus under 28 U. S. C. § 2254 in October 2004, by which time Attorney General Cornyn had left office. See *Buck* v. *Dretke*, 2006 WL 8411481, *2 (SD Tex., July 24, 2006). Buck sought relief on the ground that trial counsel's introduction of Dr. Quijano's testimony was constitutionally ineffective. The State responded that the state court had dismissed Buck's ineffective assistance claim because Buck had failed to press it in his first petition, raising it for the first time in a procedurally improper second petition. The State argued that such reliance on an established state rule of procedure was an adequate and independent state ground precluding federal review. Texas acknowledged that it had waived similar procedural defenses in Saldano's case. But it argued that Buck's case was different because "[i]n Saldano's case Dr. Quijano *testified for the State*"; in Buck's, "it was Buck who called Dr. Quijano to testify." Answer and Motion for Summary Judgment in No. 4:04–cv–03965 (SD Tex.), p. 20.

Buck countered that, notwithstanding his procedural default, the District Court should reach the merits of his claim because a failure to do so would result in a miscarriage of justice. Buck did not argue that his default should be excused on a showing of "cause" and "prejudice"—that is, cause for the default, and prejudice from the denial of a federal

right. And for good reason: At the time Buck filed his § 2254 petition, our decision in *Coleman* v. *Thompson*, 501 U. S. 722, 752–753 (1991), made clear that an attorney's failure to raise an ineffective assistance claim during state postconviction review could not constitute cause. The District Court rejected Buck's miscarriage of justice argument and held that, because of his procedural default, his ineffective assistance claim was unreviewable. *Buck* v. *Dretke*, 2006 WL 8411481, *8. Buck unsuccessfully sought review of the District Court's ruling. See *Buck* v. *Thaler*, 345 Fed. Appx. 923 (CA5 2009) (*per curiam*) (denying application for a COA), cert. denied, 559 U. S. 1072 (2010).

In 2011, Buck sought to reopen his case, arguing that the prosecution had violated the Equal Protection and Due Process Clauses by asking Dr. Quijano about the relationship between race and future violence on cross-examination and referring to his testimony during summation. Buck also argued that the State's decision to treat him differently from the other defendants affected by Dr. Quijano's testimony justified relieving him of the District Court's adverse judgment. The Fifth Circuit disagreed, see *Buck* v. *Thaler*, 452 Fed. Appx. 423, 427–428 (CA5 2011) (*per curiam*), and we denied certiorari, *Buck* v. *Thaler*, 565 U. S. 1022 (2011). Buck, still barred by *Coleman* from avoiding the consequences of his procedural default, did not pursue his ineffective assistance claim.

C

In 2012, this Court "modif[ied] the unqualified statement in *Coleman* that an attorney's ignorance or inadvertence in a postconviction proceeding does not qualify as cause to excuse a procedural default." *Martinez*, 566 U. S., at 9. We held that when a State formally limits the adjudication of claims of ineffective assistance of trial counsel to collateral review, a prisoner may establish cause for procedural default if (1) "the state courts did not appoint counsel in the initial-review collateral proceeding," or "appointed counsel in [that]

proceeding . . . was ineffective under the standards of *Strickland* v. *Washington*, 466 U. S. 668 (1984)"; and (2) "the underlying . . . claim is a substantial one, which is to say that . . . the claim has some merit." *Id.*, at 14.

By its terms, *Martinez* did not bear on Buck's ineffective assistance claim. At the time of Buck's conviction and appeal, Texas did not formally require criminal defendants to reserve such claims for collateral review. In *Trevino*, however, the Court concluded that the exception announced in *Martinez* extended to state systems that, as a practical matter, deny criminal defendants "a meaningful opportunity" to press ineffective assistance claims on direct appeal. 569 U. S., at 428. The Court further concluded that the system in Texas, where petitioner had been convicted, was such a system. *Ibid.* The upshot: Had *Martinez* and *Trevino* been decided before Buck filed his § 2254 petition, a federal court could have reviewed Buck's ineffective assistance claim if he demonstrated that (1) state postconviction counsel had been constitutionally ineffective in failing to raise it, and (2) the claim had "some merit." *Martinez*, 566 U. S., at 14.

D

When *Trevino* was decided, Buck's third state habeas petition was pending in Texas court. That petition was denied in November 2013. *Ex parte Buck*, 418 S. W. 3d 98 (Tex. Crim. App. 2013) (*per curiam*). Two months later, Buck returned to federal court, where he filed a motion to reopen his § 2254 case under Federal Rule of Civil Procedure 60(b)(6). Rule 60(b) enumerates specific circumstances in which a party may be relieved of the effect of a judgment, such as mistake, newly discovered evidence, fraud, and the like. The Rule concludes with a catchall category—subdivision (b)(6)—providing that a court may lift a judgment for "any other reason that justifies relief." Relief is available under subdivision (b)(6), however, only in "extraordinary circumstances," and the Court has explained that "[s]uch cir-

cumstances will rarely occur in the habeas context." *Gonzalez*, 545 U. S., at 535.

In his motion, Buck identified 11 factors that, in his view, justified reopening the judgment. These included his attorney's introduction of expert testimony linking Buck's race to violence, the central issue at sentencing; the prosecution's questions about race and violence on cross-examination and reliance on Dr. Quijano's testimony in summation; the State's confession of error in other cases in which Dr. Quijano testified, but its refusal to concede error in Buck's case; and the change in law effected by *Martinez* and *Trevino*, which, if they had been decided earlier, would have permitted federal review of Buck's defaulted claim. App. 283a–285a.

The District Court denied relief on two grounds. First, the court concluded that Buck had failed to demonstrate extraordinary circumstances. To that end, the court observed that a change in decisional law is rarely extraordinary by itself. *Buck* v. *Stephens*, 2014 WL 11310152, *4 (SD Tex., Aug. 29, 2014). It further determined that the State's "promise" not to oppose resentencing did not count for much, reasoning that "Buck's case is different in critical respects from the cases in which Texas confessed error" in that Buck's lawyer, not the prosecutor, had first elicited the objectionable testimony. *Id.*, at *4–*5. The court also dismissed the contention that the nature of Dr. Quijano's testimony argued for reopening the case. Although "the introduction of any mention of race was," in the court's view, "ill[ ]advised at best and repugnant at worst," it was also "*de minimis*": Dr. Quijano had discussed the connection between race and violence only twice. *Id.*, at *5. The court accordingly concluded that Buck had failed to make out the predicate for Rule 60(b)(6) relief.

Second, the court determined that—even if the circumstances *were* extraordinary—Buck's claim would fail on the merits. The court noted that under *Strickland*, Buck was obliged to show that counsel's performance was both defi-

cient and prejudicial. The court held that Buck's lawyer had indeed performed deficiently in calling Dr. Quijano to give testimony that "len[t] credence to any potential latent racial prejudice held by the jury." 2014 WL 11310152, *6. But, the court concluded, Buck had failed to demonstrate prejudice. It observed that Buck's crime had been "horrific." *Ibid.* And the court had already concluded that "the introduction of any mention of race was . . . *de minimis*." *Id.*, at *5. For those reasons, it held, Buck had failed to show a reasonable probability that he would not have been sentenced to death but for Dr. Quijano's testimony about race and violence.

Buck sought to appeal the denial of his Rule 60(b)(6) motion. He accordingly filed an application for a COA with the Fifth Circuit. To obtain a COA, Buck was required to make "a substantial showing of the denial of a constitutional right."* 28 U. S. C. § 2253(c)(2).

The Fifth Circuit denied a COA, concluding that Buck's case was "not extraordinary at all in the habeas context." *Buck* v. *Stephens*, 623 Fed. Appx. 668, 673 (2015). The panel agreed with the District Court that *Martinez* and *Trevino* were not significant factors in the analysis. It characterized most of the other factors Buck had identified as "variations on the merits" of his claim, which was "at least unremarkable as far as [ineffective assistance] claims go." 623 Fed. Appx., at 673. The panel likewise rejected Buck's argument that he was entitled to relief because the State had issued a press release indicating that his case would be treated like Saldano's, and then had confessed error in the other cases identified as similar in the statement, but not in Buck's. *Id.*, at 674. Because Buck had "not shown extraordinary circum-

*The Federal Courts of Appeals appear to disagree over whether a COA is needed to appeal the denial of a Rule 60(b) motion. See *Gonzalez* v. *Crosby*, 545 U. S. 524, 535, and n. 7 (2005). In keeping with the approach adopted by the Fifth Circuit below and by the parties in their briefs, we assume without deciding that a COA is required here.

stances that would permit relief under Federal Rule of Civil Procedure 60(b)(6)," the panel "den[ied] the application for a COA." *Id.*, at 669.

Buck's motion for rehearing en banc was denied over two dissenting votes. *Buck* v. *Stephens*, 630 Fed. Appx. 251 (CA5 2015) (*per curiam*). We granted certiorari. *Buck* v. *Stephens*, 578 U. S. 1022 (2016).

II

A state prisoner whose petition for a writ of habeas corpus is denied by a federal district court does not enjoy an absolute right to appeal. Federal law requires that he first obtain a COA from a circuit justice or judge. 28 U. S. C. § 2253(c)(1). A COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." § 2253(c)(2). Until the prisoner secures a COA, the court of appeals may not rule on the merits of his case. *Miller-El* v. *Cockrell*, 537 U. S. 322, 336 (2003).

The COA inquiry, we have emphasized, is not coextensive with a merits analysis. At the COA stage, the only question is whether the applicant has shown that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Id.*, at 327. This threshold question should be decided without "full consideration of the factual or legal bases adduced in support of the claims." *Id.*, at 336. "When a court of appeals sidesteps [the COA] process by first deciding the merits of an appeal, and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction." *Id.*, at 336–337.

The court below phrased its determination in proper terms—that jurists of reason would not debate that Buck should be denied relief, 623 Fed. Appx., at 674—but it reached that conclusion only after essentially deciding the

case on the merits. As the court put it in the second sentence of its opinion: "Because [Buck] has not shown extraordinary circumstances that would permit relief under Federal Rule of Civil Procedure 60(b)(6), we deny the application for a COA." *Id.*, at 669. The balance of the Fifth Circuit's opinion reflects the same approach. The change in law effected by *Martinez* and *Trevino*, the panel wrote, was "not an extraordinary circumstance." 623 Fed. Appx., at 674. Even if Texas initially indicated to Buck that he would be resentenced, its "decision not to follow through" was "not extraordinary." *Ibid.* Buck "ha[d] not shown why" the State's alleged broken promise "would justify relief from the judgment." *Ibid.*

But the question for the Fifth Circuit was not whether Buck had "shown extraordinary circumstances" or "shown why [Texas's broken promise] would justify relief from the judgment." *Id.*, at 669, 674. Those are ultimate merits determinations the panel should not have reached. We reiterate what we have said before: A "court of appeals should limit its examination [at the COA stage] to a threshold inquiry into the underlying merit of [the] claims," and ask "only if the District Court's decision was debatable." *Miller-El*, 537 U. S., at 327, 348.

The dissent does not accept this established rule, arguing that a reviewing court that deems a claim nondebatable "must necessarily conclude that the claim is meritless." *Post*, at 129 (opinion of THOMAS, J.). Of course when a court of appeals properly applies the COA standard and determines that a prisoner's claim is not even debatable, that necessarily means the prisoner has failed to show that his claim is meritorious. But the converse is not true. That a prisoner has failed to make the ultimate showing that his claim is meritorious does not logically mean he failed to make a preliminary showing that his claim was debatable. Thus, when a reviewing court (like the Fifth Circuit here) inverts the statutory order of operations and "first decid[es] the mer-

its of an appeal, . . . then justif[ies] its denial of a COA based on its adjudication of the actual merits," it has placed too heavy a burden on the prisoner *at the COA stage*. *Miller-El*, 537 U. S., at 336–337. *Miller-El* flatly prohibits such a departure from the procedure prescribed by § 2253. *Ibid.*

The State defends the Fifth Circuit's approach by arguing that the court's consideration of an application for a COA is often quite thorough. The court "occasionally hears oral argument when considering whether to grant a COA in a capital case." Brief for Respondent 50. Indeed, in one recent case, it "received nearly 200 pages of initial briefing, permitted a reply brief, considered the parties' supplemental authorities, invited supplemental letter briefs from both sides, and heard oral argument before denying the request for a COA." *Id.*, at 50–51.

But this hurts rather than helps the State's case. "[A] claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." *Miller-El*, 537 U. S., at 338. The statute sets forth a two-step process: an initial determination whether a claim is reasonably debatable, and then—if it is—an appeal in the normal course. We do not mean to specify what procedures may be appropriate in every case. But whatever procedures are employed at the COA stage should be consonant with the limited nature of the inquiry.

Given the approach of the court below, it is perhaps understandable that the parties have essentially briefed and argued the underlying merits at length. See, *e. g.*, Brief for Petitioner 32 ("[T]rial counsel rendered deficient performance under *Strickland*."); *id.*, at 39 ("[T]here is a reasonable probability that Dr. Quijano's race-as-dangerousness opinion swayed the judgment of jurors in favor of death." (internal quotation marks and alteration omitted)); *id.*, at 59 (Buck "has demonstrated his entitlement to relief under Rule 60(b)(6)"); Brief for Respondent 40 ("The particular facts of

petitioner's case do not establish extraordinary circumstances justifying relief from the judgment." (boldface type deleted)). With respect to this Court's review, § 2253 does not limit the scope of our consideration of the underlying merits, and at this juncture we think it proper to meet the decision below and the arguments of the parties on their own terms.

III

Buck's request for a COA raised two separate questions for the Fifth Circuit, one substantive and one procedural: first, whether reasonable jurists could debate the District Court's conclusion that Buck was not denied his right to effective assistance of counsel under *Strickland*; and second, whether reasonable jurists could debate the District Court's procedural holding that Buck had not made the necessary showing to reopen his case under Rule 60(b)(6).

A

We begin with the District Court's determination (not specifically addressed by the Fifth Circuit) that Buck's constitutional claim failed on the merits. The Sixth Amendment right to counsel "is the right to the effective assistance of counsel." *Strickland*, 466 U. S., at 686 (quoting *McMann* v. *Richardson*, 397 U. S. 759, 771, n. 14 (1970)). A defendant who claims to have been denied effective assistance must show both that counsel performed deficiently and that counsel's deficient performance caused him prejudice. 466 U. S., at 687.

1

Strickland's first prong sets a high bar. A defense lawyer navigating a criminal proceeding faces any number of choices about how best to make a client's case. The lawyer has discharged his constitutional responsibility so long as his decisions fall within the "wide range of professionally competent assistance." *Id.*, at 690. It is only when the lawyer's errors were "so serious that counsel was not functioning as the

'counsel' guaranteed . . . by the Sixth Amendment" that *Strickland*'s first prong is satisfied. *Id.*, at 687.

The District Court determined that, in this case, counsel's performance fell outside the bounds of competent representation. We agree. Counsel knew that Dr. Quijano's report reflected the view that Buck's race disproportionately predisposed him to violent conduct; he also knew that the principal point of dispute during the trial's penalty phase was whether Buck was likely to act violently in the future. Counsel nevertheless (1) called Dr. Quijano to the stand; (2) specifically elicited testimony about the connection between Buck's race and the likelihood of future violence; and (3) put into evidence Dr. Quijano's expert report that stated, in reference to factors bearing on future dangerousness, "**Race.** Black: Increased probability." App. 19a, 145a–146a.

Given that the jury had to make a finding of future dangerousness before it could impose a death sentence, Dr. Quijano's report said, in effect, that the color of Buck's skin made him more deserving of execution. It would be patently unconstitutional for a State to argue that a defendant is liable to be a future danger because of his race. See *Zant* v. *Stephens*, 462 U. S. 862, 885 (1983) (identifying race among factors that are "constitutionally impermissible or totally irrelevant to the sentencing process"). No competent defense attorney would introduce such evidence about his own client. See *Buck* v. *Thaler*, 565 U. S., at 1022 (statement of ALITO, J., joined by Scalia and BREYER, JJ., respecting denial of certiorari) (Buck's case "concerns bizarre and objectionable testimony").

2

To satisfy *Strickland*, a litigant must also demonstrate prejudice—"a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." 466 U. S., at 694. Accordingly, the question before the District Court was whether Buck had demonstrated a reasonable probability that, without Dr. Qui-

jano's testimony on race, at least one juror would have harbored a reasonable doubt about whether Buck was likely to be violent in the future. The District Court concluded that Buck had not made such a showing. We disagree.

In arguing that the jury would have imposed a death sentence even if Dr. Quijano had not offered race-based testimony, the State primarily emphasizes the brutality of Buck's crime and his lack of remorse. A jury may conclude that a crime's vicious nature calls for a sentence of death. See *Wong* v. *Belmontes*, 558 U. S. 15 (2009) (*per curiam*). In this case, however, several considerations convince us that it is reasonably probable—notwithstanding the nature of Buck's crime and his behavior in its aftermath—that the proceeding would have ended differently had counsel rendered competent representation.

Dr. Quijano testified on the key point at issue in Buck's sentencing. True, the jury was asked to decide two issues—whether Buck was likely to be a future danger, and, if so, whether mitigating circumstances nevertheless justified a sentence of life imprisonment. But the focus of the proceeding was on the first question. Much of the penalty phase testimony was directed to future dangerousness, as were the summations for both sides. The jury, consistent with the focus of the parties, asked during deliberations to see the expert reports on dangerousness. See App. 187a–196a, 198a–203a, 209a.

Deciding the key issue of Buck's dangerousness involved an unusual inquiry. The jurors were not asked to determine a historical fact concerning Buck's conduct, but to render a predictive judgment inevitably entailing a degree of speculation. Buck, all agreed, had committed acts of terrible violence. Would he do so again?

Buck's prior violent acts had occurred outside of prison, and within the context of romantic relationships with women. If the jury did not impose a death sentence, Buck would be sentenced to life in prison, and no such romantic relationship

would be likely to arise. A jury could conclude that those changes would minimize the prospect of future dangerousness.

But one thing would never change: the color of Buck's skin. Buck would always be black. And according to Dr. Quijano, that immutable characteristic carried with it an "[i]ncreased probability" of future violence. *Id.*, at 19a. Here was hard statistical evidence—from an expert—to guide an otherwise speculative inquiry.

And it was potent evidence. Dr. Quijano's testimony appealed to a powerful racial stereotype—that of black men as "violence prone." *Turner* v. *Murray*, 476 U. S. 28, 35 (1986) (plurality opinion). In combination with the substance of the jury's inquiry, this created something of a perfect storm. Dr. Quijano's opinion coincided precisely with a particularly noxious strain of racial prejudice, which itself coincided precisely with the central question at sentencing. The effect of this unusual confluence of factors was to provide support for making a decision on life or death on the basis of race.

This effect was heightened due to the source of the testimony. Dr. Quijano took the stand as a medical expert bearing the court's imprimatur. The jury learned at the outset of his testimony that he held a doctorate in clinical psychology, had conducted evaluations in some 70 capital murder cases, and had been appointed by the trial judge (at public expense) to evaluate Buck. App. 138a–141a. Reasonable jurors might well have valued his opinion concerning the central question before them. See *Satterwhite* v. *Texas*, 486 U. S. 249, 259 (1988) (testimony from "a medical doctor specializing in psychiatry" on the question of future dangerousness may have influenced the sentencing jury).

For these reasons, we cannot accept the District Court's conclusion that "the introduction of any mention of race" during the penalty phase was "*de minimis*." 2014 WL 11310152, *5. There were only "two references to race in Dr. Quijano's testimony"—one during direct examination, the other on cross. *Ibid.* But when a jury hears expert

testimony that expressly makes a defendant's race directly pertinent on the question of life or death, the impact of that evidence cannot be measured simply by how much air time it received at trial or how many pages it occupies in the record. Some toxins can be deadly in small doses.

The State acknowledges, as it must, that introducing "race or ethnicity as evidence of criminality" can in some cases prejudice a defendant. Brief for Respondent 31. But it insists that this is not such a case, because Buck's own counsel, not the prosecution, elicited the offending testimony. We are not convinced. In fact, the distinction could well cut the other way. A prosecutor is seeking a conviction. Jurors understand this and may reasonably be expected to evaluate the government's evidence and arguments in light of its motivations. When a defendant's own lawyer puts in the offending evidence, it is in the nature of an admission against interest, more likely to be taken at face value.

The effect of Dr. Quijano's testimony on Buck's sentencing cannot be dismissed as "*de minimis*." Buck has demonstrated prejudice.

B

1

We now turn to the lower courts' procedural holding: that Buck failed to demonstrate that he was entitled to have the judgment against him reopened under Rule 60(b)(6). We have held that a litigant seeking a COA must demonstrate that a procedural ruling barring relief is itself debatable among jurists of reason; otherwise, the appeal would not "deserve encouragement to proceed further." *Slack* v. *McDaniel*, 529 U. S. 473, 484 (2000) (quoting *Barefoot* v. *Estelle*, 463 U. S. 880, 893, n. 4 (1983)).

The Rule 60(b)(6) holding Buck challenges would be reviewed for abuse of discretion during a merits appeal, see 11 C. Wright, A. Miller, & M. Kane, Federal Practice and Proce-

dure § 2857 (3d ed. 2012), and the parties agree that the COA question is therefore whether a reasonable jurist could conclude that the District Court abused its discretion in declining to reopen the judgment. See Brief for Petitioner 54–57; Brief for Respondent 34.

Buck brought his Rule 60(b) motion under the Rule's catchall category, subdivision (b)(6), which permits a court to reopen a judgment for "any other reason that justifies relief." Rule 60(b) vests wide discretion in courts, but we have held that relief under Rule 60(b)(6) is available only in "extraordinary circumstances." *Gonzalez*, 545 U. S., at 535. In determining whether extraordinary circumstances are present, a court may consider a wide range of factors. These may include, in an appropriate case, "the risk of injustice to the parties" and "the risk of undermining the public's confidence in the judicial process." *Liljeberg* v. *Health Services Acquisition Corp.*, 486 U. S. 847, 864 (1988).

In the circumstances of this case, the District Court abused its discretion in denying Buck's Rule 60(b)(6) motion. The District Court's conclusion that Buck "ha[d] failed to demonstrate that this case presents extraordinary circumstances" rested in large measure on its determination that "the introduction of any mention of race"—though "ill[ ]advised at best and repugnant at worst"—played only a "*de minimis*" role in the proceeding. 2014 WL 11310152, *5. The Fifth Circuit, for its part, failed even to mention the racial evidence in concluding that Buck's claim was "at least unremarkable as far as [ineffective assistance] claims go." 623 Fed. Appx., at 673. But our holding on prejudice makes clear that Buck may have been sentenced to death in part because of his race. As an initial matter, this is a disturbing departure from a basic premise of our criminal justice system: Our law punishes people for what they do, not who they are. Dispensing punishment on the basis of an immutable characteristic flatly contravenes this guiding principle. As petitioner correctly puts it, "[i]t stretches credulity to char-

acterize Mr. Buck's [ineffective assistance of counsel] claim as run-of-the-mill." Brief for Petitioner 57.

This departure from basic principle was exacerbated because it concerned race. "Discrimination on the basis of race, odious in all aspects, is especially pernicious in the administration of justice." *Rose* v. *Mitchell*, 443 U. S. 545, 555 (1979). Relying on race to impose a criminal sanction "poisons public confidence" in the judicial process. *Davis* v. *Ayala*, 576 U. S. 257, 285 (2015). It thus injures not just the defendant, but "the law as an institution, . . . the community at large, and . . . the democratic ideal reflected in the processes of our courts." *Rose*, 443 U. S., at 556 (internal quotation marks omitted). Such concerns are precisely among those we have identified as supporting relief under Rule 60(b)(6). See *Liljeberg*, 486 U. S., at 864.

The extraordinary nature of this case is confirmed by what the State itself did in response to Dr. Quijano's testimony. When the case of Victor Hugo Saldano came before this Court, Texas confessed error and consented to resentencing. The State's response to Saldano's petition for certiorari succinctly expressed the injustice Saldano had suffered: "the infusion of race as a factor for the jury to weigh in making its determination violated his constitutional right to be sentenced without regard to the color of his skin." App. 306a.

The Attorney General's public statement, issued shortly after we vacated the judgment in Saldano's case, reflected this sentiment. It explained that the State had responded to Saldano's troubling petition by conducting a "thorough audit" of criminal cases, finding six similar to Saldano's "in which testimony was offered by Dr. Quijano that race should be a factor for the jury to consider." *Id.*, at 213a. The statement affirmed that "it is inappropriate to allow race to be considered as a factor in our criminal justice system." *Ibid.* Consistent with this position—and to its credit—the State confessed error in the cases of five of the six defendants identified in the Attorney General's statement, waiv-

ing all available procedural defenses and consenting to resentencing.

These were remarkable steps. It is not every day that a State seeks to vacate the sentences of five defendants found guilty of capital murder. But then again, these were—as the State itself put it at oral argument here—"extraordinary" cases. Tr. of Oral Arg. 41; see *Buck* v. *Thaler*, 565 U. S., at 1030 (SOTOMAYOR, J., joined by KAGAN, J., dissenting from denial of certiorari) ("Especially in light of the capital nature of this case and the express recognition by a Texas attorney general that the relevant testimony was inappropriately race charged, Buck has presented issues that 'deserve encouragement to proceed further.' " (quoting *Miller-El*, 537 U. S., at 327)).

To be sure, the State has repeatedly attempted to justify its decision to treat Buck differently from the other five defendants identified in the Attorney General's statement, including on asserted factual grounds that the State has been required to abjure. See Brief for Respondent 46, n. 10 (the State's initial opposition to Buck's habeas petition "erroneously" argued that Buck was treated differently because defense counsel, not the State, called Dr. Quijano as a witness; that was also true of two of the other defendants). The State continues its efforts before this Court, arguing that Buck's was the only one of the six cases in which defense counsel, not the prosecution, first elicited Dr. Quijano's opinion on race. See also *post*, at 135 (opinion of THOMAS, J.).

But this is beside the point. The State's various explanations for distinguishing Buck's case have nothing to do with the Attorney General's stated reasons for confessing error in *Saldano* and the cases acknowledged as similar. Regardless of which party first broached the subject, race was in all these cases put to the jury "as a factor . . . to weigh in making its determination." App. 306a. The statement that "it is inappropriate to allow race to be considered as a factor in our criminal justice system" is equally applicable whether

the prosecution or ineffective defense counsel initially injected race into the proceeding. *Id.*, at 213a. The terms of the State's announcement provide every reason for originally including Buck on the list of defendants situated similarly to Saldano, and no reason for later taking him off.

In opposition, the State reminds us of the importance of preserving the finality of judgments. Brief for Respondent 34. But the "whole purpose" of Rule 60(b) "is to make an exception to finality." *Gonzalez*, 545 U. S., at 529. And in this case, the State's interest in finality deserves little weight. When Texas recognized that the infusion of race into proceedings similar to Saldano's warranted confession of error, it effectively acknowledged that the people of Texas lack an interest in enforcing a capital sentence obtained on so flawed a basis. In concluding that the value of finality does not demand that we leave the District Court's judgment in place, we do no more than acknowledge what Texas itself recognized 17 years ago.

2

Our Rule 60(b)(6) analysis has thus far omitted one significant element. When Buck first sought federal habeas relief in 2004, *Coleman* barred the District Court from hearing his claim. Today, however, a claim of ineffective assistance of trial counsel defaulted in a Texas postconviction proceeding may be reviewed in federal court if state habeas counsel was constitutionally ineffective in failing to raise it, and the claim has "some merit." *Martinez*, 566 U. S., at 14; see *Trevino*, 569 U. S., at 427–428. Buck cannot obtain relief unless he is entitled to the benefit of this rule—that is, unless *Martinez* and *Trevino*, not *Coleman*, would govern his case were it reopened. If they would not, his claim would remain unreviewable, and Rule 60(b)(6) relief would be inappropriate. See 11 Wright & Miller, Federal Practice and Procedure § 2857 (showing "a good claim or defense" is a precondition of Rule 60(b)(6) relief).

Until merits briefing in this Court, both parties litigated this matter on the assumption that *Martinez* and *Trevino* would apply if Buck reopened his case. See Pet. for Cert. 27–28; Brief in Opposition 11–13; Amended Application for Certificate of Appealability and Brief in Support 26, Respondent-Appellee's Opposition to Pet. for En Banc Rehearing 9–11, and Respondent's Opposition to Application for Certificate of Appealability 15–17 in No. 14–70030 (CA5); Amended Response to Motion for Relief from Judgment in No. 4:04–cv–03965 (SD Tex.), pp. 11–13. But the State's brief adopts a new position on this issue. The State now argues that those cases announced a "new rule" that, under *Teague* v. *Lane*, 489 U. S. 288 (1989) (plurality opinion), does not apply retroactively to cases (like Buck's) on collateral review. Brief for Respondent 38–40. Buck responds that *Teague* analysis applies only to new rules of criminal procedure that govern trial proceedings—not new rules of habeas procedure that govern collateral proceedings—and that the State has in any event waived its *Teague* argument. Reply Brief 20.

We agree that the argument has been waived. See *Danforth* v. *Minnesota*, 552 U. S. 264, 289 (2008) ("States can waive a *Teague* defense . . . by failing to raise it in a timely manner . . . ."). It was not advanced in District Court, before the Fifth Circuit, or in the State's brief in opposition to Buck's petition for certiorari. Although we may reach the issue in our discretion, we have observed before that a State's failure to raise a *Teague* argument at the petition stage is particularly "significant" in deciding whether such an exercise of discretion is appropriate. *Schiro* v. *Farley*, 510 U. S. 222, 228–229 (1994). When "a legal issue appears to warrant review, we grant certiorari in the expectation of being able to decide that issue." *Id.*, at 229. If we were to entertain the State's eleventh-hour *Teague* argument and find it persuasive, Buck's *Strickland* and Rule 60(b)(6) contentions—the issues we thought worthy of review—would be

insulated from our consideration. We therefore decline to reach the *Teague* question and conclude that *Martinez* and *Trevino* apply to Buck's claim. We reach no broader determination concerning the application of these cases.

C

For the foregoing reasons, we conclude that Buck has demonstrated both ineffective assistance of counsel under *Strickland* and an entitlement to relief under Rule 60(b)(6). It follows that the Fifth Circuit erred in denying Buck the COA required to pursue these claims on appeal.

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

It is so ordered.

JUSTICE THOMAS, with whom JUSTICE ALITO joins, dissenting.

Having settled on a desired outcome, the Court bulldozes procedural obstacles and misapplies settled law to justify it. But the majority's focus on providing relief to petitioner in this particular case has at least one upside: Today's decision has few ramifications, if any, beyond the highly unusual facts presented here. The majority leaves entirely undisturbed the black-letter principles of collateral review, ineffective assistance of counsel, and Rule 60(b)(6) law that govern day-to-day operations in federal courts.

I

In reversing the judgment below, the majority relies on three grounds: that the Fifth Circuit misapplied the standard for granting a certificate of appealability (COA); that the District Court erroneously rejected petitioner's Sixth Amendment ineffective-assistance-of-counsel claim; and that the District Court abused its discretion in rejecting petition-

er's Federal Rule of Civil Procedure 60(b)(6) motion to reopen the court's earlier judgment denying habeas relief. On each ground, the majority simply disagrees with the courts below over the *application* of the governing standard. The majority does not announce any new standards or suggest that the District Court or the Fifth Circuit applied the wrong standards altogether. See, *e. g.*, *ante*, at 115 ("The court below phrased its determination in proper terms . . . "). I agree with the majority that the courts below identified the correct standards for all three of these inquiries. Contrary to the majority's conclusion, however, I would hold that they correctly applied those standards, too.

A

At the outset, the Court wrongly criticizes the Fifth Circuit for its application of the COA standard. A COA is warranted only if the district court's ruling is "debatable amongst jurists of reason." *Miller-El* v. *Cockrell*, 537 U. S. 322, 336 (2003). To answer this question, a court must conduct a "general assessment" of the merits of a defendant's claim. *Ibid.* The majority faults the Fifth Circuit for concluding outright that petitioner "'has not shown extraordinary circumstances that would permit relief under [Rule] 60(b)(6).'" *Ante*, at 116 (quoting *Buck* v. *Stephens*, 623 Fed. Appx. 668, 669 (CA5 2015)). In the majority's view, the existence of extraordinary circumstances represents an "ultimate merits determinatio[n] the panel should not have reached." *Ante*, at 116. Instead, according to the majority, the panel should have limited itself to the threshold question whether the merits were debatable.

The majority's criticism of the Fifth Circuit is misplaced. A court may grant a COA even if it might ultimately conclude that the underlying claim is meritless, so long as the claim is debatable. *Miller-El*, *supra*, at 336. But to deny a COA, a court must necessarily conclude that the claim is meritless. A reviewing court cannot determine that a claim is in-

disputably meritless (that is, nondebatable) without first deciding that it *is* meritless. See *Slack* v. *McDaniel*, 529 U. S. 473, 484 (2000) ("Where a plain procedural bar is present and the district court *is correct* to invoke it to dispose of the case," the claim is not debatable (emphasis added)); *Weeks* v. *Angelone*, 528 U. S. 225, 231, 234 (2000) (affirming denial of COA after determining that petitioner's claim was meritless).

In concluding that petitioner's claims were indisputably meritless as a prelude to denying the COA, the Fifth Circuit thus adopted the approach that courts must take in denying a COA. The majority might disagree with the conclusion that petitioner's claims are indisputably meritless, but its criticism of the Fifth Circuit's approach is most certainly misguided. The majority's contrary approach would prevent a court of appeals from denying a COA in any case, an outcome that Congress and our precedents have plainly foreclosed. See 28 U. S. C. § 2253(c)(2) (COA warranted only if petitioner makes "a substantial showing of the denial of a constitutional right"); *Miller-El*, *supra*, at 337 (The "issuance of a COA must not be *pro forma* or a matter of course"). The majority's comment that "[u]ntil the prisoner secures a COA, the court of appeals may not rule on the merits of his case," *ante*, at 115, should not be taken at face value.

In any event, after chastising the Court of Appeals for making an end run around the COA standard in order to reach the merits of petitioner's Rule 60(b) claim, the Court does precisely that. See *ante*, at 128 ("[W]e conclude that Buck has demonstrated . . . an entitlement to relief under Rule 60(b)(6)"). Astonishingly, the Court also decides the merits of petitioner's Sixth Amendment claim—an issue that was not even "addressed by the Fifth Circuit." *Ante*, at 118; see *ante*, at 128 ("Buck has demonstrated . . . ineffective assistance of counsel under *Strickland* [v. *Washington*, 466 U. S. 668 (1984)]").

After reaching out to adjudicate the merits, the Court relies on its merits disposition to justify reversing the Fifth

Circuit's denial of a COA. *Ante*, at 128 ("*It follows that* the Fifth Circuit erred in denying Buck the COA required to pursue these claims on appeal" (emphasis added)). This unapologetic course reversal—made without so much as a hint of the irony—is striking. The majority also has things just backwards. It criticizes the Fifth Circuit for undertaking a merits inquiry to deny a COA (when such an inquiry is required) and then it conducts a merits inquiry to decide that petitioner's claim is debatable (when such an inquiry is inappropriate).

B

The Court's application of the standard in *Strickland* v. *Washington*, 466 U. S. 668 (1984), is similarly misguided. In particular, the Court erroneously finds that petitioner's claim satisfies *Strickland*'s second prong, which requires a defendant to show that his counsel's mistake materially prejudiced his defense. Prejudice exists only when correcting the alleged error would have produced a "substantial" likelihood of a different result. *Harrington* v. *Richter*, 562 U. S. 86, 111–112 (2011). Here, the sentence of death hinged on the jury's finding that petitioner posed a threat of future dangerousness. Texas' standard for making such a finding is not difficult to satisfy: "The facts of the offense alone may be sufficient to sustain the jury's finding of future dangerousness," and "[a] jury may also infer a defendant's future dangerousness from evidence showing a lack of remorse." *Buntion* v. *State*, 482 S. W. 3d 58, 66–67 (Tex. Crim. App. 2016).

The majority neglects even to mention the relevant legal standard in Texas, relying instead on rhetoric and speculation to craft a finding of prejudice. But the prosecution's evidence of both the heinousness of petitioner's crime and his complete lack of remorse was overwhelming. Accordingly, Dr. Quijano's "*de minimis*" racial testimony, *Buck* v. *Stephens*, 2014 WL 11310152, *5 (SD Tex., Aug. 29, 2014), did not prejudice petitioner.

First, the facts leave no doubt that this crime was premeditated and cruel. The Court recites defense testimony describing the killing spree here as a "crime of passion," *ante*, at 106 (internal quotation marks omitted), but the record belies that characterization. The rampage occurred at the home of Debra Gardner, petitioner's ex-girlfriend. Prior to the shooting, petitioner called her house. His stepsister, Phyllis Taylor, answered, and petitioner asked to speak with Gardner. Gardner declined, and petitioner hung up. Petitioner then retrieved a shotgun and rifle, loaded both guns, and drove *28 miles* to Gardner's house. Upon arrival, he broke down the door and opened fire without provocation. The shooting did not occur in the heat of the moment.

In addition to describing this as a crime of passion, the majority also parrots defense testimony that petitioner's violence was limited to "the context of romantic relationships." *Ante*, at 120. But this assertion is also quite wrong. Upon entering Gardner's house, petitioner first shot at an acquaintance, Harold Ebnezer. He next approached his stepsister, Taylor, who was seated on the couch. He said, "'I'm going to shoot your ass too.'" App. 82a. She begged him, "'Duane, please don't shoot me. I'm your sister. I don't deserve to be shot. Remember I do have children.'" *Id.*, at 83a. Petitioner ignored her pleas, placed the gun on her chest, and shot her. Petitioner does not claim that he was in a romantic relationship with either Ebnezer or Taylor.

After shooting Taylor, petitioner cornered one of Gardner's friends, Kenneth Butler, and shot him, as well. He then exited the house and chased Gardner into the middle of the street. She turned to him and pleaded, "'Please don't shoot me. Please don't shoot me. Why are you doing this in front of my kids?'" *Id.*, at 104a. Her son, Devon, watched from the sidewalk. Her daughter, Shennel, begged petitioner to spare her mother and even attempted to restrain him. Petitioner pointed the gun at Gardner and said, "'I'm going to shoot you. I'm going to shoot your A[ss].'"

Id., at 117a. He then did so. The flight path of the bullet suggests that Gardner was on her knees when petitioner shot her.

Second, the evidence of petitioner's lack of remorse, largely ignored by the majority, is startling. After shooting Gardner, petitioner walked back to his car and placed the firearms in the trunk. He then returned to taunt Gardner where she lay mortally wounded and bleeding in the street. He said, "'It ain't funny now. You ain't laughing now.'" *Id.*, at 106a. Police arrived shortly thereafter and arrested him. In the patrol car, petitioner was "laughing and joking and taunting." *Id.*, at 71a. He continued to smile and laugh during the drive to the police station. When one of the officers informed petitioner that he did not find the situation humorous, petitioner replied that "'[t]he bitch got what she deserved.'" *Id.*, at 135a. He remained happy and upbeat for the remainder of the drive, even commenting that he was going to heaven because God had already forgiven him.

C

Finally, the majority incorrectly concludes that the District Court erred in denying petitioner's motion under Rule 60(b)(6), which permits district courts to reopen otherwise final judgments only in "extraordinary circumstances." *Ackermann* v. *United States*, 340 U. S. 193, 199 (1950). Although the majority pays lipservice to the fact that the District Court's decision on this point is subject to "limited and deferential appellate review," *Gonzalez* v. *Crosby*, 545 U. S. 524, 535 (2005); see *ante*, at 122–123, it proceeds to conduct a *de novo* review. Indeed, the majority references the District Court's analysis only once in the entire section of its opinion addressing Rule 60(b)(6). But the question is not whether *this* Court thinks the circumstances are extraordinary; the question is whether reasonable jurists would debate that the District Court abused its discretion in reaching the equitable, highly factbound conclusion that they are not.

Particularly in light of our admonition that such circumstances "will rarely occur in the habeas context," 545 U. S., at 535, I think it is not debatable that the District Court acted within its discretion in denying Rule 60(b)(6) relief here.

In reversing the Fifth Circuit, the centerpiece of the Court's analysis is its observation that "'[d]iscrimination on the basis of race, odious in all aspects, is especially pernicious in the administration of justice.'" *Ante*, at 124 (quoting *Rose* v. *Mitchell*, 443 U. S. 545, 555 (1979)). I agree that racial classifications are categorically impermissible under the Equal Protection Clause—but petitioner is not raising an equal protection claim. The many precedents the Court cites interpreting *that* Clause are therefore beside the point. Instead, petitioner is claiming that his case presents extraordinary circumstances under Rule 60(b)(6). The majority identifies no precedents regarding race in the Rule 60(b)(6) context. And certainly nothing in the text or history of Rule 60(b)(6)—unlike the text and history of the Equal Protection Clause—suggests that race-based claims demand unique solicitude in this context. At the very least, the District Court did not abuse its discretion in determining that they do not.[1]

In a similar vein, the majority suggests that the use of race in petitioner's capital proceeding injured the public's confidence in the integrity of our judicial system. *Ante*, at 124. This argument cannot be squared with the District Court's finding that the challenged racial testimony was "*de minimis*." 2014 WL 11310152, *5. It also ignores the fact that petitioner's *own counsel* elicited the testimony. The majority obscures this point by citing cases concerning al-

[1] That is especially true given that Dr. Quijano's testimony is relevant to the Rule 60(b)(6) inquiry, under the majority's reasoning, only insofar as it was prejudicial. See *ante*, at 123 ("[O]ur holding on prejudice makes clear that Buck may have been sentenced to death in part because of his race"). As I have explained, the testimony was not prejudicial.

leged racial discrimination by an agent of the state. See *ante*, at 124 (citing, *e. g.*, *Davis* v. *Ayala*, 576 U. S. 257 (2015) (addressing the *prosecutor's* use of peremptory strikes and holding that any constitutional error was harmless)). There, the injury to public confidence derives from the fact that the government itself is discriminating against the defendant. The same cannot be said, however, when defense counsel introduces harmful testimony or makes a bad strategic choice.[2]

In conjunction with its observations about race, the Court notes that the Texas attorney general, in response to similar testimony from Dr. Quijano in another case, issued a press release decrying the use of race in the justice system and subsequently waived all procedural obstacles to resentencing in several cases in which Dr. Quijano testified. But Texas had good reason for treating this case differently from the others. Of those cases, this is the only one where "it can be said that the responsibility for eliciting the offensive testimony lay squarely with the defense." *Buck* v. *Thaler*, 565 U. S. 1022, 1025 (2011) (ALITO, J., statement respecting denial of certiorari).

Lastly, the Court belittles Texas' claimed interest in finality. In the majority's view, Texas effectively forfeited its finality interest when it waived its procedural defenses in purportedly similar cases. See *ante*, at 126. But Texas did not waive its procedural defenses in this case, and, in any event, Texas is not alone in possessing an interest in the finality of petitioner's sentence. Society at large has the same interest. Finality advances values "essential to the operation of our criminal justice system." *Teague* v. *Lane*, 489 U. S. 288, 309 (1989) (plurality opinion). It promotes the law's deterrent effect; it provides peace of mind to a wrong-

[2] Although the prosecution on cross-examination asked Dr. Quijano a single question about his views on race, the question arose in the course of canvassing his expert report, and did not extend beyond the testimony already elicited by the defense. App. 170a.

doer's victims; it promotes public confidence in the justice system; it conserves limited public resources; and it ensures the clarity of legal rights and statuses.

The Court's finality analysis also ignores the lengthy passage of time (nearly eight years) between the District Court's original rejection of habeas relief in this case and petitioner's filing of the instant Rule 60(b)(6) motion. See *Gonzalez*, 545 U. S., at 542, n. 4 (Stevens, J., dissenting) ("In cases where significant time has elapsed between a habeas judgment and the relevant change in procedural law, it would be within a district court's discretion to leave such a judgment in repose"). Permitting a defendant to file a Rule 60(b) motion years after the fact functionally eviscerates the statute of limitations contained in the Antiterrorism and Effective Death Penalty Act of 1996, thereby undermining its purpose of "lend[ing] finality to state court judgments within a reasonable time." *Day* v. *McDonough*, 547 U. S. 198, 205–206 (2006) (internal quotation marks omitted).

II

Despite its errors, today's opinion should have little effect on the broader law, for two reasons. For one thing, the Court's reasoning is highly factbound, and the facts presented here are unlikely to arise again. For another, although the majority misapplies settled principles, it does not purport to actually alter any of those principles.

A

This is an unusual case, and the majority's single-minded focus on according relief to *this* petitioner on *these* facts naturally limits the reach of its decision. In cases presenting different facts, today's decision will provide little guidance. The Court's ultimate conclusion relies on the convergence of three critical factors that will rarely, if ever, recur. See *ante*, at 121 (describing this case as involving an "unusual confluence of factors" that together create a "perfect storm").

First, the Court places special weight on the fact that this is a capital case. See, *e. g.*, *ante*, at 125 (noting "the capital nature of this case" as a factor favoring Rule 60(b)(6) relief (internal quotation marks omitted)). Second, the Court notes that the testimony at issue was expressly racial and suggested that petitioner was more deserving of the death penalty because he is black. See, *e. g.*, *ante*, at 123 ("Buck may have been sentenced to death in part because of his race. . . . [T]his is a disturbing departure from a basic premise of our criminal justice system").[3] Third, the Court explains that the state attorney general took the "remarkable steps," *ante*, at 125, of publicly declaring that Dr. Quijano's testimony in this case was inappropriate and waiving all procedural defenses to resentencing in similar cases. See, *e. g.*, *ante*, at 124 ("The extraordinary nature of this case is confirmed by what the State itself did in response to Dr. Quijano's testimony").

B

The effect of today's decision is also limited for a second reason. Although the majority misapplies many existing doctrines, it refrains from announcing any new principles of law. In particular, it leaves untouched—and courts should accordingly continue to apply as usual—established principles governing collateral review, ineffective-assistance-of-counsel claims, and Rule 60(b)(6) motions.

At the outset, the opinion leaves intact *Miller-El*'s well-worn COA standard for habeas petitions: Courts of appeals should deny applications when the district court's ruling is not "debatabl[y]" wrong. 537 U. S., at 336; see *ante*, at 115. "A prisoner seeking a COA must prove something more than

[3] Dr. Quijano also testified that petitioner was more likely to be dangerous in the future because he is male. Petitioner does not claim that this testimony renders his case extraordinary, and the Court does not so hold. Any such claim would find no support in today's decision, given the importance of the *racial* nature of the testimony at issue to the Court's reasoning.

the absence of frivolity or the existence of mere good faith on his or her part." 537 U. S., at 338 (internal quotation marks omitted). Courts have substantial discretion in deciding how to structure this inquiry. See *ante*, at 117 ("We do not mean to specify what procedures may be appropriate in every case").

The Court also reaffirms the "'highly deferential'" character of the *Strickland* standard. *Harrington*, 562 U. S., at 105 (quoting *Strickland*, 466 U. S., at 689); see, *e. g.*, *ante*, at 118 (first prong of *Strickland* "sets a high bar"). Courts applying *Strickland* must respect "the constitutionally protected independence of counsel and the wide latitude counsel must have in making tactical decisions." *Cullen* v. *Pinholster*, 563 U. S. 170, 195 (2011) (internal quotation marks and alteration omitted). Counsel should be "strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.*, at 189 (internal quotation marks omitted). And a defendant can show prejudice only if the likelihood of a different result would have been "substantial, not just conceivable." *Harrington*, *supra*, at 112.

Perhaps most significantly, the test for reopening judgments under Rule 60(b)(6) remains the same. A "'very strict interpretation of Rule 60(b) is essential if the finality of judgments is to be preserved.'" *Gonzalez*, *supra*, at 535 (quoting *Liljeberg* v. *Health Services Acquisition Corp.*, 486 U. S. 847, 873 (1988) (Rehnquist, C. J., dissenting)). A district court may grant relief only if the movant can show "extraordinary circumstances," which "will rarely occur in the habeas context." 545 U. S., at 535 (internal quotation marks omitted); see *ante*, at 112–113. A change in law alone is not enough. See 545 U. S., at 536–537. And a district court's decision to deny relief is subject to only "limited and deferential" appellate review. *Id.*, at 535.

Although petitioner argues that the change in law effected by *Martinez* v. *Ryan*, 566 U. S. 1 (2012), and *Trevino* v. *Tha-*

ler, 569 U. S. 413 (2013), is central to the Rule 60(b)(6) inquiry, see Brief for Petitioner 56; Reply Brief 19, the Court does not even count those decisions in its tally of extraordinary circumstances. Instead, it treats a potentially viable *Martinez* claim as a "precondition" to relief. *Ante*, at 126. This makes sense: Unless petitioner has the ability to invoke *Martinez* and *Trevino*, reopening the judgment would be futile. For those in petitioner's position, the absence of a potentially valid *Martinez* claim is disqualifying, but the presence of one does nothing to demonstrate the existence of extraordinary circumstances.

III

Finally, the Court's opinion does not require the lower courts to reflexively accord relief to petitioner on remand. In order to succeed under *Martinez* and *Trevino*, petitioner must establish that his state habeas counsel was constitutionally ineffective for failing to raise a *Strickland* claim as to his trial counsel. Today's decision does not address that showing, and the court on remand should not treat it as a foregone conclusion.

I respectfully dissent.

Syllabus

LIFE TECHNOLOGIES CORP. ET AL. *v.* PROMEGA CORP.

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

No. 14–1538. Argued December 6, 2016—Decided February 22, 2017

Respondent Promega Corporation sublicensed the Tautz patent, which claims a toolkit for genetic testing, to petitioner Life Technologies Corporation and its subsidiaries (collectively Life Technologies) for the manufacture and sale of the kits for use in certain licensed law enforcement fields worldwide. One of the kit's five components, an enzyme known as the *Taq* polymerase, was manufactured by Life Technologies in the United States and then shipped to the United Kingdom, where the four other components were made, for combination there. When Life Technologies began selling the kits outside the licensed fields of use, Promega sued, claiming that patent infringement liability was triggered under § 271(f)(1) of the Patent Act, which prohibits the supply from the United States of "all or a substantial portion of the components of a patented invention" for combination abroad. The jury returned a verdict for Promega, but the District Court granted Life Technologies' motion for judgment as a matter of law, holding that § 271(f)(1)'s phrase "all or a substantial portion" did not encompass the supply of a single component of a multicomponent invention. The Federal Circuit reversed. It determined that a single important component could constitute a "substantial portion" of the components of an invention under § 271(f)(1) and found the *Taq* polymerase to be such a component.

Held: The supply of a single component of a multicomponent invention for manufacture abroad does not give rise to § 271(f)(1) liability. Pp. 145–152.

(a) Section 271(f)(1)'s phrase "substantial portion" refers to a quantitative measurement. Although the Patent Act itself does not define the term "substantial," and the term's ordinary meaning may refer either to qualitative importance or to quantitatively large size, the statutory context points to a quantitative meaning. Neighboring words "all" and "portion" convey a quantitative meaning, and nothing in the neighboring text points to a qualitative interpretation. Moreover, a qualitative reading would render the modifying phrase "of the components" unnecessary the first time it is used in § 271(f)(1). Only the quantitative approach thus gives meaning to each statutory provision.

Promega's proffered "case-specific approach," which would require a factfinder to decipher whether the components at issue are a "substan-

tial portion" under either a qualitative or a quantitative test, is rejected. Tasking juries with interpreting the statute's meaning on an ad hoc basis would only compound, not resolve, the statute's ambiguity. And Promega's proposal to adopt an analytical framework that accounts for both the components' quantitative and qualitative aspects is likely to complicate rather than aid the factfinder's review. Pp. 145–149.

(b) Under a quantitative approach, a single component cannot constitute a "substantial portion" triggering § 271(f)(1) liability. This conclusion is reinforced by § 271(f)'s text, context, and structure. Section 271(f)(1) consistently refers to the plural "components," indicating that multiple components make up the substantial portion. Reading § 271(f)(1) to cover any single component would also leave little room for § 271(f)(2), which refers to "any component," and would undermine § 271(f)(2)'s express reference to a single component "especially made or especially adapted for use in the invention." The better reading allows the two provisions to work in tandem and gives each provision its unique application. Pp. 149–151.

(c) The history of § 271(f) further bolsters this conclusion. Congress enacted § 271(f) in response to *Deepsouth Packing Co.* v. *Laitram Corp.*, 406 U. S. 518, to fill a gap in the enforceability of patent rights by reaching components that are manufactured in the United States but assembled overseas. Consistent with Congress' intent, a supplier may be liable under § 271(f)(1) for supplying from the United States all or a substantial portion of the components of the invention or under § 271(f)(2) for supplying a single component if it is especially made or especially adapted for use in the invention and not a staple article or commodity. But, as here, when a product is made abroad and all components but a single commodity article are supplied from abroad, the activity is outside the statute's scope. Pp. 151–152.

773 F. 3d 1338, reversed and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which KENNEDY, GINSBURG, BREYER, and KAGAN, JJ., joined, and in which THOMAS and ALITO, JJ., joined as to all but Part II–C. ALITO, J., filed an opinion concurring in part and concurring in the judgment, in which THOMAS, J., joined, *post,* p. 152. ROBERTS, C. J., took no part in the decision of the case.

Carter G. Phillips argued the cause for petitioners. With him on the briefs was *Robert N. Hochman.*

Zachary D. Tripp argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief

were *Acting Solicitor General Gershengorn*, *Principal Deputy Assistant Attorney General Mizer*, *Deputy Solicitor General Stewart*, *Mark R. Freeman*, *Sarah T. Harris*, *Thomas W. Krause*, *Scott C. Weidenfeller*, and *Monica B. Lateef*.

Seth P. Waxman argued the cause for respondent. With him on the brief were *Thomas G. Saunders*, *Mark C. Fleming*, and *Eric F. Fletcher*.*

JUSTICE SOTOMAYOR delivered the opinion of the Court.

This case concerns the intersection of international supply chains and federal patent law. Section 271(f)(1) of the Patent Act of 1952 prohibits the supply from the United States of "all or a substantial portion" of the components of a patented invention for combination abroad. 35 U. S. C. §271(f)(1). We granted certiorari to determine whether a party that supplies a single component of a multicomponent invention for manufacture abroad can be held liable for infringement under §271(f)(1). 579 U. S. 927 (2016). We hold that a single component does not constitute a substantial portion of the components that can give rise to liability under §271(f)(1). Because only a single component of the patented invention at issue here was supplied from the United States, we reverse and remand.

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*Briefs of *amici curiae* urging reversal were filed for Agilent Technologies, Inc., by *John M. Griem, Jr.*, *Judith M. Wallace*, and *Bradford Paul Schmidt*; for the Bundesverband der Deutschen Industrie e. V. et al. by *Ronald J. Mann*; and for Intellectual Property Professors by *Timothy R. Holbrook*, *pro se*.

Briefs of *amici curiae* urging affirmance were filed for the New York Intellectual Property Law Association by *Irena Royzman*, *Walter E. Hanley, Jr.*, *Robert J. Rando*, and *Robert M. Isackson*; and for the Wisconsin Alumni Research Foundation by *Jennifer L. Gregor* and *Shane Delsman*.

Briefs of *amici curiae* were filed for the American Intellectual Property Law Association by *Doris Johnson Hines*, *Denise W. DeFranco*, and *Pier D. DeRoo;* and for the Intellectual Property Owners Association by *Paul H. Berghoff*, *Kevin H. Rhodes*, and *Steven W. Miller*.

I

A

We begin with an overview of the patent in dispute. Although the science behind the patent is complex, a basic understanding suffices to resolve the question presented by this case.

The Tautz patent, U. S. Reissue Patent No. RE 37,984, claims a toolkit for genetic testing.[1] The kit is used to take small samples of genetic material—in the form of nucleotide sequences that make up the molecule deoxyribonucleic acid (commonly referred to as "DNA")—and then synthesize multiple copies of a particular nucleotide sequence. This process of copying, known as amplification, generates DNA profiles that can be used by law enforcement agencies for forensic identification and by clinical and research institutions around the world. For purposes of this litigation, the parties agree that the kit covered by the Tautz patent contains five components: (1) a mixture of primers that mark the part of the DNA strand to be copied; (2) nucleotides for forming replicated strands of DNA; (3) an enzyme known as *Taq* polymerase; (4) a buffer solution for the amplification; and (5) control DNA.[2]

Respondent Promega Corporation was the exclusive licensee of the Tautz patent. Petitioner Life Technologies Corporation manufactured genetic testing kits.[3] During the

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[1] The Tautz patent expired in 2015. The litigation thus concerns past acts of infringement only.

[2] Because the parties here agree that the patented invention is made up of only these five components, we do not consider how to identify the "components" of a patent or whether and how that inquiry relates to the elements of a patent claim.

[3] Applied Biosystems, LLC, and Invitrogen IP Holdings, Inc., are also petitioners in this proceeding and are wholly owned subsidiaries of Life Technologies Corporation. The agreement at issue here was originally between Promega and Applied Biosystems. 773 F. 3d 1338, 1344, n. 3 (CA Fed. 2014).

timeframe relevant here, Promega sublicensed the Tautz patent to Life Technologies for the manufacture and sale of the kits for use in certain licensed law enforcement fields worldwide. Life Technologies manufactured all but one component of the kits in the United Kingdom. It manufactured that component—the *Taq* polymerase—in the United States. Life Technologies shipped the *Taq* polymerase to its United Kingdom facility, where it was combined with the other four components of the kit.

Four years into the agreement, Promega sued Life Technologies on the grounds that Life Technologies had infringed the patent by selling the kits outside the licensed fields of use to clinical and research markets. As relevant here, Promega alleged that Life Technologies' supply of the *Taq* polymerase from the United States to its United Kingdom manufacturing facilities triggered liability under § 271(f)(1).

B

At trial, the parties disputed the scope of § 271(f)(1)'s prohibition against supplying all or a substantial portion of the components of a patented invention from the United States for combination abroad. Section 271(f)(1)'s full text reads:

> "Whoever without authority supplies or causes to be supplied in or from the United States all or a substantial portion of the components of a patented invention, where such components are uncombined in whole or in part, in such manner as to actively induce the combination of such components outside of the United States in a manner that would infringe the patent if such combination occurred within the United States, shall be liable as an infringer."

The jury returned a verdict for Promega, finding that Life Technologies had willfully infringed the patent. Life Technologies then moved for judgment as a matter of law, contending that § 271(f)(1) did not apply to its conduct because the

phrase "all or a substantial portion" does not encompass the supply of a single component of a multicomponent invention.

The District Court granted Life Technologies' motion. The court agreed that there could be no infringement under § 271(f)(1) because Promega's evidence at trial "showed at most that *one* component of all of the accused products, [the *Taq*] polymerase, was supplied from the United States." 2012 WL 12862829, *3 (WD Wis., Sept. 13, 2012) (Crabb, J.). Section 271(f)(1)'s reference to "a substantial portion of the components," the District Court ruled, does not embrace the supply of a single component. *Id.*, at *5.

The Court of Appeals for the Federal Circuit reversed and reinstated the jury's verdict finding Life Technologies liable for infringement.[4] 773 F. 3d 1338, 1353 (2014). As relevant here, the court held that "there are circumstances in which a party may be liable under § 271(f)(1) for supplying or causing to be supplied a single component for combination outside the United States." *Ibid.* The Federal Circuit concluded that the dictionary definition of "substantial" is "important" or "essential," which it read to suggest that a single important component can be a "'substantial portion of the components'" of a patented invention. *Ibid.* Relying in part on expert trial testimony that the *Taq* polymerase is a "'main'" and "'major'" component of the kits, the court ruled that the single *Taq* polymerase component was a substantial component as the term is used in § 271(f)(1). *Id.*, at 1356.

II

The question before us is whether the supply of a single component of a multicomponent invention is an infringing act under 35 U. S. C. § 271(f)(1). We hold that it is not.

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[4] Chief Judge Prost dissented from the majority's conclusion with respect to the "active inducement" element of 35 U. S. C. § 271(f)(1). 773 F. 3d, at 1358–1360. Neither that question, nor any of the Federal Circuit's conclusions regarding Life Technologies' liability under § 271(a) or infringement of four additional Promega patents, see *id.*, at 1341, is before us. See 579 U. S. 927 (2016).

A

The threshold determination to be made is whether § 271(f)(2)'s requirement of "a substantial portion" of the components of a patented invention refers to a quantitative or qualitative measurement. Life Technologies and the United States argue that the text of § 271(f)(1) establishes a quantitative threshold, and that the threshold must be greater than one. Promega defends the Federal Circuit's reading of the statute, arguing that a "substantial portion" of the components includes a single component if that component is sufficiently important to the invention.

We look first to the text of the statute. *Sebelius* v. *Cloer*, 569 U. S. 369, 376 (2013). The Patent Act itself does not define the term "substantial," and so we turn to its ordinary meaning. *Ibid.* Here we find little help. All agree the term is ambiguous and, taken in isolation, might refer to an important portion or to a large portion. Brief for Petitioners 16; Brief for Respondent 18; Brief for United States as *Amicus Curiae* 12. "Substantial," as it is commonly understood, may refer either to qualitative importance or to quantitatively large size. See, *e. g.*, Webster's Third New International Dictionary 2280 (defs. 1c, 2c) (1981) (Webster's Third) ("important, essential," or "considerable in amount, value, or worth"); 17 Oxford English Dictionary 67 (defs. 5a, 9) (2d ed. 1989) (OED) ("That is, constitutes, or involves an essential part, point, or feature; essential, material," or "Of ample or considerable amount, quantity, or dimensions").

The context in which "substantial" appears in the statute, however, points to a quantitative meaning here. Its neighboring terms are the first clue. "[A] word is given more precise content by the neighboring words with which it is associated." *United States* v. *Williams*, 553 U. S. 285, 294 (2008). Both "all" and "portion" convey a quantitative meaning. "All" means the entire quantity, without reference to relative importance. See, *e. g.*, Webster's Third 54 (defs. 1a, 2a, 3) ("that is the whole amount or quantity of,"

or "every member or individual component of," or "the whole number or sum of"); 1 OED 324 (def. 2) ("The entire number of; the individual components of, without exception"). "Portion" likewise refers to some quantity less than all. Webster's Third 1768 (defs. 1, 3a) ("an individual's part or share of something," or "a part of a whole"); 12 OED 154, 155 (defs. 1a, 5a) ("The part (of anything) allotted or belonging to one person," or "A part of any whole"). Conversely, there is nothing in the neighboring text to ground a qualitative interpretation.

Moreover, the phrase "substantial portion" is modified by "of the components of a patented invention." It is the supply of all or a substantial portion "of the components" of a patented invention that triggers liability for infringement. But if "substantial" has a qualitative meaning, then the more natural way to write the opening clause of the provision would be to not reference "the components" at all. Instead, the opening clause of § 271(f)(1) could have triggered liability for the supply of "all or a substantial portion of . . . a patented invention, where [its] components are uncombined in whole or in part." A qualitative reading would render the phrase "of the components" unnecessary the first time it is used in § 271(f)(1). Whenever possible, however, we should favor an interpretation that gives meaning to each statutory provision. See *Hibbs* v. *Winn*, 542 U. S. 88, 101 (2004). Only the quantitative approach does so here. Thus, "substantial," in the context of § 271(f)(1), is most reasonably read to connote a quantitative measure.

Promega argues that a quantitative approach is too narrow, and invites the Court to instead adopt a "case-specific" approach that would require a factfinder to decipher whether the components at issue are a "substantial portion" under *either* a qualitative or quantitative test. Brief for Respondent 17, 42. We decline to do so. Having determined the phrase "substantial portion" is ambiguous, our task is to resolve that ambiguity, not to compound it by tasking juries across the Nation with interpreting the meaning of the stat-

ute on an ad hoc basis. See, *e. g.*, *Robinson* v. *Shell Oil Co.*, 519 U. S. 337, 345–346 (1997).

As a more general matter, moreover, we cannot accept Promega's suggestion that the Court adopt a different analytical framework entirely—one that accounts for both the quantitative *and* qualitative aspects of the components. Promega reads § 271(f)(1) to mean that the answer to whether a given portion of the components is "substantial" depends not only on the number of components involved but also on their qualitative importance to the invention overall. At first blush, there is some appeal to the idea that, in close cases, a subjective analysis of the qualitative importance of a component may help determine whether it is a "substantial portion" of the components of a patent. But, for the reasons discussed above, the statute's structure provides little support for a qualitative interpretation of the term.[5]

Nor would considering the qualitative importance of a component necessarily help resolve close cases. To the contrary, it might just as easily complicate the factfinder's review. Surely a great many components of an invention (if not every component) are important. Few inventions, including the one at issue here, would function at all without any one of their components. Indeed, Promega has not identified any component covered by the Tautz patent that would not satisfy Promega's "importance" litmus test.[6] How are courts—or, for that matter, market participants attempting to avoid liability—to determine the relative importance of

[5] The examples Promega provides of other statutes' use of the terms "substantial" or "significant" are inapposite. See Brief for Respondent 19–20. The text of these statutes, which arise in different statutory schemes with diverse purposes and structures, differs in material ways from the text of § 271(f)(1). The Tax Code, for instance, refers to "a substantial portion of a return," 26 U. S. C. § 7701(a)(36)(A), not to "a substantial portion *of the entries* of a return."

[6] Life Technologies' expert described the *Taq* polymerase as a "main" component. App. 160. The expert also described two other components the same way. *Ibid.*

the components of an invention? Neither Promega nor the Federal Circuit offers an easy way to make this decision. Accordingly, we conclude that a quantitative interpretation hews most closely to the text of the statute and provides an administrable construction.

B

Having determined that the term "substantial portion" refers to a quantitative measurement, we must next decide whether, as a matter of law, a single component can ever constitute a "substantial portion" so as to trigger liability under § 271(f)(1). The answer is no.

As before, we begin with the text of the statute. Section 271(f)(1) consistently refers to "components" in the plural. The section is targeted toward the supply of all or a substantial portion "of the *components*," where "such *components*" are uncombined, in a manner that actively induces the combination of "such *components*" outside the United States. Text specifying a substantial portion of "components," plural, indicates that multiple components constitute the substantial portion.

The structure of § 271(f) reinforces this reading. Section 271(f)(2), which is § 271(f)(1)'s companion provision, reads as follows:

> "Whoever without authority supplies or causes to be supplied in or from the United States any component of a patented invention that is especially made or especially adapted for use in the invention and not a staple article or commodity of commerce suitable for substantial noninfringing use, where such component is uncombined in whole or in part, knowing that such component is so made or adapted and intending that such component will be combined outside of the United States in a manner that would infringe the patent if such combination occurred within the United States, shall be liable as an infringer."

Reading § 271(f)(1) to refer to more than one component allows the two provisions to work in tandem. Whereas § 271(f)(1) refers to "components," plural, § 271(f)(2) refers to "any component," singular. And, whereas § 271(f)(1) speaks to whether the components supplied by a party constitute a substantial portion of the components, § 271(f)(2) speaks to whether a party has supplied "any" noncommodity component "especially made or especially adapted for use in the invention."

We do not disagree with the Federal Circuit's observation that the two provisions concern different scenarios. See 773 F. 3d, at 1354. As this Court has previously observed, §§ 271(f)(1) and (f)(2) "differ, among other things, on the quantity of components that must be 'supplie[d] . . . from the United States' for liability to attach." *Microsoft Corp.* v. *AT&T Corp.*, 550 U. S. 437, 454, n. 16 (2007). But we do not draw the Federal Circuit's conclusion from these different but related provisions. Reading § 271(f)(1) to cover *any* single component would not only leave little room for § 271(f)(2) but would also undermine § 271(f)(2)'s express reference to a single component "especially made or especially adapted for use in the invention."[7] Our conclusion that § 271(f)(1) prohibits the supply of components, plural, gives each subsection its unique application.[8] See, *e. g.*, *Cloer*, 569 U. S., at 376.

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[7] This Court's opinion in *Microsoft Corp.* v. *AT&T Corp.*, 550 U. S. 437, 447 (2007), is not to the contrary. The holding in that case turned not on the number of components involved, but rather on whether the software at issue was a component at all.

[8] Promega argues that the important distinction between these provisions is that § 271(f)(1), unlike § 271(f)(2), requires a showing of specific intent for active inducement. Brief for Respondent 34–41. But cf. *Global-Tech Appliances, Inc.* v. *SEB S. A.*, 563 U. S. 754, 765–766 (2011) (substantially equating the intent requirements for §§ 271(b) and (c), on which Promega asserts §§ 271(f)(1) and (f)(2) were modeled). But, to repeat, whatever intent subsection (f)(1) may require, it also imposes liability only on a party who supplies a "substantial portion of the components"

Taken alone, § 271(f)(1)'s reference to "components" might plausibly be read to encompass "component" in the singular. See 1 U. S. C. § 1 (instructing that "words importing the plural include the singular," "unless the context indicates otherwise"). But § 271(f)'s text, context, and structure leave us to conclude that when Congress said "components," plural, it meant plural, and when it said "component," singular, it meant singular.

We do not today define how close to "all" of the components "a substantial portion" must be. We hold only that one component does not constitute "all or a substantial portion" of a multicomponent invention under § 271(f)(1). This is all that is required to resolve the question presented.

C

The history of § 271(f) bolsters our conclusion. The Court has previously observed that Congress enacted § 271(f) in response to our decision in *Deepsouth Packing Co.* v *Laitram Corp.*, 406 U. S. 518 (1972). See *Microsoft Corp.*, 550 U. S., at 444. In *Deepsouth*, the Court determined that, under patent law as it existed at the time, it was "not an infringement to make or use a patented product outside of the United States." 406 U. S., at 527. The new § 271(f) "expand[ed] the definition of infringement to include supplying from the United States a patented invention's components," as outlined in subsections (f)(1) and (f)(2). *Microsoft*, 550 U. S., at 444–445.

The effect of this provision was to fill a gap in the enforceability of patent rights by reaching components that are manufactured in the United States but assembled overseas

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of the invention. Thus, even assuming that subsection (f)(1)'s "active inducement" requirement is different from subsection (f)(2)'s "knowing" and "intending" element—a question we do not reach today—that difference between the two provisions does not read the "substantial portion" language out of the statute.

and that were beyond the reach of the statute in its prior formulation. Our ruling today comports with Congress' intent. A supplier may be liable under § 271(f)(1) for supplying from the United States all or a substantial portion of the components (plural) of the invention, even when those components are combined abroad. The same is true even for a single component under § 271(f)(2) if it is especially made or especially adapted for use in the invention and not a staple article or commodity. We are persuaded, however, that when as in this case a product is made abroad and all components but a single commodity article are supplied from abroad, this activity is outside the scope of the statute.

III

We hold that the phrase "substantial portion" in 35 U. S. C. § 271(f)(1) has a quantitative, not a qualitative, meaning. We hold further that § 271(f)(1) does not cover the supply of a single component of a multicomponent invention. The judgment of the Court of Appeals for the Federal Circuit is therefore reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

THE CHIEF JUSTICE took no part in the decision of this case.

JUSTICE ALITO, with whom JUSTICE THOMAS joins, concurring in part and concurring in the judgment.

I join all but Part II–C of the Court's opinion. It is clear from the text of 35 U. S. C. § 271(f) that Congress intended not only to fill the gap created by *Deepsouth Packing Co.* v. *Laitram Corp.*, 406 U. S. 518 (1972)—where all of the components of the invention were manufactured in the United States, *id.*, at 524—but to go at least a little further. How much further is the question in this case, and the genesis of § 271(f) sheds no light on that question.

I note, in addition, that while the Court holds that a single component cannot constitute a substantial portion of an invention's components for § 271(f)(1) purposes, I do not read the opinion to suggest that *any* number greater than one is sufficient. In other words, today's opinion establishes that more than one component is necessary, but does not address *how much* more.

Syllabus

FRY ET VIR, AS NEXT FRIENDS OF MINOR E. F. *v.* NAPOLEON COMMUNITY SCHOOLS ET AL.

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

No. 15–497. Argued October 31, 2016—Decided February 22, 2017

The Individuals with Disabilities Education Act (IDEA) offers federal funds to States in exchange for a commitment to furnish a "free appropriate public education" (FAPE) to children with certain disabilities, 20 U. S. C. § 1412(a)(1)(A), and establishes formal administrative procedures for resolving disputes between parents and schools concerning the provision of a FAPE. Other federal statutes also protect the interests of children with disabilities, including Title II of the Americans with Disabilities Act (ADA) and § 504 of the Rehabilitation Act. In *Smith* v. *Robinson*, 468 U. S. 992, this Court considered the interaction between those other laws and the IDEA, holding that the IDEA was "the exclusive avenue" through which a child with a disability could challenge the adequacy of his education. *Id.*, at 1009. Congress responded by passing the Handicapped Children's Protection Act of 1986, overturning *Smith*'s preclusion of non-IDEA claims and adding a carefully defined exhaustion provision. Under that provision, a plaintiff bringing suit under the ADA, the Rehabilitation Act, or similar laws "seeking relief that is also available under [the IDEA]" must first exhaust the IDEA's administrative procedures. § 1415(*l*).

Petitioner E. F. is a child with a severe form of cerebral palsy; a trained service dog named Wonder assists her with various daily life activities. When E. F.'s parents, petitioners Stacy and Brent Fry, sought permission for Wonder to join E. F. in kindergarten, officials at Ezra Eby Elementary School refused. The officials reasoned that the human aide provided as part of E. F.'s individualized education program rendered the dog superfluous. In response, the Frys removed E. F. from Ezra Eby and began homeschooling her. They also filed a complaint with the Department of Education's Office for Civil Rights (OCR), claiming that the exclusion of E. F.'s service animal violated her rights under Title II and § 504. OCR agreed, and school officials invited E. F. to return to Ezra Eby with Wonder. But the Frys, concerned about resentment from school officials, instead enrolled E. F. in a different school that welcomed the service dog. The Frys then filed this suit in federal court against Ezra Eby's local and regional school districts and principal (collectively, the school districts), alleging that they violated

Syllabus

Title II and § 504 and seeking declaratory and monetary relief. The District Court granted the school districts' motion to dismiss the suit, holding that § 1415(*l*) required the Frys to first exhaust the IDEA's administrative procedures. The Sixth Circuit affirmed, reasoning that § 1415(*l*) applies whenever a plaintiff's alleged harms are "educational" in nature.

Held:

1. Exhaustion of the IDEA's administrative procedures is unnecessary where the gravamen of the plaintiff's suit is something other than the denial of the IDEA's core guarantee of a FAPE. Pp. 165–174.

(a) The language of § 1415(*l*) compels exhaustion when a plaintiff seeks "relief" that is "available" under the IDEA. Establishing the scope of § 1415(*l*), then, requires identifying the circumstances in which the IDEA enables a person to obtain redress or access a benefit. That inquiry immediately reveals the primacy of a FAPE in the statutory scheme. The IDEA's stated purpose and specific commands center on ensuring a FAPE for children with disabilities. And the IDEA's administrative procedures test whether a school has met this obligation: Any decision by a hearing officer on a request for substantive relief "shall" be "based on a determination of whether the child received a free appropriate public education." § 1415(f)(3)(E)(i). Accordingly, § 1415(*l*)'s exhaustion rule hinges on whether a lawsuit seeks relief for the denial of a FAPE. If a lawsuit charges such a denial, the plaintiff cannot escape § 1415(*l*) merely by bringing the suit under a statute other than the IDEA. But if the remedy sought in a suit brought under a different statute is not for the denial of a FAPE, then exhaustion of the IDEA's procedures is not required. Pp. 165–169.

(b) In determining whether a plaintiff seeks relief for the denial of a FAPE, what matters is the gravamen of the plaintiff's complaint, setting aside any attempts at artful pleading. That inquiry makes central the plaintiff's own claims, as § 1415(*l*) explicitly requires in asking whether a lawsuit in fact "seeks" relief available under the IDEA. But examination of a plaintiff's complaint should consider substance, not surface: Section 1415(*l*) requires exhaustion when the gravamen of a complaint seeks redress for a school's failure to provide a FAPE, even if not phrased or framed in precisely that way. In addressing whether a complaint fits that description, a court should attend to the diverse means and ends of the statutes covering persons with disabilities. The IDEA guarantees individually tailored educational services for children with disabilities, while Title II and § 504 promise nondiscriminatory access to public institutions for people with disabilities of all ages. That is not to deny some overlap in coverage: The same conduct might violate

all three statutes. But still, these statutory differences mean that a complaint brought under Title II and § 504 might instead seek relief for simple discrimination, irrespective of the IDEA's FAPE obligation. One clue to the gravamen of a complaint can come from asking a pair of hypothetical questions. First, could the plaintiff have brought essentially the same claim if the alleged conduct had occurred at a public facility that was not a school? Second, could an adult at the school have pressed essentially the same grievance? When the answer to those questions is yes, a complaint that does not expressly allege the denial of a FAPE is also unlikely to be truly about that subject. But when the answer is no, then the complaint probably does concern a FAPE. A further sign of the gravamen of a suit can emerge from the history of the proceedings. Prior pursuit of the IDEA's administrative remedies may provide strong evidence that the substance of a plaintiff's claim concerns the denial of a FAPE, even if the complaint never explicitly uses that term. Pp. 169–174.

2. This case is remanded to the Court of Appeals for a proper analysis of whether the gravamen of E. F.'s complaint charges, and seeks relief for, the denial of a FAPE. The Frys' complaint alleges only disability-based discrimination, without making any reference to the adequacy of the special education services E. F.'s school provided. Instead, the Frys have maintained that the school districts infringed E. F.'s right to equal access—even if their actions complied in full with the IDEA's requirements. But the possibility remains that the history of these proceedings might suggest something different. The parties have not addressed whether the Frys initially pursued the IDEA's administrative remedies, and the record is cloudy as to the relevant facts. On remand, the court below should establish whether (or to what extent) the Frys invoked the IDEA's dispute resolution process before filing suit. And if the Frys started down that road, the court should decide whether their actions reveal that the gravamen of their complaint is indeed the denial of a FAPE, thus necessitating further exhaustion. Pp. 174–176.

788 F. 3d 622, vacated and remanded.

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, and SOTOMAYOR, JJ., joined. ALITO, J., filed an opinion concurring in part and concurring in the judgment, in which THOMAS, J., joined, *post,* p. 176.

Samuel R. Bagenstos argued the cause for petitioners. With him on the briefs were *Steven R. Shapiro*, *Jill M.*

Wheaton, *James F. Hermon*, *Michael J. Steinberg*, and *Claudia Center*.

Roman Martinez argued the cause for the United States as *amicus curiae* urging reversal. With him on the brief were *Acting Solicitor General Gershengorn*, *Principal Deputy Assistant General Gupta*, *Irving Gornstein*, *Sharon M. McGowan*, *Jennifer Levin Eichhorn*, *James Cole, Jr.*, *Francisco Lopez*, and *Rhonda Weiss*.

Neal Kumar Katyal argued the cause for respondents. With him on the brief were *Eugene A. Sokoloff*, *Thomas P. Schmidt*, *Timothy J. Mullins*, and *Kenneth B. Chapie*.*

JUSTICE KAGAN delivered the opinion of the Court.

The Individuals with Disabilities Education Act (IDEA or Act), 84 Stat. 175, as amended, 20 U. S. C. § 1400 *et seq.*, ensures that children with disabilities receive needed special education services. One of its provisions, § 1415(*l*), addresses the Act's relationship with other laws protecting those children. Section 1415(*l*) makes clear that nothing in the IDEA "restrict[s] or limit[s] the rights [or] remedies" that other federal laws, including antidiscrimination statutes, confer on children with disabilities. At the same time, the

*Briefs of *amici curiae* urging reversal were filed for the State of Illinois et al. by *Lisa Madigan*, Attorney General of Illinois, *David L. Franklin*, Solicitor General, *Brett E. Legner*, Deputy Solicitor General, *Meghan P. Carter*, Assistant Attorney General, and *Lori Swanson*, Attorney General of Minnesota; for Autism Speaks by *Gary Mayerson*, *Jean Marie Brescia*, *Dan Unumb*, and *Caroline J. Heller*; for the Council of Parent Attorneys and Advocates et al. by *Selene Almazan-Altobelli*, *Alexis Casillas*, *Alice K. Nelson*, and *Catherine Merino Reisman*; for the National Disability Rights Network et al. by *Tauna M. Szymanski*, *Ronald M. Hager*, *Cliff Zucker*, and *Laura J. Miller*; for Psychiatric Service Dog Partners, Inc., et al. by *John J. Ensminger*; for Thomas Hehir et al. by *Aaron M. Panner* and *Ira A. Burnim*; and for the Honorable Lowell P. Weicker, Jr., by *Sasha Samberg-Champion* and *Arlene B. Mayerson*.

Thomas B. Allen and *Francisco M. Negrón, Jr.*, filed a brief for the National School Boards Association et al. as *amici curiae* urging affirmance.

section states that if a suit brought under such a law "seek[s] relief that is also available under" the IDEA, the plaintiff must first exhaust the IDEA's administrative procedures. In this case, we consider the scope of that exhaustion requirement. We hold that exhaustion is not necessary when the gravamen of the plaintiff's suit is something other than the denial of the IDEA's core guarantee—what the Act calls a "free appropriate public education." § 1412(a)(1)(A).

I

A

The IDEA offers federal funds to States in exchange for a commitment: to furnish a "free appropriate public education"—more concisely known as a FAPE—to all children with certain physical or intellectual disabilities. *Ibid.*; see § 1401(3)(A)(i) (listing covered disabilities). As defined in the Act, a FAPE comprises "special education and related services"—both "instruction" tailored to meet a child's "unique needs" and sufficient "supportive services" to permit the child to benefit from that instruction. §§ 1401(9), (26), (29); see *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty.* v. *Rowley*, 458 U. S. 176, 203 (1982). An eligible child, as this Court has explained, acquires a "substantive right" to such an education once a State accepts the IDEA's financial assistance. *Smith* v. *Robinson*, 468 U. S. 992, 1010 (1984).

Under the IDEA, an "individualized education program," called an IEP for short, serves as the "primary vehicle" for providing each child with the promised FAPE. *Honig* v. *Doe*, 484 U. S. 305, 311 (1988); see § 1414(d). (Welcome to—and apologies for—the acronymic world of federal legislation.) Crafted by a child's "IEP Team"—a group of school officials, teachers, and parents—the IEP spells out a personalized plan to meet all of the child's "educational needs." §§ 1414(d)(1)(A)(i)(II)(bb), (d)(1)(B). Most notably, the IEP documents the child's current "levels of academic achieve-

ment," specifies "measurable annual goals" for how she can "make progress in the general education curriculum," and lists the "special education and related services" to be provided so that she can "advance appropriately toward [those] goals." §§ 1414(d)(1)(A)(i)(I), (II), (IV)(aa).

Because parents and school representatives sometimes cannot agree on such issues, the IDEA establishes formal procedures for resolving disputes. To begin, a dissatisfied parent may file a complaint as to any matter concerning the provision of a FAPE with the local or state educational agency (as state law provides). See § 1415(b)(6). That pleading generally triggers a "[p]reliminary meeting" involving the contending parties, § 1415(f)(1)(B)(i); at their option, the parties may instead (or also) pursue a full-fledged mediation process, see § 1415(e). Assuming their impasse continues, the matter proceeds to a "due process hearing" before an impartial hearing officer. § 1415(f)(1)(A); see § 1415(f)(3)(A)(i). Any decision of the officer granting substantive relief must be "based on a determination of whether the child received a [FAPE]." § 1415(f)(3)(E)(i). If the hearing is initially conducted at the local level, the ruling is appealable to the state agency. See § 1415(g). Finally, a parent unhappy with the outcome of the administrative process may seek judicial review by filing a civil action in state or federal court. See § 1415(i)(2)(A).

Important as the IDEA is for children with disabilities, it is not the only federal statute protecting their interests. Of particular relevance to this case are two antidiscrimination laws—Title II of the Americans with Disabilities Act (ADA), 42 U. S. C. § 12131 *et seq.*, and § 504 of the Rehabilitation Act, 29 U. S. C. § 794—which cover both adults and children with disabilities, in both public schools and other settings. Title II forbids any "public entity" from discriminating based on disability; § 504 applies the same prohibition to any federally funded "program or activity." 42 U. S. C. §§ 12131–12132; 29 U. S. C. § 794(a). A regulation implementing Title II re-

quires a public entity to make "reasonable modifications" to its "policies, practices, or procedures" when necessary to avoid such discrimination. 28 CFR § 35.130(b)(7) (2016); see, *e. g.*, *Alboniga* v. *School Bd. of Broward Cty.*, 87 F. Supp. 3d 1319, 1345 (SD Fla. 2015) (requiring an accommodation to permit use of a service animal under Title II). In similar vein, courts have interpreted § 504 as demanding certain "reasonable" modifications to existing practices in order to "accommodate" persons with disabilities. *Alexander* v. *Choate*, 469 U. S. 287, 299–300 (1985); see, *e. g.*, *Sullivan* v. *Vallejo City Unified School Dist.*, 731 F. Supp. 947, 961–962 (ED Cal. 1990) (requiring an accommodation to permit use of a service animal under § 504). And both statutes authorize individuals to seek redress for violations of their substantive guarantees by bringing suits for injunctive relief or money damages. See 29 U. S. C. § 794a(a)(2); 42 U. S. C. § 12133.

This Court first considered the interaction between such laws and the IDEA in *Smith* v. *Robinson*, 468 U. S. 992.[1] The plaintiffs there sought "to secure a 'free appropriate public education' for [their] handicapped child." *Id.*, at 994. But instead of bringing suit under the IDEA alone, they appended "virtually identical" claims (again alleging the denial of a "free appropriate public education") under § 504 of the Rehabilitation Act and the Fourteenth Amendment's Equal Protection Clause. *Id.*, at 1009; see *id.*, at 1016. The Court held that the IDEA altogether foreclosed those additional claims: With its "comprehensive" and "carefully tailored" provisions, the Act was "the exclusive avenue" through which a child with a disability (or his parents) could challenge the adequacy of his education. *Id.*, at 1009; see *id.*, at 1013, 1016, 1021.

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[1] At the time (and until 1990), the IDEA was called the Education of the Handicapped Act, or EHA. See § 901(a), 104 Stat. 1141–1142 (renaming the statute). To avoid confusion—and acronym overload—we refer throughout this opinion only to the IDEA.

Congress was quick to respond. In the Handicapped Children's Protection Act of 1986, 100 Stat. 796, it overturned *Smith*'s preclusion of non-IDEA claims while also adding a carefully defined exhaustion requirement. Now codified at 20 U. S. C. § 1415(*l*), the relevant provision of that statute reads:

> "Nothing in [the IDEA] shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the [ADA], title V of the Rehabilitation Act [including § 504], or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under [the IDEA], the [IDEA's administrative procedures] shall be exhausted to the same extent as would be required had the action been brought under [the IDEA]."

The first half of § 1415(*l*) (up until "except that") "reaffirm[s] the viability" of federal statutes like the ADA or Rehabilitation Act "as separate vehicles," no less integral than the IDEA, "for ensuring the rights of handicapped children." H. R. Rep. No. 99–296, p. 4 (1985); see *id.*, at 6. According to that opening phrase, the IDEA does not prevent a plaintiff from asserting claims under such laws even if, as in *Smith* itself, those claims allege the denial of an appropriate public education (much as an IDEA claim would). But the second half of § 1415(*l*) (from "except that" onward) imposes a limit on that "anything goes" regime, in the form of an exhaustion provision. According to that closing phrase, a plaintiff bringing suit under the ADA, the Rehabilitation Act, or similar laws must in certain circumstances—that is, when "seeking relief that is also available under" the IDEA—first exhaust the IDEA's administrative procedures. The reach of that requirement is the issue in this case.

B

Petitioner E. F. is a child with a severe form of cerebral palsy, which "significantly limits her motor skills and mobil-

ity." App. to Brief in Opposition 6, Complaint ¶19.[2] When E. F. was five years old, her parents—petitioners Stacy and Brent Fry—obtained a trained service dog for her, as recommended by her pediatrician. The dog, a goldendoodle named Wonder, "help[s E. F.] to live as independently as possible" by assisting her with various life activities. *Id.*, at 2, ¶3. In particular, Wonder aids E. F. by "retrieving dropped items, helping her balance when she uses her walker, opening and closing doors, turning on and off lights, helping her take off her coat, [and] helping her transfer to and from the toilet." *Id.*, at 7, ¶27.

But when the Frys sought permission for Wonder to join E. F. in kindergarten, officials at Ezra Eby Elementary School refused the request. Under E. F.'s existing IEP, a human aide provided E. F. with one-on-one support throughout the day; that two-legged assistance, the school officials thought, rendered Wonder superfluous. In the words of one administrator, Wonder should be barred from Ezra Eby because all of E. F.'s "physical and academic needs [were] being met through the services/programs/accommodations" that the school had already agreed to. *Id.*, at 8, ¶33. Later that year, the school officials briefly allowed Wonder to accompany E. F. to school on a trial basis; but even then, "the dog was required to remain in the back of the room during classes, and was forbidden from assisting [E. F.] with many tasks he had been specifically trained to do." *Ibid.*, ¶35. And when the trial period concluded, the administrators again informed the Frys that Wonder was not welcome. As a result, the Frys removed E. F. from Ezra Eby and began homeschooling her.

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[2] Because this case comes to us on review of a motion to dismiss E. F.'s suit, we accept as true all facts pleaded in her complaint. See *Leatherman* v. *Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U. S. 163, 164 (1993).

In addition, the Frys filed a complaint with the U. S. Department of Education's Office for Civil Rights (OCR), charging that Ezra Eby's exclusion of E. F.'s service animal violated her rights under Title II of the ADA and § 504 of the Rehabilitation Act. Following an investigation, OCR agreed. The office explained in its decision letter that a school's obligations under those statutes go beyond providing educational services: A school could offer a FAPE to a child with a disability but still run afoul of the laws' ban on discrimination. See App. 30–32. And here, OCR found, Ezra Eby had indeed violated that ban, even if its use of a human aide satisfied the FAPE standard. See *id.*, at 35–36. OCR analogized the school's conduct to "requir[ing] a student who uses a wheelchair to be carried" by an aide or "requir[ing] a blind student to be led [around by a] teacher" instead of permitting him to use a guide dog or cane. *Id.*, at 35. Regardless whether those—or Ezra Eby's—policies denied a FAPE, they violated Title II and § 504 by discriminating against children with disabilities. See *id.*, at 35–36.

In response to OCR's decision, school officials at last agreed that E. F. could come to school with Wonder. But after meeting with Ezra Eby's principal, the Frys became concerned that the school administration "would resent [E. F.] and make her return to school difficult." App. to Brief in Opposition 10, ¶48. Accordingly, the Frys found a different public school, in a different district, where administrators and teachers enthusiastically received both E. F. and Wonder.

C

The Frys then filed this suit in federal court against the local and regional school districts in which Ezra Eby is located, along with the school's principal (collectively, the school districts). The complaint alleged that the school dis-

tricts violated Title II of the ADA and § 504 of the Rehabilitation Act by "denying [E. F.] equal access" to Ezra Eby and its programs, "refus[ing] to reasonably accommodate" E. F.'s use of a service animal, and otherwise "discriminat[ing] against [E. F.] as a person with disabilities." *Id.*, at 15, ¶68, 17–18, ¶¶82–83. According to the complaint, E. F. suffered harm as a result of that discrimination, including "emotional distress and pain, embarrassment, [and] mental anguish." *Id.*, at 11–12, ¶51. In their prayer for relief, the Frys sought a declaration that the school districts had violated Title II and § 504, along with money damages to compensate for E. F.'s injuries.

The District Court granted the school districts' motion to dismiss the suit, holding that § 1415(*l*) required the Frys to first exhaust the IDEA's administrative procedures. See App. to Pet. for Cert. 50. A divided panel of the Court of Appeals for the Sixth Circuit affirmed on the same ground. In that court's view, § 1415(*l*) applies if "the injuries [alleged in a suit] relate to the specific substantive protections of the IDEA." 788 F. 3d 622, 625 (2015). And that means, the court continued, that exhaustion is necessary whenever "the genesis and the manifestations" of the complained-of harms were "educational" in nature. *Id.*, at 627 (quoting *Charlie F.* v. *Board of Ed. of Skokie School Dist. 68*, 98 F. 3d 989, 993 (CA7 1996)). On that understanding of § 1415(*l*), the Sixth Circuit held, the Frys' suit could not proceed: Because the harms to E. F. were generally "educational"—most notably, the court reasoned, because "Wonder's absence hurt her sense of independence and social confidence at school"—the Frys had to exhaust the IDEA's procedures. 788 F. 3d, at 627. Judge Daughtrey dissented, emphasizing that in bringing their Title II and § 504 claims, the Frys "did not allege the denial of a FAPE" or "seek to modify [E. F.'s] IEP in any way." *Id.*, at 634.

We granted certiorari to address confusion in the Courts of Appeals as to the scope of § 1415(*l*)'s exhaustion requirement.

579 U. S. 940 (2016).[3] We now vacate the Sixth Circuit's decision.

II

Section 1415(*l*) requires that a plaintiff exhaust the IDEA's procedures before filing an action under the ADA, the Rehabilitation Act, or similar laws when (but only when) her suit "seek[s] relief that is also available" under the IDEA. We first hold that to meet that statutory standard, a suit must seek relief for the denial of a FAPE, because that is the only "relief" the IDEA makes "available." We next conclude that in determining whether a suit indeed "seeks" relief for such a denial, a court should look to the substance, or gravamen, of the plaintiff's complaint.[4]

A

In this Court, the parties have reached substantial agreement about what "relief" the IDEA makes "available" for children with disabilities—and about how the Sixth Circuit went wrong in addressing that question. The Frys maintain

[3] See *Payne* v. *Peninsula School Dist.*, 653 F. 3d 863, 874 (CA9 2011) (en banc) (cataloguing different Circuits' understandings of § 1415(*l*)). In particular, the Ninth Circuit has criticized an approach similar to the Sixth Circuit's for "treat[ing] § 1415(*l*) as a quasi-preemption provision, requiring administrative exhaustion for any case that falls within the general 'field' of educating disabled students." *Id.*, at 875.

[4] In reaching these conclusions, we leave for another day a further question about the meaning of § 1415(*l*): Is exhaustion required when the plaintiff complains of the denial of a FAPE, but the specific remedy she requests—here, money damages for emotional distress—is not one that an IDEA hearing officer may award? The Frys, along with the Solicitor General, say the answer is no. See Reply Brief 2–3; Brief for United States as *Amicus Curiae* 16. But resolution of that question might not be needed in this case because the Frys also say that their complaint is not about the denial of a FAPE, see Reply Brief 17—and, as later explained, we must remand that distinct issue to the Sixth Circuit, see *infra*, at 174–176. Only if that court rejects the Frys' view of their lawsuit, using the analysis we set out below, will the question about the effect of their request for money damages arise.

that such a child can obtain remedies under the IDEA for decisions that deprive her of a FAPE, but none for those that do not. So in the Frys' view, § 1415(*l*)'s exhaustion requirement can come into play only when a suit concerns the denial of a FAPE—and not, as the Sixth Circuit held, when it merely has some articulable connection to the education of a child with a disability. See Reply Brief 13–15. The school districts, for their part, also believe that the Sixth Circuit's exhaustion standard "goes too far" because it could mandate exhaustion when a plaintiff is "seeking relief that is *not* in substance available" under the IDEA. Brief for Respondents 30. And in particular, the school districts acknowledge that the IDEA makes remedies available only in suits that "directly implicate[ ]" a FAPE—so that only in those suits can § 1415(*l*) apply. Tr. of Oral Arg. 46. For the reasons that follow, we agree with the parties' shared view: The only relief that an IDEA officer can give—hence the thing a plaintiff must seek in order to trigger § 1415(*l*)'s exhaustion rule—is relief for the denial of a FAPE.

We begin, as always, with the statutory language at issue, which (at risk of repetition) compels exhaustion when a plaintiff seeks "relief" that is "available" under the IDEA. The ordinary meaning of "relief" in the context of a lawsuit is the "redress[ ] or benefit" that attends a favorable judgment. Black's Law Dictionary 1161 (5th ed. 1979). And such relief is "available," as we recently explained, when it is "accessible or may be obtained." *Ross* v. *Blake*, 578 U. S. 632, 642 (2016) (quoting Webster's Third New International Dictionary 150 (1993)). So to establish the scope of § 1415(*l*), we must identify the circumstances in which the IDEA enables a person to obtain redress (or, similarly, to access a benefit).

That inquiry immediately reveals the primacy of a FAPE in the statutory scheme. In its first section, the IDEA declares as its first purpose "to ensure that all children with disabilities have available to them a free appropriate public education." § 1400(d)(1)(A). That principal purpose then

becomes the Act's principal command: A State receiving federal funding under the IDEA must make such an education "available to all children with disabilities." § 1412(a)(1)(A). The guarantee of a FAPE to those children gives rise to the bulk of the statute's more specific provisions. For example, the IEP—"the centerpiece of the statute's education delivery system"—serves as the "vehicle" or "means" of providing a FAPE. *Honig*, 484 U. S., at 311; *Rowley*, 458 U. S., at 181; see *supra*, at 158. And finally, as all the above suggests, the FAPE requirement provides the yardstick for measuring the adequacy of the education that a school offers to a child with a disability: Under that standard, this Court has held, a child is entitled to "meaningful" access to education based on her individual needs. *Rowley*, 458 U. S., at 192.[5]

The IDEA's administrative procedures test whether a school has met that obligation—and so center on the Act's FAPE requirement. As noted earlier, any decision by a hearing officer on a request for substantive relief "shall" be "based on a determination of whether the child received a free appropriate public education." § 1415(f)(3)(E)(i); see *supra*, at 159.[6] Or said in Latin: In the IDEA's administrative process, a FAPE denial is the *sine qua non*. Suppose that a parent's complaint protests a school's failure to provide some accommodation for a child with a disability. If that accommodation is needed to fulfill the IDEA's FAPE requirement, the hearing officer must order relief. But if it is not, he cannot—even though the dispute is between a child with a disability and the school she attends. There might be good reasons, unrelated to a FAPE, for the school to make the

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[5] A case now before this Court, *Endrew F.* v. *Douglas County School Dist. RE–1*, No. 15–827, presents unresolved questions about the precise content of the FAPE standard. [Reporter's Note: See *post*, p. 386.]

[6] Without finding the denial of a FAPE, a hearing officer may do nothing more than order a school district to comply with the Act's various procedural requirements, see § 1415(f)(3)(E)(iii)—for example, by allowing parents to "examine all records" relating to their child, § 1415(b)(1).

requested accommodation. Indeed, another federal law (like the ADA or Rehabilitation Act) might *require* the accommodation on one of those alternative grounds. See *infra*, at 170–171. But still, the hearing officer cannot provide the requested relief. His role, under the IDEA, is to enforce the child's "substantive right" to a FAPE. *Smith*, 468 U. S., at 1010. And that is all.[7]

For that reason, § 1415(*l*)'s exhaustion rule hinges on whether a lawsuit seeks relief for the denial of a FAPE. If a lawsuit charges such a denial, the plaintiff cannot escape § 1415(*l*) merely by bringing her suit under a statute other than the IDEA—as when, for example, the plaintiffs in *Smith* claimed that a school's failure to provide a FAPE also violated the Rehabilitation Act.[8] Rather, that plaintiff must first submit her case to an IDEA hearing officer, experienced in addressing exactly the issues she raises. But if, in a suit brought under a different statute, the remedy sought is not for the denial of a FAPE, then exhaustion of the IDEA's procedures is not required. After all, the plaintiff could not get any relief from those procedures: A hearing officer, as just explained, would have to send her away empty-handed. And that is true even when the suit arises directly from a school's treatment of a child with a disability—and so could be said to relate in some way to her education. A school's conduct toward such a child—say, some refusal to make an accommodation—might injure her in ways unrelated to a FAPE, which are addressed in statutes other than the

[7] Similarly, a court in IDEA litigation may provide a substantive remedy only when it determines that a school has denied a FAPE. See *School Comm. of Burlington* v. *Department of Ed. of Mass.*, 471 U. S. 359, 369 (1985). Without such a finding, that kind of relief is (once again) unavailable under the Act.

[8] Once again, we do not address here (or anywhere else in this opinion) a case in which a plaintiff, although charging the denial of a FAPE, seeks a form of remedy that an IDEA officer cannot give—for example, as in the Frys' complaint, money damages for resulting emotional injury. See n. 4, *supra*.

IDEA. A complaint seeking redress for those other harms, independent of any FAPE denial, is not subject to § 1415(*l*)'s exhaustion rule because, once again, the only "relief" the IDEA makes "available" is relief for the denial of a FAPE.

B

Still, an important question remains: How is a court to tell when a plaintiff "seeks" relief for the denial of a FAPE and when she does not? Here, too, the parties have found some common ground: By looking, they both say, to the "substance" of, rather than the labels used in, the plaintiff's complaint. Brief for Respondents 20; Reply Brief 7–8. And here, too, we agree with that view: What matters is the crux—or, in legal-speak, the gravamen—of the plaintiff's complaint, setting aside any attempts at artful pleading.

That inquiry makes central the plaintiff's own claims, as § 1415(*l*) explicitly requires. The statutory language asks whether a lawsuit in fact "seeks" relief available under the IDEA—not, as a stricter exhaustion statute might, whether the suit "could have sought" relief available under the IDEA (or, what is much the same, whether any remedies "are" available under that law). See Brief for United States as *Amicus Curiae* 20 (contrasting § 1415(*l*) with the exhaustion provision in the Prison Litigation Reform Act, 42 U. S. C. § 1997e(a)). In effect, § 1415(*l*) treats the plaintiff as "the master of the claim": She identifies its remedial basis—and is subject to exhaustion or not based on that choice. *Caterpillar Inc.* v. *Williams*, 482 U. S. 386, 392, and n. 7 (1987). A court deciding whether § 1415(*l*) applies must therefore examine whether a plaintiff's complaint—the principal instrument by which she describes her case—seeks relief for the denial of an appropriate education.

But that examination should consider substance, not surface. The use (or non-use) of particular labels and terms is not what matters. The inquiry, for example, does not ride on whether a complaint includes (or, alternatively, omits) the

precise words(?) "FAPE" or "IEP." After all, § 1415(*l*)'s premise is that the plaintiff is suing under a statute *other than* the IDEA, like the Rehabilitation Act; in such a suit, the plaintiff might see no need to use the IDEA's distinctive language—even if she is in essence contesting the adequacy of a special education program. And still more critically, a "magic words" approach would make § 1415(*l*)'s exhaustion rule too easy to bypass. Just last Term, a similar worry led us to hold that a court's jurisdiction under the Foreign Sovereign Immunities Act turns on the "gravamen," or "essentials," of the plaintiff's suit. *OBB Personenverkehr AG* v. *Sachs*, 577 U. S. 27, 34, 35, 36 (2015). "[A]ny other approach," we explained, "would allow plaintiffs to evade the Act's restrictions through artful pleading." *Id.*, at 36. So too here. Section 1415(*l*) is not merely a pleading hurdle. It requires exhaustion when the gravamen of a complaint seeks redress for a school's failure to provide a FAPE, even if not phrased or framed in precisely that way.

In addressing whether a complaint fits that description, a court should attend to the diverse means and ends of the statutes covering persons with disabilities—the IDEA on the one hand, the ADA and Rehabilitation Act (most notably) on the other. The IDEA, of course, protects only "children" (well, really, adolescents too) and concerns only their schooling. § 1412(a)(1)(A). And as earlier noted, the statute's goal is to provide each child with meaningful access to education by offering individualized instruction and related services appropriate to her "unique needs." § 1401(29); see *Rowley*, 458 U. S., at 192, 198; *supra*, at 167. By contrast, Title II of the ADA and § 504 of the Rehabilitation Act cover people with disabilities of all ages, and do so both inside and outside schools. And those statutes aim to root out disability-based discrimination, enabling each covered person (sometimes by means of reasonable accommodations) to participate equally to all others in public facilities and federally funded programs. See *supra*, at 159–160. In short, the IDEA guarantees

individually tailored educational services, while Title II and § 504 promise non-discriminatory access to public institutions. That is not to deny some overlap in coverage: The same conduct might violate all three statutes—which is why, as in *Smith*, a plaintiff might seek relief for the denial of a FAPE under Title II and § 504 as well as the IDEA. But still, the statutory differences just discussed mean that a complaint brought under Title II and § 504 might instead seek relief for simple discrimination, irrespective of the IDEA's FAPE obligation.

One clue to whether the gravamen of a complaint against a school concerns the denial of a FAPE, or instead addresses disability-based discrimination, can come from asking a pair of hypothetical questions. First, could the plaintiff have brought essentially the same claim if the alleged conduct had occurred at a public facility that was *not* a school—say, a public theater or library? And second, could an *adult* at the school—say, an employee or visitor—have pressed essentially the same grievance? When the answer to those questions is yes, a complaint that does not expressly allege the denial of a FAPE is also unlikely to be truly about that subject; after all, in those other situations there is no FAPE obligation and yet the same basic suit could go forward. But when the answer is no, then the complaint probably does concern a FAPE, even if it does not explicitly say so; for the FAPE requirement is all that explains why only a child in the school setting (not an adult in that setting or a child in some other) has a viable claim.

Take two contrasting examples. Suppose first that a wheelchair-bound child sues his school for discrimination under Title II (again, without mentioning the denial of a FAPE) because the building lacks access ramps. In some sense, that architectural feature has educational consequences, and a different lawsuit might have alleged that it violates the IDEA: After all, if the child cannot get inside the school, he cannot receive instruction there; and if he must

be carried inside, he may not achieve the sense of independence conducive to academic (or later to real-world) success. But is the denial of a FAPE really the gravamen of the plaintiff's Title II complaint? Consider that the child could file the same basic complaint if a municipal library or theater had no ramps. And similarly, an employee or visitor could bring a mostly identical complaint against the school. That the claim can stay the same in those alternative scenarios suggests that its essence is equality of access to public facilities, not adequacy of special education. See *supra*, at 163 (describing OCR's use of a similar example). And so § 1415(*l*) does not require exhaustion.[9]

But suppose next that a student with a learning disability sues his school under Title II for failing to provide remedial tutoring in mathematics. That suit, too, might be cast as one for disability-based discrimination, grounded on the school's refusal to make a reasonable accommodation; the complaint might make no reference at all to a FAPE or an IEP. But can anyone imagine the student making the same claim against a public theater or library? Or, similarly, imagine an adult visitor or employee suing the school to ob-

[9] The school districts offer another example illustrating the point. They suppose that a teacher, acting out of animus or frustration, strikes a student with a disability, who then sues the school under a statute other than the IDEA. See Brief for Respondents 36–37. Here too, the suit could be said to relate, in both genesis and effect, to the child's education. But the school districts opine, we think correctly, that the substance of the plaintiff's claim is unlikely to involve the adequacy of special education—and thus is unlikely to require exhaustion. See *ibid.* A telling indicator of that conclusion is that a child could file the same kind of suit against an official at another public facility for inflicting such physical abuse—as could an adult subject to similar treatment by a school official. To be sure, the particular circumstances of such a suit (school or theater? student or employee?) might be pertinent in assessing the reasonableness of the challenged conduct. But even if that is so, the plausibility of bringing other variants of the suit indicates that the gravamen of the plaintiff's complaint does not concern the appropriateness of an educational program.

tain a math tutorial? The difficulty of transplanting the complaint to those other contexts suggests that its essence—even though not its wording—is the provision of a FAPE, thus bringing § 1415(*l*) into play.[10]

A further sign that the gravamen of a suit is the denial of a FAPE can emerge from the history of the proceedings. In particular, a court may consider that a plaintiff has previously invoked the IDEA's formal procedures to handle the dispute—thus starting to exhaust the Act's remedies before switching midstream. Recall that a parent dissatisfied with her child's education initiates those administrative procedures by filing a complaint, which triggers a preliminary meeting (or possibly mediation) and then a due process hearing. See *supra*, at 159. A plaintiff's initial choice to pursue that process may suggest that she is indeed seeking relief for the denial of a FAPE—with the shift to judicial proceedings prior to full exhaustion reflecting only strategic calculations about how to maximize the prospects of such a remedy. Whether that is so depends on the facts; a court may conclude, for example, that the move to a courtroom came from a late-acquired awareness that the school had fulfilled its FAPE obligation and that the grievance involves something else entirely. But prior pursuit of the IDEA's administrative remedies will often provide strong evidence that the substance of a plaintiff's claim concerns the denial of a

[10] According to JUSTICE ALITO, the hypothetical inquiries described above are useful only if the IDEA and other federal laws are mutually exclusive in scope. See *post*, at 176 (opinion concurring in part and concurring in judgment). That is incorrect. The point of the questions is not to show that a plaintiff faced with a particular set of circumstances could *only* have proceeded under Title II or § 504—or, alternatively, could *only* have proceeded under the IDEA. (Depending on the circumstances, she might well have been able to proceed under both.) Rather, these questions help determine whether a plaintiff who has chosen to bring a claim under Title II or § 504 instead of the IDEA—and whose complaint makes no mention of a FAPE—nevertheless raises a claim whose *substance* is the denial of an appropriate education.

FAPE, even if the complaint never explicitly uses that term.[11]

III

The Court of Appeals did not undertake the analysis we have just set forward. As noted above, it asked whether E. F.'s injuries were, broadly speaking, "educational" in nature. See *supra*, at 164; 788 F. 3d, at 627 (reasoning that the "value of allowing Wonder to attend [school] with E. F. was educational" because it would foster "her sense of independence and social confidence," which is "the sort of interest the IDEA protects"). That is not the same as asking whether the gravamen of E. F.'s complaint charges, and seeks relief for, the denial of a FAPE. And that difference in standard may have led to a difference in result in this case. Understood correctly, § 1415(*l*) might not require exhaustion of the Frys' claim. We lack some important information on that score, however, and so we remand the issue to the court below.

The Frys' complaint alleges only disability-based discrimination, without making any reference to the adequacy of the special education services E. F.'s school provided. The school districts' "refusal to allow Wonder to act as a service dog," the complaint states, "discriminated against [E. F.] as a person with disabilities . . . by denying her equal access" to public facilities. App. to Brief in Opposition 15, Complaint ¶68. The complaint contains no allegation about the denial of a FAPE or about any deficiency in E. F.'s IEP. More, it does not accuse the school even in general terms of refusing to provide the educational instruction and services that E. F. needs. See 788 F. 3d, at 631 (acknowledging that

[11] The point here is limited to commencement of the IDEA's formal administrative procedures; it does not apply to more informal requests to IEP Team members or other school administrators for accommodations or changes to a special education program. After all, parents of a child with a disability are likely to bring *all* grievances first to those familiar officials, whether or not they involve the denial of a FAPE.

the Frys do not "state that Wonder enhances E. F.'s educational opportunities"). As the Frys explained in this Court: The school districts "have said all along that because they gave [E. F.] a one-on-one [human] aide, that all of her . . . educational needs were satisfied. And we have not challenged that, and it would be difficult for us to challenge that." Tr. of Oral Arg. 16. The Frys instead maintained, just as OCR had earlier found, that the school districts infringed E. F.'s right to equal access—even if their actions complied in full with the IDEA's requirements. See App. to Brief in Opposition 15, 18–19, Complaint ¶¶ 69, 85, 87; App. 34–37; *supra*, at 163–164.

And nothing in the nature of the Frys' suit suggests any implicit focus on the adequacy of E. F.'s education. Consider, as suggested above, that the Frys could have filed essentially the same complaint if a public library or theater had refused admittance to Wonder. See *supra*, at 172. Or similarly, consider that an adult visitor to the school could have leveled much the same charges if prevented from entering with his service dog. See *ibid.* In each case, the plaintiff would challenge a public facility's policy of precluding service dogs (just as a blind person might challenge a policy of barring guide dogs, see *supra*, at 163) as violating Title II's and § 504's equal access requirements. The suit would have nothing to do with the provision of educational services. From all that we know now, that is exactly the kind of action the Frys have brought.

But we do not foreclose the possibility that the history of these proceedings might suggest something different. As earlier discussed, a plaintiff's initial pursuit of the IDEA's administrative remedies can serve as evidence that the gravamen of her later suit is the denial of a FAPE, even though that does not appear on the face of her complaint. See *supra*, at 173–174. The Frys may or may not have sought those remedies before filing this case: None of the parties here have addressed that issue, and the record is cloudy as to

the relevant facts. Accordingly, on remand, the court below should establish whether (or to what extent) the Frys invoked the IDEA's dispute resolution process before bringing this suit. And if the Frys started down that road, the court should decide whether their actions reveal that the gravamen of their complaint is indeed the denial of a FAPE, thus necessitating further exhaustion.

With these instructions and for the reasons stated, we vacate the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE ALITO, with whom JUSTICE THOMAS joins, concurring in part and concurring in the judgment.

I join all of the opinion of the Court with the exception of its discussion (in the text from the beginning of the first new paragraph on page 171 to the end of the opinion) in which the Court provides several misleading "clue[s]," *ante*, at 171, for the lower courts.

The Court first instructs the lower courts to inquire whether the plaintiff could have brought "essentially the same claim if the alleged conduct had occurred at a public facility that was *not* a school—say, a public theater or library." *Ibid.* Next, the Court says, a court should ask whether "an *adult* at the school—say, an employee or visitor—[could] have pressed essentially the same grievance." *Ibid.* These clues make sense only if there is no overlap between the relief available under the following two sets of claims: (1) the relief provided by the Individuals with Disabilities Education Act (IDEA), and (2) the relief provided by other federal laws (including the Constitution, the Americans with Disabilities Act of 1990 (ADA), and the Rehabilitation Act of 1973). The Court does not show or even claim that there is no such overlap—to the contrary, it observes that "[t]he same conduct might violate" the ADA, the Rehabilitation Act and the IDEA. *Ibid.* And since these clues

work only in the absence of overlap, I would not suggest them.

The Court provides another false clue by suggesting that lower courts take into account whether parents, before filing suit under the ADA or the Rehabilitation Act, began to pursue but then abandoned the IDEA's formal procedures. *Ante*, at 173. This clue also seems to me to be ill advised. It is easy to imagine circumstances under which parents might start down the IDEA road and then change course and file an action under the ADA or the Rehabilitation Act that seeks relief that the IDEA cannot provide. The parents might be advised by their attorney that the relief they were seeking under the IDEA is not available under that law but is available under another. Or the parents might change their minds about the relief that they want, give up on the relief that the IDEA can provide, and turn to another statute.

Although the Court provides these clues for the purpose of assisting the lower courts, I am afraid that they may have the opposite effect. They are likely to confuse and lead courts astray.

Syllabus

BETHUNE-HILL ET AL. *v.* VIRGINIA STATE BOARD OF ELECTIONS ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

No. 15–680. Argued December 5, 2016—Decided March 1, 2017

After the 2010 census, the Virginia State Legislature drew new lines for 12 state legislative districts, with a goal of ensuring that each district would have a black voting-age population (BVAP) of at least 55%. Certain voters filed suit, claiming that the new districts violated the Fourteenth Amendment's Equal Protection Clause. State legislative officials (State) intervened to defend the plan. A three-judge District Court rejected the challenges. As to 11 of the districts, the court concluded that the voters had not shown, as this Court's precedent requires, "that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district," *Miller* v. *Johnson*, 515 U. S. 900, 916. In so doing, the court held that race predominates only where there is an "'*actual* conflict between traditional redistricting criteria and race.'" 141 F. Supp. 3d 505, 524. It thus confined the predominance analysis to the portions of the new lines that appeared to deviate from traditional criteria. As to the remaining district, District 75, the court found that race did predominate, but that the lines were constitutional because the legislature's use of race was narrowly tailored to a compelling state interest. In particular, the court found the legislature had good reasons to believe that a 55% racial target was necessary in District 75 to avoid diminishing the ability of black voters to elect their preferred candidates, which at the time would have violated § 5 of the Voting Rights Act of 1965, see *Alabama Legislative Black Caucus* v. *Alabama*, 575 U. S. 254, 278.

Held:

1. The District Court employed an incorrect legal standard in determining that race did not predominate in 11 of the 12 districts. Pp. 187–193.

(a) The Equal Protection Clause prohibits a State, without sufficient justification, from "separat[ing] its citizens into different voting districts on the basis of race." *Miller*, 515 U. S., at 911. Courts must "exercise extraordinary caution in adjudicating claims" of racial gerrymandering, *id.*, at 916, since a legislature is always "*aware* of race when it draws district lines, just as it is aware of . . . other demographic factors," *Shaw* v. *Reno*, 509 U. S. 630, 646 (*Shaw I*). A plaintiff alleging racial gerrymandering thus bears the burden "to show, either through

circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's [districting] decision," which requires proving "that the legislature subordinated traditional race-neutral districting principles . . . to racial considerations." *Miller*, *supra*, at 916. Here, the District Court misapplied controlling law in two principal ways. Pp. 187–188.

(b) First, the District Court misunderstood relevant precedents when it required the challengers to establish, as a prerequisite to showing racial predominance, an actual conflict between the enacted plan and traditional redistricting principles. This Court has made clear that parties may show predominance "either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose," *Miller*, *supra*, at 916, and that race may predominate even when a plan respects traditional principles, *Shaw* v. *Hunt*, 517 U. S. 899, 907 (*Shaw II*).

The State's theory in this case is irreconcilable with *Miller* and *Shaw II*. The State insists, *e. g.*, that the harm from racial gerrymandering lies not in racial line-drawing *per se* but in grouping voters of the same race together when they otherwise lack shared interests. But "the constitutional violation" in racial gerrymandering cases stems from the "racial purpose of state action, not its stark manifestation." *Miller*, *supra*, at 913. The State also contends that race does not have a prohibited effect on a district's lines if the legislature could have drawn the same lines in accordance with traditional criteria. The proper inquiry, however, concerns the actual considerations that provided the essential basis for the lines drawn, not *post hoc* justifications that the legislature could have used but did not. A legislature could construct a plethora of potential maps that look consistent with traditional, race-neutral principles, but if race is the overriding reason for choosing one map over others, race still may predominate. A conflict or inconsistency may be persuasive circumstantial evidence tending to show racial predomination, but no rule requires challengers to present this kind of evidence in every case. As a practical matter, this kind of evidence may be necessary in many or even most cases. But there may be cases where challengers can establish racial predominance without evidence of an actual conflict. Pp. 188–191.

(c) The District Court also erred in considering the legislature's racial motive only to the extent that the challengers identified deviations from traditional redistricting criteria attributable to race and not to some other factor. Racial gerrymandering claims proceed "district-by-district," *Alabama*, *supra*, at 262, and courts should not divorce any portion of a district's lines—whatever their relationship to traditional principles—from the rest of the district. Courts may consider evidence

pertaining to an area that is larger or smaller than the district at issue. But the ultimate object of the inquiry is the legislature's predominant motive for the district's design as a whole, and any explanation for a particular portion of the lines must take account of the districtwide context. A holistic analysis is necessary to give the proper weight to districtwide evidence, such as stark splits in the racial composition of populations moved into and out of a district, or the use of a racial target. Pp. 191–192.

(d) The District Court is best positioned to determine on remand the extent to which, under the proper standard, race directed the shape of these 11 districts, and if race did predominate, whether strict scrutiny is satisfied. Pp. 192–193.

2. The District Court's judgment regarding District 75 is consistent with the basic narrow tailoring analysis explained in *Alabama*. Where a challenger succeeds in establishing racial predominance, the burden shifts to the State to "demonstrate that its districting legislation is narrowly tailored to achieve a compelling interest." *Miller*, *supra*, at 920. Here, it is assumed that the State's interest in complying with the Voting Rights Act was a compelling interest. When a State justifies the predominant use of race in redistricting on the basis of the need to comply with the Voting Rights Act, "the narrow tailoring requirement insists only that the legislature have a 'strong basis in evidence' in support of the (race-based) choice that it has made." *Alabama*, 575 U. S., at 278. The State must show not that its action was actually necessary to avoid a statutory violation, but only that the legislature had "'*good reasons* to believe'" its use of race was needed in order to satisfy the Voting Rights Act. *Ibid.* There was no error in the District Court's conclusion that the legislature had sufficient grounds to determine that the race-based calculus it employed in District 75 was necessary to avoid violating § 5. Under the facts found by that court, the legislature performed the kind of functional analysis of District 75 necessary under § 5, and the result reflected the good-faith efforts of legislators to achieve an informed bipartisan consensus. In contesting the sufficiency of that evidence and the evidence justifying the 55% BVAP floor, the challengers ask too much from state officials charged with the sensitive duty of reapportioning legislative districts. As to the claim that the BVAP floor is akin to the "mechanically numerical view" of § 5 rejected in *Alabama*, *supra*, at 277, the record here supports the State's conclusion that this was an instance where a 55% BVAP was necessary for black voters to have a functional working majority. Pp. 193–196.

141 F. Supp. 3d 505, affirmed in part, vacated in part, and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed an opinion concurring in part and concurring in the judgment, *post*, p. 197. THOMAS, J., filed an opinion concurring in the judgment in part and dissenting in part, *post*, p. 197.

Marc E. Elias argued the cause for appellants. With him on the briefs were *Bruce V. Spiva*, *Kevin J. Hamilton*, and *Abha Khanna*.

Irving L. Gornstein argued the cause for the United States as *amicus curiae* urging vacatur in part and affirmance in part. With him on the brief were *Acting Solicitor General Gershengorn*, *Principal Deputy Assistant Attorney General Gupta*, *Elizabeth B. Prelogar*, *Tovah R. Calderon*, and *Christine H. Ku*.

Paul D. Clement argued the cause for appellees. With him on the brief were *Erin E. Murphy*, *Efrem M. Braden*, *Katherine L. McKnight*, and *Richard B. Raile*.*

JUSTICE KENNEDY delivered the opinion of the Court.

This case addresses whether the Virginia state legislature's consideration of race in drawing new lines for 12 state legislative districts violated the Equal Protection Clause of the Fourteenth Amendment. After the 2010 census, some

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*Briefs of *amici curiae* urging reversal were filed for the Campaign Legal Center et al. by *Paul M. Smith*, *Jessica Ring Amunson*, *Mark P. Gaber*, *J. Gerald Hebert*, *Aderson B. Francois*, *Lloyd Leonard*, and *Deborah N. Archer*; for the Constitutional Accountability Center by *Elizabeth B. Wydra*, *Brianne J. Gorod*, and *David H. Gans*; for the NAACP et al. by *Anita S. Earls* and *Allison J. Riggs*; and for OneVirginia2021: Virginians for Fair Redistricting by *Gregory E. Lucyk*.

Briefs of *amici curiae* urging affirmance were filed for the National Black Chamber of Commerce et al. by *Jason Torchinsky*; and for the Southeastern Legal Foundation et al. by *John J. Park, Jr.*, *Kimberly S. Hermann*, and *Roger Clegg*.

Briefs of *amici curiae* were filed for the Lawyers' Committee for Civil Rights Under Law by *Michael B. de Leeuw*, *Kristen Clarke*, *Jon M. Greenbaum*, and *Ezra D. Rosenberg*; and for Thomas L. Brunell et al. by *Marguerite Mary Leoni* and *Christopher E. Skinnell*.

redistricting was required to ensure proper numerical apportionment for the Virginia House of Delegates. It is undisputed that the boundary lines for the 12 districts at issue were drawn with a goal of ensuring that each district would have a black voting-age population (BVAP) of at least 55%.

Certain voters challenged the new districts as unconstitutional racial gerrymanders. The United States District Court for the Eastern District of Virginia, constituted as a three-judge district court, rejected the challenges as to each of the 12 districts. As to 11 of the districts, the District Court concluded that the voters had not shown, as this Court's precedent requires, "that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Miller* v. *Johnson*, 515 U. S. 900, 916 (1995). The District Court held that race predominates only where there is an "'*actual* conflict between traditional redistricting criteria and race,'" 141 F. Supp. 3d 505, 524 (ED Va. 2015), so it confined the predominance analysis to the portions of the new lines that appeared to deviate from traditional criteria, and found no violation. As to the remaining district, District 75, the District Court found that race did predominate. It concluded, however, that the lines were constitutional because the legislature's use of race was narrowly tailored to a compelling state interest. In particular, the District Court determined that the legislature had "good reasons to believe" that a 55% racial target was necessary in District 75 to avoid diminishing the ability of black voters to elect their preferred candidates, which at the time would have violated § 5 of the Voting Rights Act of 1965. *Alabama Legislative Black Caucus* v. *Alabama*, 575 U. S. 254, 278 (2015) (internal quotation marks omitted; emphasis deleted).

On appeal to this Court, the challengers contend that the District Court employed an incorrect legal standard for racial predominance and that the legislature lacked good reasons for its use of race in District 75. This Court now

affirms as to District 75 and vacates and remands as to the remaining 11 districts.

I

After the 2010 census, the Virginia General Assembly set out to redraw the legislative districts for the State Senate and House of Delegates in time for the 2011 elections. In February 2011, the House Committee on Privileges and Elections adopted a resolution establishing criteria to guide the redistricting process. Among those criteria were traditional redistricting factors such as compactness, contiguity of territory, and respect for communities of interest. But above those traditional objectives, the committee gave priority to two other goals. First, in accordance with the principle of one person, one vote, the committee resolved that "[t]he population of each district shall be as nearly equal to the population of every other district as practicable," with any deviations falling "within plus-or-minus one percent." 141 F. Supp. 3d, at 518. Second, the committee resolved that the new map must comply with the "protections against . . . unwarranted retrogression" contained in § 5 of the Voting Rights Act. *Ibid.* At the time, § 5 required covered jurisdictions, including Virginia, to preclear any change to a voting standard, practice, or procedure by showing federal authorities that the change would not have the purpose or effect of "diminishing the ability of [members of a minority group] to elect their preferred candidates of choice." § 5, 120 Stat. 580–581, 52 U. S. C. § 10304(b). After the redistricting process here was completed, this Court held that the coverage formula in § 4(b) of the Voting Rights Act no longer may be used to require preclearance under § 5. See *Shelby County* v. *Holder*, 570 U. S. 529, 557 (2013).

The committee's criteria presented potential problems for 12 House districts. Under § 5 as Congress amended it in 2006, "[a] plan leads to impermissible retrogression when, compared to the plan currently in effect (typically called a 'benchmark plan'), the new plan diminishes the number of

districts in which minority groups can 'elect their preferred candidates of choice' (often called 'ability-to-elect' districts)." *Harris* v. *Arizona Independent Redistricting Comm'n*, 578 U. S. 253, 260 (2016) (quoting 52 U. S. C. § 10304(b)). The parties agree that the 12 districts at issue here, where minorities had constituted a majority of the voting-age population for many past elections, qualified as "ability-to-elect" districts. Most of the districts were underpopulated, however, so any new plan required moving significant numbers of new voters into these districts in order to comply with the principle of one person, one vote. Under the benchmark plan, the districts had BVAPs ranging from 62.7% down to 46.3%. Three districts had BVAPs below 55%.

Seeking to maintain minority voters' ability to elect their preferred candidates in these districts while complying with the one-person, one-vote criterion, legislators concluded that each of the 12 districts "needed to contain a BVAP of at least 55%." 141 F. Supp. 3d, at 519. At trial, the parties disputed whether the 55% figure "was an aspiration or a target or a rule." *Ibid.* But they did not dispute "the most important question—whether [the 55%] figure was used in drawing the Challenged Districts." *Ibid.* The parties agreed, and the District Court found, "that the 55% BVAP figure was used in structuring the districts." *Ibid.* In the enacted plan all 12 districts contained a BVAP greater than 55%.

Who first suggested the 55% BVAP criterion and how the legislators agreed upon it was less clear from the evidence. See *id.*, at 521 (describing the "[t]estimony on this question" as "a muddle"). In the end, the District Court found that the 55% criterion emerged from discussions among certain members of the House Black Caucus and the leader of the redistricting effort in the House, Delegate Chris Jones, "based largely on concerns pertaining to the re-election of Delegate Tyler in [District] 75." *Id.*, at 522. The 55% figure "was then applied across the board to all twelve" districts. *Ibid.*

In April 2011, the General Assembly passed Delegate Jones' plan with broad support from both parties and members of the Black Caucus. One of only two dissenting members of the Black Caucus was Delegate Tyler of District 75, who objected solely on the ground that the 55.4% BVAP in her district was too low. In June 2011, the U. S. Department of Justice precleared the plan.

Three years later, before this suit was filed, a separate District Court struck down Virginia's third federal congressional district (not at issue here), based in part on the legislature's use of a 55% BVAP threshold. See *Page* v. *Virginia State Bd. of Elections*, 58 F. Supp. 3d 533, 553 (ED Va. 2014), vacated and remanded *sub nom. Cantor* v. *Personhuballah*, 575 U. S. 931 (2015), judgt. entered *sub nom. Page* v. *Virginia State Bd. of Elections*, 2015 WL 3604029 (June 5, 2015), appeal dism'd *sub nom. Wittman* v. *Personhuballah*, 578 U. S. 539 (2016). After that decision, 12 voters registered in the 12 districts here at issue filed this action challenging the district lines under the Equal Protection Clause. Because the claims "challeng[ed] the constitutionality of . . . the apportionment of [a] statewide legislative body," the case was heard by a three-judge District Court. 28 U. S. C. § 2284(a). The Virginia House of Delegates and its Speaker, William Howell (together referred to hereinafter as the State), intervened and assumed responsibility for defending the plan, both before the District Court and now before this Court.

After a 4-day bench trial, a divided District Court ruled for the State. With respect to each challenged district, the court first assessed whether "racial considerations predominated over—or 'subordinated'—traditional redistricting criteria." 141 F. Supp. 3d, at 523. An essential premise of the majority opinion was that race does not predominate unless there is an "*actual* conflict between traditional redistricting criteria and race that leads to the subordination of the former." *Id.*, at 524. To implement that standard, moreover,

the court limited its inquiry into racial motive to those portions of the district lines that appeared to deviate from traditional criteria. The court thus "examine[d] those aspects of the [district] that appear[ed] to constitute 'deviations' from neutral criteria" to ascertain whether the deviations were attributable to race or to other considerations, "such as protection of incumbents." *Id.*, at 534. Only if the court found a deviation attributable to race did it proceed to "determine whether racial considerations qualitatively subordinated all other non-racial districting criteria." *Ibid.* Under that analysis, the court found that race did not predominate in 11 of the 12 districts.

When it turned to District 75, the District Court found that race did predominate. The court reasoned that "[a]chieving a 55% BVAP floor required 'drastic maneuvering' that is reflected on the face of the district." *Id.*, at 557. Applying strict scrutiny, the court held that compliance with § 5 was a compelling state interest and that the legislature's consideration of race in District 75 was narrowly tailored. As to narrow tailoring, the court explained that the State had "a strong basis in evidence" to believe that its actions were "reasonably necessary" to avoid retrogression. *Id.*, at 548. In particular, the court found that Delegate Jones had considered "precisely the kinds of evidence that legislators are encouraged to use" in achieving compliance with § 5, including turnout rates, the district's large disenfranchised prison population, and voting patterns in the contested 2005 primary and general elections. *Id.*, at 558.

Judge Keenan dissented as to all 12 districts. She concluded that the majority applied an incorrect understanding of racial predominance and that Delegate Jones' analysis of District 75 was too "general and conclusory." *Id.*, at 578. This appeal followed, and probable jurisdiction was noted. 578 U. S. 1021 (2016); see 28 U. S. C. § 1253.

II

Against the factual and procedural background set out above, it is now appropriate to consider the controlling legal principles in this case. The Equal Protection Clause prohibits a State, without sufficient justification, from "separat[ing] its citizens into different voting districts on the basis of race." *Miller*, 515 U. S., at 911. The harms that flow from racial sorting "include being personally subjected to a racial classification as well as being represented by a legislator who believes his primary obligation is to represent only the members of a particular racial group." *Alabama*, 575 U. S., at 263 (alterations, citation, and internal quotation marks omitted). At the same time, courts must "exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race." *Miller*, 515 U. S., at 916. "Electoral districting is a most difficult subject for legislatures," requiring a delicate balancing of competing considerations. *Id.*, at 915. And "redistricting differs from other kinds of state decisionmaking in that the legislature always is *aware* of race when it draws district lines, just as it is aware of . . . a variety of other demographic factors." *Shaw* v. *Reno*, 509 U. S. 630, 646 (1993) (*Shaw I*).

In light of these considerations, this Court has held that a plaintiff alleging racial gerrymandering bears the burden "to show, either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Miller*, 515 U. S., at 916. To satisfy this burden, the plaintiff "must prove that the legislature subordinated traditional race-neutral districting principles . . . to racial considerations." *Ibid.* The challengers contend that, in finding that race did not predominate in 11 of the 12 districts, the District

Court misapplied controlling law in two principal ways. This Court considers them in turn.

A

The challengers first argue that the District Court misunderstood the relevant precedents when it required the challengers to establish, as a prerequisite to showing racial predominance, an actual conflict between the enacted plan and traditional redistricting principles. The Court agrees with the challengers on this point.

A threshold requirement that the enacted plan must conflict with traditional principles might have been reconcilable with this Court's case law at an earlier time. In *Shaw I*, the Court recognized a claim of racial gerrymandering for the first time. See 509 U. S., at 652. Certain language in *Shaw I* can be read to support requiring a challenger who alleges racial gerrymandering to show an actual conflict with traditional principles. The opinion stated, for example, that strict scrutiny applies to "redistricting legislation that is so bizarre on its face that it is unexplainable on grounds other than race." *Id.*, at 644 (internal quotation marks omitted). The opinion also stated that "reapportionment is one area in which appearances do matter." *Id.*, at 647.

The Court's opinion in *Miller*, however, clarified the racial predominance inquiry. In particular, it rejected the argument that, "regardless of the legislature's purposes, a plaintiff must demonstrate that a district's shape is so bizarre that it is unexplainable other than on the basis of race." 515 U. S., at 910–911. The Court held to the contrary in language central to the instant case: "Shape is relevant not because bizarreness is a necessary element of the constitutional wrong or a threshold requirement of proof, but because it may be persuasive circumstantial evidence that race for its own sake, and not other districting principles, was the legislature's dominant and controlling rationale." *Id.*, at 913. Parties therefore "may rely on evidence other than bizarre-

ness to establish race-based districting," and may show predominance "either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose." *Id.*, at 913, 916.

The Court addressed racial gerrymandering and traditional redistricting factors again in *Shaw* v. *Hunt*, 517 U. S. 899 (1996) (*Shaw II*). The Court there rejected the view of one of the dissents that "strict scrutiny does not apply where a State 'respects' or 'complies with traditional districting principles.' " *Id.*, at 906 (quoting *id.*, at 931–932 (Stevens, J., dissenting); alteration omitted). Race may predominate even when a reapportionment plan respects traditional principles, the Court explained, if "[r]ace was the criterion that, in the State's view, could not be compromised," and race-neutral considerations "came into play only after the race-based decision had been made." *Id.*, at 907.

The State's theory in this case is irreconcilable with *Miller* and *Shaw II*. The State insists, for example, that the harm from racial gerrymandering lies not in racial line-drawing *per se* but in grouping voters of the same race together when they otherwise lack shared interests. But "the constitutional violation" in racial gerrymandering cases stems from the "racial purpose of state action, not its stark manifestation." *Miller*, *supra*, at 913. The Equal Protection Clause does not prohibit misshapen districts. It prohibits unjustified racial classifications.

The State contends further that race does not have a prohibited effect on a district's lines if the legislature could have drawn the same lines in accordance with traditional criteria. That argument parallels the District Court's reasoning that a reapportionment plan is not an express racial classification unless a racial purpose is apparent from the face of the plan based on the irregular nature of the lines themselves. See 141 F. Supp. 3d, at 524–526. This is incorrect. The racial predominance inquiry concerns the actual considerations that provided the essential basis for the lines drawn, not *post*

hoc justifications the legislature in theory could have used but in reality did not.

Traditional redistricting principles, moreover, are numerous and malleable. The District Court here identified no fewer than 11 race-neutral redistricting factors a legislature could consider, some of which are "surprisingly ethereal" and "admi[t] of degrees." *Id.*, at 535, 537. By deploying those factors in various combinations and permutations, a State could construct a plethora of potential maps that look consistent with traditional, race-neutral principles. But if race for its own sake is the overriding reason for choosing one map over others, race still may predominate.

For these reasons, a conflict or inconsistency between the enacted plan and traditional redistricting criteria is not a threshold requirement or a mandatory precondition in order for a challenger to establish a claim of racial gerrymandering. Of course, a conflict or inconsistency may be persuasive circumstantial evidence tending to show racial predomination, but there is no rule requiring challengers to present this kind of evidence in every case.

As a practical matter, in many cases, perhaps most cases, challengers will be unable to prove an unconstitutional racial gerrymander without evidence that the enacted plan conflicts with traditional redistricting criteria. In general, legislatures that engage in impermissible race-based redistricting will find it necessary to depart from traditional principles in order to do so. And, in the absence of a conflict with traditional principles, it may be difficult for challengers to find other evidence sufficient to show that race was the overriding factor causing neutral considerations to be cast aside. In fact, this Court to date has not affirmed a predominance finding, or remanded a case for a determination of predominance, without evidence that some district lines deviated from traditional principles. See *Alabama*, 575 U. S., at 273; *Hunt* v. *Cromartie*, 526 U. S. 541, 547 (1999); *Bush* v. *Vera*, 517 U. S. 952, 962, 966, 974 (1996) (plurality opinion); *Shaw*

II, *supra*, at 905–906; *Miller*, *supra*, at 917; *Shaw I*, *supra*, at 635–636. Yet the law responds to proper evidence and valid inferences in ever-changing circumstances, as it learns more about ways in which its commands are circumvented. So there may be cases where challengers will be able to establish racial predominance in the absence of an actual conflict by presenting direct evidence of the legislative purpose and intent or other compelling circumstantial evidence.

B

The challengers submit that the District Court erred further when it considered the legislature's racial motive only to the extent that the challengers identified deviations from traditional redistricting criteria that were attributable to race and not to some other factor. In the challengers' view, this approach foreclosed a holistic analysis of each district and led the District Court to give insufficient weight to the 55% BVAP target and other relevant evidence that race predominated. Again, this Court agrees.

As explained, showing a deviation from, or conflict with, traditional redistricting principles is not a necessary prerequisite to establishing racial predominance. *Supra*, at 190. But even where a challenger alleges a conflict, or succeeds in showing one, the court should not confine its analysis to the conflicting portions of the lines. That is because the basic unit of analysis for racial gerrymandering claims in general, and for the racial predominance inquiry in particular, is the district. Racial gerrymandering claims proceed "district-by-district." *Alabama*, 575 U. S., at 262. "We have consistently described a claim of racial gerrymandering as a claim that race was improperly used in the drawing of the boundaries of one or more *specific electoral districts*." *Id.*, at 262–263. And *Miller*'s basic predominance test scrutinizes the legislature's motivation for placing "a significant number of voters within or without a particular district." 515 U. S., at 916. Courts evaluating racial predominance

therefore should not divorce any portion of the lines—whatever their relationship to traditional principles—from the rest of the district.

This is not to suggest that courts evaluating racial gerrymandering claims may not consider evidence pertaining to an area that is larger or smaller than the district at issue. The Court has recognized that "[v]oters, of course, can present statewide evidence in order to prove racial gerrymandering in a particular district." *Alabama*, *supra*, at 263 (emphasis deleted). Districts share borders, after all, and a legislature may pursue a common redistricting policy toward multiple districts. Likewise, a legislature's race-based decisionmaking may be evident in a notable way in a particular part of a district. It follows that a court may consider evidence regarding certain portions of a district's lines, including portions that conflict with traditional redistricting principles.

The ultimate object of the inquiry, however, is the legislature's predominant motive for the design of the district as a whole. A court faced with a racial gerrymandering claim therefore must consider all of the lines of the district at issue; any explanation for a particular portion of the lines, moreover, must take account of the districtwide context. Concentrating on particular portions in isolation may obscure the significance of relevant districtwide evidence, such as stark splits in the racial composition of populations moved into and out of disparate parts of the district, or the use of an express racial target. A holistic analysis is necessary to give that kind of evidence its proper weight.

C

The challengers ask this Court not only to correct the District Court's racial predominance standard but also to apply that standard and conclude that race in fact did predominate in the 11 districts where the District Court held that it did not. For its part, the State asks the Court to hold that,

even if race did predominate in these districts, the State's predominant use of race was narrowly tailored to the compelling interest in complying with § 5.

The Court declines these requests. "[O]urs is a court of final review and not first view." *Department of Transportation* v. *Association of American Railroads*, 575 U. S. 43, 56 (2015) (internal quotation marks omitted). The District Court is best positioned to determine in the first instance the extent to which, under the proper standard, race directed the shape of these 11 districts. And if race did predominate, it is proper for the District Court to determine in the first instance whether strict scrutiny is satisfied. These matters are left for the District Court on remand.

III

The Court now turns to the arguments regarding District 75. Where a challenger succeeds in establishing racial predominance, the burden shifts to the State to "demonstrate that its districting legislation is narrowly tailored to achieve a compelling interest." *Miller*, *supra*, at 920. The District Court here determined that the State's predominant use of race in District 75 was narrowly tailored to achieve compliance with § 5. The challengers contest the finding of narrow tailoring, but they do not dispute that compliance with § 5 was a compelling interest at the relevant time. As in previous cases, therefore, the Court assumes, without deciding, that the State's interest in complying with the Voting Rights Act was compelling. *E. g.*, *Alabama*, *supra*, at 275–279; *Shaw II*, 517 U. S., at 915.

Turning to narrow tailoring, the Court explained the contours of that requirement in *Alabama*. When a State justifies the predominant use of race in redistricting on the basis of the need to comply with the Voting Rights Act, "the narrow tailoring requirement insists only that the legislature have a strong basis in evidence in support of the (race-based) choice that it has made." 575 U. S., at 278 (internal quota-

tion marks omitted). That standard does not require the State to show that its action was "actually . . . necessary" to avoid a statutory violation, so that, but for its use of race, the State would have lost in court. *Ibid.* (internal quotation marks omitted). Rather, the requisite strong basis in evidence exists when the legislature has "*good reasons* to believe" it must use race in order to satisfy the Voting Rights Act, "even if a court does not find that the actions were necessary for statutory compliance." *Ibid.* (internal quotation marks omitted).

The Court now finds no error in the District Court's conclusion that the State had sufficient grounds to determine that the race-based calculus it employed in District 75 was necessary to avoid violating § 5. As explained, § 5 at the time barred Virginia from adopting any districting change that would "have the effect of diminishing the ability of [members of a minority group] to elect their preferred candidates of choice." 52 U. S. C. § 10304(b). Determining what minority population percentage will satisfy that standard is a difficult task requiring, in the view of the Department of Justice, a "functional analysis of the electoral behavior within the particular . . . election district." Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act, 76 Fed. Reg. 7471 (2011).

Under the facts found by the District Court, the legislature performed that kind of functional analysis of District 75 when deciding upon the 55% BVAP target. Redrawing this district presented a difficult task, and the result reflected the good-faith efforts of Delegate Jones and his colleagues to achieve an informed bipartisan consensus. Delegate Jones met with Delegate Tyler "probably half a dozen times to configure her district" in order to avoid retrogression. 141 F. Supp. 3d, at 558 (internal quotation marks omitted). He discussed the district with incumbents from other majority-minority districts. He also considered turnout rates, the results of the recent contested primary and general elections

in 2005, and the district's large population of disenfranchised black prisoners. The challengers, moreover, do not dispute that District 75 was an ability-to-elect district, or that white and black voters in the area tend to vote as blocs. See *id.*, at 557–559. In light of Delegate Jones' careful assessment of local conditions and structures, the State had a strong basis in evidence to believe a 55% BVAP floor was required to avoid retrogression.

The challengers' responses ask too much from state officials charged with the sensitive duty of reapportioning legislative districts. First, the challengers contest the sufficiency of the evidence showing that Delegate Jones in fact performed a functional analysis, in part because that analysis was not memorialized in writing. But the District Court's factual findings are reviewed only for clear error. See *Easley* v. *Cromartie*, 532 U. S. 234, 242 (2001). The findings regarding how the legislature arrived at the 55% BVAP target are well supported, and "we do not . . . require States engaged in redistricting to compile a comprehensive administrative record." *Vera*, 517 U. S., at 966 (internal quotation marks omitted).

The challengers argue further that the drafters of the plan had insufficient evidence to justify a 55% BVAP floor. The 2005 elections were idiosyncratic, the challengers contend; moreover, demographic information about the prison in the district is absent from the record, and Delegate Tyler's perspective was influenced by a personal interest in reelection. That may have been so, and for those reasons, it is possible that, if the State had drawn District 75 with a BVAP below 55% and had sought judicial preclearance, a court would have found no §5 violation. But that is not the question here. "The law cannot insist that a state legislature, when redistricting, determine *precisely* what percent minority population §5 demands." *Alabama*, 575 U. S., at 278. The question is whether the State had "*good reasons*" to believe a 55% BVAP floor was necessary to avoid liability under §5.

Ibid. (internal quotation marks omitted). The State did have good reasons under these circumstances. Holding otherwise would afford state legislatures too little breathing room, leaving them "trapped between the competing hazards of liability" under the Voting Rights Act and the Equal Protection Clause. *Vera*, *supra*, at 977 (internal quotation marks omitted).

As a final point, the challengers liken the 55% BVAP floor here to the "mechanically numerical view" of § 5 this Court rejected in *Alabama*. 575 U. S., at 277. But *Alabama* did not condemn the use of BVAP targets to comply with § 5 in every instance. Rather, this Court corrected the "misperception" that § 5 required a State to "maintai[n] the same population percentages in majority-minority districts as in the prior plan." *Id.*, at 275–276. "[I]t would seem highly unlikely," the Court explained, that reducing a district's BVAP "from, say, 70% to 65% would have a significant impact on the black voters' ability to elect their preferred candidate." *Id.*, at 277. Yet reducing the BVAP below 55% well might have that effect in some cases. The record here supports the legislature's conclusion that this was one instance where a 55% BVAP was necessary for black voters to have a functional working majority.

IV

The Court's holding in this case is controlled by precedent. The Court reaffirms the basic racial predominance analysis explained in *Miller* and *Shaw II*, and the basic narrow tailoring analysis explained in *Alabama*. The District Court's judgment as to District 75 is consistent with these principles. Applying these principles to the remaining 11 districts is entrusted to the District Court in the first instance.

The judgment of the District Court is affirmed in part and vacated in part. The case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE ALITO, concurring in part and concurring in the judgment.

I join the opinion of the Court insofar as it upholds the constitutionality of District 75. *Ante*, at 193–196. The districting plan at issue here was adopted prior to our decision in *Shelby County* v. *Holder*, 570 U. S. 529 (2013), and therefore it is appropriate to apply the body of law in effect at that time. What is more, appellants have never contested the District Court's holding that compliance with § 5 of the Voting Rights Act was a compelling government interest for covered jurisdictions before our decision in *Shelby County*. See 141 F. Supp. 3d 505, 545–547 (ED Va. 2015).

I concur in the judgment of the Court insofar as it vacates and remands the judgment below with respect to all the remaining districts. Unlike the Court, however, I would hold that all these districts must satisfy strict scrutiny. See *post*, at 198 (THOMAS, J., concurring in judgment in part and dissenting in part); see also *League of United Latin American Citizens* v. *Perry*, 548 U. S. 399, 517 (2006) (Scalia, J., concurring in judgment in part and dissenting in part) ("[W]hen a legislature intentionally creates a majority-minority district, race is necessarily its predominant motivation and strict scrutiny is therefore triggered").

JUSTICE THOMAS, concurring in the judgment in part and dissenting in part.

Appellants contend that 12 of Virginia's state legislative districts are unconstitutional racial gerrymanders. The three-judge District Court rejected their challenge, holding that race was not the legislature's predominant motive in drawing 11 of the districts and that the remaining district survives strict scrutiny. I would reverse the District Court as to all 12 districts. I therefore concur in the judgment in part and dissent in part.

I

I concur in the Court's judgment reversing the District Court's decision to uphold 11 of the 12 districts at issue in this case—House Districts 63, 69, 70, 71, 74, 77, 80, 89, 90, 92, and 95. I do not agree, however, with the Court's decision to leave open the question whether race predominated in those districts and, thus, whether they are subject to strict scrutiny. *Ante*, at 192–193. Appellees (hereinafter State) concede that the legislature intentionally drew all 12 districts as majority-black districts. See, *e. g.*, Brief for Appellees 1 ("[T]he legislature sought to achieve a [black voting-age population] of at least 55% in adjusting the lines of the 12 majority-minority districts"). That concession, in my view, mandates strict scrutiny as to each district. See *Bush* v. *Vera*, 517 U. S. 952, 1000 (1996) (THOMAS, J., concurring in judgment) (A State's "concession that it intentionally created majority-minority districts [i]s sufficient to show that race was a predominant, motivating factor in its redistricting"); *League of United Latin American Citizens* v. *Perry*, 548 U. S. 399, 517 (2006) (*LULAC*) (Scalia, J., concurring in judgment in part and dissenting in part) ("[W]hen a legislature intentionally creates a majority-minority district, race is necessarily its predominant motivation and strict scrutiny is therefore triggered"). I would therefore hold that the District Court must apply strict scrutiny to Districts 63, 69, 70, 71, 74, 77, 80, 89, 90, 92, and 95 on remand.

II

I disagree with the Court's judgment with respect to the remaining district, District 75. The majority affirms the District Court's holding that District 75 is subject to strict scrutiny. With this I agree, because, as with the other 11 districts, the State conceded that it intentionally drew District 75 as a majority-black district.

I disagree, however, with the majority's determination that District 75 satisfies strict scrutiny. This Court has held

that a State may draw distinctions among its citizens based on race only when it "is pursuing a compelling state interest" and has chosen "narrowly tailored" means to accomplish that interest. *Shaw* v. *Hunt*, 517 U. S. 899, 908 (1996) (internal quotation marks omitted). The State asserts that it used race in drawing District 75 to further a "compelling interest in complying with Section 5 of the [Voting Rights Act of 1965]." Brief for Appellees 50.[1] And it argues that, based on its "good-faith functional analysis" of the district, it narrowly tailored its use of race to achieve that interest. *Id.*, at 56. In my view, the State has neither asserted a compelling state interest nor narrowly tailored its use of race.

A

As an initial matter, the majority errs by "assum[ing], without deciding, that the State's interest in complying with the Voting Rights Act was compelling." *Ante*, at 193. To be sure, this Court has previously assumed that a State has a compelling interest in complying with the Voting Rights Act. But it has done so only in cases in which it has not upheld the redistricting plan at issue. See, *e. g.*, *Miller* v. *Johnson*, 515 U. S. 900, 921 (1995) (leaving open the question "[w]hether or not in some cases compliance with the [Voting Rights] Act, standing alone, can provide a compelling interest independent of any interest in remedying past discrimination").[2] This Court has never, before today, assumed a

[1] It is unclear from the record whether the State sought to justify its use of race on other grounds. I would leave it to the District Court to evaluate in the first instance any other asserted compelling interest, including whether such interest has been forfeited.

[2] See also *Shaw* v. *Hunt*, 517 U. S. 899, 911 (1996) ("In *Miller*, we expressly left open the question whether under the proper circumstances compliance with the Voting Rights Act, on its own, could be a compelling [state] interest. . . . Here once again we do not reach that question because we find that creating an additional majority-black district was not required under a correct reading of § 5"); *id.*, at 915 ("We assume, *arguendo*, for the purpose of resolving this suit, that compliance with § 2 could be a compel-

compelling state interest while upholding a state redistricting plan. Indeed, I know of no other case, in any context, in which the Court has assumed away part of the State's burden to justify its intentional use of race. This should not be the first. I would hold that complying with § 5 of the Voting Rights Act is not a compelling interest.

"[C]ompliance with federal antidiscrimination laws cannot justify race-based districting where the challenged district was not reasonably necessary under a *constitutional* reading and application of those laws." *Id.*, at 921 (emphasis added). More than a decade ago, I joined Justice Scalia's opinion in *LULAC*, which noted that this Court had "upheld the constitutionality of § 5 as a proper exercise of Congress's authority under § 2 of the Fifteenth Amendment to enforce that Amendment's prohibition on the denial or abridgment of the right to vote." 548 U. S., at 518. I therefore agreed that, "[i]n the proper case, . . . a covered jurisdiction may have a compelling interest in complying with § 5." *Id.*, at 519.

I have since concluded that § 5 is "unconstitutional." *Northwest Austin Municipal Util. Dist. No. One* v. *Holder*, 557 U. S. 193, 216 (2009) (THOMAS, J., concurring in judgment in part and dissenting in part). "[T]he violence, intimidation, and subterfuge that led Congress to pass § 5 and this Court to uphold it no longer remains," *id.*, at 229, so § 5 "can no longer be justified as an appropriate mechanism for enforcement of the Fifteenth Amendment," *id.*, at 216. Because, in my view, § 5 is unconstitutional, I would hold that

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ling interest" but hold that the remedy "is not narrowly tailored to the asserted end"); *Bush* v. *Vera*, 517 U. S. 952, 977, 979 (1996) (plurality opinion) ("[W]e assume without deciding that compliance with [the Voting Rights Act], as interpreted by our precedents, can be a compelling state interest" but hold that the districts at issue are not "narrowly tailored" to achieve that interest (citation omitted)); *Alabama Legislative Black Caucus* v. *Alabama*, 575 U. S. 254, 279 (2015) ("[W]e do not here decide whether . . . continued compliance with § 5 remains a compelling interest" because "we conclude that the District Court and the legislature asked the wrong question with respect to narrow tailoring").

a State does not have a compelling interest in complying with it.

B

Even if compliance with §5 were a compelling interest, the State failed to narrowly tailor its use of race to further that interest.

1

This Court has explained that "[a]ny preference based on racial or ethnic criteria must necessarily receive a most searching examination." *Wygant* v. *Jackson Bd. of Ed.*, 476 U. S. 267, 273 (1986) (plurality opinion) (internal quotation marks omitted); accord, *Adarand Constructors, Inc.* v. *Peña*, 515 U. S. 200, 223 (1995); *Grutter* v. *Bollinger*, 539 U. S. 306, 378 (2003) (Rehnquist, C. J., dissenting). This exacting scrutiny makes sense because "[d]iscrimination on the basis of race" is "odious in all aspects." *Rose* v. *Mitchell*, 443 U. S. 545, 555 (1979). Accordingly, a State's use of race must bear "'the most exact connection'" to the compelling state interest. *Wygant*, *supra*, at 280 (opinion of Powell, J.). In the context of redistricting, the redistricting map must, "at a minimum," actually "remedy the anticipated violation" or "achieve compliance" with the Voting Rights Act. *Shaw*, 517 U. S., at 916.

I have serious doubts about the Court's standard for narrow tailoring, as characterized today and in *Alabama Legislative Black Caucus* v. *Alabama*, 575 U. S. 254 (2015). Relying on *Alabama*, the majority explains that narrow tailoring in the redistricting context requires "only that the legislature have a strong basis in evidence in support of the (race-based) choice that it has made." *Ante*, at 193 (internal quotation marks omitted). That standard "does not demand that a State's actions actually be necessary to achieve a compelling state interest in order to be constitutionally valid." *Alabama*, *supra*, at 278 (internal quotation marks omitted); see also *ante*, at 194. Instead, under that standard, a state

legislature needs only "*good reasons* to believe" that the use of race is required, even if the use of race is not "actually . . . necessary." *Alabama*, *supra*, at 278 (internal quotation marks omitted).

That approach to narrow tailoring—deferring to a State's belief that it has good reasons to use race—is "strict" in name only. To the extent the Court applies *Alabama* to dilute the well-settled standard established by our precedents, I demur.

2

Applying the proper narrow-tailoring standard for state classifications based on race, I conclude that the State did not narrowly tailor its use of race to comply with § 5. As the majority recognizes, § 5 requires a state redistricting plan to maintain the black population's ability to elect the candidate of its choice in the district at issue—in other words, the State must "avoid retrogression" in the new district. *Ante*, at 194–195.

The majority observes that the redistricting plan's architect, Delegate Chris Jones, performed a "functional analysis" in deciding that District 75 required a 55% black voting-age population—as opposed to some other percentage—to avoid retrogression. *Ibid.* The Court notes that, in arriving at the 55% threshold, Delegate Jones considered turnout rates, the results of the primary and general elections in 2005, and the district's "large population of disenfranchised black prisoners." *Ante*, at 195. He also met with the incumbent delegate for District 75 "probably half a dozen times" and "discussed the district with incumbents from other majority-minority districts." *Ante*, at 194 (internal quotation marks omitted). Those efforts add up, in the majority's view, to a "careful assessment of local conditions and structures." *Ante*, at 195.

I do not agree that those efforts satisfy narrow tailoring. Delegate Jones admitted that he was "not aware" of "any retrogress[ion] analysis" performed by "h[im] or any persons that worked with him in the development of the [redistrict-

ing] plan." App. 288–289. Instead, he merely "look[ed] at" the "percentage of black population and the percentage of black voting age population," "looked at what had happened over the last 10-year period given the existing population and demographic shifts," and "tried to restore back" the levels of black voting-age population from the previous maps. *Id.*, at 290. That approach was misguided, because § 5 "does not require maintaining the same population percentages in majority-minority districts as in the prior plan." *Alabama*, *supra*, at 276. And in any event, that back-of-the-envelope calculation does not qualify as rigorous analysis. I do not think we would permit so imprecise an approach with regard to any other instance of racial discrimination.

The other evidence cited by the majority is similarly weak. The majority points to the "'half a dozen'" meetings between Delegate Jones and the incumbent delegate for District 75, *ante*, at 194, but it is not apparent from the record whether District 75's incumbent is the current black population's candidate of choice. Moreover, the incumbent delegate may well have wanted her district to be electorally safer than the Voting Rights Act requires. It also is not obvious to me that Delegate Jones was seeking to avoid retrogression in District 75 when he met with incumbent delegates from *other* majority-black districts. *Ibid.* In my view, those efforts fall far short of establishing that a 55% black voting-age population bears a more "'exact connection'" to the State's interest than any alternative percentage. *Wygant*, 476 U. S., at 280 (opinion of Powell, J.). Accordingly, I would hold that the State failed to narrowly tailor its use of race to avoid retrogression in District 75.

* * *

In reaching these conclusions, I recognize that this Court is at least as responsible as the state legislature for these racially gerrymandered districts. As explained above, this Court has repeatedly failed to decide whether compliance with the Voting Rights Act is a compelling governmental

interest. See *supra*, at 199–200, and n. 2. Indeed, this Court has refused even to decide whether § 5 is constitutional, despite having twice taken cases to decide that question. Compare Juris. Statement in *Northwest Austin*, O. T. 2008, No. 08–322, p. i (presenting the question "[w]hether . . . the § 5 preclearance requirement can be applied as a valid exercise of Congress's remedial powers under the Reconstruction Amendments"), and *Shelby County* v. *Holder*, 568 U. S. 1006 (2012) (granting certiorari on the question "[w]hether Congress' decision in 2006 to reauthorize § 5 of the Voting Rights Act under the pre-existing coverage formula of § 4(b) . . . violated the Tenth Amendment and Article IV of the [United States] Constitution"), with *Northwest Austin*, 557 U. S., at 197 (holding that the district at issue was eligible to seek bailout under the Voting Rights Act and therefore "not reach[ing] the constitutionality of § 5"), and *Shelby County* v. *Holder*, 570 U. S. 529, 557 (2013) (holding only that the coverage formula under § 4(b) was unconstitutional and "issu[ing] no holding on § 5 itself"). As a result, the Court has left the State without clear guidance about its redistricting obligations under § 5.

This Court has put the State in a similar bind with respect to narrow tailoring. To comply with § 5, a State necessarily must make a deliberate and precise effort to sort its citizens on the basis of their race. But that result is fundamentally at odds with our "color-blind" Constitution, which "neither knows nor tolerates classes among citizens." *Plessy* v. *Ferguson*, 163 U. S. 537, 559 (1896) (Harlan, J., dissenting). That contradiction illustrates the perversity of the Court's jurisprudence in this area as well as the uncomfortable position in which the State might find itself.

Despite my sympathy for the State, I cannot ignore the Constitution's clear prohibition on state-sponsored race discrimination. "The Constitution abhors classifications based on race, not only because those classifications can harm favored races or are based on illegitimate motives, but also

because every time the government places citizens on racial registers . . . , it demeans us all." *Grutter*, 539 U. S., at 353 (THOMAS, J., concurring in part and dissenting in part). This prohibition was "[p]urchased at the price of immeasurable human suffering," and it "reflects our Nation's understanding that such classifications ultimately have a destructive impact on the individual and our society." *Adarand Constructors*, 515 U. S., at 240 (THOMAS, J., concurring in part and concurring in judgment). I respectfully dissent from the Court's judgment as to District 75.

Syllabus

PENA-RODRIGUEZ *v.* COLORADO

CERTIORARI TO THE SUPREME COURT OF COLORADO

No. 15–606. Argued October 11, 2016—Decided March 6, 2017

A Colorado jury convicted petitioner Peña-Rodriguez of harassment and unlawful sexual contact. Following the discharge of the jury, two jurors told defense counsel that, during deliberations, Juror H. C. had expressed anti-Hispanic bias toward petitioner and petitioner's alibi witness. Counsel, with the trial court's supervision, obtained affidavits from the two jurors describing a number of biased statements by H. C. The court acknowledged H. C.'s apparent bias but denied petitioner's motion for a new trial on the ground that Colorado Rule of Evidence 606(b) generally prohibits a juror from testifying as to statements made during deliberations in a proceeding inquiring into the validity of the verdict. The Colorado Court of Appeals affirmed, agreeing that H. C.'s alleged statements did not fall within an exception to Rule 606(b). The Colorado Supreme Court also affirmed, relying on *Tanner* v. *United States*, 483 U. S. 107, and *Warger* v. *Shauers*, 574 U. S. 40, both of which rejected constitutional challenges to the federal no-impeachment rule as applied to evidence of juror misconduct or bias.

Held: Where a juror makes a clear statement indicating that he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee. Pp. 215–219.

(a) At common law jurors were forbidden to impeach their verdict, either by affidavit or live testimony. Some American jurisdictions adopted a more flexible version of the no-impeachment bar, known as the "Iowa rule," which prevented jurors from testifying only about their own subjective beliefs, thoughts, or motives during deliberations. An alternative approach, later referred to as the federal approach, permitted an exception only for events extraneous to the deliberative process. This Court's early decisions did not establish a clear preference for a particular version of the no-impeachment rule, appearing open to the Iowa rule in *United States* v. *Reid*, 12 How. 361, and *Mattox* v. *United States*, 146 U. S. 140, but rejecting that approach in *McDonald* v. *Pless*, 238 U. S. 264.

The common-law development of the rule reached a milestone in 1975 when Congress adopted Federal Rule of Evidence 606(b), which sets out

a broad no-impeachment rule, with only limited exceptions. This version of the no-impeachment rule has substantial merit, promoting full and vigorous discussion by jurors and providing considerable assurance that after being discharged they will not be summoned to recount their deliberations or otherwise harassed. The rule gives stability and finality to verdicts. Pp. 215–218.

(b) Some version of the no-impeachment rule is followed in every State and the District of Columbia, most of which follow the Federal Rule. At least 16 jurisdictions have recognized an exception for juror testimony about racial bias in deliberations. Three Federal Courts of Appeals have also held or suggested there is a constitutional exception for evidence of racial bias.

In addressing the common-law no-impeachment rule, this Court noted the possibility of an exception in the "gravest and most important cases." *United States* v. *Reid*, *supra*, at 366; *McDonald* v. *Pless*, *supra*, at 269. The Court has addressed the question whether the Constitution mandates an exception to Rule 606(b) just twice, rejecting an exception each time. In *Tanner*, where the evidence showed that some jurors were under the influence of drugs and alcohol during the trial, the Court identified "long-recognized and very substantial concerns" supporting the no-impeachment rule. 483 U. S., at 127. The Court also outlined existing, significant safeguards for the defendant's right to an impartial and competent jury beyond post-trial juror testimony: Members of the venire can be examined for impartiality during *voir dire*; juror misconduct may be observed by the court, counsel, and court personnel during the trial; and jurors themselves can report misconduct to the court before a verdict is rendered. In *Warger*, a civil case where the evidence indicated that the jury forewoman failed to disclose a prodefendant bias during *voir dire*, the Court again put substantial reliance on existing safeguards for a fair trial. But the Court also warned, as in *Reid* and *McDonald*, that the no-impeachment rule may admit of exceptions for "juror bias so extreme that, almost by definition, the jury trial right has been abridged." 574 U. S., at 51, n. 3. *Reid*, *McDonald*, and *Warger* left open the question here: whether the Constitution requires an exception to the no-impeachment rule when a juror's statements indicate that racial animus was a significant motivating factor in his or her finding of guilt. Pp. 218–221.

(c) The imperative to purge racial prejudice from the administration of justice was given new force and direction by the ratification of the Civil War Amendments. "[T]he central purpose of the Fourteenth Amendment was to eliminate racial discrimination emanating from official sources in the States." *McLaughlin* v. *Florida*, 379 U. S. 184, 192. Time and again, this Court has enforced the Constitution's guarantee

against state-sponsored racial discrimination in the jury system. The Court has interpreted the Fourteenth Amendment to prohibit the exclusion of jurors based on race, *Strauder* v. *West Virginia*, 100 U. S. 303, 305–309; struck down laws and practices that systematically exclude racial minorities from juries, see, *e. g.*, *Neal* v. *Delaware*, 103 U. S. 370; ruled that no litigant may exclude a prospective juror based on race, see, *e. g.*, *Batson* v. *Kentucky*, 476 U. S. 79; and held that defendants may at times be entitled to ask about racial bias during *voir dire*, see, *e. g.*, *Ham* v. *South Carolina*, 409 U. S. 524. The unmistakable principle of these precedents is that discrimination on the basis of race, "odious in all aspects, is especially pernicious in the administration of justice," *Rose* v. *Mitchell*, 443 U. S. 545, 555, damaging "both the fact and the perception" of the jury's role as "a vital check against the wrongful exercise of power by the State," *Powers* v. *Ohio*, 499 U. S. 400, 411. Pp. 221–223.

(d) This case lies at the intersection of the Court's decisions endorsing the no-impeachment rule and those seeking to eliminate racial bias in the jury system. Those lines of precedent need not conflict. Racial bias, unlike the behavior in *McDonald*, *Tanner*, or *Warger*, implicates unique historical, constitutional, and institutional concerns and, if left unaddressed, would risk systemic injury to the administration of justice. It is also distinct in a pragmatic sense, for the *Tanner* safeguards may be less effective in rooting out racial bias. But while all forms of improper bias pose challenges to the trial process, there is a sound basis to treat racial bias with added precaution. A constitutional rule that racial bias in the justice system must be addressed—including, in some instances, after a verdict has been entered—is necessary to prevent a systemic loss of confidence in jury verdicts, a confidence that is a central premise of the Sixth Amendment trial right. Pp. 223–225.

(e) Before the no-impeachment bar can be set aside to allow further judicial inquiry, there must be a threshold showing that one or more jurors made statements exhibiting overt racial bias that cast serious doubt on the fairness and impartiality of the jury's deliberations and resulting verdict. To qualify, the statement must tend to show that racial animus was a significant motivating factor in the juror's vote to convict. Whether the threshold showing has been satisfied is committed to the substantial discretion of the trial court in light of all the circumstances, including the content and timing of the alleged statements and the reliability of the proffered evidence.

The practical mechanics of acquiring and presenting such evidence will no doubt be shaped and guided by state rules of professional ethics and local court rules, both of which often limit counsel's post-trial contact with jurors. The experience of those jurisdictions that have already recognized a racial-bias exception to the no-impeachment rule,

and the experience of courts going forward, will inform the proper exercise of trial judge discretion. The Court need not address what procedures a trial court must follow when confronted with a motion for a new trial based on juror testimony of racial bias or the appropriate standard for determining when such evidence is sufficient to require that the verdict be set aside and a new trial be granted. Standard and existing safeguards may also help prevent racial bias in jury deliberations, including careful *voir dire* and a trial court's instructions to jurors about their duty to review the evidence, deliberate together, and reach a verdict in a fair and impartial way, free from bias of any kind. Pp. 225–229.

350 P. 3d 287, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed a dissenting opinion, *post*, p. 230. ALITO, J., filed a dissenting opinion, in which ROBERTS, C. J., and THOMAS, J., joined, *post*, p. 235.

Jeffrey L. Fisher argued the cause for petitioner. With him on the briefs were *Pamela S. Karlan*, *Brian Wolfman*, and *Jonathan D. Rosen*.

Frederick R. Yarger, Solicitor General of Colorado, argued the cause for respondent. With him on the brief were *Cynthia H. Coffman*, Attorney General, *L. Andrew Cooper*, Deputy Attorney General, *Glenn P. Roper*, Deputy Solicitor General, *Katharine J. Gillespie* and *Stephanie Linquist Scoville*, Senior Assistant Attorneys General, and *Majid Yazdi* and *Molly E. McNab*, Assistant Attorneys General.

Rachel P. Kovner argued the cause for the United States as *amicus curiae* urging affirmance. With her on the brief were *Acting Solicitor General Gershengorn*, *Assistant Attorney General Caldwell*, *Deputy Solicitor General Dreeben*, and *William A. Glasner*.*

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*Briefs of *amici curiae* urging reversal were filed for the Center on the Administration of Criminal Law by *David A. Barrett* and *Joshua J. Libling*; for the Constitutional Accountability Center by *Elizabeth B. Wydra*, *Brianne J. Gorod*, and *David H. Gans*; for the Hispanic National Bar Association et al. by *Peter Karanjia* and *Robert T. Maldonado*; for the NAACP Legal Defense & Educational Fund, Inc., et al. by *John Paul Schnapper-Casteras*, *Sherrilyn Ifill*, *Janai Nelson*, *Christina Swarns*, *Jin Hee Lee*,

JUSTICE KENNEDY delivered the opinion of the Court.

The jury is a central foundation of our justice system and our democracy. Whatever its imperfections in a particular case, the jury is a necessary check on governmental power. The jury, over the centuries, has been an inspired, trusted, and effective instrument for resolving factual disputes and determining ultimate questions of guilt or innocence in criminal cases. Over the long course its judgments find acceptance in the community, an acceptance essential to respect for the rule of law. The jury is a tangible implementation of the principle that the law comes from the people.

In the era of our Nation's founding, the right to a jury trial already had existed and evolved for centuries, through and alongside the common law. The jury was considered a fundamental safeguard of individual liberty. See The Federalist No. 83, p. 451 (B. Warner ed. 1818) (A. Hamilton). The right to a jury trial in criminal cases was part of the Constitution as first drawn, and it was restated in the Sixth Amendment. Art. III, § 2, cl. 3; Amdt. 6. By operation of

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R. Reeves Anderson, *Barbara Bergman*, and *Steven R. Shapiro*; for the National Association of Federal Defenders by *Matthew S. Hellman*, *Josh M. Parker*, *Michael A. Scodro*, *Donna F. Coltharp*, *Sarah S. Gannett*, *Daniel L. Kaplan*, *David A. Strauss*, and *Sarah M. Konsky*; for Professors of Law by *Marc A. Goldman* and *Lisa Kern Griffin*, *pro se*; for the United Mexican States by *Gregory J. Kuykendall*; and for Cedric Merlin Powell by *Junis L. Baldon* and *Mark A. Flores*.

Briefs of *amici curiae* urging affirmance were filed for the State of Indiana et al. by *Gregory F. Zoeller*, Attorney General of Indiana, *Thomas M. Fisher*, Solicitor General, and *Heather Hagar McVeigh*, Deputy Attorney General, and by the Attorneys General for their respective States as follows: *Luther Strange* of Alabama, *Leslie Rutledge* of Arkansas, *Sam Olens* of Georgia, *Lawrence G. Wasden* of Idaho, *Jeff Landry* of Louisiana, *Janet T. Mills* of Maine, *Adam Paul Laxalt* of Nevada, *Bruce R. Beemer* of Pennsylvania, *Marty J. Jackley* of South Dakota, *Ken Paxton* of Texas, and *Peter K. Michael* of Wyoming; for the Colorado District Attorney's Council by *William S. Consovoy* and *Brian K. Weir*; and for the Criminal Justice Legal Foundation by *Kymberlee Stapleton* and *Kent S. Scheidegger*.

the Fourteenth Amendment, it is applicable to the States. *Duncan* v. *Louisiana*, 391 U. S. 145, 149–150 (1968).

Like all human institutions, the jury system has its flaws, yet experience shows that fair and impartial verdicts can be reached if the jury follows the court's instructions and undertakes deliberations that are honest, candid, robust, and based on common sense. A general rule has evolved to give substantial protection to verdict finality and to assure jurors that, once their verdict has been entered, it will not later be called into question based on the comments or conclusions they expressed during deliberations. This principle, itself centuries old, is often referred to as the no-impeachment rule. The instant case presents the question whether there is an exception to the no-impeachment rule when, after the jury is discharged, a juror comes forward with compelling evidence that another juror made clear and explicit statements indicating that racial animus was a significant motivating factor in his or her vote to convict.

I

State prosecutors in Colorado brought criminal charges against petitioner, Miguel Angel Peña-Rodriguez, based on the following allegations. In 2007, in the bathroom of a Colorado horse-racing facility, a man sexually assaulted two teenage sisters. The girls told their father and identified the man as an employee of the racetrack. The police located and arrested petitioner. Each girl separately identified petitioner as the man who had assaulted her.

The State charged petitioner with harassment, unlawful sexual contact, and attempted sexual assault on a child. Before the jury was empaneled, members of the venire were repeatedly asked whether they believed that they could be fair and impartial in the case. A written questionnaire asked if there was "anything about you that you feel would make it difficult for you to be a fair juror." App. 14. The court repeated the question to the panel of prospective ju-

rors and encouraged jurors to speak in private with the court if they had any concerns about their impartiality. Defense counsel likewise asked whether anyone felt that "this is simply not a good case" for them to be a fair juror. *Id.*, at 34. None of the empaneled jurors expressed any reservations based on racial or any other bias. And none asked to speak with the trial judge.

After a 3-day trial, the jury found petitioner guilty of unlawful sexual contact and harassment, but it failed to reach a verdict on the attempted sexual assault charge. When the jury was discharged, the court gave them this instruction, as mandated by Colorado law:

> "The question may arise whether you may now discuss this case with the lawyers, defendant, or other persons. For your guidance the court instructs you that whether you talk to anyone is entirely your own decision. . . . If any person persists in discussing the case over your objection, or becomes critical of your service either before or after any discussion has begun, please report it to me." *Id.*, at 85–86.

Following the discharge of the jury, petitioner's counsel entered the jury room to discuss the trial with the jurors. As the room was emptying, two jurors remained to speak with counsel in private. They stated that, during deliberations, another juror had expressed anti-Hispanic bias toward petitioner and petitioner's alibi witness. Petitioner's counsel reported this to the court and, with the court's supervision, obtained sworn affidavits from the two jurors.

The affidavits by the two jurors described a number of biased statements made by another juror, identified as Juror H. C. According to the two jurors, H. C. told the other jurors that he "believed the defendant was guilty because, in [H. C.'s] experience as an ex-law enforcement officer, Mexican men had a bravado that caused them to believe they could do whatever they wanted with women." *Id.*, at 110.

The jurors reported that H. C. stated his belief that Mexican men are physically controlling of women because of their sense of entitlement, and further stated, "'I think he did it because he's Mexican and Mexican men take whatever they want.'" *Id.*, at 109. According to the jurors, H. C. further explained that, in his experience, "nine times out of ten Mexican men were guilty of being aggressive toward women and young girls." *Id.*, at 110. Finally, the jurors recounted that H. C. said that he did not find petitioner's alibi witness credible because, among other things, the witness was "'an illegal.'" *Ibid.* (In fact, the witness testified during trial that he was a legal resident of the United States.)

After reviewing the affidavits, the trial court acknowledged H. C.'s apparent bias. But the court denied petitioner's motion for a new trial, noting that "[t]he actual deliberations that occur among the jurors are protected from inquiry under [Colorado Rule of Evidence] 606(b)." *Id.*, at 90. Like its federal counterpart, Colorado's Rule 606(b) generally prohibits a juror from testifying as to any statement made during deliberations in a proceeding inquiring into the validity of the verdict. See Fed. Rule Evid. 606(b). The Colorado Rule reads as follows:

> "(b) Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith. But a juror may testify about (1) whether extraneous prejudicial information was improperly brought to the jurors' attention, (2) whether any outside influence was improperly brought to bear upon any juror, or (3) whether there was a mistake in entering the verdict onto the

> verdict form. A juror's affidavit or evidence of any statement by the juror may not be received on a matter about which the juror would be precluded from testifying." Colo. Rule Evid. 606(b) (2016).

The verdict deemed final, petitioner was sentenced to two years' probation and was required to register as a sex offender. A divided panel of the Colorado Court of Appeals affirmed petitioner's conviction, agreeing that H. C.'s alleged statements did not fall within an exception to Rule 606(b) and so were inadmissible to undermine the validity of the verdict. 412 P. 3d 461 (2012).

The Colorado Supreme Court affirmed by a vote of 4 to 3. 350 P. 3d 287 (2015). The prevailing opinion relied on two decisions of this Court rejecting constitutional challenges to the federal no-impeachment rule as applied to evidence of juror misconduct or bias. See *Tanner* v. *United States*, 483 U. S. 107 (1987); *Warger* v. *Shauers*, 574 U. S. 40 (2014). After reviewing those precedents, the court could find no "dividing line between different *types* of juror bias or misconduct," and thus no basis for permitting impeachment of the verdicts in petitioner's trial, notwithstanding H. C.'s apparent racial bias. 350 P. 3d, at 293. This Court granted certiorari to decide whether there is a constitutional exception to the no-impeachment rule for instances of racial bias. 578 U. S. 905 (2016).

H. C.'s bias was based on petitioner's Hispanic identity, which the Court in prior cases has referred to as ethnicity, and that may be an instructive term here. See, *e. g.*, *Hernandez* v. *New York*, 500 U. S. 352, 355 (1991) (plurality opinion). Yet we have also used the language of race when discussing the relevant constitutional principles in cases involving Hispanic persons. See, *e. g.*, *ibid.*; *Fisher* v. *University of Tex. at Austin*, 570 U. S. 297 (2013); *Rosales-Lopez* v. *United States*, 451 U. S. 182, 189–190 (1981) (plurality opinion). Petitioner and respondent both refer to race, or to race and ethnicity, in this more expansive sense in their

briefs to the Court. This opinion refers to the nature of the bias as racial in keeping with the primary terminology employed by the parties and used in our precedents.

II

A

At common law jurors were forbidden to impeach their verdict, either by affidavit or live testimony. This rule originated in *Vaise* v. *Delaval*, 1 T. R. 11, 99 Eng. Rep. 944 (K. B. 1785). There, Lord Mansfield excluded juror testimony that the jury had decided the case through a game of chance. The Mansfield rule, as it came to be known, prohibited jurors, after the verdict was entered, from testifying either about their subjective mental processes or about objective events that occurred during deliberations.

American courts adopted the Mansfield rule as a matter of common law, though not in every detail. Some jurisdictions adopted a different, more flexible version of the no-impeachment bar known as the "Iowa rule." Under that rule, jurors were prevented only from testifying about their own subjective beliefs, thoughts, or motives during deliberations. See *Wright* v. *Illinois & Miss. Tel. Co.*, 20 Iowa 195 (1866). Jurors could, however, testify about objective facts and events occurring during deliberations, in part because other jurors could corroborate that testimony.

An alternative approach, later referred to as the federal approach, stayed closer to the original Mansfield rule. See *Warger*, *supra*, at 46. Under this version of the rule, the no-impeachment bar permitted an exception only for testimony about events extraneous to the deliberative process, such as reliance on outside evidence—newspapers, dictionaries, and the like—or personal investigation of the facts.

This Court's early decisions did not establish a clear preference for a particular version of the no-impeachment rule. In *United States* v. *Reid*, 12 How. 361 (1852), the Court appeared open to the admission of juror testimony that the

jurors had consulted newspapers during deliberations, but in the end it barred the evidence because the newspapers "had not the slightest influence" on the verdict. *Id.*, at 366. The *Reid* Court warned that juror testimony "ought always to be received with great caution." *Ibid.* Yet it added an important admonition: "[C]ases might arise in which it would be impossible to refuse" juror testimony "without violating the plainest principles of justice." *Ibid.*

In a following case the Court required the admission of juror affidavits stating that the jury consulted information that was not in evidence, including a prejudicial newspaper article. *Mattox* v. *United States*, 146 U. S. 140, 151 (1892). The Court suggested, furthermore, that the admission of juror testimony might be governed by a more flexible rule, one permitting jury testimony even where it did not involve consultation of prejudicial extraneous information. *Id.*, at 148–149; see also *Hyde* v. *United States*, 225 U. S. 347, 382–384 (1912) (stating that the more flexible Iowa rule "should apply," but excluding evidence that the jury reached the verdict by trading certain defendants' acquittals for others' convictions).

Later, however, the Court rejected the more lenient Iowa rule. In *McDonald* v. *Pless*, 238 U. S. 264 (1915), the Court affirmed the exclusion of juror testimony about objective events in the jury room. There, the jury allegedly had calculated a damages award by averaging the numerical submissions of each member. *Id.*, at 265–266. As the Court explained, admitting that evidence would have "dangerous consequences": "no verdict would be safe" and the practice would "open the door to the most pernicious arts and tampering with jurors." *Id.*, at 268 (internal quotation marks omitted). Yet the Court reiterated its admonition from *Reid*, again cautioning that the no-impeachment rule might recognize exceptions "in the gravest and most important cases" where exclusion of juror affidavits might well violate "the plainest principles of justice." 238 U. S., at 269 (quoting *Reid*, *supra*, at 366; internal quotation marks omitted).

The common-law development of the no-impeachment rule reached a milestone in 1975, when Congress adopted the Federal Rules of Evidence, including Rule 606(b). Congress, like the *McDonald* Court, rejected the Iowa rule. Instead it endorsed a broad no-impeachment rule, with only limited exceptions.

The version of the rule that Congress adopted was "no accident." *Warger*, 574 U. S., at 48. The Advisory Committee at first drafted a rule reflecting the Iowa approach, prohibiting admission of juror testimony only as it related to jurors' mental processes in reaching a verdict. The Department of Justice, however, expressed concern over the preliminary rule. The Advisory Committee then drafted the more stringent version now in effect, prohibiting all juror testimony, with exceptions only where the jury had considered prejudicial extraneous evidence or was subject to other outside influence. Rules of Evidence for United States Courts and Magistrates, 56 F. R. D. 183, 265 (1972). The Court adopted this second version and transmitted it to Congress.

The House favored the Iowa approach, but the Senate expressed concern that it did not sufficiently address the public policy interest in the finality of verdicts. S. Rep. No. 93–1277, pp. 13–14 (1974). Siding with the Senate, the Conference Committee adopted, Congress enacted, and the President signed the Court's proposed rule. The substance of the Rule has not changed since 1975, except for a 2006 modification permitting evidence of a clerical mistake on the verdict form. See 574 U. S., at 48.

The current version of Rule 606(b) states as follows:

> "(1) *Prohibited Testimony or Other Evidence.* During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's

affidavit or evidence of a juror's statement on these matters.

"(2) *Exceptions.* A juror may testify about whether:

"(A) extraneous prejudicial information was improperly brought to the jury's attention;

"(B) an outside influence was improperly brought to bear on any juror; or

"(C) a mistake was made in entering the verdict on the verdict form."

This version of the no-impeachment rule has substantial merit. It promotes full and vigorous discussion by providing jurors with considerable assurance that after being discharged they will not be summoned to recount their deliberations, and they will not otherwise be harassed or annoyed by litigants seeking to challenge the verdict. The rule gives stability and finality to verdicts.

B

Some version of the no-impeachment rule is followed in every State and the District of Columbia. Variations make classification imprecise, but, as a general matter, it appears that 42 jurisdictions follow the Federal Rule, while 9 follow the Iowa Rule. Within both classifications there is a diversity of approaches. Nine jurisdictions that follow the Federal Rule have codified exceptions other than those listed in Federal Rule 606(b). See Appendix, *infra*. At least 16 jurisdictions, 11 of which follow the Federal Rule, have recognized an exception to the no-impeachment bar under the circumstances the Court faces here: juror testimony that racial bias played a part in deliberations. *Ibid.* According to the parties and *amici*, only one State other than Colorado has addressed this issue and declined to recognize an exception for racial bias. See *Commonwealth* v. *Steele*, 599 Pa. 341, 377–379, 961 A. 2d 786, 807–808 (2012).

The federal courts, for their part, are governed by Federal Rule 606(b), but their interpretations deserve further com-

ment. Various Courts of Appeals have had occasion to consider a racial-bias exception and have reached different conclusions. Three have held or suggested there is a constitutional exception for evidence of racial bias. See *United States* v. *Villar*, 586 F. 3d 76, 87–88 (CA1 2009) (holding the Constitution demands a racial-bias exception); *United States* v. *Henley*, 238 F. 3d 1111, 1119–1121 (CA9 2001) (finding persuasive arguments in favor of an exception but not deciding the issue); *Shillcutt* v. *Gagnon*, 827 F. 2d 1155, 1158–1160 (CA7 1987) (observing that in some cases fundamental fairness could require an exception). One Court of Appeals has declined to find an exception, reasoning that other safeguards inherent in the trial process suffice to protect defendants' constitutional interests. See *United States* v. *Benally*, 546 F. 3d 1230, 1240–1241 (CA10 2008). Another has suggested as much, holding in the habeas context that an exception for racial bias was not clearly established but indicating in dicta that no such exception exists. See *Williams* v. *Price*, 343 F. 3d 223, 237–239 (CA3 2003) (Alito, J.). And one Court of Appeals has held that evidence of racial bias is excluded by Rule 606(b), without addressing whether the Constitution may at times demand an exception. See *Martinez* v. *Food City, Inc.*, 658 F. 2d 369, 373–374 (CA5 1981).

C

In addressing the scope of the common-law no-impeachment rule before Rule 606(b)'s adoption, the *Reid* and *McDonald* Courts noted the possibility of an exception to the rule in the "gravest and most important cases." *Reid*, 12 How., at 366; *McDonald*, 238 U. S., at 269. Yet since the enactment of Rule 606(b), the Court has addressed the precise question whether the Constitution mandates an exception to it in just two instances.

In its first case, *Tanner*, 483 U. S. 107, the Court rejected a Sixth Amendment exception for evidence that some jurors were under the influence of drugs and alcohol during the

trial. *Id.*, at 125. Central to the Court's reasoning were the "long-recognized and very substantial concerns" supporting "the protection of jury deliberations from intrusive inquiry." *Id.*, at 127. The *Tanner* Court echoed *McDonald*'s concern that, if attorneys could use juror testimony to attack verdicts, jurors would be "harassed and beset by the defeated party," thus destroying "all frankness and freedom of discussion and conference." 483 U. S., at 120 (quoting *McDonald*, *supra*, at 267–268). The Court was concerned, moreover, that attempts to impeach a verdict would "disrupt the finality of the process" and undermine both "jurors' willingness to return an unpopular verdict" and "the community's trust in a system that relies on the decisions of laypeople." 483 U. S., at 120–121.

The *Tanner* Court outlined existing, significant safeguards for the defendant's right to an impartial and competent jury beyond post-trial juror testimony. At the outset of the trial process, *voir dire* provides an opportunity for the court and counsel to examine members of the venire for impartiality. As a trial proceeds, the court, counsel, and court personnel have some opportunity to learn of any juror misconduct. And, before the verdict, jurors themselves can report misconduct to the court. These procedures do not undermine the stability of a verdict once rendered. Even after the trial, evidence of misconduct other than juror testimony can be used to attempt to impeach the verdict. *Id.*, at 127. Balancing these interests and safeguards against the defendant's Sixth Amendment interest in that case, the Court affirmed the exclusion of affidavits pertaining to the jury's inebriated state. *Ibid.*

The second case to consider the general issue presented here was *Warger*, 574 U. S. 40. The Court again rejected the argument that, in the circumstances there, the jury trial right required an exception to the no-impeachment rule. *Warger* involved a civil case where, after the verdict was entered, the losing party sought to proffer evidence that the

jury forewoman had failed to disclose pro-defendant bias during *voir dire*. As in *Tanner*, the Court put substantial reliance on existing safeguards for a fair trial. The Court stated: "Even if jurors lie in *voir dire* in a way that conceals bias, juror impartiality is adequately assured by the parties' ability to bring to the court's attention any evidence of bias before the verdict is rendered, and to employ nonjuror evidence even after the verdict is rendered." 574 U. S., at 51.

In *Warger*, however, the Court did reiterate that the no-impeachment rule may admit exceptions. As in *Reid* and *McDonald*, the Court warned of "juror bias so extreme that, almost by definition, the jury trial right has been abridged." 574 U. S., at 51, n. 3. "If and when such a case arises," the Court indicated it would "consider whether the usual safeguards are or are not sufficient to protect the integrity of the process." *Ibid.*

The recognition in *Warger* that there may be extreme cases where the jury trial right requires an exception to the no-impeachment rule must be interpreted in context as a guarded, cautious statement. This caution is warranted to avoid formulating an exception that might undermine the jury dynamics and finality interests the no-impeachment rule seeks to protect. Today, however, the Court faces the question that *Reid*, *McDonald*, and *Warger* left open. The Court must decide whether the Constitution requires an exception to the no-impeachment rule when a juror's statements indicate that racial animus was a significant motivating factor in his or her finding of guilt.

III

It must become the heritage of our Nation to rise above racial classifications that are so inconsistent with our commitment to the equal dignity of all persons. This imperative to purge racial prejudice from the administration of justice was given new force and direction by the ratification of the Civil War Amendments.

"[T]he central purpose of the Fourteenth Amendment was to eliminate racial discrimination emanating from official sources in the States." *McLaughlin* v. *Florida*, 379 U. S. 184, 192 (1964). In the years before and after the ratification of the Fourteenth Amendment, it became clear that racial discrimination in the jury system posed a particular threat both to the promise of the Amendment and to the integrity of the jury trial. "Almost immediately after the Civil War, the South began a practice that would continue for many decades: All-white juries punished black defendants particularly harshly, while simultaneously refusing to punish violence by whites, including Ku Klux Klan members, against blacks and Republicans." Forman, Juries and Race in the Nineteenth Century, 113 Yale L. J. 895, 909–910 (2004). To take one example, just in the years 1865 and 1866, all-white juries in Texas decided a total of 500 prosecutions of white defendants charged with killing African-Americans. All 500 were acquitted. *Id.*, at 916. The stark and unapologetic nature of race-motivated outcomes challenged the American belief that "the jury was a bulwark of liberty," *id.*, at 909, and prompted Congress to pass legislation to integrate the jury system and to bar persons from eligibility for jury service if they had conspired to deny the civil rights of African-Americans, *id.*, at 920–930. Members of Congress stressed that the legislation was necessary to preserve the right to a fair trial and to guarantee the equal protection of the laws. *Ibid.*

The duty to confront racial animus in the justice system is not the legislature's alone. Time and again, this Court has been called upon to enforce the Constitution's guarantee against state-sponsored racial discrimination in the jury system. Beginning in 1880, the Court interpreted the Fourteenth Amendment to prohibit the exclusion of jurors on the basis of race. *Strauder* v. *West Virginia*, 100 U. S. 303, 305–309 (1880). The Court has repeatedly struck down laws and practices that systematically exclude racial minorities from

juries. See, *e. g.*, *Neal* v. *Delaware*, 103 U. S. 370 (1881); *Hollins* v. *Oklahoma*, 295 U. S. 394 (1935) (*per curiam*); *Avery* v. *Georgia*, 345 U. S. 559 (1953); *Hernandez* v. *Texas*, 347 U. S. 475 (1954); *Castaneda* v. *Partida*, 430 U. S. 482 (1977). To guard against discrimination in jury selection, the Court has ruled that no litigant may exclude a prospective juror on the basis of race. *Batson* v. *Kentucky*, 476 U. S. 79 (1986); *Edmonson* v. *Leesville Concrete Co.*, 500 U. S. 614 (1991); *Georgia* v. *McCollum*, 505 U. S. 42 (1992). In an effort to ensure that individuals who sit on juries are free of racial bias, the Court has held that the Constitution at times demands that defendants be permitted to ask questions about racial bias during *voir dire*. *Ham* v. *South Carolina*, 409 U. S. 524 (1973); *Rosales-Lopez*, 451 U. S. 182; *Turner* v. *Murray*, 476 U. S. 28 (1986).

The unmistakable principle underlying these precedents is that discrimination on the basis of race, "odious in all aspects, is especially pernicious in the administration of justice." *Rose* v. *Mitchell*, 443 U. S. 545, 555 (1979). The jury is to be "a criminal defendant's fundamental 'protection of life and liberty against race or color prejudice.'" *McCleskey* v. *Kemp*, 481 U. S. 279, 310 (1987) (quoting *Strauder*, *supra*, at 309). Permitting racial prejudice in the jury system damages "both the fact and the perception" of the jury's role as "a vital check against the wrongful exercise of power by the State." *Powers* v. *Ohio*, 499 U. S. 400, 411 (1991); cf. *Aldridge* v. *United States*, 283 U. S. 308, 315 (1931); *Buck* v. *Davis*, *ante*, at 124.

IV

A

This case lies at the intersection of the Court's decisions endorsing the no-impeachment rule and its decisions seeking to eliminate racial bias in the jury system. The two lines of precedent, however, need not conflict.

Racial bias of the kind alleged in this case differs in critical ways from the compromise verdict in *McDonald*, the drug

and alcohol abuse in *Tanner*, or the pro-defendant bias in *Warger*. The behavior in those cases is troubling and unacceptable, but each involved anomalous behavior from a single jury—or juror—gone off course. Jurors are presumed to follow their oath, cf. *Penry* v. *Johnson*, 532 U. S. 782, 799 (2001), and neither history nor common experience shows that the jury system is rife with mischief of these or similar kinds. To attempt to rid the jury of every irregularity of this sort would be to expose it to unrelenting scrutiny. "It is not at all clear . . . that the jury system could survive such efforts to perfect it." *Tanner*, 483 U. S., at 120.

The same cannot be said about racial bias, a familiar and recurring evil that, if left unaddressed, would risk systemic injury to the administration of justice. This Court's decisions demonstrate that racial bias implicates unique historical, constitutional, and institutional concerns. An effort to address the most grave and serious statements of racial bias is not an effort to perfect the jury but to ensure that our legal system remains capable of coming ever closer to the promise of equal treatment under the law that is so central to a functioning democracy.

Racial bias is distinct in a pragmatic sense as well. In past cases this Court has relied on other safeguards to protect the right to an impartial jury. Some of those safeguards, to be sure, can disclose racial bias. *Voir dire* at the outset of trial, observation of juror demeanor and conduct during trial, juror reports before the verdict, and nonjuror evidence after trial are important mechanisms for discovering bias. Yet their operation may be compromised, or they may prove insufficient. For instance, this Court has noted the dilemma faced by trial court judges and counsel in deciding whether to explore potential racial bias at *voir dire*. See *Rosales-Lopez*, *supra*; *Ristaino* v. *Ross*, 424 U. S. 589 (1976). Generic questions about juror impartiality may not expose specific attitudes or biases that can poison jury deliberations. Yet more pointed questions "could well exacerbate whatever

prejudice might exist without substantially aiding in exposing it." *Rosales-Lopez*, *supra*, at 195 (Rehnquist, J., concurring in result).

The stigma that attends racial bias may make it difficult for a juror to report inappropriate statements during the course of juror deliberations. It is one thing to accuse a fellow juror of having a personal experience that improperly influences her consideration of the case, as would have been required in *Warger*. It is quite another to call her a bigot.

The recognition that certain of the *Tanner* safeguards may be less effective in rooting out racial bias than other kinds of bias is not dispositive. All forms of improper bias pose challenges to the trial process. But there is a sound basis to treat racial bias with added precaution. A constitutional rule that racial bias in the justice system must be addressed—including, in some instances, after the verdict has been entered—is necessary to prevent a systemic loss of confidence in jury verdicts, a confidence that is a central premise of the Sixth Amendment trial right.

B

For the reasons explained above, the Court now holds that where a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee.

Not every offhand comment indicating racial bias or hostility will justify setting aside the no-impeachment bar to allow further judicial inquiry. For the inquiry to proceed, there must be a showing that one or more jurors made statements exhibiting overt racial bias that cast serious doubt on the fairness and impartiality of the jury's deliberations and resulting verdict. To qualify, the statement must tend to show that racial animus was a significant motivating factor

in the juror's vote to convict. Whether that threshold showing has been satisfied is a matter committed to the substantial discretion of the trial court in light of all the circumstances, including the content and timing of the alleged statements and the reliability of the proffered evidence.

The practical mechanics of acquiring and presenting such evidence will no doubt be shaped and guided by state rules of professional ethics and local court rules, both of which often limit counsel's post-trial contact with jurors. See 27 C. Wright & V. Gold, Federal Practice and Procedure: Evidence § 6076, pp. 580–583 (2d ed. 2007) (Wright); see also Variations of ABA Model Rules of Professional Conduct, Rule 3.5 (Sept. 15, 2016) (overview of state ethics rules); 2 Jurywork Systematic Techniques § 13:18 (2016–2017) (overview of Federal District Court rules). These limits seek to provide jurors some protection when they return to their daily affairs after the verdict has been entered. But while a juror can always tell counsel they do not wish to discuss the case, jurors in some instances may come forward of their own accord.

That is what happened here. In this case the alleged statements by a juror were egregious and unmistakable in their reliance on racial bias. Not only did H. C. deploy a dangerous racial stereotype to conclude petitioner was guilty and his alibi witness should not be believed, but he also encouraged other jurors to join him in convicting on that basis.

Petitioner's counsel did not seek out the two jurors' allegations of racial bias. Pursuant to Colorado's mandatory jury instruction, the trial court had set limits on juror contact and encouraged jurors to inform the court if anyone harassed them about their role in the case. Similar limits on juror contact can be found in other jurisdictions that recognize a racial-bias exception. See, *e. g.*, Fla. Standard Jury Instrs. in Crim. Cases No. 4.2 (West 2016) ("Although you are at liberty to speak with anyone about your deliberations, you are also at liberty to refuse to speak to anyone"); Mass. Office

of Jury Comm'r, Trial Juror's Handbook (Dec. 2015) ("You are not required to speak with anyone once the trial is over. . . . If anyone tries to learn this confidential information from you, or if you feel harassed or embarrassed in any way, you should report it to the court . . . immediately"); N. J. Crim. Model Jury Charges, Non 2C Charges, Dismissal of Jury (2014) ("It will be up to each of you to decide whether to speak about your service as a juror").

With the understanding that they were under no obligation to speak out, the jurors approached petitioner's counsel, within a short time after the verdict, to relay their concerns about H. C.'s statements. App. 77. A similar pattern is common in cases involving juror allegations of racial bias. See, *e. g.*, *Villar*, 586 F. 3d, at 78 (juror e-mailed defense counsel within hours of the verdict); *Kittle* v. *United States*, 65 A. 3d 1144, 1147 (D. C. 2013) (juror wrote a letter to the judge the same day the court discharged the jury); *Benally*, 546 F. 3d, at 1231 (juror approached defense counsel the day after the jury announced its verdict). Pursuant to local court rules, petitioner's counsel then sought and received permission from the court to contact the two jurors and obtain affidavits limited to recounting the exact statements made by H. C. that exhibited racial bias.

While the trial court concluded that Colorado's Rule 606(b) did not permit it even to consider the resulting affidavits, the Court's holding today removes that bar. When jurors disclose an instance of racial bias as serious as the one involved in this case, the law must not wholly disregard its occurrence.

C

As the preceding discussion makes clear, the Court relies on the experiences of the 17 jurisdictions that have recognized a racial-bias exception to the no-impeachment rule—some for over half a century—with no signs of an increase in juror harassment or a loss of juror willingness to engage in searching and candid deliberations.

The experience of these jurisdictions, and the experience of the courts going forward, will inform the proper exercise of trial judge discretion in these and related matters. This case does not ask, and the Court need not address, what procedures a trial court must follow when confronted with a motion for a new trial based on juror testimony of racial bias. See 27 Wright 575–578 (noting a divergence of authority over the necessity and scope of an evidentiary hearing on alleged juror misconduct). The Court also does not decide the appropriate standard for determining when evidence of racial bias is sufficient to require that the verdict be set aside and a new trial be granted. Compare, *e. g.*, *Shillcutt*, 827 F. 2d, at 1159 (inquiring whether racial bias "pervaded the jury room"), with, *e. g.*, *Henley*, 238 F. 3d, at 1120 ("One racist juror would be enough").

D

It is proper to observe as well that there are standard and existing processes designed to prevent racial bias in jury deliberations. The advantages of careful *voir dire* have already been noted. And other safeguards deserve mention.

Trial courts, often at the outset of the case and again in their final jury instructions, explain the jurors' duty to review the evidence and reach a verdict in a fair and impartial way, free from bias of any kind. Some instructions are framed by trial judges based on their own learning and experience. Model jury instructions likely take into account these continuing developments and are common across jurisdictions. See, *e. g.*, 1A K. O'Malley, J. Grenig, & W. Lee, Federal Jury Practice and Instructions, Criminal § 10:01, p. 22 (6th ed. 2008) ("Perform these duties fairly. Do not let any bias, sympathy or prejudice that you may feel toward one side or the other influence your decision in any way"). Instructions may emphasize the group dynamic of deliberations by urging jurors to share their questions and conclusions with their colleagues. See, *e. g.*, *id.*, § 20:01, at 841 ("It

is your duty as jurors to consult with one another and to deliberate with one another with a view towards reaching an agreement if you can do so without violence to individual judgment").

Probing and thoughtful deliberation improves the likelihood that other jurors can confront the flawed nature of reasoning that is prompted or influenced by improper biases, whether racial or otherwise. These dynamics can help ensure that the exception is limited to rare cases.

* * *

The Nation must continue to make strides to overcome race-based discrimination. The progress that has already been made underlies the Court's insistence that blatant racial prejudice is antithetical to the functioning of the jury system and must be confronted in egregious cases like this one despite the general bar of the no-impeachment rule. It is the mark of a maturing legal system that it seeks to understand and to implement the lessons of history. The Court now seeks to strengthen the broader principle that society can and must move forward by achieving the thoughtful, rational dialogue at the foundation of both the jury system and the free society that sustains our Constitution.

The judgment of the Supreme Court of Colorado is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

APPENDIX

Codified Exceptions in Addition to Those Enumerated in Fed. Rule Evid. 606(b)

See Ariz. Rules Crim. Proc. 24.1(c)(3), (d) (2011) (exception for evidence of misconduct, including verdict by game of chance or intoxication); Idaho Rule Evid. 606(b) (2016) (game of chance); Ind. Rule Evid. 606(b)(2)(A) (Burns 2014) (drug

or alcohol use); Minn. Rule Evid. 606(b) (2014) (threats of violence or violent acts); Mont. Rule Evid. 606(b) (2015) (game of chance); N. D. Rule Evid. 606(b)(2)(C) (2016–2017) (same); Tenn. Rule Evid. 606(b) (2016) (quotient verdict or-game of chance); Tex. Rule Evid. 606(b)(2)(B) (West 2016) (rebutting claim juror was unqualified); Vt. Rule Evid. 606(b) (2016 Cum. Supp.) (juror communication with nonjuror); see also 27 C. Wright & V. Gold, Federal Practice and Procedure: Evidence § 6071, p. 447, and n. 66 (2d ed. 2007); *id.*, at 451, and n. 70; *id.*, at 452, and n. 72.

Judicially Recognized Exceptions for Evidence of Racial Bias

See *State* v. *Santiago*, 245 Conn. 301, 323–340, 715 A. 2d 1, 14–22 (1998); *Kittle* v. *United States*, 65 A. 3d 1144, 1154–1156 (D. C. 2013); *Fisher* v. *State*, 690 A. 2d 917, 919–921, and n. 4 (Del. 1996) (appendix to opinion); *Powell* v. *Allstate Ins. Co.*, 652 So. 2d 354, 357–358 (Fla. 1995); *Spencer* v. *State*, 260 Ga. 640, 643–644, 398 S. E. 2d 179, 184–185 (1990); *State* v. *Jackson*, 81 Haw. 39, 48–49, 912 P. 2d 71, 80–81 (1996); *Commonwealth* v. *Laguer*, 410 Mass. 89, 97–98, 571 N. E. 2d 371, 376 (1991); *State* v. *Callender*, 297 N. W. 2d 744, 746 (Minn. 1980); *Fleshner* v. *Pepose Vision Inst., P. C.*, 304 S. W. 3d 81, 87–90 (Mo. 2010); *State* v. *Levitt*, 36 N. J. 266, 271–273, 176 A. 2d 465, 467–468 (1961); *People* v. *Rukaj*, 123 App. Div. 2d 277, 280–281, 506 N. Y. S. 2d 677, 679–680 (1986); *State* v. *Hidanovic*, 2008 ND 66, ¶¶21–26, 747 N. W. 2d 463, 472–474; *State* v. *Brown*, 62 A. 3d 1099, 1110 (R. I. 2013); *State* v. *Hunter*, 320 S. C. 85, 88, 463 S. E. 2d 314, 316 (1995); *Seattle* v. *Jackson*, 70 Wash. 2d 733, 738, 425 P. 2d 385, 389 (1967); *After Hour Welding, Inc.* v. *Laneil Management Co.*, 108 Wis. 2d 734, 739–740, 324 N. W. 2d 686, 690 (1982).

JUSTICE THOMAS, dissenting.

The Court today holds that the Sixth Amendment requires the States to provide a criminal defendant the opportunity to impeach a jury's guilty verdict with juror testimony about a juror's alleged racial bias, notwithstanding a state proce-

dural rule forbidding such testimony. I agree with JUSTICE ALITO that the Court's decision is incompatible with the text of the Amendment it purports to interpret and with our precedents. I write separately to explain that the Court's holding also cannot be squared with the original understanding of the Sixth or Fourteenth Amendments.

I

The Sixth Amendment's protection of the right, "[i]n all criminal prosecutions," to a "trial, by an impartial jury," is limited to the protections that existed at common law when the Amendment was ratified. See, *e. g.*, *Apprendi* v. *New Jersey*, 530 U. S. 466, 500, and n. 1 (2000) (THOMAS, J., concurring); 3 J. Story, Commentaries on the Constitution of the United States § 1773, pp. 652–653 (1833) (Story) (explaining that "the trial by jury in criminal cases" protected by the Constitution is the same "great privilege" that was "a part of that admirable common law" of England); cf. 5 St. G. Tucker, Blackstone's Commentaries 349, n. 2 (1803). It is therefore "entirely proper to look to the common law" to ascertain whether the Sixth Amendment requires the result the Court today reaches. *Apprendi*, *supra*, at 500, n. 1.

The Sixth Amendment's specific guarantee of impartiality incorporates the common-law understanding of that term. See, *e. g.*, 3 W. Blackstone, Commentaries on the Laws of England 365 (1769) (Blackstone) (describing English trials as "impartially just" because of their "caution against all partiality and bias" in the jury). The common law required a juror to have "freedome of mind" and to be "indifferent as hee stands unsworne." 1 E. Coke, First Part of the Institutes of the Laws of England § 234, p. 155a (16th ed. 1809); accord, 3 M. Bacon, A New Abridgment of the Law 258 (3d ed. 1768); cf. T. Cooley, A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union 319 (1868) ("The jury must be indifferent between the prisoner and the commonwealth").

Impartial jurors could "have no interest of their own affected, and no personal bias, or pre-possession, in favor [of] or against either party." *Pettis* v. *Warren*, 1 Kirby 426, 427 (Conn. Super. 1788).

II

The common-law right to a jury trial did not, however, guarantee a defendant the right to impeach a jury verdict with juror testimony about juror misconduct, including "a principal species of [juror] misbehaviour"—"notorious partiality." 3 Blackstone 388. Although partiality was a ground for setting aside a jury verdict, *ibid.*, the English common-law rule at the time the Sixth Amendment was ratified did not allow jurors to supply evidence of that misconduct. In 1770, Lord Mansfield refused to receive a juror's affidavit to impeach a verdict, declaring that such an affidavit "can't be read." *Rex* v. *Almon*, 5 Burr. 2687, 98 Eng. Rep. 411 (K. B.). And in 1785, Lord Mansfield solidified the doctrine, holding that "[t]he Court [could not] receive such an affidavit from any of the jurymen" to prove that the jury had cast lots to reach a verdict. *Vaise* v. *Delaval*, 1 T. R. 11, 99 Eng. Rep. 944 (K. B.).[1]

At the time of the founding, the States took mixed approaches to this issue. See *Cluggage* v. *Swan*, 4 Binn. 150, 156 (Pa. 1811) (opinion of Yeates, J.) ("The opinions of *American* judges . . . have greatly differed on the point in question"); *Bishop* v. *State*, 9 Ga. 121, 126 (1850) (describing the

[1] Prior to 1770, it appears that juror affidavits were sometimes received to impeach a verdict on the ground of juror misbehavior, although only "with great caution." *McDonald* v. *Pless*, 238 U. S. 264, 268 (1915); see, *e. g.*, *Dent* v. *The Hundred of Hertford*, 2 Salk. 645, 91 Eng. Rep. 546 (K. B. 1696); *Philips* v. *Fowler*, Barnes. 441, 94 Eng. Rep. 994 (K. B. 1735). But "previous to our Revolution, and at least as early as 1770, the doctrine in England was distinctly ruled the other way, and has so stood ever since." 3 T. Waterman, A Treatise on the Principles of Law and Equity Which Govern Courts in the Granting of New Trials in Cases Civil and Criminal 1429 (1855).

common law in 1776 on this question as "in a *transition* state"). Many States followed Lord Mansfield's no-impeachment rule and refused to receive juror affidavits. See, *e. g.*, *Brewster* v. *Thompson*, 1 N. J. L. 32 (1790) (*per curiam*); *Robbins* v. *Windover*, 2 Tyl. 11, 14 (Vt. 1802); *Taylor* v. *Giger*, 3 Ky. 586, 588–589 (1808); *Price* v. *McIlvain*, 2 Tread. 503, 504 (S. C. 1815); *Tyler* v. *Stevens*, 4 N. H. 116, 117 (1827); 1 Z. Swift, A Digest of the Laws of the State of Connecticut 775 (1822) ("In England, and in the courts of the United States, jurors are not permitted to be witnesses respecting the misconduct of the jury . . . and this is, most unquestionably, the correct principle"). Some States, however, permitted juror affidavits about juror misconduct. See, *e. g.*, *Crawford* v. *State*, 10 Tenn. 60, 68 (1821); *Cochran* v. *Street*, 1 Va. 79, 81 (1792). And others initially permitted such evidence but quickly reversed course. Compare, *e. g.*, *Smith* v. *Cheetham*, 3 Cai. 57, 59–60 (N. Y. 1805) (opinion of Livingston, J.) (permitting juror testimony), with *Dana* v. *Tucker*, 4 Johns. 487, 488–489 (N. Y. 1809) (*per curiam*) (overturning *Cheetham*); compare also *Bradley's Lessee* v. *Bradley*, 4 Dall. 112 (Pa. 1792) (permitting juror affidavits), with, *e. g.*, *Cluggage*, *supra*, at 156–158 (opinion of Yeates, J.) (explaining that *Bradley* was incorrectly reported and rejecting affidavits); compare also *Talmadge* v. *Northrop*, 1 Root 522 (Conn. 1793) (admitting juror testimony), with *State* v. *Freeman*, 5 Conn. 348, 352 (1824) ("The opinion of almost the whole legal world is adverse to the reception of the testimony in question; and, in my opinion, on invincible foundations").

By the time the Fourteenth Amendment was ratified, Lord Mansfield's no-impeachment rule had become firmly entrenched in American law. See Lettow, New Trial for Verdict Against Law: Judge-Jury Relations in Early-Nineteenth Century America, 71 Notre Dame L. Rev. 505, 536 (1996) ("[O]pponents of juror affidavits had largely won out by the middle of the century"); 8 J. Wigmore, Evidence in Trials at

Common Law § 2352, p. 697 (J. McNaughton rev. 1961) (Wigmore) (Lord Mansfield's rule "came to receive in the United States an adherence almost unquestioned"); J. Proffatt, A Treatise on Trial by Jury § 408, p. 467 (1877) ("It is a well established rule of law that no affidavit shall be received from a juror to impeach his verdict"). The vast majority of States adopted the no-impeachment rule as a matter of common law. See, *e. g.*, *Bull* v. *Commonwealth*, 55 Va. 613, 627–628 (1857) ("[T]he practice appears to be now generally settled, to reject the testimony of jurors when offered to impeach their verdict. The cases on the subject are too numerous to be cited"); *Tucker* v. *Town Council of South Kingstown*, 5 R. I. 558, 560 (1859) (collecting cases); *State* v. *Coupenhaver*, 39 Mo. 430 (1867) ("The law is well settled that a traverse juror cannot be a witness to prove misbehavior in the jury in regard to their verdict"); *Peck* v. *Brewer*, 48 Ill. 54, 63 (1868) ("So far back as . . . 1823, the doctrine was held that the affidavits of jurors cannot be heard to impeach their verdict"); *Heffron* v. *Gallupe*, 55 Me. 563, 566 (1868) (ruling inadmissible "depositions of . . . jurors as to what transpired in the jury room"); *Withers* v. *Fiscus*, 40 Ind. 131, 132 (1872) ("In the United States it seems to be settled, notwithstanding a few adjudications to the contrary . . . , that such affidavits cannot be received").[2]

The Court today acknowledges that the States "adopted the Mansfield rule as a matter of common law," *ante*, at 215, but ascribes no significance to that fact. I would hold that it is dispositive. Our common-law history does not establish that—in either 1791 (when the Sixth Amendment was ratified) or 1868 (when the Fourteenth Amendment was ratified)—a defendant had the right to impeach a verdict with juror testimony of juror misconduct. In fact, it strongly

[2] Although two States declined to follow the rule in the mid-19th century, see *Wright* v. *Illinois & Miss. Tel. Co.*, 20 Iowa 195, 210 (1866); *Perry* v. *Bailey*, 12 Kan. 539, 544–545 (1874), "most of the state courts" had already "committed themselves upon the subject," 8 Wigmore § 2354, at 702.

suggests that such evidence was prohibited. In the absence of a definitive common-law tradition permitting impeachment by juror testimony, we have no basis to invoke a constitutional provision that merely "follow[s] out the established course of the common law in all trials for crimes," 3 Story § 1785, at 662, to overturn Colorado's decision to preserve the no-impeachment rule, cf. *Boumediene* v. *Bush*, 553 U. S. 723, 832–833 (2008) (Scalia, J., dissenting).

* * *

Perhaps good reasons exist to curtail or abandon the no-impeachment rule. Some States have done so, see Appendix to majority opinion, *ante*, and others have not. Ultimately, that question is not for us to decide. It should be left to the political process described by JUSTICE ALITO. See *post*, at 239–241 (dissenting opinion). In its attempt to stimulate a "thoughtful, rational dialogue" on race relations, *ante*, at 229, the Court today ends the political process and imposes a uniform, national rule. The Constitution does not require such a rule. Neither should we.

I respectfully dissent.

JUSTICE ALITO, with whom THE CHIEF JUSTICE and JUSTICE THOMAS join, dissenting.

Our legal system has many rules that restrict the admission of evidence of statements made under circumstances in which confidentiality is thought to be essential. Statements made to an attorney in obtaining legal advice, statements to a treating physician, and statements made to a spouse or member of the clergy are familiar examples. See *Trammel* v. *United States*, 445 U. S. 40, 51 (1980). Even if a criminal defendant whose constitutional rights are at stake has a critical need to obtain and introduce evidence of such statements, long-established rules stand in the way. The goal of avoiding interference with confidential communications of great value has long been thought to justify the loss of important

evidence and the effect on our justice system that this loss entails.

The present case concerns a rule like those just mentioned, namely, the age-old rule against attempting to overturn or "impeach" a jury's verdict by offering statements made by jurors during the course of deliberations. For centuries, it has been the judgment of experienced judges, trial attorneys, scholars, and lawmakers that allowing jurors to testify after a trial about what took place in the jury room would undermine the system of trial by jury that is integral to our legal system.

Juries occupy a unique place in our justice system. The other participants in a trial—the presiding judge, the attorneys, the witnesses—function in an arena governed by strict rules of law. Their every word is recorded and may be closely scrutinized for missteps.

When jurors retire to deliberate, however, they enter a space that is not regulated in the same way. Jurors are ordinary people. They are expected to speak, debate, argue, and make decisions the way ordinary people do in their daily lives. Our Constitution places great value on this way of thinking, speaking, and deciding. The jury trial right protects parties in court cases from being judged by a special class of trained professionals who do not speak the language of ordinary people and may not understand or appreciate the way ordinary people live their lives. To protect that right, the door to the jury room has been locked, and the confidentiality of jury deliberations has been closely guarded.

Today, with the admirable intention of providing justice for one criminal defendant, the Court not only pries open the door; it rules that respecting the privacy of the jury room, as our legal system has done for centuries, violates the Constitution. This is a startling development, and although the Court tries to limit the degree of intrusion, it is doubtful that there are principled grounds for preventing the expansion of today's holding.

The Court justifies its decision on the ground that the nature of the confidential communication at issue in this particular case—a clear expression of what the Court terms racial bias[1]—is uniquely harmful to our criminal justice system. And the Court is surely correct that even a tincture of racial bias can inflict great damage on that system, which is dependent on the public's trust. But until today, the argument that the Court now finds convincing has not been thought to be sufficient to overcome confidentiality rules like the one at issue here.

Suppose that a prosecution witness gives devastating but false testimony against a defendant, and suppose that the witness's motivation is racial bias. Suppose that the witness admits this to his attorney, his spouse, and a member of the clergy. Suppose that the defendant, threatened with conviction for a serious crime and a lengthy term of imprisonment, seeks to compel the attorney, the spouse, or the member of the clergy to testify about the witness's admissions. Even though the constitutional rights of the defendant hang in the balance, the defendant's efforts to obtain the testimony would fail. The Court provides no good reason why the result in this case should not be the same.

I

Rules barring the admission of juror testimony to impeach a verdict (so-called "no-impeachment rules") have a long history. Indeed, they predate the ratification of the Constitution. They are typically traced back to *Vaise* v. *Delaval*, 1 T. R. 11, 99 Eng. Rep. 944 (K. B. 1785), in which Lord Mansfield declined to consider an affidavit from two jurors who

[1] The bias at issue in this case was a "bias against Mexican men." App. 160. This might be described as bias based on national origin or ethnicity. Cf. *Hernandez* v. *New York*, 500 U. S. 352, 355 (1991) (plurality opinion); *Hernandez* v. *Texas*, 347 U. S. 475, 479 (1954). However, no party has suggested that these distinctions make a substantive difference in this case.

claimed that the jury had reached its verdict by lot. See *Warger* v. *Shauers*, 574 U. S. 40, 45 (2014). Lord Mansfield's approach "soon took root in the United States," *ibid.*, and "[b]y the beginning of [the 20th] century, if not earlier, the near-universal and firmly established common-law rule in the United States flatly prohibited the admission of juror testimony to impeach a jury verdict," *Tanner* v. *United States*, 483 U. S. 107, 117 (1987); see 27 C. Wright & V. Gold, Federal Practice and Procedure: Evidence § 6071, p. 431 (2d ed. 2007) (Wright & Gold) (noting that the Mansfield approach "came to be accepted in almost all states").

In *McDonald* v. *Pless*, 238 U. S. 264 (1915), this Court adopted a strict no-impeachment rule for cases in federal court. *McDonald* involved allegations that the jury had entered a quotient verdict—that is, that it had calculated a damages award by taking the average of the jurors' suggestions. *Id.*, at 265–266. The Court held that evidence of this misconduct could not be used. *Id.*, at 269. It applied what it said was "unquestionably the general rule, that the losing party cannot, in order to secure a new trial, use the testimony of jurors to impeach their verdict." *Ibid.* The Court recognized that the defendant had a powerful interest in demonstrating that the jury had "adopted an arbitrary and unjust method in arriving at their verdict." *Id.*, at 267. "But," the Court warned, "let it once be established that verdicts . . . can be attacked and set aside on the testimony of those who took part in their publication and all verdicts could be, and many would be, followed by an inquiry in the hope of discovering something which might invalidate the finding." *Ibid.* This would lead to "harass[ment]" of jurors and "the destruction of all frankness and freedom of discussion and conference." *Id.*, at 267–268. Ultimately, even though the no-impeachment rule "may often exclude the only possible evidence of misconduct," relaxing the rule "would open the door to the most pernicious arts and tampering with jurors." *Id.*, at 268 (internal quotation marks omitted).

The firm no-impeachment approach taken in *McDonald* came to be known as "the Federal Rule." This approach categorically bars testimony about jury deliberations, except where it is offered to demonstrate that the jury was subjected to an extraneous influence (for example, an attempt to bribe a juror). *Warger*, *supra*, at 46; *Tanner*, *supra*, at 117;[2] see 27 Wright & Gold § 6071, at 432–433.

Some jurisdictions, notably Iowa, adopted a more permissive rule. Under the Iowa rule, jurors were generally permitted to testify about any subject except their "subjective intentions and thought processes in reaching a verdict." *Warger*, *supra*, at 45. Accordingly, the Iowa rule allowed jurors to "testify as to events or conditions which might have improperly influenced the verdict, even if these took place during deliberations within the jury room." 27 Wright & Gold § 6071, at 432.

Debate between proponents of the Federal Rule and the Iowa rule emerged during the framing and adoption of Federal Rule of Evidence 606(b). Both sides had their supporters. The contending arguments were heard and considered, and in the end the strict federal approach was retained.

An early draft of the Advisory Committee on the Federal Rules of Evidence included a version of the Iowa rule, 51 F. R. D. 315, 387–388 (1971). That draft was forcefully criticized, however,[3] and the Committee ultimately produced a

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[2] As this Court has explained, the extraneous influence exception "do[es] not detract from, but rather harmonize[s] with, the weighty government interest in insulating the jury's deliberative process." *Tanner*, 483 U. S., at 120. The extraneous influence exception, like the no-impeachment rule itself, is directed at protecting jury deliberations against unwarranted interference. *Ibid.*

[3] In particular, the Justice Department observed that "[s]trong policy considerations continue to support" the federal approach and that "[r]ecent experience has shown that the danger of harassment of jurors by unsuccessful litigants warrants a rule which imposes strict limitations on the instances in which jurors may be questioned about their verdict." Letter from R. Kliendienst, Deputy Attorney General, to Judge A. Maris (Aug. 9,

revised draft that retained the well-established federal approach. *Tanner*, *supra*, at 122; see Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Revised Draft of Proposed Rules of Evidence for the United States Courts and Magistrates 73 (Oct. 1971). Expressly repudiating the Iowa rule, the new draft provided that jurors generally could not testify "as to any matter or statement occurring during the course of the jury's deliberations." *Ibid.* This new version was approved by the Judicial Conference and sent to this Court, which adopted the rule and referred it to Congress. 56 F. R. D. 183, 265–266 (1972).

Initially, the House rejected this Court's version of Rule 606(b) and instead reverted to the earlier (and narrower) Advisory Committee draft. *Tanner*, *supra*, at 123; see H. R. Rep. No. 93–650, pp. 9–10 (1973) (criticizing the Supreme Court draft for preventing jurors from testifying about "quotient verdict[s]" and other "irregularities which occurred in the jury room"). In the Senate, however, the Judiciary Committee favored this Court's rule. The Committee Report observed that the House draft broke with "long-accepted Federal law" by allowing verdicts to be "challenge[d] on the basis of what happened during the jury's internal deliberations." S. Rep. No. 93–1277, p. 13 (1974) (S. Rep.). In the view of the Senate Committee, the House rule would have "permit[ted] the harassment of former jurors" as well as "the possible exploitation of disgruntled or otherwise badly-motivated ex-jurors." *Id.*, at 14. This re-

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1971), 117 Cong. Rec. 33648, 33655 (1971). And Senator McClellan, an influential member of the Senate Judiciary Committee, insisted that the "mischief in this Rule ought to be plain for all to see" and that it would be impossible "to conduct trials, particularly criminal prosecutions, as we know them today, if every verdict were followed by a post-trial hearing into the conduct of the juror's deliberations." Letter from Sen. J. McClellan to Judge A. Maris (Aug. 12, 1971), *id.*, at 33642, 33645.

sult would have undermined the finality of verdicts, violated "common fairness," and prevented jurors from "function[ing] effectively." *Ibid.* The Senate rejected the House version of the rule and returned to the Court's rule. A Conference Committee adopted the Senate version, see H. R. Conf. Rep. No. 93–1597, p. 8 (1974), and this version was passed by both Houses and was signed into law by the President.

As this summary shows, the process that culminated in the adoption of Federal Rule of Evidence 606(b) was the epitome of reasoned democratic rulemaking. The "distinguished, Supreme Court-appointed" members of the Advisory Committee went through a 7-year drafting process, "produced two well-circulated drafts," and "considered numerous comments from persons involved in nearly every area of court-related law." Rothstein, The Proposed Amendments to the Federal Rules of Evidence, 62 Geo. L. J. 125 (1973). The work of the Committee was considered and approved by the experienced appellate and trial judges serving on the Judicial Conference and by our predecessors on this Court. After that, the matter went to Congress, which "specifically understood, considered, and rejected a version of [the rule] that would have allowed jurors to testify on juror conduct during deliberations." *Tanner*, 483 U. S., at 125. The judgment of all these participants in the process, which was informed by their assessment of an empirical issue, *i. e.*, the effect that the competing Iowa rule would have had on the jury system, is entitled to great respect.

Colorado considered this same question, made the same judgment as the participants in the federal process, and adopted a very similar rule. In doing so, it joined the overwhelming majority of States. *Ante,* at 218. In the great majority of jurisdictions, strong no-impeachment rules continue to be "viewed as both promoting the finality of verdicts and insulating the jury from outside influences." *Warger*, 574 U. S., at 45.

II

A

Recognizing the importance of Rule 606(b), this Court has twice rebuffed efforts to create a Sixth Amendment exception—first in *Tanner* and then, just two Terms ago, in *Warger*.

The *Tanner* petitioners were convicted of committing mail fraud and conspiring to defraud the United States. 483 U. S., at 109–110, 112–113. After the trial, two jurors came forward with disturbing stories of juror misconduct. One claimed that several jurors "consumed alcohol during lunch breaks . . . causing them to sleep through the afternoons." *Id.*, at 113. The second added that jurors also smoked marijuana and ingested cocaine during the trial. *Id.*, at 115–116. This Court held that evidence of this bacchanalia could properly be excluded under Rule 606(b). *Id.*, at 127.

The Court noted that "[s]ubstantial policy considerations support the common-law rule against the admission of jury testimony to impeach a verdict." *Id.*, at 119. While there is "little doubt that postverdict investigation into juror misconduct would in some instances lead to the invalidation of verdicts reached after irresponsible or improper juror behavior," the Court observed, it is "not at all clear . . . that the jury system could survive such efforts to perfect it." *Id.*, at 120. Allowing such postverdict inquiries would "seriously disrupt the finality of the process." *Ibid.* It would also undermine "full and frank discussion in the jury room, jurors' willingness to return an unpopular verdict, and the community's trust in a system that relies on the decisions of laypeople." *Id.*, at 120–121.

The *Tanner* petitioners, of course, had a Sixth Amendment right "to 'a tribunal both impartial and mentally competent to afford a hearing.'" *Id.*, at 126 (quoting *Jordan* v. *Massachusetts*, 225 U. S. 167, 176 (1912)). The question, however, was whether they also had a right to an evidentiary hearing

featuring "one particular kind of evidence inadmissible under the Federal Rules." 483 U. S., at 126–127. Turning to that question, the Court noted again that "long-recognized and very substantial concerns support the protection of jury deliberations from intrusive inquiry." *Id.*, at 127. By contrast, "[p]etitioners' Sixth Amendment interests in an unimpaired jury [were] protected by several aspects of the trial process." *Ibid.*

The Court identified four mechanisms that protect defendants' Sixth Amendment rights. First, jurors can be "examined during *voir dire*." *Ibid.* Second, "during the trial the jury is observable by the court, by counsel, and by court personnel." *Ibid.* Third, "jurors are observable by each other, and may report inappropriate juror behavior to the court *before* they render a verdict." *Ibid.* And fourth, "after the trial a party may seek to impeach the verdict by nonjuror evidence of misconduct." *Ibid.* These "other sources of protection of petitioners' right to a competent jury" convinced the Court that the juror testimony was properly excluded. *Ibid.*

Warger involved a negligence suit arising from a motorcycle crash. 574 U. S., at 42. During *voir dire*, the individual who eventually became the jury's foreperson said that she could decide the case fairly and impartially. *Id.*, at 42–43. After the jury returned a verdict in favor of the defendant, one of the jurors came forward with evidence that called into question the truthfulness of the foreperson's responses during *voir dire*. According to this juror, the foreperson revealed during the deliberations that her daughter had once caused a deadly car crash, and the foreperson expressed the belief that a lawsuit would have ruined her daughter's life. *Id.*, at 43.

In seeking to use this testimony to overturn the jury's verdict, the plaintiff's primary contention was that Rule 606(b) does not apply to evidence concerning a juror's alleged misrepresentations during *voir dire*. If otherwise inter-

preted, the plaintiff maintained, the rule would threaten his right to trial by an impartial jury.[4] The Court disagreed, in part because "any claim that Rule 606(b) is unconstitutional in circumstances such as these is foreclosed by our decision in *Tanner*." *Id.*, at 50. The Court explained that "[e]ven if jurors lie in *voir dire* in a way that conceals bias, juror impartiality is adequately assured by" two of the other *Tanner* safeguards: preverdict reports by the jurors and nonjuror evidence. 574 U. S., at 51.

Tanner and *Warger* fit neatly into this Court's broader jurisprudence concerning the constitutionality of evidence rules. As the Court has explained, "state and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials." *Holmes* v. *South Carolina*, 547 U. S. 319, 324 (2006) (internal quotation marks and alteration omitted). Thus, evidence rules of this sort have been invalidated only if they "serve no legitimate purpose or . . . are disproportionate to the ends that they are asserted to promote." *Id.*, at 326. *Tanner* and *Warger* recognized that Rule 606(b) serves vital purposes and does not impose a disproportionate burden on the jury trial right.

Today, for the first time, the Court creates a constitutional exception to no-impeachment rules. Specifically, the Court holds that no-impeachment rules violate the Sixth Amendment to the extent that they preclude courts from considering evidence of a juror's racially biased comments. *Ante*, at 225. The Court attempts to distinguish *Tanner* and *Warger*, but its efforts fail.

Tanner and *Warger* rested on two basic propositions. First, no-impeachment rules advance crucial interests. Second, the right to trial by an impartial jury is adequately protected by mechanisms other than the use of juror testimony

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[4] Although *Warger* was a civil case, we wrote that "[t]he Constitution guarantees both criminal and civil litigants a right to an impartial jury." 574 U. S., at 50.

regarding jury deliberations. The first of these propositions applies regardless of the nature of the juror misconduct, and the Court does not argue otherwise. Instead, it contends that, in cases involving racially biased jurors, the *Tanner* safeguards are less effective and the defendant's Sixth Amendment interests are more profound. Neither argument is persuasive.

B

As noted above, *Tanner* identified four "aspects of the trial process" that protect a defendant's Sixth Amendment rights: (1) *voir dire*; (2) observation by the court, counsel, and court personnel; (3) preverdict reports by the jurors; and (4) nonjuror evidence. 483 U. S., at 127.[5] Although the Court insists that these mechanisms "may be compromised" in cases involving allegations of racial bias, it addresses only two of them and fails to make a sustained argument about either. *Ante*, at 224.

1

First, the Court contends that the effectiveness of *voir dire* is questionable in cases involving racial bias because pointed questioning about racial attitudes may highlight racial issues and thereby exacerbate prejudice. *Ante*, at 224–225. It is far from clear, however, that careful *voir dire* cannot surmount this problem. Lawyers may use questionnaires or individual questioning of prospective jurors[6] in order to elicit frank answers that a juror might be reluctant to voice in the

[5] The majority opinion in this case identifies a fifth mechanism: jury instructions. It observes that, by explaining the jurors' responsibilities, appropriate jury instructions can promote "[p]robing and thoughtful deliberation," which in turn "improves the likelihood that other jurors can confront the flawed nature of reasoning that is prompted or influenced by improper biases." *Ante*, at 229. This mechanism, like those listed in *Tanner*, can help to prevent bias from infecting a verdict.

[6] Both of those techniques were used in this case for other purposes. App. 13–14; Tr. 56–78 (Feb. 23, 2010, morning session).

presence of other prospective jurors.[7] Moreover, practice guides are replete with advice on conducting effective *voir dire* on the subject of race. They outline a variety of subtle and nuanced approaches that avoid pointed questions.[8] And

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[7] See *People* v. *Harlan*, 8 P. 3d 448, 500 (Colo. 2000) ("The trial court took precautions at the outset of the trial to foreclose the injection of improper racial considerations by including questions concerning racial issues in the jury questionnaire"); *Brewer* v. *Marshall*, 119 F. 3d 993, 996 (CA1 1997) ("The judge asked each juror, out of the presence of other jurors, whether they had any bias or prejudice for or against black persons or persons of Hispanic origin"); 6 W. LaFave, J. Israel, N. King, & O. Kerr, Criminal Procedure § 22.3(a), p. 92 (4th ed. 2015) (noting that "[j]udges commonly allow jurors to approach the bench and discuss sensitive matters there" and are also free to conduct "in chambers discussions").

[8] See, *e. g.*, J. Gobert, E. Kreitzberg, & C. Rose, Jury Selection: The Law, Art, and Science of Selecting a Jury § 7:41, pp. 357–358 (3d ed. 2014) (explaining that "the issue should be approached more indirectly" and suggesting the use of "[o]pen-ended questions" on subjects like "the composition of the neighborhood in which the juror lives, the juror's relationship with co-workers or neighbors of different races, or the juror's past experiences with persons of other races"); W. Jordan, Jury Selection § 8.11, p. 237 (1980) (explaining that "the whole matter of prejudice" should be approached "delicately and cautiously" and giving an example of an indirect question that avoids the word "prejudice"); R. Wenke, The Art of Selecting a Jury 67 (1979) (discussing questions that could identify biased jurors when "your client is a member of a minority group"); *id.*, at 66 (suggesting that instead of "asking a juror if he is 'prejudiced' " the attorney should "inquire about his 'feeling,' 'belief' or 'opinion' "); 2 National Jury Project, Inc., Jurywork: Systematic Techniques § 17.23 (E. Krauss ed., 2d ed. 2010) (listing sample questions about racial prejudice); A. Grine & E. Coward, Raising Issues of Race in North Carolina Criminal Cases, p. 8–14 (2014) (suggesting that attorneys "share a brief example about a judgment shaped by a racial stereotype" to make it easier for jurors to share their own biased views), http://defendermanuals.sog.unc.edu/race/8-addressing-race-trial (as last visited Mar. 3, 2017); *id.*, at 8–15 to 8–17 (suggesting additional strategies and providing sample questions); T. Mauet, Trial Techniques 44 (8th ed. 2010) (suggesting that "likely beliefs and attitudes are more accurately learned through indirection"); J. Lieberman & B. Sales, Scientific Jury Selection 114–115 (2007) (discussing research suggesting that "participants were more likely to admit they were

of course, if an attorney is concerned that a juror is concealing bias, a peremptory strike may be used.[9]

The suggestion that *voir dire* is ineffective in unearthing bias runs counter to decisions of this Court holding that *voir dire* on the subject of race is constitutionally required in some cases, mandated as a matter of federal supervisory authority in others, and typically advisable in any case if a defendant requests it. See *Turner* v. *Murray*, 476 U. S. 28, 36–37 (1986); *Rosales-Lopez* v. *United States*, 451 U. S. 182, 192 (1981) (plurality opinion); *Ristaino* v. *Ross*, 424 U. S. 589, 597, n. 9 (1976). If *voir dire* were not useful in identifying racial prejudice, those decisions would be pointless. Cf. *Turner*, *supra*, at 36 (plurality opinion) (noting "the ease with which [the] risk [of racial bias] could have been minimized" through *voir dire*). Even the majority recognizes the "advantages of careful *voir dire*" as a "proces[s] designed to prevent racial bias in jury deliberations." *Ante*,

unable to abide by legal due process guarantees when asked open-ended questions that did not direct their responses").

[9] To the extent race does become salient during *voir dire*, there is social science research suggesting that this may actually combat rather than reinforce the jurors' biases. See, *e. g.*, Lee, A New Approach to *Voir Dire* on Racial Bias, 5 U. C. Irvine L. Rev. 843, 861 (2015) ("A wealth of fairly recent empirical research has shown that when race is made salient either through pretrial publicity, *voir dire* questioning of prospective jurors, opening and closing arguments, or witness testimony, White jurors are more likely to treat similarly situated Black and White defendants the same way"). See also Sommers & Ellsworth, White Juror Bias: An Investigation of Prejudice Against Black Defendants in the American Courtroom, 7 Psychology, Pub. Pol'y, & L. 201, 222 (2001); Sommers & Ellsworth, How Much Do We Really Know About Race and Juries? A Review of Social Science Theory and Research, 78 Chi.-Kent L. Rev. 997, 1013–1014, 1027 (2003); Schuller, Kazoleas, & Kawakami, The Impact of Prejudice Screening Procedures on Racial Bias in the Courtroom, 33 Law & Human Behavior 320, 326 (2009); Cohn, Bucolo, Pride, & Somers, Reducing White Juror Bias: The Role of Race Salience and Racial Attitudes, 39 J. Applied Soc. Psychology 1953, 1964–1965 (2009).

at 228. And reported decisions substantiate that *voir dire* can be effective in this regard. *E. g.*, *Brewer* v. *Marshall*, 119 F. 3d 993, 995–996 (CA1 1997); *United States* v. *Hasting*, 739 F. 2d 1269, 1271 (CA7 1984); *People* v. *Harlan*, 8 P. 3d 448, 500 (Colo. 2000); see Brief for Respondent 23–24, n. 7 (listing additional cases). Thus, while *voir dire* is not a magic cure, there are good reasons to think that it is a valuable tool.

In any event, the critical point for present purposes is that the effectiveness of *voir dire* is a debatable empirical proposition. Its assessment should be addressed in the process of developing federal and state evidence rules. Federal and state rulemakers can try a variety of approaches, and they can make changes in response to the insights provided by experience and research. The approach taken by today's majority—imposing a federal constitutional rule on the entire country—prevents experimentation and makes change exceedingly hard.[10]

2

The majority also argues—even more cursorily—that "racial bias may make it difficult for a juror to report inappropriate statements during the course of juror deliberations." *Ante*, at 225. This is so, we are told, because it is difficult to "call [another juror] a bigot." *Ibid.*

Since the Court's decision mandates the admission of the testimony of one juror about a statement made by another juror during deliberations, what the Court must mean in making this argument is that jurors are less willing to report

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[10] It is worth noting that, even if *voir dire* were entirely ineffective at detecting racial bias (a proposition no one defends), that still would not suffice to distinguish this case from *Warger* v. *Shauers*, 574 U. S. 40 (2014). After all, the allegation in *Warger* was that the foreperson had entirely circumvented *voir dire* by lying in order to shield her bias. The Court, nevertheless, concluded that even where "jurors lie in *voir dire* in a way that conceals bias, juror impartiality is adequately assured" through other means. *Id.*, at 51.

biased comments by fellow jurors prior to the beginning of deliberations (while they are still sitting with the biased juror) than they are after the verdict is announced and the jurors have gone home. But this is also a questionable empirical assessment, and the Court's seat-of-the-pants judgment is no better than that of those with the responsibility of drafting and adopting federal and state evidence rules. There is no question that jurors *do* report biased comments made by fellow jurors prior to the beginning of deliberations. See, *e. g.*, *United States* v. *McClinton*, 135 F. 3d 1178, 1184–1185 (CA7 1998); *United States* v. *Heller*, 785 F. 2d 1524, 1525–1529 (CA11 1986); *Tavares* v. *Holbrook*, 779 F. 2d 1, 1–3 (CA1 1985) (Breyer, J.); see Brief for Respondent 31–32, n. 10; Brief for United States as *Amicus Curiae* 31. And the Court marshals no evidence that such predeliberation reporting is rarer than the postverdict variety.

Even if there is something to the distinction that the Court makes between preverdict and postverdict reporting it is debatable whether the difference is significant enough to merit different treatment. This is especially so because postverdict reporting is both more disruptive and may be the result of extraneous influences. A juror who is initially in the minority but is ultimately persuaded by other jurors may have second thoughts after the verdict is announced and may be angry with others on the panel who pressed for unanimity. In addition, if a verdict is unpopular with a particular juror's family, friends, employer, co-workers, or neighbors, the juror may regret his or her vote and may feel pressured to rectify what the jury has done.

In short, the Court provides no good reason to depart from the calculus made in *Tanner* and *Warger*. Indeed, the majority itself uses hedged language and appears to recognize that this "pragmatic" argument is something of a makeweight. *Ante,* at 225 (noting that the argument is "not dispositive"); *ante,* at 224 (stating that the operation of the safeguards "may be compromised, or they may prove insufficient").

III

A

The real thrust of the majority opinion is that the Constitution is less tolerant of racial bias than other forms of juror misconduct, but it is hard to square this argument with the nature of the Sixth Amendment right on which petitioner's argument and the Court's holding are based. What the Sixth Amendment protects is the right to an "impartial jury." Nothing in the text or history of the Amendment or in the inherent nature of the jury trial right suggests that the extent of the protection provided by the Amendment depends on the nature of a jury's partiality or bias. As the Colorado Supreme Court aptly put it, it is hard to "discern a dividing line between different *types* of juror bias or misconduct, whereby one form of partiality would implicate a party's Sixth Amendment right while another would not." 350 P. 3d 287, 293 (2015).[11]

Nor has the Court found any decision of this Court suggesting that the Sixth Amendment recognizes some sort of hierarchy of partiality or bias. The Court points to a line of cases holding that, in some narrow circumstances, the Constitution requires trial courts to conduct *voir dire* on the subject of race. Those decisions, however, were not based on a ranking of types of partiality but on the Court's conclusion that in certain cases racial bias was especially likely. See *Turner*, 476 U. S., at 38, n. 12 (plurality opinion) (requiring *voir dire* on the subject of race where there is "a particularly compelling need to inquire into racial prejudice" because of

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[11] The majority's reliance on footnote 3 of *Warger*, *ante*, at 221, is unavailing. In that footnote, the Court noted that some "cases of juror bias" might be "so extreme" as to prompt the Court to "*consider* whether the usual safeguards are or are not sufficient to protect the integrity of the process." 574 U. S., at 51, n. 3 (emphasis added). Considering this question is very different from adopting a constitutionally based exception to long-established no-impeachment rules.

a qualitatively higher "risk of racial bias"); *Ristaino*, 424 U. S., at 596 (explaining that the requirement applies only if there is a "constitutionally significant likelihood that, absent questioning about racial prejudice, the jurors would not be [impartial]").[12] Thus, this line of cases does not advance the majority's argument.

It is undoubtedly true that "racial bias implicates unique historical, constitutional, and institutional concerns." *Ante*, at 224. But it is hard to see what that has to do with the scope of an *individual criminal defendant's* Sixth Amendment right to be judged impartially. The Court's efforts to reconcile its decision with *McDonald*, *Tanner*, and *Warger* illustrate the problem. The Court writes that the misconduct in those cases, while "troubling and unacceptable," was "anomalous." *Ante*, at 224. By contrast, racial bias, the Court says, is a "familiar and recurring evil" that causes "systemic injury to the administration of justice." *Ibid.*

Imagine two cellmates serving lengthy prison terms. Both were convicted for homicides committed in unrelated barroom fights. At the trial of the first prisoner, a juror, during deliberations, expressed animosity toward the defendant because of his race. At the trial of the second prisoner, a juror, during deliberations, expressed animosity toward the defendant because he was wearing the jersey of a hated football team. In both cases, jurors come forward after the trial and reveal what the biased juror said in the jury room. The Court would say to the first prisoner: "You are entitled to introduce the jurors' testimony, because racial bias is damaging to our society." To the second, the Court would say: "Even if you did not have an impartial jury, you must stay in prison because sports rivalries are not a major societal issue."

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[12] In addition, those cases did not involve a challenge to a long-established evidence rule. As such, they offer little guidance in performing the analysis required by this case.

This disparate treatment is unsupportable under the Sixth Amendment. If the Sixth Amendment requires the admission of juror testimony about statements or conduct during deliberations that show one type of juror partiality, then statements or conduct showing any type of partiality should be treated the same way.

B

Recasting this as an equal protection case would not provide a ground for limiting the holding to cases involving racial bias. At a minimum, cases involving bias based on any suspect classification—such as national origin[13] or religion[14]—would merit equal treatment. So, I think, would bias based on sex, *United States* v. *Virginia*, 518 U. S. 515, 531 (1996), or the exercise of the First Amendment right to freedom of expression or association. See *Regan* v. *Taxation With Representation of Wash.*, 461 U. S. 540, 545 (1983). Indeed, convicting a defendant on the basis of any irrational classification would vio ate the Equal Protection Clause

Attempting to limit the damage worked by its decision, the Court says that only "clear" expressions of bias must be admitted, *ante*, at 225, but judging whether a statement is sufficiently "clear" will often not be easy. Suppose that the allegedly biased juror in this case never made reference to Peña-Rodriguez's race or national origin but said that he had a lot of experience with "this macho type" and knew that men of this kind felt that they could get their way with women. Suppose that other jurors testified that they were certain that "this macho type" was meant to refer to Mexican or Hispanic men. Many other similarly suggestive statements can easily be imagined, and under today's decision it will be difficult for judges to discern the dividing line be-

[13] See *Cleburne* v. *Cleburne Living Center, Inc.*, 473 U. S. 432, 440 (1985).

[14] See, *e. g.*, *United States* v. *Armstrong*, 517 U. S. 456, 464 (1996); *Burlington Northern R. Co.* v. *Ford*, 504 U. S. 648, 651 (1992); *New Orleans* v. *Dukes*, 427 U. S. 297, 303 (1976) (*per curiam*).

tween those that are "clear[ly]" based on racial or ethnic bias and those that are at least somewhat ambiguous.

IV

Today's decision—especially if it is expanded in the ways that seem likely—will invite the harms that no-impeachment rules were designed to prevent.

First, as the Court explained in *Tanner*, "postverdict scrutiny of juror conduct" will inhibit "full and frank discussion in the jury room." 483 U. S., at 120–121; see also *McDonald*, 238 U. S., at 267–268 (warning that the use of juror testimony about misconduct during deliberations would "make what was intended to be a private deliberation, the constant subject of public investigation—to the destruction of all frankness and freedom of discussion and conference"). Or, as the Senate Report put it: "[C]ommon fairness requires that absolute privacy be preserved for jurors to engage in the full and free debate necessary to the attainment of just verdicts. Jurors will not be able to function effectively if their deliberations are to be scrutinized in post-trial litigation." S. Rep., at 14.

Today's ruling will also prompt losing parties and their friends, supporters, and attorneys to contact and seek to question jurors, and this pestering may erode citizens' willingness to serve on juries. Many jurisdictions now have rules that prohibit or restrict postverdict contact with jurors, but whether those rules will survive today's decision is an open question—as is the effect of this decision on privilege rules such as those noted at the outset of this opinion.[15]

[15] The majority's emphasis on the unique harms of racial bias will not succeed at cabining the novel exception to no-impeachment rules, but it may succeed at putting other kinds of rules under threat. For example, the majority approvingly refers to the widespread rules limiting attorneys' contact with jurors. *Ante*, at 226. But under the reasoning of the majority opinion, it is not clear why such rules should be enforced when they come into conflict with a defendant's attempt to introduce evidence of racial bias. For instance, what will happen when a lawyer obtains clear

Where postverdict approaches are permitted or occur, there is almost certain to be an increase in harassment, arm twisting, and outright coercion. See *McDonald*, *supra*, at 267; S. Rep., at 14 (explaining that a laxer rule "would permit the harassment of former jurors by losing parties as well as the possible exploitation of disgruntled or otherwise badly-motivated ex-jurors"); 350 P. 3d, at 293. As one treatise explains, "[a] juror who reluctantly joined a verdict is likely to be sympathetic to overtures by the loser, and persuadable to the view that his own consent rested on false or impermissible considerations, and the truth will be hard to know." 3 C. Mueller & L. Kirkpatrick, Federal Evidence § 6:16, p. 75 (4th ed. 2013).

The majority's approach will also undermine the finality of verdicts. "Public policy requires a finality to litigation." S. Rep., at 14. And accusations of juror bias—which may be "raised for the first time days, weeks, or months after the verdict"—can "seriously disrupt the finality of the process." *Tanner*, *supra*, at 120. This threatens to "degrad[e] the prominence of the trial itself" and to send the message that juror misconduct need not be dealt with promptly. *Engle* v. *Isaac*, 456 U. S. 107, 127 (1982). See H. R. Conf. Rep. No. 93–1597, at 8 ("The Conferees believe that jurors should be encouraged to be conscientious in promptly reporting to the court misconduct that occurs during jury deliberations").

The Court itself acknowledges that strict no-impeachment rules "promot[e] full and vigorous discussion," protect jurors from "be[ing] harassed or annoyed by litigants seeking to challenge the verdict," and "giv[e] stability and finality to verdicts." *Ante,* at 218. By the majority's own logic, then,

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evidence of racist statements by contacting jurors in violation of a local rule? (Something similar happened in *Tanner*. 483 U. S., at 126.) It remains to be seen whether rules of this type—or other rules which exclude probative evidence, such as evidentiary privileges—will be allowed to stand in the way of the "imperative to purge racial prejudice from the administration of justice." *Ante*, at 221.

imposing exceptions on no-impeachment rules will tend to defeat full and vigorous discussion, expose jurors to harassment, and deprive verdicts of stability.

The Court's only response is that some jurisdictions already make an exception for racial bias, and the Court detects no signs of "a loss of juror willingness to engage in searching and candid deliberations." *Ante*, at 227. One wonders what sort of outward signs the Court would expect to see if jurors in these jurisdictions do not speak as freely in the jury room as their counterparts in jurisdictions with strict no-impeachment rules. Gathering and assessing evidence regarding the quality of jury deliberations in different jurisdictions would be a daunting enterprise, and the Court offers no indication that anybody has undertaken that task.

In short, the majority barely bothers to engage with the policy issues implicated by no-impeachment rules. But even if it had carefully grappled with those issues, it still would have no basis for exalting its own judgment over that of the many expert policymakers who have endorsed broad no-impeachment rules.

V

The Court's decision is well intentioned. It seeks to remedy a flaw in the jury trial system, but as this Court said some years ago, it is questionable whether our system of trial by jury can endure this attempt to perfect it. *Tanner*, *supra*, at 120.

I respectfully dissent.

Syllabus

BECKLES *v.* UNITED STATES

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

No. 15–8544. Argued November 28, 2016—Decided March 6, 2017

Petitioner Beckles was convicted of possession of a firearm by a convicted felon, 18 U. S. C. § 922(g)(1). His presentence investigation report concluded that he was eligible for a sentencing enhancement as a "career offender" under United States Sentencing Guideline § 4B1.1(a) because his offense qualified as a "crime of violence" under § 4B1.2(a)'s residual clause. The District Court sentenced petitioner as a career offender, and the Eleventh Circuit affirmed. Petitioner then filed a postconviction motion to vacate his sentence, arguing that his offense was not a "crime of violence." The District Court denied the motion, and the Eleventh Circuit affirmed. Petitioner next filed a petition for a writ of certiorari from this Court. While his petition was pending, this Court held that the identically worded residual clause in the Armed Career Criminal Act (ACCA), § 924(e)(2)(B), was unconstitutionally vague, *Johnson* v. *United States*, 576 U. S. 591. The Court vacated and remanded petitioner's case in light of *Johnson*. On remand, the Eleventh Circuit affirmed again, distinguishing the ACCA's unconstitutionally vague residual clause from the residual clause in the Sentencing Guidelines.

Held: The Federal Sentencing Guidelines, including § 4B1.2(a)'s residual clause, are not subject to vagueness challenges under the Due Process Clause. Pp. 262–270.

(a) The Due Process Clause prohibits the Government from "taking away someone's life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement." *Johnson*, *supra*, at 595. Under the void-for-vagueness doctrine, laws that fix the permissible sentences for criminal offenses must specify the range of available sentences with "sufficient clarity." *United States* v. *Batchelder*, 442 U. S. 114, 123. In *Johnson*, this Court held that the ACCA's residual clause fixed—in an impermissibly vague way—a higher range of sentences for certain defendants. But the advisory Guidelines do not fix the permissible range of sentences. They merely guide the exercise of a court's discretion in choosing an appropriate sentence within the statutory range. Pp. 262–267.

(1) The limited scope of the void-for-vagueness doctrine in this context is rooted in the history of federal sentencing. Congress has long

permitted district courts "wide discretion to decide whether the offender should be incarcerated and for how long." *Mistretta* v. *United States*, 488 U. S. 361, 363. Yet this Court has "never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range," *United States* v. *Booker*, 543 U. S. 220, 233, nor suggested that a defendant can successfully challenge as vague a sentencing statute conferring discretion to select an appropriate sentence from within a statutory range, even when that discretion is unfettered, see *Batchelder*, *supra*, at 123, 126. Pp. 263–264.

(2) The Sentencing Reform Act of 1984 departed from this regime by establishing several factors to guide district courts in exercising their sentencing discretion. It also created the United States Sentencing Commission and charged it with establishing the Federal Sentencing Guidelines. Because the Guidelines have been rendered "effectively advisory" by this Court, *Booker*, *supra*, at 245, they guide district courts in exercising their discretion, but do not constrain that discretion. Accordingly, they are not amenable to vagueness challenges: If a system of unfettered discretion is not unconstitutionally vague, then it is difficult to see how the present system of guided discretion could be. Neither do they implicate the twin concerns underlying vagueness doctrine—providing notice and preventing arbitrary enforcement. The appl cable statutory range, which estab ishes the permissible bounds of the court's sentencing discretion, provides all the notice that is required. Similarly, the Guidelines do not invite arbitrary enforcement within the meaning of this Court's case law, because they do not permit the sentencing court to prohibit behavior or to prescribe the sentencing ranges available. Rather, they advise sentencing courts on how to exercise their discretion within the bounds established by Congress. Pp. 264–267.

(b) The holding in this case does not render the advisory Guidelines immune from constitutional scrutiny, see, *e. g.*, *Peugh* v. *United States*, 569 U. S. 530, or render "sentencing procedure[s]" entirely "immune from scrutiny under the due process clause," *Williams* v. *New York*, 337 U. S. 241, 252, n. 18. This Court holds only that the Sentencing Guidelines are not subject to a challenge under the void-for-vagueness doctrine. Pp. 267–268.

(c) Nor does this holding cast doubt on the validity of the other factors that sentencing courts must consider in exercising their sentencing discretion. See §§ 3553(a)(1)–(3), (5)–(7). A contrary holding, however, would cast serious doubt on those other factors because many of them appear at least as unclear as § 4B1.2(a)'s residual clause. This Court rejects the Government's argument that the individualized sentencing required by those other factors is distinguishable from that required by the Guidelines. It is far from obvious that § 4B1.2(a)'s residual clause

implicates the twin concerns of vagueness more than the other factors do, and neither the Guidelines nor the other factors implicate those concerns more than the absence of any guidance at all, which the Government concedes is constitutional. Pp. 268–270.

616 Fed. Appx. 415, affirmed.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, BREYER, and ALITO, JJ., joined. KENNEDY, J., filed a concurring opinion, *post*, p. 270. GINSBURG, J., *post*, p. 271, and SOTOMAYOR, J., *post*, p. 272, filed opinions concurring in the judgment. KAGAN, J., took no part in the consideration or decision of the case.

Janice L. Bergmann argued the cause for petitioner. With her on the briefs were *Michael Caruso* and *Andrew L. Adler*.

Deputy Solicitor General Dreeben argued the cause for the United States. With him on the briefs were *Acting Solicitor General Gershengorn*, *Assistant Attorney General Caldwell*, *John F. Bash*, and *Nina Goodman*.

Adam K. Mortara, by invitation of the Court, 579 U. S. 965, argued the cause and filed a brief as *amicus curiae* in support of the judgment below on Question 2.*

JUSTICE THOMAS delivered the opinion of the Court.

At the time of petitioner's sentencing, the advisory Sentencing Guidelines included a residual clause defining a "crime of violence" as an offense that "involves conduct that presents a serious potential risk of physical injury to another." United States Sentencing Commission, Guidelines Manual § 4B1.2(a)(2) (Nov. 2006) (USSG). This Court held in *Johnson* v. *United States*, 576 U. S. 591 (2015), that the identically worded residual clause in the Armed Career

*Briefs of *amici curiae* urging reversal were filed for Federal Public and Community Defenders et al. by *Amy Baron-Evans*, *Jennifer Niles Coffin*, *Donna Coltharp*, *Sarah Gannett*, *Daniel Kaplan*, and *Brett Sweitzer*; and for Scholars of Criminal Law, Federal Courts, and Sentencing by *Carissa Byrne Hessick*, *Leah M. Litman*, and *Douglas A. Berman*, all *pro se*.

Criminal Act (ACCA), 18 U. S. C. § 924(e)(2)(B), was unconstitutionally vague. Petitioner contends that the Guidelines' residual clause is also void for vagueness. Because we hold that the advisory Guidelines are not subject to vagueness challenges under the Due Process Clause, we reject petitioner's argument.

I

Petitioner Travis Beckles was convicted in 2007 of possession of a firearm by a convicted felon, § 922(g)(1). According to the presentence investigation report, the firearm was a sawed-off shotgun, and petitioner was therefore eligible for a sentencing enhancement as a "career offender" under the Sentencing Guidelines. The 2006 version of the Guidelines, which were in effect when petitioner was sentenced,[1] provided that "[a] defendant is a career offender if

> "(1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense." USSG § 4B1.1(a).

The Guidelines defined "crime of violence" as

> "any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that—
>
> "(1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or
>
> "(2) is burglary of a dwelling, arson, or extortion, involves use of explosives, *or otherwise involves conduct*

[1] With one exception not relevant here, 18 U. S. C. § 3553(a)(4)(A) instructs sentencing courts to consider the Guidelines ranges that "are in effect on the date the defendant is sentenced." Accordingly, references in this opinion to the Guidelines are to the 2006 version.

> *that presents a serious potential risk of physical injury to another*." § 4B1.2(a) (emphasis added).

The clause beginning with "or otherwise" in this definition is known as the residual clause.

The commentary to the career-offender Guideline provided that possession of a sawed-off shotgun was a crime of violence. See § 4B1.2, comment., n. 1 ("Unlawfully possessing a firearm described in 26 U. S. C. § 5845(a) (*e. g.,* a sawed-off shotgun . . .) is a 'crime of violence' "); § 5845(a) ("The term 'firearm' means (1) a shotgun having a barrel or barrels of less than 18 inches in length").

The District Court agreed that petitioner qualified as a career offender under the Guidelines. Petitioner was over 18 years of age at the time of his offense, and his criminal history included multiple prior felony convictions for controlled substance offenses. Furthermore, in the District Court's view, petitioner's § 922(g)(1) conviction qualified as a "crime of violence." Because he qualified as a career offender, petitioner's Guidelines range was 360 months to life imprisonment. The District Court sentenced petitioner to 360 months. The Court of Appeals affirmed petitioner's conviction and sentence, and this Court denied certiorari. *United States* v. *Beckles,* 565 F. 3d 832, 846 (CA11), cert. denied, 558 U. S. 906 (2009).

In September 2010, petitioner filed a motion to vacate his sentence under 28 U. S. C. § 2255, arguing that his conviction for unlawful possession of a firearm was not a "crime of violence," and therefore that he did not qualify as a career offender under the Guidelines. The District Court denied the motion, and the Court of Appeals affirmed.

Petitioner then filed a second petition for certiorari in this Court. While his petition was pending, the Court decided *Johnson*, holding that "imposing an increased sentence under the residual clause of the [ACCA]"—which contained the same language as the Guidelines' residual clause—"violate[d]

the Constitution's guarantee of due process" because the clause was unconstitutionally vague. 576 U. S., at 606. We subsequently granted his petition, vacated the judgment of the Court of Appeals, and remanded for further consideration in light of *Johnson*. *Beckles* v. *United States*, 576 U. S. 1082 (2015).

On remand, petitioner argued that his enhanced sentence was based on § 4B1.2(a)'s residual clause, which he contended was unconstitutionally vague under *Johnson*. The Court of Appeals again affirmed. It noted that petitioner "was sentenced as a career offender based *not* on the ACCA's residual clause, but based on express language in the Sentencing Guidelines classifying [his] offense as a 'crime of violence.'" 616 Fed. Appx. 415, 416 (2015) (*per curiam*). "*Johnson*," the Court of Appeals reasoned, "says and decided nothing about career-offender enhancements under the Sentencing Guidelines or about the Guidelines commentary underlying [petitioner]'s status as a career-offender." *Ibid.* The Court of Appeals denied rehearing en banc.

Petitioner filed another petition for certiorari in this Court, again contending that § 4B1.2(a)'s residual clause is void for vagueness. To resolve a conflict among the Courts of Appeals on the question whether *Johnson*'s vagueness holding applies to the residual clause in § 4B1.2(a) of the Guidelines,[2] we granted certiorari. 579 U. S. 927 (2016). Because the United States, as respondent, agrees with petitioner that the Guidelines are subject to vagueness challenges, the Court appointed Adam K. Mortara as *amicus*

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[2] Compare *United States* v. *Matchett*, 802 F. 3d 1185, 1193–1196 (CA11 2015) (holding that the Guidelines are not subject to due process vagueness challenges), with, *e. g.*, *United States* v. *Townsend*, 638 Fed. Appx. 172, 178, n. 14 (CA3 2015) (declining to follow *Matchett*); *United States* v. *Pawlak*, 822 F. 3d 902, 905–911 (CA6 2016) (holding that the Guidelines are subject to due process vagueness challenges); *United States* v. *Hurlburt*, 835 F. 3d 715, 721–725 (CA7 2016) (en banc) (same); *United States* v. *Madrid*, 805 F. 3d 1204, 1210–1211 (CA10 2015) (same).

curiae to argue the contrary position. 579 U. S. 965 (2016). He has ably discharged his responsibilities.

II

This Court has held that the Due Process Clause prohibits the Government from "taking away someone's life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement." *Johnson*, 576 U. S., at 595 (citing *Kolender* v. *Lawson*, 461 U. S. 352, 357–358 (1983)). Applying this standard, the Court has invalidated two kinds of criminal laws as "void for vagueness": laws that *define* criminal offenses and laws that *fix the permissible sentences* for criminal offenses.

For the former, the Court has explained that "the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Id.*, at 357. For the latter, the Court has explained that "statutes fixing sentences," *Johnson*, *supra*, at 596 (citing *United States* v. *Batchelder*, 442 U. S. 114, 123 (1979)), must specify the range of available sentences with "sufficient clarity," *id.*, at 123; see also *United States* v. *Evans*, 333 U. S. 483 (1948); cf. *Giaccio* v. *Pennsylvania*, 382 U. S. 399 (1966).

In *Johnson*, we applied the vagueness rule to a statute fixing permissible sentences. The ACCA's residual clause, where applicable, required sentencing courts to increase a defendant's prison term from a statutory maximum of 10 years to a minimum of 15 years. That requirement thus fixed—in an impermissibly vague way—a higher range of sentences for certain defendants. See *Alleyne* v. *United States*, 570 U. S. 99, 112 (2013) (describing the legally prescribed range of available sentences as the penalty fixed to a crime).

Unlike the ACCA, however, the advisory Guidelines do not fix the permissible range of sentences. To the contrary, they merely guide the exercise of a court's discretion in choosing an appropriate sentence within the statutory range. Accordingly, the Guidelines are not subject to a vagueness challenge under the Due Process Clause. The residual clause in § 4B1.2(a)(2) therefore is not void for vagueness.

A

The limited scope of the void-for-vagueness doctrine in this context is rooted in the history of federal sentencing. Instead of enacting specific sentences for particular federal crimes, Congress historically permitted district courts "wide discretion to decide whether the offender should be incarcerated and for how long." *Mistretta* v. *United States*, 488 U. S. 361, 363 (1989). For most crimes, Congress set forth a range of sentences, and sentencing courts had "almost unfettered discretion" to select the actual length of a defendant's sentence "within the customarily wide range" Congress had enacted. *Id.*, at 364; see also, *e. g.*, *Apprendi* v. *New Jersey*, 530 U. S. 466, 481–482 (2000); *Williams* v. *New York*, 337 U. S. 241, 247–248 (1949). That discretion allowed district courts to craft individualized sentences, taking into account the facts of the crime and the history of the defendant. As a result, "[s]erious disparities in sentences . . . were common." *Mistretta*, *supra*, at 365.

Yet in the long history of discretionary sentencing, this Court has "never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range." *United States* v. *Booker*, 543 U. S. 220, 233 (2005); see also, *e. g.*, *Apprendi*, *supra*, at 481 ("[N]othing in this history suggests that it is impermissible for judges to exercise discretion . . . in imposing a judgment *within the range* prescribed by statute"); *Giaccio*, *supra*, at 405, n. 8 ("[W]e intend to cast no doubt whatever on the constitutionality of the settled practice of many States to leave to juries

finding defendants guilty of a crime the power to fix punishment within legally prescribed limits").

More specifically, our cases have never suggested that a defendant can successfully challenge as vague a sentencing statute conferring discretion to select an appropriate sentence from within a statutory range, even when that discretion is unfettered. In fact, our reasoning in *Batchelder* suggests the opposite. This Court considered in that case the constitutionality of two overlapping criminal provisions that authorized different maximum penalties for the same conduct. 442 U. S., at 115–116. The Court held that the sentencing provisions were not void for vagueness because they specified the "penalties available" and defined the "punishment authorized" upon conviction for each crime. *Id.*, at 123. "Although the statutes create[d] uncertainty as to which crime may be charged and therefore what penalties may be imposed, they d[id] so *to no greater extent than would a single statute authorizing various alternative punishments*." *Ibid.* (emphasis added). By specifying "the *range* of penalties that prosecutors and judges may seek and impose," Congress had "fulfilled its duty." *Id.*, at 126 (citing *Evans*, *supra*, at 486, 492, 495; emphasis added). Indeed, no party to this case suggests that a system of purely discretionary sentencing could be subject to a vagueness challenge.

B

The Sentencing Reform Act of 1984 departed from this regime by establishing several factors to guide district courts in exercising their traditional sentencing discretion. 18 U. S. C. § 3553. Congress in the same Act created the United States Sentencing Commission and charged it with establishing guidelines to be used for sentencing. *Mistretta*, *supra*, at 367. The result of the Commission's work is the Federal Sentencing Guidelines, which are one of the sentencing factors that the Act requires courts to consider. § 3553(a)(4).

The Guidelines were initially binding on district courts, *Booker*, 543 U. S., at 233, but this Court in *Booker* rendered them "effectively advisory," *id.*, at 245. Although the Guidelines remain "the starting point and the initial benchmark" for sentencing, a sentencing court may no longer rely exclusively on the Guidelines range; rather, the court "must make an individualized assessment based on the facts presented" and the other statutory factors. *Gall* v. *United States*, 552 U. S. 38, 49, 50 (2007). The Guidelines thus continue to guide district courts in exercising their discretion by serving as "the framework for sentencing," *Peugh* v. *United States*, 569 U. S. 530, 542 (2013), but they "do not constrain th[at] discretion," *id.*, at 552 (THOMAS, J., dissenting).

Because they merely guide the district courts' discretion, the Guidelines are not amenable to a vagueness challenge. As discussed above, the system of purely discretionary sentencing that predated the Guidelines was constitutionally permissible. If a system of unfettered discretion is not unconstitutionally vague, then it is difficult to see how the present system of guided discretion could be.

The advisory Guidelines also do not implicate the twin concerns underlying vagueness doctrine—providing notice and preventing arbitrary enforcement. As to notice, even perfectly clear Guidelines could not provide notice to a person who seeks to regulate his conduct so as to avoid particular penalties within the statutory range. See, *e. g.*, *Grayned* v. *City of Rockford*, 408 U. S. 104, 108 (1972). That is because even if a person behaves so as to avoid an enhanced sentence under the career-offender guideline, the sentencing court retains discretion to impose the enhanced sentence. See, *e. g.*, *Pepper* v. *United States*, 562 U. S. 476, 501 (2011) ("[O]ur post-*Booker* decisions make clear that a district court may in appropriate cases impose a non-Guidelines sentence based on a disagreement with the Commission's views"). As we held in *Irizarry* v. *United States*, 553 U. S. 708 (2008), "[t]he due process concerns that . . . require notice in a world of

mandatory Guidelines no longer" apply. *Id.*, at 714; see *id.*, at 713 ("Any expectation subject to due process protection . . . that a criminal defendant would receive a sentence within the presumptively applicable Guidelines range did not survive our decision in [*Booker*], which invalidated the mandatory features of the Guidelines"). All of the notice required is provided by the applicable statutory range, which establishes the permissible bounds of the court's sentencing discretion.

The advisory Guidelines also do not implicate the vagueness doctrine's concern with arbitrary enforcement. Laws that "regulate persons or entities," we have explained, must be sufficiently clear "that those enforcing the law do not act in an arbitrary or discriminatory way." *FCC* v. *Fox Television Stations, Inc.*, 567 U. S. 239, 253 (2012); see also *Grayned*, *supra*, at 108–109 ("A vague law impermissibly delegates basic policy matters" to judges "for resolution on an *ad hoc* and subjective basis"). An unconstitutionally vague law invites arbitrary enforcement in this sense if it "leaves judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case," *Giaccio*, 382 U. S., at 402–403, or permits them to prescribe the sentences or sentencing range available, cf. *Alleyne*, 570 U. S., at 112 ("[T]he legally prescribed range *is* the penalty affixed to the crime").

The Guidelines, however, do not regulate the public by prohibiting any conduct or by "establishing minimum and maximum penalties for [any] crime." *Mistretta*, 488 U. S., at 396 (Sentencing Guidelines "do not bind or regulate the primary conduct of the public"). Rather, the Guidelines advise sentencing courts how to exercise their discretion within the bounds established by Congress. In this case, for example, the District Court did not "enforce" the career-offender Guideline against petitioner. It enforced 18 U. S. C. §922(g)(1)'s prohibition on possession of a firearm by a felon—which prohibited petitioner's conduct—and

§ 924(e)(1)'s mandate of a sentence of 15 years to life imprisonment—which fixed the permissible range of petitioner's sentence. The court relied on the career-offender Guideline merely for advice in exercising its discretion to choose a sentence within those statutory limits.

JUSTICE SOTOMAYOR's concurrence suggests that judges interpreting a vague Sentencing Guideline might rely on "statistical analysis," "gut instinct," or the judge's "own feelings" to decide whether a defendant's conviction is a crime of violence. *Post*, at 277 (opinion concurring in judgment) (internal quotation marks omitted). A judge granted unfettered discretion could use those same approaches in determining a defendant's sentence. Indeed, the concurrence notes that federal judges before the Guidelines considered their own "view[s] of proper sentencing policy," among other considerations. *Post*, at 281. Yet we have never suggested that unfettered discretion can be void for vagueness.

Accordingly, we hold that the advisory Sentencing Guidelines are not subject to a vagueness challenge under the Due Process Clause and that § 4B1.2(a)'s residual clause is not void for vagueness.

III

Our holding today does not render the advisory Guidelines immune from constitutional scrutiny. This Court held in *Peugh*, for example, that a "retrospective increase in the Guidelines range applicable to a defendant" violates the *Ex Post Facto* Clause. 569 U. S., at 544. But the void-for-vagueness and *ex post facto* inquiries are "analytically distinct." See *id.*, at 550 (distinguishing an *ex post facto* inquiry from a Sixth Amendment inquiry). Our *ex post facto* cases "have focused on whether a change in law creates a 'significant risk' of a higher sentence." *Ibid.* A retroactive change in the Guidelines creates such a risk because "sentencing decisions are anchored by the Guidelines," which establish "the framework for sentencing." *Id.*, at 541, 542. In contrast, the void-for-vagueness doctrine requires a dif-

ferent inquiry. The question is whether a law regulating private conduct by fixing permissible sentences provides notice and avoids arbitrary enforcement by clearly specifying the range of penalties available. The Government's rebuttal that both doctrines are concerned with "'fundamental justice,'" Reply Brief for United States 7, ignores the contours of our precedents.

The Court has also recognized "in the *Eighth Amendment* context" that a district court's reliance on a vague sentencing factor in a capital case, even indirectly, "can taint the sentence." Brief for United States 43 (citing *Espinosa* v. *Florida*, 505 U. S. 1079, 1082 (1992) (*per curiam*); emphasis added). But our approach to vagueness under the Due Process Clause is not interchangeable with "the rationale of our cases construing and applying the Eighth Amendment." *Maynard* v. *Cartwright*, 486 U. S. 356, 361 (1988). Our decision in *Espinosa* is thus inapposite, as it did not involve advisory Sentencing Guidelines or the Due Process Clause.

Finally, our holding today also does not render "sentencing procedure[s]" entirely "immune from scrutiny under the due process clause." *Williams*, 337 U. S., at 252, n. 18; see, *e. g.*, *Townsend* v. *Burke*, 334 U. S. 736, 741 (1948) (holding that due process is violated when a court relies on "extensively and materially false" evidence to impose a sentence on an uncounseled defendant). We hold only that the advisory Sentencing Guidelines, including §4B1.2(a)'s residual clause, are not subject to a challenge under the void-for-vagueness doctrine.

IV

In addition to directing sentencing courts to consider the Guidelines, see §3553(a)(4)(A), Congress has directed them to consider a number of other factors in exercising their sentencing discretion, see §§3553(a)(1)–(3), (5)–(7). The Government concedes that "American judges have long made th[e] sorts of judgments" called for by the §3553(a) factors "in indeterminate-sentencing schemes, and this Court has

never understood such discretionary determinations to raise vagueness concerns." Brief for United States 42. Because the § 3553 factors—like the Guidelines—do not mandate any specific sentences, but rather guide the exercise of a district court's discretion within the applicable statutory range, our holding today casts no doubt on their validity.

Holding that the Guidelines are subject to vagueness challenges under the Due Process Clause, however, would cast serious doubt on their validity. Many of these other factors appear at least as unclear as § 4B1.2(a)'s residual clause. For example, courts must assess "the need for the sentence imposed" to achieve certain goals—such as to "reflect the seriousness of the offense," "promote respect for the law," "provide just punishment for the offense," "afford adequate deterrence to criminal conduct," and "provide the defendant with needed educational or vocational training . . . in the most effective manner." § 3553(a)(2). If petitioner were correct that § 4B1.2(a)'s residual clause were subject to a vagueness challenge, we would be hard pressed to find these factors sufficiently definite to provide adequate notice and prevent arbitrary enforcement.

The Government tries to have it both ways, arguing that the individualized sentencing required by the other § 3553(a) factors is different in kind from that required by the Guidelines. "An inscrutably vague advisory guideline," it contends, "injects arbitrariness into the sentencing process that is not found in the exercise of unguided discretion in a traditional sentencing system." Reply Brief for United States 10–11. But it is far from obvious that the residual clause implicates the twin concerns of vagueness any more than the statutory command that sentencing courts impose a sentence tailored, for example, "to promote respect for the law." § 3553(a)(2)(A). And neither the Guidelines nor the other § 3553 factors implicate those concerns more than the absence of any guidance at all, which the Government concedes is constitutional.

The Government also suggests that the Guidelines are not like the other § 3553(a) factors "because they require a court to decide whether the facts of the case satisfy a legal standard in order to derive a specific numerical range." *Id.*, at 22. But that does not distinguish the other sentencing factors, which require courts to do the same thing. Section 3553(a) states that district courts "shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in [§ 3553(a)(2)]." In fact, the Guidelines generally offer more concrete advice in imposing a particular sentence and make it easier to review whether a court has abused its substantial discretion. There is no sound reason to conclude that the Guidelines—but not § 3553(a)'s other sentencing factors—are amenable to vagueness review.

* * *

Because the advisory Sentencing Guidelines are not subject to a due process vagueness challenge, § 4B1.2(a)'s residual clause is not void for vagueness. The judgment of the Court of Appeals, accordingly, is affirmed.

It is so ordered.

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

JUSTICE KENNEDY, concurring.

As sentencing laws and standards continue to evolve, cases may arise in which the formulation of a sentencing provision leads to a sentence, or a pattern of sentencing, challenged as so arbitrary that it implicates constitutional concerns. In that instance, a litigant might use the word vague in a general sense—that is to say, imprecise or unclear—in trying to establish that the sentencing decision was flawed. That something is vague as a general matter, however, does not necessarily mean that it is vague within the well-established legal meaning of that term. And it seems most unlikely that the definitional structure used to explain vagueness in the

context of fair warning to a transgressor, or of preventing arbitrary enforcement, is, by automatic transference, applicable to the subject of sentencing where judicial discretion is involved as distinct from a statutory command. See *Johnson* v. *United States*, 576 U. S. 591 (2015).

The existing principles for defining vagueness cannot be transported uncritically to the realm of judicial discretion in sentencing. Some other explication of the constitutional limitations likely would be required.

These considerations inform my reading of the Court's opinion, in which I join.

JUSTICE GINSBURG, concurring in the judgment.

This case has a simple solution. When Travis Beckles was convicted in 2007 of violating 18 U. S. C. § 922(g)(1), the official commentary to the career-offender Sentencing Guideline expressly designated his offense of conviction—possessing a sawed-off shotgun as a felon—a "crime of violence." See *ante*, at 259–260; United States Sentencing Commission, Guidelines Manual § 4B1.2(a), comment., n. 1 (Nov. 2006). Harmonious with federal law and the text of § 4B1.2(a), that commentary was "authoritative." *Stinson* v. *United States*, 508 U. S. 36, 38 (1993).*

*Beckles protests that the commentary is "inconsistent with" § 4B1.2(a), and thus inoperative, once the residual clause is stricken from the Guideline as impermissibly vague. Brief for Petitioner 49; see *Stinson*, 508 U. S., at 38. But excising the problematic provision *first* and considering illustrative language *second* "flip[s] the normal order of operations in adjudicating vagueness challenges." Brief for United States 55. This Court has routinely rejected, in a variety of contexts, vagueness claims where a clarifying construction rendered an otherwise enigmatic provision clear as applied to the challenger. See *Bell* v. *Cone*, 543 U. S. 447, 453, 457–458 (2005) (*per curiam*) (capital aggravating factor clarified by state-court precedent); *Hoffman Estates* v. *Flipside, Hoffman Estates, Inc.*, 455 U. S. 489, 500–502, and n. 18 (1982) (quasi-criminal ordinance clarified by licensing guidelines); *Red Lion Broadcasting Co.* v. *FCC*, 395 U. S. 367, 395 (1969) (federal regulation clarified by agency adjudications).

Beckles therefore cannot, and indeed does not, claim that §4B1.2(a) was vague as applied to him. And because his conduct was "clearly proscribed," he also "cannot complain of the vagueness of the [guideline] as applied to the conduct of others." *Holder* v. *Humanitarian Law Project*, 561 U. S. 1, 18–19 (2010) (internal quotation marks omitted) (rejecting vagueness challenge to terrorism material-support statute, 18 U. S. C. §2339B). I would accordingly defer any more encompassing ruling until a case we have agreed to take up requires one.

JUSTICE SOTOMAYOR, concurring in the judgment.

JUSTICE GINSBURG explains why the Court's holding today is unnecessary. See *ante*, at 271 and this page (opinion concurring in judgment). Petitioner Travis Beckles was sentenced to 30 years in prison on the basis of commentary promulgated by the U. S. Sentencing Commission interpreting a sentencing provision identical to the "residual clause" we held unconstitutionally vague two years ago in *Johnson* v. *United States*, 576 U. S. 591 (2015). But *Johnson* affords Beckles no relief, because the commentary under which he was sentenced was not unconstitutionally vague. Had the majority limited itself to this conclusion, I would have joined its opinion. Instead, the majority reaches far beyond what is necessary to resolve this case and announces that the U. S. Sentencing Guidelines as a whole are immune from vagueness challenges.

I write separately to explain why that holding is not only unnecessary, but also deeply unsound. The Guidelines anchor every sentence imposed in federal district courts. They are, "'in a real sense[,] a basis for the sentence.'" *Molina-Martinez* v. *United States*, 578 U. S. 189, 199 (2016) (quoting *Peugh* v. *United States*, 569 U. S. 530, 542 (2013); emphasis deleted). The Due Process Clause requires that rules this weighty be drafted "with sufficient definiteness that ordinary people can understand" them, and "in a manner

that does not encourage arbitrary and discriminatory enforcement." *Kolender* v. *Lawson*, 461 U. S. 352, 357 (1983). Because I cannot agree with the majority's conclusion to the contrary, I respectfully concur in the judgment only.

I

A

The Due Process Clause prohibits the Government from "taking away someone's life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement." *Johnson*, 576 U. S., at 595. The prohibition against vagueness in criminal proceedings is "a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law." *Connally* v. *General Constr. Co.*, 269 U. S. 385, 391 (1926). The doctrine rests on two justifications. First, it ensures that people receive "fair notice of what is prohibited." *United States* v. *Williams*, 553 U. S. 285, 304 (2008). Second, it safeguards the integrity of the judicial system by ensuring that criminal adjudications are not conducted in an arbitrary manner and that terms of imprisonment are not imposed "on an *ad hoc* and subjective basis." *Grayned* v. *City of Rockford*, 408 U. S. 104, 109 (1972).

"These principles apply not only to statutes defining elements of crimes, but also to statutes fixing sentences." *Johnson*, 576 U. S., at 596. Just two Terms ago, we struck down a sentencing law—the Armed Career Criminal Act's (ACCA) residual clause, 18 U. S. C. § 924(e)(2)(B)—as unconstitutionally vague. See 576 U. S., at 606. We spent little time on whether the vagueness doctrine applied to such provisions. *Id.*, at 595–596. And for good reason: A statute fixing a sentence imposes no less a deprivation of liberty than does a statute defining a crime, as our Sixth Amendment jurisprudence makes plain. See *Apprendi* v. *New Jersey*, 530 U. S. 466, 490 (2000). We instead analyzed the resid-

ual clause in light of "[n]ine years' experience trying to derive meaning from" it, 576 U. S., at 601, and declared the experiment a failure. "Invoking so shapeless a provision to condemn someone to prison for 15 years to life," we held, "does not comport with the Constitution's guarantee of due process." *Id.*, at 602.

B

The question before us is how these principles apply to the U. S. Sentencing Guidelines.

Congress established the U. S. Sentencing Commission in 1984 in order to address "[f]undamental and widespread dissatisfaction" with the then-prevailing regime of discretionary sentencing. *Mistretta* v. *United States*, 488 U. S. 361, 365–366 (1989); see Sentencing Reform Act of 1984, § 217(a), 98 Stat. 2017. It charged the Commission with reducing "the great variation among sentences imposed by different judges upon similarly situated offenders" and the resulting "uncertainty as to the time [each] offender would spend in prison." *Mistretta*, 488 U. S., at 366. The Sentencing Guidelines are the product of that mandate. The Guidelines establish a framework "under which a set of inputs specific to a given case (the particular characteristics of the offense and offender) yiel[d] a predetermined output (a range of months within which the defendant [can] be sentenced)." *Peugh*, 569 U. S., at 535. In doing so, the Guidelines ensure "*uniformity* in sentencing . . . imposed by different federal courts for similar criminal conduct" and "*proportionality* in sentencing through a system that imposes appropriately different sentences for criminal conduct of different severity." *Rita* v. *United States*, 551 U. S. 338, 349 (2007) (internal quotation marks omitted).

The Guidelines today play a central role in federal sentencing. Although no longer binding on federal courts, see *United States* v. *Booker*, 543 U. S. 220, 245 (2005), the Guidelines nonetheless "provide the framework for the tens of thousands of federal sentencing proceedings that occur each year," *Molina-Martinez*, 578 U. S., at 192. A district court

must "begin all sentencing proceedings by correctly calculating the applicable Guidelines range." *Gall* v. *United States*, 552 U. S. 38, 49 (2007). The court must entertain the parties' arguments and consider the factors set forth in 18 U. S. C. § 3553(a) as possible grounds for deviation from the Guidelines range, 552 U. S., at 49–50, and "may not presume that the . . . range is reasonable," *id.*, at 50. But it must explain any deviation from the range on the record, and it must "ensure that the justification is sufficiently compelling to support the degree of the variance." *Ibid.*; see *Peugh*, 569 U. S., at 548. A district court that incorrectly calculates the Guidelines range commits reversible procedural error, see *Gall*, 552 U. S., at 51; a district court that imposes a sentence within the correct Guidelines range, by contrast, may be afforded a presumption that the sentence it has imposed is reasonable, see *Rita*, 551 U. S., at 347.

The importance of the Guidelines in this process, as we explained last Term, makes them "not only the starting point for most federal sentencing proceedings but also the lodestar." *Molina-Martinez*, 578 U. S., at 200. In most cases, it is the range set by the Guidelines, not the minimum or maximum term of imprisonment set by statute, that specifies the number of years a defendant will spend in prison. District courts impose a sentence within the Guidelines (or below the Guidelines based on a Government motion) over 80% of the time. *Id.*, at 199; see 2015 Annual Report and 2015 Sourcebook of Federal Sentencing Statistics (20th ed.) (Figure G), online at http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2015/FigureG.pdf (as last visited Feb. 27, 2017). And when Guidelines ranges change—because the Guidelines themselves change, or because the court is informed of an error it made in applying them—sentences change, too.[1] See

[1] The evidence before us suggests that the same is true of the career-offender Guideline at issue here. Given the near consensus among the lower courts that this Guideline is unconstitutionally vague, see n. 3, *infra*, some courts have proceeded to resentence defendants whose sentences

Molina-Martinez, 578 U. S., at 200; *Peugh*, 569 U. S., at 541. It is therefore no exaggeration to say that the Guidelines are, "'in a real sense[,] a basis for the sentence'" imposed by the district court. *Molina-Martinez*, 578 U. S., at 199 (quoting *Peugh*, 569 U. S., at 542; emphasis deleted).

C

It follows from the central role that the Guidelines play at sentencing that they should be susceptible to vagueness challenges under the Due Process Clause.

Contrary to the majority's conclusion, an inscrutably vague Guideline implicates both of the concerns animating the prohibition on vagueness. First, a district court's reliance on such a Guideline deprives an ordinary person of "fair notice" of the consequences of his actions. See *Johnson*, 576 U. S., at 595. A defendant is entitled to understand the legal rules that will determine his sentence. But a vague Guideline is by definition impossible to understand. Take the career offender Guideline at issue here. We explained in *Johnson* that the identically worded provision in the ACCA created "pervasive disagreement" among courts imposing sentences as to "the nature of the inquiry" that they were required to conduct. *Id.*, at 601. The result was a law that was "'nearly impossible to apply consistently.'" *Ibid.* (quoting *Chambers* v. *United States*, 555 U. S. 122, 133 (2009) (ALITO, J., concurring in judgment)). An ordinary person cannot be expected to understand the consequences that such a shapeless provision will have on his sentence.[2]

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were originally enhanced under the Guideline. See App. to Reply Brief for Petitioner 1–14. In these resentencings, "every defendant but one received a sentence lower than the sentence originally imposed," and the average defendant received a sentence "more than [three] years lower than the original sentence." Reply Brief for Petitioner 12.

[2] Our decision in *Irizarry* v. *United States*, 553 U. S. 708 (2008), is not to the contrary. In *Irizarry* we held that Federal Rule of Criminal Procedure 32(h) does not require a judge to inform a defendant, in advance of a sentencing proceeding, of his intent to vary above the Guidelines

Second, and more importantly, a district court's reliance on a vague Guideline creates a serious risk of "arbitrary enforcement." *Johnson*, 576 U. S., at 595. As set out above, although the Guidelines do not bind a district court as a *formal* matter, as a *functional* matter they "anchor both the district court's discretion and the appellate review process." *Peugh*, 569 U. S., at 549. It introduces an unacceptable degree of arbitrariness into sentencing proceedings to begin by applying a rule that is so vague that efforts to interpret it boil down to "guesswork and intuition." *Johnson*, 576 U. S., at 600. One judge may conduct a statistical analysis to decide that a defendant's crime of conviction is not a crime of violence. Another may rely on gut instinct to conclude that it is. Still a third may "throw [our] opinions into the air in frustration, and give free rein to [her] own feelings" in making the decision. *Derby* v. *United States*, 564 U. S. 1047, 1049 (2011) (Scalia, J., dissenting from denial of certiorari). Importantly, that decision is the end of the ball game for a criminal defendant. Although he may ask the judge to vary downward from the Guidelines range, he must take the range as the starting point for his request. He may ask for a month here or a month there, but he is negotiating from a baseline he cannot control or predict. The result is a sentencing proceeding hopelessly skewed from the outset by "unpredictability and arbitrariness." *Johnson*, 576 U. S., at 598. The Due Process Clause does not tolerate such a proceeding.

Consider, by way of example, a hypothetical version of Beckles' own sentencing proceeding in which the commentary played no clarifying role. Beckles was convicted of possessing a firearm as a convicted felon, in violation of 18 U. S. C. § 922(g)(1), and sentenced to 360 months in prison. That sentence sat at the bottom end of the applicable Guide-

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range. *Id.*, at 715–716. That narrow decision has no bearing on the broader question whether ordinary people are entitled to fair notice, under the Due Process Clause, of the rules that will dictate their punishment.

lines range, factoring in the career-offender Guideline: 360 months to life. But had the career-offender Guideline *not* applied to Beckles, the Guidelines range calculated by the District Court would have been significantly lower: 262 to 327 months. See *Beckles* v. *United States*, Civ. No. 10–23517 (SD Fla., Mar. 4, 2013), App. 129–130. Absent that Guideline, Beckles would have been sentenced to between 33 and 98 fewer months in prison. The District Court admitted as much, explaining that had the Guideline not applied, she "would not have imprisoned Beckles to 360 months" in prison. *Id.*, at 149 (emphasis deleted). Years of Beckles' life thus turned solely on whether the career-offender Guideline applied. There is no meaningful way in which the Guideline exerted less effect on Beckles' sentence than did the statute setting his minimum and maximum terms of imprisonment; indeed, it was the Guidelines, not just the statute, that "fix[ed]" Beckles' "sentenc[e]" in every meaningful way. *Johnson*, 576 U. S., at 596. Nothing of substance, in other words, distinguishes the Guidelines from the kind of laws we held susceptible to vagueness challenges in *Johnson*; both law and Guideline alike operate to extend the time a person spends in prison. The Due Process Clause should apply equally to each.

II

The majority brushes past this logic in its decision to shield the Guidelines from vagueness challenges. In doing so, it casts our sentencing jurisprudence into doubt and upends the law of nearly every Court of Appeals to have considered this question.[3] None of its explanations justify its novel and sweeping conclusion.

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[3] See *United States* v. *Hurlburt*, 835 F. 3d 715, 721–725 (CA7 2016) (en banc) (the Guidelines are subject to vagueness challenges); *United States* v. *Calabretta*, 831 F. 3d 128, 136–137 (CA3 2016) (same); *United States* v. *Sheffield*, 832 F. 3d 296, 312–313 (CADC 2016) (same); *United States* v. *Pawlak*, 822 F. 3d 902, 905–911 (CA6 2016) (same); *United States* v. *Madrid*, 805 F. 3d 1204, 1210–1211 (CA10 2015) (same). But see *United States* v. *Matchett*, 802 F. 3d 1185, 1193–1196 (CA11 2015) (they are not).

A

The majority first reasons that the Guidelines are not susceptible to vagueness challenges because they "do not fix the permissible range of sentences," *ante*, at 263, but merely "guide district courts in exercising their discretion," *ante*, at 265. But we have not embraced such formalism before, and the majority provides no coherent justification for its decision to do so here.

Indeed, we have refused before to apply exactly the formalistic distinction that the majority now embraces. In *Espinosa* v. *Florida*, 505 U. S. 1079, 1081 (1992) (*per curiam*), we held that a State's capital aggravating factor that was drafted in a manner "so vague as to leave the sentencer without sufficient guidance for determining the presence or absence of the factor" violated the Eighth Amendment. The factor was unconstitutional, we explained, notwithstanding the fact that only the jury, not the judge, was instructed on the factor; that the judge, not the jury, made the final decision to sentence the defendant to death; and that the judge, in doing so, was not required to defer to the jury's recommendation. "This kind of indirect weighing of an invalid aggravating factor," we explained, "creates the same potential for arbitrariness as the direct weighing of an invalid aggravating factor." *Id.*, at 1082. In doing so, we effectively rejected just the argument the majority now embraces: that advisory guidelines lack the kind of binding legal effect that subject them to constitutional scrutiny.

If there were any doubt that advisory sentencing guidelines are subject to constitutional limits, we dispelled it in *Peugh*, where we held that the Guidelines are amenable to challenges under the *Ex Post Facto* Clause. See 569 U. S., at 533. There, the Government argued that the "advisory" nature of the Guidelines rendered them immune from such claims. *Id.*, at 539. But we rejected such an argument. "The federal system," we explained, "adopts procedural measures intended to make the Guidelines the lodestone of

sentencing," and "considerable empirical evidence indicat[es] that the . . . Guidelines have the intended effect." *Id.*, at 543–544. We declined the Government's invitation to limit our *ex post facto* jurisprudence to rules that, as a formal matter, "increase[d] the maximum sentence for which a defendant is eligible." *Id.*, at 539. And we explained that a rule may exert "'binding legal effect' through . . . procedural rules and standards for appellate review that, in combination, encourag[e] district courts to sentence within the guidelines." *Id.*, at 547. It was not true, we concluded, that "the Guidelines are too much like guideposts and not enough like fences," *ibid.*; instead, the Guidelines were just fencelike enough—just lawlike enough—that they cannot be shielded from the Constitution's reach.

The same principle should dictate the same result in this case. How can the Guidelines carry sufficient legal weight to warrant scrutiny under the Eighth Amendment and the *Ex Post Facto* Clause, but not enough to warrant scrutiny under the Due Process Clause? Cf. *United States* v. *Hurlburt*, 835 F. 3d 715, 724 (CA7 2016) (en banc) ("We see no principled way to distinguish *Peugh* on doctrinal grounds"). The majority offers no convincing answer. It asserts that the Due Process Clause "requires a different inquiry" than these provisions do. *Ante*, at 267–268. But it does not explain why it views this as relevant to the constitutional status of the Guidelines. A court considering a challenge to a criminal statute under the *Ex Post Facto* Clause will apply a different legal standard than will a court considering a vagueness challenge to the same statute; that does not make the statute more or less susceptible to constitutional challenge in one context than the other. Our opinion in *Peugh* is particularly difficult for the majority to escape, given that the *Ex Post Facto* Clause, like the Due Process Clause's prohibition against vagueness, is rooted in concerns about "fair warning" and "'fundamental fairness.'" 569 U. S., at 544 (plurality opinion). The majority musters no persuasive ex-

planation for why those concerns would have less force in this context than in that one. That is because none exists.[4]

B

The majority next posits that because courts have long sentenced defendants under purely discretionary regimes, there can be no vagueness concern with any system that, like the Guidelines regime, sets guideposts on the exercise of discretion. *Ante*, at 263–264. But this argument fundamentally misunderstands the problem caused by a court's reliance on a vague Sentencing Guideline.

True enough, for many years, federal courts relied on "a system of indeterminate sentencing" in criminal cases. *Mistretta*, 488 U. S., at 363; see also K. Stith & J. Cabranes, Fear of Judging: Sentencing Guidelines in the Federal Courts 9–14 (1998). Under such a scheme, a sentencing judge considers the full range of relevant aggravating and mitigating facts and circumstances, as well as his view of proper sentencing policy, and then imposes a sentence in light of those considerations. See *Koon* v. *United States*, 518 U. S. 81, 113 (1996) ("It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue"). As the majority notes, no party here "suggests that a system of purely discretionary sentencing could be subject to a vagueness challenge." *Ante*, at 264. The ma-

[4] The Court's adherence to the formalistic distinction between mandatory and advisory rules at least leaves open the question whether defendants sentenced to terms of imprisonment before our decision in *United States* v. *Booker*, 543 U. S. 220 (2005)—that is, during the period in which the Guidelines *did* "fix the permissible range of sentences," *ante*, at 263—may mount vagueness attacks on their sentences. See Brief for Scholars of Criminal Law, Federal Courts, and Sentencing as *Amici Curiae* 33–34. That question is not presented by this case and I, like the majority, take no position on its appropriate resolution.

jority reasons that the Guidelines—which limit the sentencing judge's discretion from what he otherwise would have enjoyed—must therefore also be immune from vagueness attacks. *Ante*, at 265.

But the majority misapprehends the nature of the constitutional infirmity that occurs when a sentencing judge relies on an inscrutably vague Guideline. A defendant who is sentenced under a purely discretionary regime does not face the prospect of "arbitrary enforcement" by the sentencing judge, *Kolender*, 461 U. S., at 358; rather, he faces a fact- and context-sensitive determination informed by the exercise of reasoned judgment. A defendant sentenced pursuant to an impossibly vague Guideline, by contrast, is put in an untenable position. The "lodestone" of his sentence—the baseline against which the district court will assess his characteristics and his conduct—is set by a rule that is impossible to understand. Such a proceeding is the antithesis of due process. See *Giaccio* v. *Pennsylvania*, 382 U. S. 399, 403 (1966) ("Implicit in [due process] is the premise that the law must be one that carries an understandable meaning with legal standards that courts must enforce"). It is not reliance on discretion that makes a sentencing regime vague; it is reliance on an impenetrable rule as a baseline for the exercise of that discretion. Reliance on a rule of this kind, whether set out in a statute or in a Guideline, does not comport with "'ordinary notions of fair play.'" *Johnson*, 576 U. S., at 595.

C

The majority ends by speculating that permitting vagueness attacks on the Guidelines would call into question the validity of many Guidelines, and even the factors that Congress has instructed courts to consider in imposing sentences. See *ante*, at 268–269. In doing so, the majority once more resuscitates arguments we have already considered and dismissed.

Johnson confronted and rejected a version of this argument. There, the Government contended that "dozens of

federal and state criminal laws use terms like 'substantial risk,' 'grave risk,' and 'unreasonable risk,'" terms that—in its view—were indistinguishable from the residual clause at issue in that case. 576 U. S., at 603. We rejected the argument, explaining that such rules "call[ed] for the application of a qualitative standard such as 'substantial risk' to real-world conduct; 'the law is full of instances where a man's fate depends on his estimating rightly . . . some matter of degree.'" *Id.*, at 604 (quoting *Nash* v. *United States*, 229 U. S. 373, 377 (1913)). What rendered the ACCA's residual clause unconstitutionally vague, we explained, was not that it required "gauging the riskiness of conduct in which an individual defendant engages *on a particular occasion*," but that it required the application of an ambiguous standard "to an idealized ordinary case of the crime." 576 U. S., at 603–604. Holding the residual clause unconstitutionally vague, in other words, cast no doubt on the dozens of laws elsewhere in the U. S. Code requiring the application of general standards to particular conduct.

The same is true here. The sentencing factors described by the majority bear no similarity to the categorical risk analysis that the Court held unconstitutionally vague in *Johnson*, nor to any other statutes it has previously found vague. Congress' instruction to district courts to consider, for instance, "the nature and circumstances of the offense and the history and characteristics of the defendant," §3553(a)(1), bears little resemblance to statutes requiring subjective determinations as to whether conduct is "annoying" or "unjust." See *Coates* v. *Cincinnati*, 402 U. S. 611, 615–616 (1971); *United States* v. *L. Cohen Grocery Co.*, 255 U. S. 81, 89 (1921).[5] And to the extent that the majority's

[5] Indeed, the Ninth Circuit has held for decades that the Guidelines are subject to vagueness challenges, see *United States* v. *Helmy*, 951 F. 2d 988, 993 (CA9 1991), yet the Government represents that that Court has never found a Guideline unconstitutionally vague. See Reply Brief for United States 20.

concern is that subjecting sentencing factors to the Due Process Clause's prohibition on vagueness would risk the demise of discretionary sentencing regimes, that prospect is unlikely, for the reasons I have already explained.

* * *

It violates the Due Process Clause "to condemn someone to prison" on the basis of a sentencing rule "so shapeless" as to resist interpretation. 576 U. S., at 602. But the Court's decision today permits exactly that result. With respect, I concur only in the judgment.

Per Curiam

RIPPO *v.* BAKER, WARDEN

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEVADA

No. 16–6316. Decided March 6, 2017

During petitioner Rippo's trial for first-degree murder, he received information that the judge was the target of a federal bribery probe and surmised that the Clark County District Attorney's Office, which was prosecuting him, was playing a role in the investigation. Rippo moved to disqualify the judge under the Fourteenth Amendment's Due Process Clause. The trial judge declined to recuse himself, and, after his federal indictment, a different judge denied Rippo's new trial motion. Rippo advanced his bias claim again in an application for state postconviction relief, this time pointing to documents from the judge's criminal trial indicating that the district attorney's office had participated in the judge's investigation. The state postconviction court denied relief, and the Nevada Supreme Court affirmed, reasoning that Rippo was not entitled to discovery or an evidentiary hearing because his allegations did not support an assertion of actual bias.

Held: The Nevada Supreme Court applied the wrong legal standard. Recusal is required when, objectively speaking, "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." *Withrow* v. *Larkin*, 421 U. S. 35, 47. This Court's decision in *Bracy* v. *Gramley*, 520 U. S. 899, is not to the contrary.

Certiorari granted; 132 Nev. 95, 368 P. 3d 729, vacated and remanded.

PER CURIAM.

A Nevada jury convicted petitioner Michael Damon Rippo of first-degree murder and other offenses and sentenced him to death. During his trial, Rippo received information that the judge was the target of a federal bribery probe, and he surmised that the Clark County District Attorney's Office—which was prosecuting him—was playing a role in that investigation. Rippo moved for the judge's disqualification under the Due Process Clause of the Fourteenth Amendment, contending that a judge could not impartially adjudicate a case in which one of the parties was criminally investigating him. But the trial judge declined to recuse himself, and (after that

judge's indictment on federal charges) a different judge later denied Rippo's motion for a new trial. The Nevada Supreme Court affirmed on direct appeal, reasoning in part that Rippo had not introduced evidence that state authorities were involved in the federal investigation. *Rippo* v. *State*, 113 Nev. 1239, 1248–1250, 946 P. 2d 1017, 1023–1024 (1997) (*per curiam*).

In a later application for state postconviction relief, Rippo advanced his bias claim once more, this time pointing to documents from the judge's criminal trial indicating that the district attorney's office had participated in the investigation of the trial judge. See, *e. g.*, App. to Pet. for Cert. 236–237, 397. The state postconviction court denied relief, and the Nevada Supreme Court affirmed. *Rippo* v. *State*, 132 Nev. 95, 115–119, 368 P. 3d 729, 743–745 (2016). It likened Rippo's claim to the "camouflaging bias" theory that this Court discussed in *Bracy* v. *Gramley*, 520 U. S. 899 (1997). The *Bracy* petitioner argued that a judge who accepts bribes to rule in favor of some defendants would seek to disguise that favorable treatment by ruling *against* defendants who did not bribe him. *Id.*, at 905. We explained that despite the "speculative" nature of that theory, the petitioner was entitled to discovery because he had also alleged specific facts suggesting that the judge may have colluded with defense counsel to rush the petitioner's case to trial. See *id.*, at 905–909. The Nevada Supreme Court reasoned that, in contrast, Rippo was not entitled to discovery or an evidentiary hearing because his allegations "d[id] not support the assertion that the trial judge was actually biased in this case." 132 Nev., at 117, 368 P. 3d, at 744.*

*The court further relied on its bias holding to determine that Rippo had not established cause and prejudice to overcome various state procedural bars. 132 Nev., at 118–119, 368 P. 3d, at 745. Because the court below did not invoke any state-law grounds "independent of the merits of [Rippo's] federal constitutional challenge," we have jurisdiction to review its resolution of federal law. *Foster* v. *Chatman*, 578 U. S. 488, 498 (2016).

We vacate the Nevada Supreme Court's judgment because it applied the wrong legal standard. Under our precedents, the Due Process Clause may sometimes demand recusal even when a judge "'ha[s] no actual bias.'" *Aetna Life Ins. Co.* v. *Lavoie*, 475 U. S. 813, 825 (1986). Recusal is required when, objectively speaking, "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." *Withrow* v. *Larkin*, 421 U. S. 35, 47 (1975); see *Williams* v. *Pennsylvania*, 579 U. S. 1, 8 (2016) ("The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his position is likely to be neutral, or whether there is an unconstitutional potential for bias" (internal quotation marks omitted)). Our decision in *Bracy* is not to the contrary: Although we explained that the petitioner there *had* pointed to facts suggesting actual, subjective bias, we did not hold that a litigant must show as a matter of course that a judge was "actually biased in [the litigant's] case," 132 Nev., at 117, 368 P. 3d, at 744—much less that he must do so when, as here, he does not allege a theory of "camouflaging bias." The Nevada Supreme Court did not ask the question our precedents require: whether, considering all the circumstances alleged, the risk of bias was too high to be constitutionally tolerable. As a result, we grant the petition for writ of certiorari and the motion for leave to proceed *in forma pauperis*, and we vacate the judgment below and remand the case for further proceedings not inconsistent with this opinion.

It is so ordered.

Syllabus

NATIONAL LABOR RELATIONS BOARD *v.* SW GENERAL, INC., DBA SOUTHWEST AMBULANCE

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15–1251. Argued November 7, 2016—Decided March 21, 2017

Article II of the Constitution requires that the President obtain "the Advice and Consent of the Senate" before appointing "Officers of the United States." §2, cl. 2. Given this provision, the responsibilities of an office requiring Presidential appointment and Senate confirmation (PAS office) may go unperformed if a vacancy arises and the President and Senate cannot promptly agree on a replacement. Congress has accounted for this reality by giving the President limited authority to appoint acting officials to temporarily perform the functions of a vacant PAS office without first obtaining Senate approval.

The current version of that authorization is the Federal Vacancies Reform Act of 1998 (FVRA), 5 U. S. C. §3345 *et seq.* Section 3345(a) of the FVRA permits three categories of Government officials to perform acting service in a vacant PAS office. Subsection (a)(1) prescribes the general rule that, if a vacancy arises in a PAS office, the first assistant to that office "shall perform" the office's "functions and duties temporarily in an acting capacity." Subsections (a)(2) and (a)(3) provide that, "notwithstanding paragraph (1)," the President "may direct" a person already serving in another PAS office, or a senior employee in the relevant agency, to serve in an acting capacity instead.

Section 3345 also makes certain individuals ineligible for acting service. Subsection (b)(1) states: "Notwithstanding subsection (a)(1), a person may not serve as an acting officer for an office under this section" if the President nominates him for the vacant PAS office and, during the 365-day period preceding the vacancy, the person "did not serve in the position of first assistant" to that office or "served in [that] position . . . for less than 90 days."

The general counsel of the National Labor Relations Board (NLRB or Board) is a PAS office. In June 2010, a vacancy arose in that office, and the President directed Lafe Solomon to serve as acting general counsel. Solomon qualified for acting service under subsection (a)(3) of the FVRA, because he was a senior employee at the NLRB. In January 2011, the President nominated Solomon to serve as the NLRB's general counsel on a permanent basis. The Senate never took action

on the nomination, and the President ultimately withdrew Solomon's name in favor of a new candidate, whom the Senate confirmed in October 2013. Throughout this entire period Solomon served as the acting general counsel to the NLRB.

In January 2013, an NLRB Regional Director, exercising authority on Solomon's behalf, issued an unfair labor practices complaint against respondent SW General, Inc. An Administrative Law Judge concluded that SW General had committed unfair labor practices, and the NLRB agreed. SW General sought review in the United States Court of Appeals for the District of Columbia Circuit, arguing that the complaint was invalid because, under subsection (b)(1) of the FVRA, Solomon could not perform the duties of general counsel to the NLRB after having been nominated to fill that position. The NLRB countered that subsection (b)(1) applies only to first assistants who automatically assume acting duties under subsection (a)(1), not to acting officers who, like Solomon, serve under (a)(2) or (a)(3). The Court of Appeals vacated the Board's order. It concluded that the prohibition on acting service by nominees contained in subsection (b)(1) applies to all acting officers, regardless of whether they serve pursuant to subsection (a)(1), (a)(2), or (a)(3). As a result, Solomon became ineligible to perform the duties of general counsel in an acting capacity once the President nominated him to fill that post.

Held:

1. Subsection (b)(1) of the FVRA prevents a person who has been nominated to fill a vacant PAS office from performing the duties of that office in an acting capacity. The prohibition applies to anyone performing acting service under the FVRA. It is not limited to first assistants performing acting service under subsection (a)(1). Pp. 299–308.

(a) The text of the FVRA requires this conclusion. Pp. 299–305.

(1) Subsection (b)(1) applies to any "person" and prohibits service "as an acting officer for an office under this section." "Person" has an expansive meaning that can encompass anyone who performs acting duties under the FVRA. See *Pfizer Inc.* v. *Government of India*, 434 U. S. 308, 312. And "under this section" clarifies that subsection (b)(1) applies to all of § 3345: The FVRA contains cross-references to specific subsections and paragraphs. But subsection (b)(1) refers to § 3345, which contains all of the ways a person may become an acting officer. The rest of the FVRA also uses the pairing of "person" and "section" to encompass anyone serving as an acting officer under the FVRA, and Congress could readily have used more specific language if it intended subsection (b)(1) to apply only to first assistants acting under (a)(1).

Syllabus

The dependent clause at the beginning of subsection (b)(1)—"[n]otwithstanding subsection (a)(1)"—confirms the breadth of the prohibition on acting service by nominees. In statutes, "notwithstanding" clauses show that one provision prevails over another in the event of a conflict. Here, that means that subsection (b)(1) applies even when it conflicts with the default rule in (a)(1) that first assistants "shall perform" acting duties. Pp. 299–301.

(2) The Board argues that, because the phrase "notwithstanding subsection (a)(1)" does not mention (a)(2) or (a)(3), Congress did not intend the prohibition in subsection (b)(1) to apply to people serving as acting officers under those provisions. The Board relies on the "interpretive canon, *expressio unius est exclusio alterius*, expressing one item of [an] associated group or series excludes another left unmentioned." *Chevron U. S. A. Inc.* v. *Echazabal*, 536 U. S. 73, 80 (internal quotation marks omitted).

This interpretive canon applies, however, only when "circumstances support[ ] a sensible inference that the term left out must have been meant to be excluded." *Id.*, at 81. A "notwithstanding" clause does not naturally give rise to such an inference; it just shows which of two or more provisions prevails in the event of a conflict. Singling out one conflict generally does not suggest that other, unaddressed conflicts should be resolved in the opposite manner. Here, the conflict between (a)(1) and (b)(1) is unique: The former uses mandatory language—the first assistant "shall perform" acting duties—while the latter identifies who "may not" serve as an acting officer. The "notwithstanding" clause clarifies that the mandatory language in subsection (a)(1) does not prevail over subsection (b)(1) in the event of a conflict. Subsections (a)(2) and (a)(3) lack that mandatory language, so the natural inference is that Congress left these provisions out of the "notwithstanding" clause because they differ from subsection (a)(1), not to implicitly exempt them from the prohibition in subsection (b)(1).

Moreover, subsection (b)(2) specifies that (b)(1) "shall not apply" to certain people who are "serving as the first assistant." If (b)(1) applied only to first assistants, stating that limitation would be superfluous. Pp. 301–305.

(b) Because the text is clear, the Board's arguments about legislative history, purpose, and post-enactment practice need not be considered. In any event, its arguments are not compelling.

The original draft of the FVRA contained a prohibition on nominees serving as acting officers, but explicitly limited that prohibition to first assistants. The Board argues that, when Congress revised this original draft, it made changes to give the President more flexibility to appoint acting officers and did not intend to broaden the prohibition on nominees

performing acting service. The glitch in this argument is that Congress did change the prohibition on nominees performing acting service, revising it to clearly apply to all acting officers. The fact that certain Senators stated that they wanted to give the President more flexibility to appoint acting officials does not mean that they got exactly what they wanted. Nor does a statement by one of the sponsors of the FVRA—who said that subsection (b)(1) applies only to first assistants—overcome the clear text, particularly given that the very next Senator to speak offered a contradictory account of the provision.

The Board also argues that, since the FVRA was enacted, Congress has not objected when Presidents have nominated individuals who were serving as acting officers under subsection (a)(2) or (a)(3), and that the Office of Legal Counsel and Government Accountability Office have issued guidance construing subsection (b)(1) to apply only to first assistants. Relying on *NLRB* v. *Noel Canning*, 573 U. S. 513, 524, the Board contends that this "historical practice" is entitled to "significant weight."

"[H]istorical practice" is too grand a title for the Board's evidence. The FVRA was not enacted until 1998, and the evidence the Board cites is not significant enough to warrant the conclusion that Congress's failure to speak up implies that it has acquiesced in the view that subsection (b)(1) applies only to first assistants. By contrast, the Court's decision in *Noel Canning* dealt with the President's constitutional authority under the Recess Appointments Clause, an issue that had attracted intense attention from Presidents, Attorneys General, and the Senate dating back to the beginning of the Republic. Pp. 305–308.

2. Applying the FVRA to this case is straightforward. Subsection (b)(1) prohibited Solomon from continuing his service as acting general counsel once the President nominated him to fill the position permanently. The President could have appointed another person to serve as acting officer in Solomon's place, but did not do so. P. 309.

796 F. 3d 67, affirmed.

ROBERTS, C. J., delivered the opinion of the Court, in which KENNEDY, THOMAS, BREYER, ALITO, and KAGAN, JJ., joined. THOMAS, J., filed a concurring opinion, *post*, p. 311. SOTOMAYOR, J., filed a dissenting opinion, in which GINSBURG, J., joined, *post*, p. 318.

Acting Solicitor General Gershengorn argued the cause for petitioner. With him on the briefs were *Principal Deputy Assistant Attorney General Mizer*, *Deputy Solicitor General Kneedler*, *Deputy Assistant Attorney General Brinkmann*, *Rachel P. Kovner*, *Douglas N. Letter*, *Scott R.*

McIntosh, *Benjamin M. Shultz*, *Richard F. Griffin, Jr.*, *John H. Ferguson*, and *Linda J. Dreeben*.

Shay Dvoretzky argued the cause for respondent. With him on the brief was *Emily J. Kennedy*.*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Article II of the Constitution requires that the President obtain "the Advice and Consent of the Senate" before appointing "Officers of the United States." §2, cl. 2. Given this provision, the responsibilities of an office requiring Presidential appointment and Senate confirmation—known as a "PAS" office—may go unperformed if a vacancy arises and the President and Senate cannot promptly agree on a re-

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*Briefs of *amici curiae* urging reversal were filed for the American Federation of Labor and Congress of Industrial Organizations by *Lynn K. Rhinehart*, *Harold C. Becker*, and *James B. Coppess*; and for the Constitutional Accountability Center by *Elizabeth B. Wydra*, *Brianne J. Gorod*, and *Brian R. Frazelle*.

Briefs of *amici curiae* urging affirmance were filed for the State of West Virginia et al. by *Patrick Morrisey*, Attorney General of West Virginia, *Elbert Lin*, Solicitor General, *Thomas M. Johnson, Jr.*, Deputy Attorney General, and *Erica N. Peterson*, Assistant Attorney General, by *Luther Strange*, Attorney General of Alabama, and *Andrew L. Brasher*, Solicitor General, and by the Attorneys General for their respective States as follows: *Mark Brnovich* of Arizona, *Samuel S. Olens* of Georgia, *Derek Schmidt* of Kansas, *Bill Schuette* of Michigan, *Timothy C. Fox* of Montana, *Adam Paul Laxalt* of Nevada, *Michael DeWine* of Ohio, *E. Scott Pruitt* of Oklahoma, *Alan Wilson* of South Carolina, *Ken Paxton* of Texas, *Sean D. Reyes* of Utah, and *Brad D. Schimel* of Wisconsin; for the Cato Institute by *Ilya Shapiro*; for the Chamber of Commerce of the United States of America by *John P. Elwood*, *Jeremy C. Marwell*, and *Kathryn Comerford Todd*; for the National Federation of Independent Business Small Business Legal Center et al. by *J. Michael Connolly*, *Michael H. Park*, *Karen R. Harned*, and *Luke A. Wake*; for the Southeastern Legal Foundation by *Kimberly S. Hermann*; for the Washington Legal Foundation et al. by *Cory L. Andrews*; for Sen. John McCain et al. by *Justin A. Torres*; and for Morton Rosenberg by *D. John Sauer*.

placement. Congress has long accounted for this reality by authorizing the President to direct certain officials to temporarily carry out the duties of a vacant PAS office in an acting capacity, without Senate confirmation.

The Federal Vacancies Reform Act of 1998 (FVRA), 5 U. S. C. § 3345 *et seq.*, is the latest version of that authorization. Section 3345(a) of the FVRA authorizes three classes of Government officials to become acting officers. The general rule is that the first assistant to a vacant office shall become the acting officer. The President may override that default rule by directing either a person serving in a different PAS office or a senior employee within the relevant agency to become the acting officer instead.

The FVRA, however, prohibits certain persons from serving as acting officers if the President has nominated them to fill the vacant office permanently. The question presented is whether that limitation applies only to first assistants who have automatically assumed acting duties, or whether it also applies to PAS officers and senior employees serving as acting officers at the President's behest. We hold that it applies to all three categories of acting officers.

I

A

The Senate's advice and consent power is a critical "structural safeguard[ ] of the constitutional scheme." *Edmond* v. *United States*, 520 U. S. 651, 659 (1997). The Framers envisioned it as "an excellent check upon a spirit of favoritism in the President" and a guard against "the appointment of unfit characters . . . from family connection, from personal attachment, or from a view to popularity." The Federalist No. 76, p. 457 (C. Rossiter ed. 1961) (A. Hamilton). The constitutional process of Presidential appointment and Senate confirmation, however, can take time: The President may not promptly settle on a nominee to fill an office; the Senate may be unable, or unwilling, to speedily confirm the nominee once

submitted. Yet neither may desire to see the duties of the vacant office go unperformed in the interim.

Since President Washington's first term, Congress has given the President limited authority to appoint acting officials to temporarily perform the functions of a vacant PAS office without first obtaining Senate approval. The earliest statutes authorized the appointment of "any person or persons" to fill specific vacancies in the Departments of State, Treasury, and War. Act of May 8, 1792, ch. 37, § 8, 1 Stat. 281. Congress at first allowed acting officers to serve until the permanent officeholder could resume his duties or a successor was appointed, *ibid.*, but soon imposed a six-month limit on acting service, Act of Feb. 13, 1795, ch. 21, 1 Stat. 415.

Congress revisited the issue in the 1860s, ultimately passing the Vacancies Act of 1868. The Vacancies Act expanded the number of PAS offices that the President could fill with acting officers. Act of July 23, 1868, ch. 227, 15 Stat. 168; see also Act of Feb. 20, 1863, ch. 45, 12 Stat. 656. With that expansion came new constraints. The authority to appoint "any person or persons" as an acting officer gave way to a default rule that the "first or sole assistant . . . shall" perform that function, with an exception allowing the President to instead fill the post with a person already serving in a PAS office. 15 Stat. 168. And rather than six months of acting service, the Vacancies Act generally authorized only ten days. *Ibid.* That narrow window of acting service was later lengthened to 30 days. Act of Feb. 6, 1891, ch. 113, 26 Stat. 733.

During the 1970s and 1980s, interbranch conflict arose over the Vacancies Act. The Department of Justice took the position that, in many instances, the head of an executive agency had independent authority apart from the Vacancies Act to temporarily fill vacant offices. The Comptroller General disagreed, arguing that the Act was the exclusive au-

thority for temporarily filling vacancies in executive agencies. See M. Rosenberg, Congressional Research Service Report for Congress, The New Vacancies Act: Congress Acts To Protect the Senate's Confirmation Prerogative 2–4 (1998) (Rosenberg). Congress then amended the Vacancies Act to clarify that it applies to such agencies, while at the same time lengthening the term of permissible acting service to 120 days, with a tolling period while a nomination is pending. *Id.*, at 3; see Presidential Transitions Effectiveness Act, § 7, 102 Stat. 988.

But tensions did not ease. By 1998, approximately 20 percent of PAS offices in executive agencies were occupied by "temporary designees, most of whom had served beyond the 120-day limitation period . . . without presidential submissions of nominations." Rosenberg 1. These acting officers filled high-level positions, sometimes in obvious contravention of the Senate's wishes. One, for instance, was brought in from outside Government to serve as Acting Assistant Attorney General for the Civil Rights Division of the Justice Department, immediately after the Senate refused to confirm him for that very office. *Ibid.*; see M. Rosenberg, Congressional Research Service, Validity of Designation of Bill Lann Lee as Acting Assistant Attorney General for Civil Rights 1–3 (1998). Perceiving a threat to the Senate's advice and consent power, see Rosenberg 6, Congress acted again. In 1998, it replaced the Vacancies Act with the FVRA.

Section 3345(a) of the FVRA permits three categories of Government officials to perform acting service in a vacant PAS office. Subsection (a)(1) prescribes a general rule: If a person serving in a PAS office dies, resigns, or is otherwise unable to perform his duties, the first assistant to that office "shall perform" the office's "functions and duties . . . temporarily in an acting capacity."

The next two paragraphs of § 3345(a) identify alternatives. Subsection (a)(2) provides that "notwithstanding paragraph

(1)," the President "may direct a person" who already serves in a PAS office to "perform the functions and duties of the vacant office temporarily in an acting capacity." Subsection (a)(3) adds that "notwithstanding paragraph (1)," the President "may direct" a person to perform acting duties if the person served in a senior position in the relevant agency for at least 90 days in the 365-day period preceding the vacancy.[1]

Section 3345 also makes certain individuals ineligible for acting service. Subsection (b)(1) states: "Notwithstanding subsection (a)(1), a person may not serve as an acting officer for an office under this section" if the President nominates him for the vacant PAS office and, during the 365-day period preceding the vacancy, the individual "did not serve in the position of first assistant" to that office or "served in [that] position . . . for less than 90 days." Subsection (b)(2) creates an exception to this prohibition, providing that "[p]aragraph (1) shall not apply to any person" serving in a first assistant position that itself requires the Senate's advice and consent.

Other sections of the FVRA establish time limits on acting service and penalties for noncompliance. In most cases, the statute permits acting service for "210 days beginning on the date the vacancy occurs"; tolls that time limit while a nomination is pending; and starts a new 210-day clock if the nomination is "rejected . . . , withdrawn, or returned." §§ 3346(a)–(b)(1). Upon a second nomination, the time limit tolls once more, and an acting officer can serve an additional 210 days if the second nomination proves unsuccessful. § 3346(b)(2). The FVRA ensures compliance by providing that, in general, "any function or duty of a vacant office" performed by a person not properly serving under the statute "shall have no force or effect." § 3348(d).

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[1] A senior position is one that has a rate of pay equal to or greater than the minimum rate "for a position at GS–15 of the General Schedule." 5 U. S. C. § 3345(a)(3)(B).

B

The National Labor Relations Board (NLRB or Board) is charged with administering the National Labor Relations Act. By statute, its general counsel must be appointed by the President with the advice and consent of the Senate. 29 U. S. C. § 153(d).

In June 2010, the NLRB's general counsel—who had been serving with Senate confirmation—resigned. The President directed Lafe Solomon to serve temporarily as the NLRB's acting general counsel, citing the FVRA as the basis for the appointment. See Memorandum from President Barack Obama to L. Solomon (June 18, 2010). Solomon satisfied the requirements for acting service under subsection (a)(3) of the FVRA because he had spent the previous ten years in the senior position of Director of the NLRB's Office of Representation Appeals.

The President had bigger plans for Solomon than acting service. On January 5, 2011, he nominated Solomon to serve as the NLRB's general counsel on a permanent basis. The Senate had other ideas. That body did not act upon the nomination during the 112th Congress, so it was returned to the President when the legislative session expired. 159 Cong. Rec. 18 (2013). The President resubmitted Solomon's name for consideration in the spring of 2013, *id.*, at 7707, but to no avail. The President ultimately withdrew Solomon's nomination and put forward a new candidate, whom the Senate confirmed on October 29, 2013. *Id.*, at 16357. Throughout this entire period, Solomon served as the NLRB's acting general counsel.

Solomon's responsibilities included exercising "final authority" to issue complaints alleging unfair labor practices. 29 U. S. C. §§ 153(d), 160(b). In January 2013, an NLRB Regional Director, exercising authority on Solomon's behalf, issued a complaint alleging that respondent SW General, Inc.—a company that provides ambulance services—had improperly failed to pay certain bonuses to long-term employ-

ees. An Administrative Law Judge concluded that SW General had committed unfair labor practices, and the NLRB agreed. 360 N. L. R. B. 109 (2014).

SW General filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit. It argued that the unfair labor practices complaint was invalid because, under subsection (b)(1) of the FVRA, Solomon could not legally perform the duties of general counsel after having been nominated to fill that position. The NLRB defended Solomon's actions. It contended that subsection (b)(1) applies only to first assistants who automatically assume acting duties under subsection (a)(1), not to acting officers who, like Solomon, serve under (a)(2) or (a)(3).

The Court of Appeals granted SW General's petition for review and vacated the Board's order. It reasoned that "the text of subsection (b)(1) squarely supports" the conclusion that the provision's restriction on nominees serving as acting officers "applies to all acting officers, no matter whether they serve pursuant to subsection (a)(1), (a)(2) or (a)(3)." 796 F. 3d 67, 78 (CADC 2015). As a result, Solomon became "ineligible to serve as Acting General Counsel once the President nominated him to be General Counsel." *Id.*, at 72.[2] We granted certiorari, 579 U. S. 917 (2016), and now affirm.

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[2] The FVRA exempts "the General Counsel of the National Labor Relations Board" from the general rule that actions taken in violation of the FVRA are void *ab initio*. 5 U. S. C. § 3348(e)(1). The Court of Appeals "assume[d] that section 3348(e)(1) renders the actions of an improperly serving Acting General Counsel *voidable*" and rejected the Board's argument against voiding Solomon's actions. 796 F. 3d, at 79–82. The Board did not seek certiorari on this issue, so we do not consider it.

In addition, the unfair labor practice complaint in this case was issued after the Senate had returned Solomon's nomination the first time but before the President had renominated him to the same position. In the proceedings below, the Board did not argue that this timing made any difference, and the court assumed it had no bearing on the proper application of the FVRA to this case. *Id.*, at 72, n. 3. We proceed on the same assumption.

II

Subsection (b)(1) of the FVRA prevents a person who has been nominated for a vacant PAS office from performing the duties of that office in an acting capacity. In full, it states:

> "(1) Notwithstanding subsection (a)(1), a person may not serve as an acting officer for an office under this section, if—
>
> (A) during the 365-day period preceding the date of the death, resignation, or beginning of inability to serve, such person—
>
> (i) did not serve in the position of first assistant to the office of such officer; or
>
> (ii) served in the position of first assistant to the office of such officer for less than 90 days; and
>
> (B) the President submits a nomination of such person to the Senate for appointment to such office."

Subsection (b)(2) adds that "[p]aragraph (1) shall not apply" to a person serving in a first assistant position that itself requires the advice and consent of the Senate.

We conclude that the prohibition in subsection (b)(1) applies to anyone performing acting service under the FVRA. It is not, as the Board contends, limited to first assistants performing acting service under subsection (a)(1). The text of the prohibition extends to any "person" who serves "as an acting officer . . . under this section," not just to "first assistants" serving under subsection (a)(1). The phrase "[n]otwithstanding subsection (a)(1)" does not limit the reach of (b)(1), but instead clarifies that the prohibition applies even when it conflicts with the default rule that first assistants shall perform acting duties.

A

1

Our analysis of subsection (b)(1) begins with its text. Subsection (b)(1) applies to any "person" and prohibits service "as an acting officer for an office under this section."

The key words are "person" and "section." They clearly indicate that (b)(1) applies to all acting officers under § 3345, regardless of the means of appointment.

Start with "person." The word has a naturally expansive meaning that can encompass anyone who performs acting duties under the FVRA. See *Pfizer Inc.* v. *Government of India*, 434 U. S. 308, 312 (1978). Important as they may be, first assistants are not the only "person[s]" of the bunch.

Now add "under this section." The language clarifies that subsection (b)(1) applies to all persons serving under § 3345. Congress often drafts statutes with hierarchical schemes—section, subsection, paragraph, and on down the line. See *Koons Buick Pontiac GMC, Inc.* v. *Nigh*, 543 U. S. 50, 60–61 (2004); L. Filson, The Legislative Drafter's Desk Reference 222 (1992). Congress used that structure in the FVRA and relied on it to make precise cross-references. When Congress wanted to refer only to a particular subsection or paragraph, it said so. See, *e. g.*, § 3346(a)(2) ("subsection (b)"); § 3346(b)(2) ("paragraph (1)"). But in (b)(1) Congress referred to the entire section—§ 3345—which subsumes all of the ways a person may become an acting officer.

The rest of the FVRA uses the pairing of "person" and "section" the same way. Section 3346, for example, specifies how long "the *person* serving as an acting officer as described under *section* 3345 may serve in the office." (Emphasis added.) And § 3348(d)(1) describes the consequences of noncompliance with the FVRA by referring to the actions "taken by any *person* who is not acting under *section* 3345, 3346, or 3347." (Emphasis added.) No one disputes that both provisions apply to anyone serving as an acting officer under the FVRA, not just first assistants serving under subsection (a)(1).

Had Congress intended subsection (b)(1) to apply only to first assistants acting under (a)(1), it could easily have chosen clearer language. Replacing "person" with "first assistant" would have done the trick. So too would replacing "under

this section" with "under subsection (a)(1)." "The fact that [Congress] did not adopt [either] readily available and apparent alternative strongly supports" the conclusion that subsection (b)(1) applies to any acting officer appointed under any provision within § 3345. *Knight* v. *Commissioner*, 552 U. S. 181, 188 (2008).

The dependent clause at the beginning of subsection (b)(1)—"[n]otwithstanding subsection (a)(1)"—confirms that the prohibition on acting service applies even when it conflicts with the default rule that the first assistant shall perform acting duties. The ordinary meaning of "notwithstanding" is "in spite of," or "without prevention or obstruction from or by." Webster's Third New International Dictionary 1545 (1986); Black's Law Dictionary 1091 (7th ed. 1999) ("Despite; in spite of"). In statutes, the word "shows which provision prevails in the event of a clash." A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 126–127 (2012). Subsection (a)(1) sets the rule that first assistants "shall perform" the vacant office's "functions and duties . . . in an acting capacity." But the "notwithstanding" clause in subsection (b)(1) means that, even if a first assistant is serving as an acting officer under this statutory mandate, he must cease that service if the President nominates him to fill the vacant PAS office. That subsection (b)(1) also applies to acting officers serving at the President's behest is already clear from the broad text of the independent clause—they are all "person[s]" serving "under this section."

2

The Board takes a different view of the phrase "[n]otwithstanding subsection (a)(1)." It begins by noting that § 3345(a) uses three different subsections to "create three separate paths for becoming an acting official." Reply Brief 2. The prohibition in subsection (b)(1), the Board continues, "applies '[n]otwithstanding' only *one* of these subsections—'subsection (a)(1).'" *Ibid.* In the Board's view, sin-

gling out subsection (a)(1) carries a negative implication: that "Congress did not intend Subsection (b)(1) to override the alternative mechanisms for acting service in Subsections (a)(2) and (a)(3)." *Id.*, at 3.

We disagree. The Board relies on the "interpretive canon, *expressio unius est exclusio alterius*, 'expressing one item of [an] associated group or series excludes another left unmentioned.'" *Chevron U. S. A. Inc.* v. *Echazabal*, 536 U. S. 73, 80 (2002) (quoting *United States* v. *Vonn*, 535 U. S. 55, 65 (2002)). If a sign at the entrance to a zoo says "come see the elephant, lion, hippo, and giraffe," and a temporary sign is added saying "the giraffe is sick," you would reasonably assume that the others are in good health.

"The force of any negative implication, however, depends on context." *Marx* v. *General Revenue Corp.*, 568 U. S. 371, 381 (2013). The *expressio unius* canon applies only when "circumstances support[ ] a sensible inference that the term left out must have been meant to be excluded." *Echazabal*, 536 U. S., at 81. A "notwithstanding" clause does not naturally give rise to such an inference; it just shows which of two or more provisions prevails in the event of a conflict. Such a clause confirms rather than constrains breadth. Singling out one potential conflict might suggest that Congress thought the conflict was particularly difficult to resolve, or was quite likely to arise. But doing so generally does not imply anything about other, unaddressed conflicts, much less that they should be resolved in the *opposite* manner.

Suppose a radio station announces: "We play your favorite hits from the '60s, '70s, and '80s. Notwithstanding the fact that we play hits from the '60s, we do not play music by British bands." You would not tune in expecting to hear the 1970s British band "The Clash" any more than the 1960s "Beatles." The station, after all, has announced that "we do not play music by British bands." The "notwithstanding" clause just establishes that this applies even to music from the '60s, when British bands were prominently featured on

the charts. No one, however, would think the station singled out the '60s to convey implicitly that its categorical statement "we do not play music by British bands" actually did not apply to the '70s and '80s.

Drawing a negative inference from the "notwithstanding" clause in subsection (b)(1) is similarly inapt. Without that clause, subsection (b)(1) plainly would apply to all persons serving as acting officers under § 3345(a). Adding "notwithstanding subsection (a)(1)" makes sense because (a)(1) conflicts with (b)(1) in a unique manner. The former is mandatory and self-executing: The first assistant "*shall* perform" acting duties. The latter, by contrast, speaks to who "may not" be an acting officer. So if a vacancy arises and the President nominates the first assistant to fill the position, (a)(1) says the first assistant "shall perform" the duties of that office in an acting capacity while the nomination is pending, and (b)(1) says he "may not." The "notwithstanding" clause clarifies that the language of (a)(1) does not prevail if that conflict occurs.

Compare the mandatory language of subsection (a)(1) to (a)(2) and (a)(3). People appointed under those provisions are just as much acting officers as first assistants who assume the role. But there is no freestanding directive that they perform acting duties; subsections (a)(2) and (a)(3) just say that the President "may direct" them to do so. The natural inference, then, is that Congress left these provisions out of the "notwithstanding" clause because they are different from subsection (a)(1), not to exempt from the broad prohibition in subsection (b)(1) those officers serving under (a)(2) and (a)(3).

Indeed, "notwithstanding" is used the same way in other parts of § 3345. Subsections (a)(2) and (a)(3) are each preceded by the phrase "notwithstanding paragraph (1)." The phrase recognizes that subsection (a)(1) is unique, and resolves the potential conflict between the mandatory "shall perform" in that provision and the permissive "may direct"

in (a)(2) and (a)(3). But it implies nothing about other potential conflicts that may arise in the statutory scheme. In subsection (b)(1), it works the same way: The "notwithstanding" clause simply shows that (b)(1) overrides (a)(1), and nothing more.

Step back from the Board's focus on "notwithstanding" and another problem appears: Its interpretation of subsection (b)(1) makes a mess of (b)(2). Subsection (b)(2) specifies that (b)(1) "shall not apply to any person" if (A) that person "is serving as the first assistant"; (B) the first assistant position is itself a PAS office; and (C) "the Senate has approved the appointment of such person" to that office.

The Board's interpretation makes the first requirement superfluous, a result we typically try to avoid. *Williams* v. *Taylor*, 529 U. S. 362, 404 (2000) ("It is . . . a cardinal principle of statutory construction that we must give effect, if possible, to every clause and word of a statute." (internal quotation marks omitted)). If subsection (b)(1) applied only to first assistants, there would be no need to state the requirement in (b)(2)(A) that "such person is serving as the first assistant." The Board proposes that Congress did so for clarity, but the same could be said of most superfluous language.

The Board and the dissent counter that applying the prohibition in subsection (b)(1) to anyone performing acting service under § 3345(a) has its own problem: Doing so would also require applying it to § 3345(c)(1), which "would nullify" that provision. Reply Brief 9. The dissent deems this "no way to read a statute." *Post*, at 323.

We agree, and it is not the way we read it. Under our reading, subsection (b)(1) has no effect on (c)(1). Subsection (b)(1) addresses nominations *generally*, prohibiting any person who has been nominated to fill any vacant office from performing that office's duties in an acting capacity. Subsection (c)(1) speaks to a *specific* nomination scenario: when a person is "nominated by the President for reappointment for

an additional term to the same office . . . without a break in service." In this particular situation, the FVRA authorizes the nominee "to continue to serve in that office." § 3345(c). "[I]t is a commonplace of statutory construction that the specific governs the general." *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U. S. 639, 645 (2012). The general prohibition on acting service by nominees yields to the more specific authorization allowing officers up for reappointment to remain at their posts. Applying subsection (b)(1) to § 3345(a) hardly compels a different result.

The text of subsection (b)(1) is clear: Subject to one narrow exception, it prohibits anyone who has been nominated to fill a vacant PAS office from performing the duties of that office in an acting capacity, regardless of whether the acting officer was appointed under subsection (a)(1), (a)(2), or (a)(3). It is not limited to first assistants who automatically assume acting duties under (a)(1).

B

The Board contends that legislative history, purpose, and post-enactment practice uniformly show that subsection (b)(1) applies only to first assistants. The text is clear, so we need not consider this extra-textual evidence. See *State Farm Fire & Casualty Co.* v. *United States ex rel. Rigsby*, 580 U. S. 26, 36–37 (2016). In any event, the Board's evidence is not compelling.

The Board argues that subsection (b)(1) was designed to serve a specific purpose: preventing the President from having his nominee serve as an acting officer by making him first assistant after (or right before) a vacancy arises. Brief for Petitioner 38. The original draft of the FVRA authorized first assistants and PAS officers to perform acting service. Subsection (b) of that draft provided that if a first assistant was nominated to fill the vacant office, he could not perform that office's duties in an acting capacity unless he had been the first assistant for at least 180 days before the vacancy. Several Senators thought the FVRA too restric-

tive. They asked to add senior agency officials to the list of potential acting officers and to shorten the 180-day length-of-service requirement in subsection (b). Their requests, the Board says, were granted; the final version of the FVRA included subsection (a)(3) for senior employees and shortened the length-of-service requirement to 90 days. There was no intent to extend the prohibition in subsection (b) beyond first assistants. *Id.*, at 45–46.

The glitch in this argument is of course the text of subsection (b)(1). Congress did amend the statute to allow senior employees to become acting officers under subsection (a)(3). The only substantive change that was requested in (b) was to reduce the length-of-service requirement. Congress could have done that with a few tweaks to the original version of subsection (b). Instead, Congress went further: It also removed language that expressly limited subsection (b) to first assistants. And it added a provision—subsection (b)(2)—that makes sense only if (b)(1) applies to all acting officers. In short, Congress took a provision that explicitly applied only to first assistants and turned it into one that applies to all acting officers.

The Board protests that Congress would not have expanded the prohibition on nominees serving as acting officers after Senators asked to give the President *more* flexibility. See Brief for Petitioner 45–46. That certain Senators made specific demands, however, does not mean that they got exactly what they wanted. Passing a law often requires compromise, where even the most firm public demands bend to competing interests. See *Ragsdale* v. *Wolverine World Wide, Inc.*, 535 U. S. 81, 93–94 (2002). What Congress ultimately agrees on is the text that it enacts, not the preferences expressed by certain legislators. See *Oncale* v. *Sundowner Offshore Services, Inc.*, 523 U. S. 75, 79 (1998) ("[I]t is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed.").

Compromise is precisely what happened here: "[A] period of intense negotiations" took place after Senators demanded changes to the original draft of the FVRA, and the final bill was "a compromise measure." Rosenberg 9. The legislation as passed *did* expand the pool of individuals the President could appoint as acting officers, by adding senior employees in subsection (a)(3). But it also expanded the scope of the limitation on acting service in (b)(1), by dropping the language making (b)(1) applicable only to first assistants.

The Board contends that this compromise must not have happened because Senator Thompson, one of the sponsors of the FVRA, said that subsection (b)(1) "applies only when the acting officer is the first assistant, and not when the acting officer is designated by the President pursuant to §§3345(a)(2) or 3345(a)(3)." 144 Cong. Rec. 27496 (1998). But Senator Byrd—the very next speaker—offered a contradictory account: A nominee may not "serve as an acting officer" if "he is not the first assistant" or "has been the first assistant for less than 90 . . . days, and has not been confirmed for the position." *Id.*, at 27498. This is a good example of why floor statements by individual legislators rank among the least illuminating forms of legislative history. See *Milner* v. *Department of Navy*, 562 U. S. 562, 572 (2011) ("Those of us who make use of legislative history believe that clear evidence of congressional intent may illuminate ambiguous text. We will not take the opposite tack of allowing ambiguous legislative history to muddy clear statutory language.").

Finally, the Board supports its interpretation with post-enactment practice. It notes that the Office of Legal Counsel and the Government Accountability Office have issued guidance construing subsection (b)(1) to apply only to first assistants. And three Presidents have, without congressional objection, submitted the nominations of 112 individuals who were serving as acting officers under subsections

(a)(2) and (a)(3). The Board contends that this "historical practice" is entitled to "significant weight" because the FVRA "concern[s] the allocation of power between two elected branches of Government." Brief for Petitioner 49 (quoting *NLRB* v. *Noel Canning*, 573 U. S. 513, 524 (2014); internal quotation marks omitted).

"[H]istorical practice" is too grand a title for the Board's evidence. The FVRA was not enacted until 1998, and the 112 nominations that the Board cites make up less than two percent of the thousands of nominations to positions in executive agencies that the Senate has considered in the years since its passage. Even the guidance documents the Board cites paid the matter little attention; both made conclusory statements about subsection (b)(1), with no analysis.

In this context, Congress's failure to speak up does not fairly imply that it has acquiesced in the Board's interpretation. See *Zuber* v. *Allen*, 396 U. S. 168, 185, n. 21 (1969); *Alexander* v. *Sandoval*, 532 U. S. 275, 292 (2001). The Senate may not have noticed that certain nominees were serving as acting officers in violation of the FVRA, or it may have chosen not to reject a qualified candidate just to make a point about compliance with the statute. Either is at least as plausible as the theory that the Legislature's inaction reflects considered acceptance of the Executive's practice.

Our decision in *Noel Canning*—the chief opinion on which the Board relies—is a sharp contrast. That case dealt with the President's constitutional authority under the Recess Appointments Clause, an issue that has attracted intense attention and written analysis from Presidents, Attorneys General, and the Senate. 573 U. S., at 539–549. The voluminous historical record dated back to "the beginning of the Republic," and included "thousands of intra-session recess appointments." *Id.*, at 526, 529. That the chronicle of the Recess Appointments Clause weighed heavily in *Noel Canning* offers no support to the Board here.

III

Applying the FVRA to this case is straightforward. Solomon was appointed as acting general counsel under subsection (a)(3). Once the President submitted his nomination to fill that position in a permanent capacity, subsection (b)(1) prohibited him from continuing his acting service. This does not mean that the duties of general counsel to the NLRB needed to go unperformed; the President could have appointed another person to serve as the acting officer in Solomon's place. And he had a wide array of individuals to choose from: any one of the approximately 250 senior NLRB employees or the hundreds of individuals in PAS positions throughout the Government. The President, however, did not do so, and Solomon's continued service violated the FVRA. Accordingly, the judgment of the Court of Appeals is affirmed.

It is so ordered.

APPENDIX

Section 3345 of the FVRA provides:

"(a) If an officer of an Executive agency (including the Executive Office of the President, and other than the Government Accountability Office) whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate, dies, resigns, or is otherwise unable to perform the functions and duties of the office—

(1) the first assistant to the office of such officer shall perform the functions and duties of the office temporarily in an acting capacity subject to the time limitations of section 3346;

(2) notwithstanding paragraph (1), the President (and only the President) may direct a person who serves in an office for which appointment is required to be made by the President, by and with the advice and consent of the Senate, to perform the functions and duties of the vacant office tempo-

rarily in an acting capacity subject to the time limitations of section 3346; or

(3) notwithstanding paragraph (1), the President (and only the President) may direct an officer or employee of such Executive agency to perform the functions and duties of the vacant office temporarily in an acting capacity, subject to the time limitations of section 3346, if—

(A) during the 365-day period preceding the date of death, resignation, or beginning of inability to serve of the applicable officer, the officer or employee served in a position in such agency for not less than 90 days; and

(B) the rate of pay for the position described under subparagraph (A) is equal to or greater than the minimum rate of pay payable for a position at GS–15 of the General Schedule.

(b)(1) Notwithstanding subsection (a)(1), a person may not serve as an acting officer for an office under this section, if—

(A) during the 365-day period preceding the date of the death, resignation, or beginning of inability to serve, such person—

(i) did not serve in the position of first assistant to the office of such officer; or

(ii) served in the position of first assistant to the office of such officer for less than 90 days; and

(B) the President submits a nomination of such person to the Senate for appointment to such office.

(2) Paragraph (1) shall not apply to any person if—

(A) such person is serving as the first assistant to the office of an officer described under subsection (a);

(B) the office of such first assistant is an office for which appointment is required to be made by the President, by and with the advice and consent of the Senate; and

(C) the Senate has approved the appointment of such person to such office.

(c)(1) Notwithstanding subsection (a)(1), the President (and only the President) may direct an officer who is nomi-

nated by the President for reappointment for an additional term to the same office in an Executive department without a break in service, to continue to serve in that office subject to the time limitations in section 3346, until such time as the Senate has acted to confirm or reject the nomination, notwithstanding adjournment sine die.

(2) For purposes of this section and sections 3346, 3347, 3348, 3349, 3349a, and 3349d, the expiration of a term of office is an inability to perform the functions and duties of such office."

JUSTICE THOMAS, concurring.

I join the opinion of the Court because it correctly interprets the Federal Vacancies Reform Act of 1998 (FVRA), 5 U. S. C. § 3345 *et seq.* The dissent's conclusion that the FVRA authorized the appointment in this case, however, implicates an important constitutional question that the Court's interpretation does not: Whether directing Lafe Solomon to serve as acting general counsel of the National Labor Relations Board (NLRB or Board), without the advice and consent of the Senate, complied with the Constitution. I write separately to explain my view that the Appointments Clause likely prohibited Solomon's appointment.

I

The Appointments Clause prescribes the exclusive process by which the President may appoint "officers of the United States." *United States* v. *Germaine*, 99 U. S. 508, 510 (1879); accord, *Buckley* v. *Valeo*, 424 U. S. 1, 132 (1976) (*per curiam*) ("*[A]ll* officers of the United States are to be appointed in accordance with the Clause . . . . No class or type of officer is excluded because of its special functions"). It provides that the President

> "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose

> Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments." U. S. Const., Art. II, §2, cl. 2.

"[F]or purposes of appointment," the Clause divides all officers into two classes—"inferior officers" and noninferior officers, which we have long denominated "principal" officers. *Germaine*, *supra*, at 509, 511. Principal officers must be appointed by the President by and with the advice and consent of the Senate. See *Edmond* v. *United States*, 520 U. S. 651, 660 (1997). That process "is also the default manner of appointment for inferior officers." *Ibid.* But the Clause provides a limited exception for the appointment of inferior officers: Congress may "by Law" authorize the President, the head of an executive department, or a court of law to appoint inferior officers without the advice and consent of the Senate. *Ibid.*

The FVRA governs the process by which the President may temporarily fill a vacancy in an Executive Branch office normally occupied by an officer of the United States. As relevant in this case, when a vacancy arises, the President may "direct" an official to "perform the functions and duties of the . . . office temporarily." 5 U. S. C. §§3345(a)(2), (3). That official may be an officer previously appointed by the President and confirmed by the Senate to any office, or certain high-ranking employees of the agency in which the vacancy arose. *Ibid.* The FVRA does not, however, require the President to seek the advice and consent of the Senate before directing the official to perform the functions of the vacant office.

When the President "direct[s]" someone to serve as an officer pursuant to the FVRA, he is "appoint[ing]" that person as an "officer of the United States" within the meaning of the Appointments Clause. Around the time of the framing, the verb "appoint" meant "[t]o establish any thing by decree," 1 S. Johnson, A Dictionary of the English Language

(def. 3) (6th ed. 1785); T. Sheridan, A Complete Dictionary of the English Language (To Appoint) (6th ed. 1796), or "[t]o allot, assign, or designate," 1 N. Webster, An American Dictionary of the English Language (def. 3) (1828). When the President "direct[s]" a person to serve as an acting officer, he is "assign[ing]" or "designat[ing]" that person to serve as an officer.

The FVRA authorizes the President to appoint both inferior and principal officers without first obtaining the advice and consent of the Senate. Appointing inferior officers in this manner raises no constitutional problems. That is because the Appointments Clause authorizes Congress to enact "Law[s]," like the FVRA, "vest[ing] the Appointment of such inferior Officers . . . in the President alone." Appointing principal officers under the FVRA, however, raises grave constitutional concerns because the Appointments Clause forbids the President to appoint principal officers without the advice and consent of the Senate.

II

Because we interpret the FVRA to forbid Solomon's appointment in this case, we need not confront these concerns. But the dissent's contrary interpretation necessarily raises the question whether that appointment complied with the requirements of the Appointments Clause. That inquiry turns on two considerations: (1) whether the general counsel of the NLRB is an "Office[r] of the United States" within the meaning of the Appointments Clause and, if so, (2) whether he is a principal officer who can be appointed only by and with the advice and consent of the Senate.[1] In my view, the

[1] That Solomon was appointed "temporarily" to serve as *acting* general counsel does not change the analysis. I do not think the structural protections of the Appointments Clause can be avoided based on such trivial distinctions. Solomon served for more than three years in an office limited by statute to a 4-year term, and he exercised all of the statutory duties of that office. 29 U. S. C. § 153(d). There was thus nothing "special and temporary" about Solomon's appointment. *United States* v. *Eaton*, 169 U. S. 331, 343 (1898).

general counsel plainly is an officer of the United States. I also think he is likely a principal officer.

A

As an initial matter, the NLRB's general counsel is an "officer of the United States" whose appointment is governed by the Appointments Clause. "Extensive evidence suggests" that, at the time of the framing, this phrase was understood to encompass "all federal officials with responsibility for an ongoing statutory duty." Mascott, Who Are "Officers of the United States"? 70 Stan. L. Rev. 443, 564; see also Officers of the United States Within the Meaning of the Appointments Clause, 31 Op. OLC 73, 77 (2007) (an officer of the United States was originally understood to be an official who "hold[s] a position with delegated sovereign authority" and whose office was "'continuing,'" rather than "'incidental'" or "ad hoc"). And this Court has previously held that an "Officer of the United States" is "any appointee exercising significant authority pursuant to the laws of the United States." *Buckley*, 424 U. S., at 126; see also *Free Enterprise Fund* v. *Public Company Accounting Oversight Bd.*, 561 U. S. 477, 539–540 (2010) (BREYER, J., dissenting) (collecting cases addressing who counts as an officer).

The general counsel is an officer of the United States under both the probable original meaning of the Clause and this Court's precedents. He is charged by statute with carrying out significant duties. He "exercise[s] general supervision over all attorneys employed by the Board . . . and over the officers and employees in the regional offices." 29 U. S. C. §153(d). He has "final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints . . . and in respect of the prosecution of such complaints before the Board." *Ibid.* The general counsel is effectively the Nation's labor-law prosecutor and is therefore an officer of the United States. See *Edmond*, 520 U. S.,

at 666 (treating the general counsel of the Department of Transportation as an officer).

B

Although a closer question, the general counsel also is likely a principal officer. In *Edmond*, we explained that an "'inferior'" officer is one "whose work is directed and supervised at some level by others who were appointed by Presidential nomination with the advice and consent of the Senate." *Id.*, at 663. That view is consistent with the original meaning of the term and with the practices of the early Congresses. See *id.*, at 663–664; *Morrison* v. *Olson*, 487 U. S. 654, 719–721 (1988) (Scalia, J., dissenting); see also, *e. g.*, Sheridan, *supra* (Inferiour); 1 Johnson, *supra* (Inferiour (def. 2)); 1 Webster, *supra* (Inferior).[2] By contrast, a principal officer is one who has no superior other than the President.

The general counsel of the NLRB appears to satisfy that definition. Before 1947, the Board "controlled not only the filing of complaints, but their prosecution and adjudication" as well. *NLRB* v. *Food & Commercial Workers*, 484 U. S. 112, 117 (1987). The Labor Management Relations Act, 1947, ch. 120, 61 Stat. 136, however, "effected an important change" in the NLRB's structure by "separat[ing] the prosecuting from the adjudicating function, to place the former in the General Counsel, and to make him an independent official appointed by the President." *Lewis* v. *NLRB*, 357 U. S. 10,

[2] In *Morrison*, the Court used a multifactor test to determine whether an independent counsel under the Ethics in Government Act of 1978, 28 U. S. C. §§ 49, 591 (1982 ed., Supp. V), was an "inferior officer." 487 U. S., at 671–672. Although we did not explicitly overrule *Morrison* in *Edmond*, it is difficult to see how *Morrison*'s nebulous approach survived our opinion in *Edmond*. *Edmond* is also consistent with the Constitution's original meaning and therefore should guide our view of the principal-inferior distinction. See Calabresi & Lawson, The Unitary Executive, Jurisdiction Stripping, and the *Hamdan* Opinions: A Textualist Response to Justice Scalia, 107 Colum. L. Rev. 1002, 1018–1019 (2007).

16, n. 10 (1958). Congress thus separated the NLRB into "two independent branches," *Food & Commercial Workers*, 484 U. S., at 129, and made the general counsel "independent of the Board's supervision and review," *id.*, at 118; see also *id.*, at 129 (Congress "decided to place the General Counsel within the agency, but to make the office independent of the Board's authority"). Moreover, the general counsel's prosecutorial decisions are unreviewable by either the Board or the Judiciary. *NLRB* v. *Sears, Roebuck & Co.*, 421 U. S. 132, 138 (1975); *Vaca* v. *Sipes*, 386 U. S. 171, 182 (1967).

Although the Board has power to define some of the general counsel's duties, see 29 U. S. C. § 153(d), and the general counsel represents the Board in certain judicial proceedings, see Higgins, Labor Czars—Commissars—Keeping Women in the Kitchen—The Purpose and Effects of the Administrative Changes Made by Taft-Hartley, 47 Cath. U. L. Rev. 941, 967 (1998), the statute does not give the Board the power to remove him or otherwise generally to control his activities, see *Edmond*, *supra*, at 664 ("The power to remove officers, we have recognized, is a powerful tool for control"); see also *Free Enterprise Fund*, *supra*, at 510 (holding that executive officials were inferior officers in large part because they were subject to a superior's removal). Because it appears that the general counsel answers to no officer inferior to the President, he is likely a principal officer.[3] Accordingly, the President likely could not lawfully have appointed Solomon to serve in that role without first obtaining the advice and consent of the Senate.

III

I recognize that the "burdens on governmental processes" that the Appointments Clause imposes may "often seem clumsy, inefficient, even unworkable." *INS* v. *Chadha*, 462 U. S. 919, 959 (1983). Granting the President unilateral

[3] I think the general counsel would likely qualify as a principal officer even under *Morrison* v. *Olson*, 487 U. S. 654 (1988). See *id.*, at 671–672.

power to fill vacancies in high offices might contribute to more efficient Government. But the Appointments Clause is not an empty formality. Although the Framers recognized the potential value of leaving the selection of officers to "one man of discernment" rather than to a fractious, multimember body, see The Federalist No. 76, p. 510 (J. Cooke ed. 1961), they also recognized the serious risk for abuse and corruption posed by permitting one person to fill every office in the Government, see *id.*, at 513; 3 J. Story, Commentaries on the Constitution of the United States § 1524, p. 376 (1833). The Framers "had lived under a form of government that permitted arbitrary governmental acts to go unchecked," *Chadha*, *supra*, at 959, and they knew that liberty could be preserved only by ensuring that the powers of Government would never be consolidated in one body, see The Federalist No. 51, p. 348. They thus empowered the Senate to confirm principal officers on the view that "the necessity of its cooperation in the business of appointments will be a considerable and salutary restraint upon the conduct of" the President. The Federalist No. 76, at 514; 3 Story, *supra*, § 1525, at 376–377. We cannot cast aside the separation of powers and the Appointments Clause's important check on executive power for the sake of administrative convenience or efficiency. See *Bowsher* v. *Synar*, 478 U. S. 714, 736 (1986).

That the Senate voluntarily relinquished its advice-and-consent power in the FVRA does not make this end-run around the Appointments Clause constitutional. The Clause, like all of the Constitution's structural provisions, "is designed first and foremost not to look after the interests of the respective branches, but to protect individual liberty." *NLRB* v. *Noel Canning*, 573 U. S. 513, 571 (2014) (Scalia, J., concurring in judgment) (internal quotation marks and bracket omitted). It is therefore irrelevant that "the encroached-upon branch approves the encroachment." *Free Enterprise Fund*, *supra*, at 497 (internal quotation marks omitted). "Neither Congress nor the Executive can agree

to waive" the structural provisions of the Constitution any more than they could agree to disregard an enumerated right. *Freytag* v. *Commissioner*, 501 U. S. 868, 880 (1991). The Judicial Branch must be most vigilant in guarding the separation between the political powers precisely when those powers collude to avoid the structural constraints of our Constitution.

* * *

Courts inevitably will be called upon to determine whether the Constitution permits the appointment of principal officers pursuant to the FVRA without Senate confirmation. But here, the proper interpretation of the FVRA bars the appointment.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, dissenting.

Many high-level offices in the Executive Branch may be filled only by a person who has been nominated to the position by the President and confirmed by the Senate. The Federal Vacancies Reform Act of 1998 (FVRA) cedes the Senate's confirmation authority, partially and on a temporary basis, to allow executive agencies to continue to function when one of those high-level offices becomes vacant. It authorizes certain categories of officials to perform the duties of vacant offices on an acting basis. One of its provisions pulls back that authorization when an official has been nominated to fill the vacant office on a permanent basis. The scope of that provision is at issue here. I agree with the Court that the provision applies to first assistants to a vacant office who serve as acting officials automatically, by operation of the FVRA. I disagree with the Court's conclusion that the provision also applies to other officials who may serve as acting officials if the President directs them to serve in that capacity. The Court gives the provision a broader reach than the text can bear with no support from the

history of, or practice under, the FVRA. I respectfully dissent.

I

As the Court explains, the FVRA governs vacancies in offices held by persons "whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate." 5 U. S. C. § 3345(a). These are known as PAS offices. When an official in a PAS office "dies, resigns, or is otherwise unable to perform the functions and duties of the office" the FVRA steps in. *Ibid.*; see also § 3345(c)(2) (an "expiration of a term of office" makes an official unable "to perform the functions and duties" of the office).

Section 3345 of the FVRA authorizes four categories of officials to perform the duties of a vacant office. Subsection (a)(1) contains a default rule: The "first assistant to the office" automatically assumes the vacant office and performs "the functions and duties of the office temporarily in an acting capacity." § 3345(a)(1). Subsections (a)(2), (a)(3), and (c)(1) authorize the President to override that default rule. The President may direct a person already confirmed by the Senate to a PAS office to serve as the acting officer. See § 3345(a)(2). The President may direct certain senior officials in the same agency to serve as the acting officer. See § 3345(a)(3). Or the President may direct a person whose Senate-confirmed term in the office has expired and who has been nominated to a subsequent term in that same office to serve as the acting officer until the Senate acts on the nomination. See § 3345(c)(1).

Subsection (b)(1) takes away this authorization in a specific situation. It provides that, "[n]otwithstanding subsection (a)(1)"—the first assistant default rule—a person may not serve as an acting official while nominated to fill the office if the person was not the first assistant to the office for at least 90 of the 365 days preceding the vacancy. § 3345(b)(1). The prohibition in subsection (b)(1) does not apply to a person

serving as the Senate-confirmed first assistant to the vacant office. See § 3345(b)(2).

II

In my view, the text, purpose, and history of the FVRA make clear that the prohibition in subsection (b)(1) applies only to a first assistant who performs the duties of a vacant office under subsection (a)(1).

A

As the Court observes, subsection (b)(1) contains some potentially broad language. The provision specifies when "a person may not serve as an acting officer for an office under this section"—that is, § 3345. The words "person" and "this section," taken in isolation, could signal that the prohibition applies to subsections (a)(1), (a)(2), (a)(3), and (c)(1) and thus covers all acting officials. But context matters. And here, the context cabins those words and gives subsection (b)(1) a more limited reach.

The text of subsection (b)(1) contains a clear signal that its prohibition applies only to first assistants who automatically assume a vacant office under subsection (a)(1): It begins with the clause "[n]otwithstanding subsection (a)(1)." A notwithstanding clause identifies a potential conflict between two or more provisions and specifies which provision will prevail. Under the familiar *expressio unius est exclusio alterius* interpretive canon, the choice to single out subsection (a)(1)—and only subsection (a)(1)—in this notwithstanding clause strongly suggests that the prohibition reaches, and conflicts with, subsection (a)(1), and only subsection (a)(1).

The rest of § 3345 confirms this conclusion. The prohibition in subsection (b)(1) establishes who *may not* perform the duties of a vacant office. In doing so, it introduces a potential conflict with subsections (a)(1), (a)(2), (a)(3), and (c)(1), which identify four categories of persons who *may* perform the duties of a vacant office. By stating that its prohibition applies "[n]otwithstanding subsection (a)(1)," subsec-

tion (b)(1) expressly states that its prohibition takes precedence over the default rule set out in subsection (a)(1). The omission of any reference to subsections (a)(2), (a)(3), and (c)(1), in spite of the parallel potential for conflict with those subsections, suggests that the omission was a "'deliberate choice, not inadvertence.'" *Bruesewitz* v. *Wyeth LLC*, 562 U. S. 223, 232–233 (2011) (quoting *Barnhart* v. *Peabody Coal Co.*, 537 U. S. 149, 168 (2003)). That choice means that subsection (b)(1) trumps subsection (a)(1) but not subsections (a)(2), (a)(3), and (c)(1).

Nothing about a notwithstanding clause renders it impervious to this established rule of statutory interpretation. The Court says that the rule has less force in the context of a notwithstanding clause because such a clause "confirms rather than constrains" the breadth of the provision to which it is attached. *Ante*, at 302. But the breadth of the attached provision is precisely the question here, and the clause's specific reference to subsection (a)(1) and only subsection (a)(1) strongly supports reading the attached prohibition to limit only subsection (a)(1). See *Preseault* v. *ICC*, 494 U. S. 1, 13–14 (1990) (a reference to "'this Act'" in a notwithstanding clause limited the scope of the attached provision (emphasis deleted)).

The Court claims that the reference to subsection (a)(1) may serve a different purpose. In its view, the reference might instead demonstrate a congressional concern that a conflict between subsection (b)(1) and subsection (a)(1) would be "quite likely to arise" or "particularly difficult to resolve." *Ante*, at 302. A closer examination does not bear out this hypothesis.

The text itself refutes the theory that subsection (b)(1) is more likely to conflict with subsection (a)(1) than the other subsections. The prohibition in subsection (b)(1) does not apply to a person who served as the first assistant to the vacant office for more than 90 days in the year before the vacancy arose, §3345(b)(1)(A), or who serves as a Senate-

confirmed first assistant to the office, § 3345(b)(2). A person serving under subsection (a)(1)—by definition, only a first assistant—has a leg up in meeting those conditions and avoiding subsection (b)(1)'s prohibition altogether. Those serving under subsections (a)(2), (a)(3), and (c)(1)—PAS officials, senior agency officials, or officials whose terms in the vacant office have expired—do not. The prohibition in subsection (b)(1) is thus more likely, not less likely, to conflict with subsections (a)(2), (a)(3), and (c)(1).

And true enough, subsection (a)(1) sets out an automatic rule under which the first assistant assumes acting status upon a vacancy, whereas subsections (a)(2), (a)(3), and (c)(1) set out conditional rules, under which the President may choose to direct other officials to assume acting status. But that distinction makes no difference when asking whether a conflict between subsections (b)(1) and (a)(1) would be harder to resolve without guidance than a conflict between subsection (b)(1) and the other subsections. In stating who may not assume acting status, subsection (b)(1) conflicts equally with the rules about who may assume acting status set out in subsections (a)(1), (a)(2), (a)(3), and (c)(1). The reference to subsection (a)(1) in subsection (b)(1)'s notwithstanding clause thus cannot be understood as a means to resolve a particularly vexing conflict. The same conflict exists for all four categories.

Indeed, the Court's explanations make the notwithstanding clause in subsection (b)(1) superfluous. If the notwithstanding clause serves only to confirm the breadth of subsection (b)(1) and singles out subsection (a)(1) to address a conflict shared equally by other subsections, then it does no real work. The clause could be deleted without changing the meaning of subsection (b)(1), as the Court all but admits. See *ante*, at 303.

Worse still, a broad interpretation of subsection (b)(1) renders subsection (c)(1) superfluous. Under subsection (c)(1),

the President may designate a person whose term in an office has expired and who has been nominated to a subsequent term to serve as the acting official. It is unlikely, even implausible, that a person who serves out a set term will have served as the first assistant to her own office during the year before her term expired. Yet subsection (b)(1) requires such service before a person can serve as both an acting official and a nominee.[1] As a result, if subsection (b)(1) applies to all acting officials, it would prohibit what subsection (c)(1) expressly permits: acting service by a person nominated by the President to serve out a consecutive Senate-confirmed term in the vacant office. That is no way to read a statute.

Not a problem, the Court says. "[S]ubsection (b)(1) has no effect on (c)(1)" because subsection (c)(1) contains a specific rule about acting service by a nominee for a second term that, under ordinary principles of statutory interpretation, controls over the general rule governing acting service by a nominee in subsection (b)(1). *Ante*, at 304. The Court's reasoning on this point undercuts its opening claim that the words "person" and "under this section" in subsection (b)(1) must refer to "anyone who performs acting duties under the FVRA." *Ante*, at 300. And it underscores why the "[n]otwithstanding subsection (a)(1)" clause in subsection (b)(1) is superfluous under the Court's reading. The general authorization of acting service by a first assistant in subsection (a)(1) would yield to the specific prohibition on acting service by certain nominees in subsection (b)(1) even without the notwithstanding clause.[2]

[1] Subsection (b)(2)'s exception would not apply, as a person "nominated . . . for reappointment for an additional term to the same office . . . without a break in service," 5 U. S. C. §3345(c)(1), will of course not be a Senate-confirmed first assistant to that office.

[2] SW General offers a different response that a person directed to perform the duties of a vacant office under subsection (c)(1) does not "serve as an acting officer," §3345(b)(1). See Tr. of Oral Arg. 30. This also misses the mark. Like subsections (a)(1), (a)(2), and (a)(3), subsection

In contrast, reading subsection (b)(1) to apply only to a first assistant serving as an acting official under subsection (a)(1) renders no other provision superfluous. The Court reasons that subsection (b)(2)(A)'s reference to a person "serving as the first assistant to the office" would be superfluous if subsection (b)(1) applies only to first assistants serving under subsection (a)(1). See *ante*, at 304. But recall that subsection (b)(2) creates an exception to subsection (b)(1). Subsection (b)(1) provides that a person cannot serve as an acting official while nominated if that person was not the first assistant to the vacant office for at least 90 of the 365 days before the vacancy arose. Subsection (b)(2) states that those requirements do "not apply to" current Senate-confirmed first assistants. Put another way, subsection (b)(1) imposes requirements based on a person's past service, and subsection (b)(2) lifts those requirements based on a person's current service. The reference in subsection (b)(2)(A) to a person "serving as the first assistant to the office" is thus necessary to convey the relevant time period of the service that triggers the exception to subsection (b)(1).

B

The events leading up to and following the enactment of the FVRA further support interpreting subsection (b)(1) to apply only to first assistants serving under subsection (a)(1).

(c)(1) is located in § 3345, titled, "Acting officer." Div. C, § 151(b), 112 Stat. 2681–611. Like those subsections, it addresses who may fill a vacant office. See 5 U. S. C. § 3345(c)(2). And like those subsections, it expressly subjects service to the time limits in § 3346, which apply to "the person serving as an acting officer as described under section 3345." § 3346(a). Moreover, relegating officials directed to serve under subsection (c)(1) to some statutorily unnamed, non-acting official status would muddle other provisions of the FVRA. See § 3347(a) (making §§ 3345 and 3346 "the exclusive means for temporarily authorizing an acting official" to serve in a PAS office); § 3349(a)(2) (requiring reporting of "the name of any person serving in an acting capacity and the date such service began immediately upon the designation").

First, nothing in the legislative history of the FVRA indicates that subsection (b)(1) was enacted as a broad prohibition on acting service by all nominees. Under the Vacancies Act of 1868, the FVRA's predecessor, the first assistant to a vacant office served as the acting official unless the President directed another PAS official to do so. See Act of July 23, 1868, ch. 227, 15 Stat. 168–169. The Act did not prohibit any person, first assistant or otherwise, from serving as an acting official while nominated to fill the office. This structure remained in place for over a century.

The events that prompted the FVRA's enactment confirm, in line with the reading above, that the Act altered this preexisting structure to prohibit certain first assistants from serving in an acting capacity while nominated to the vacant office. The service of one acting official, Bill Lann Lee, was the turning point in a broader, long-running dispute between the political branches over Executive Branch compliance with the Vacancies Act of 1868. In 1997, Lee was brought into the Department of Justice to serve as the Acting Assistant Attorney General for the Civil Rights Division after his nomination to the position failed. He continued to serve in an acting capacity after he was renominated to the position. The decision to bring Lee in to serve in the Department of Justice after his failed nomination led to strong congressional criticism. See, *e. g.*, Letter from A. Fois, Assistant Attorney General, Office of Legislative Affairs, to Sen. S. Thurmond, pp. 3–4 (Feb. 24, 1998). Subsection (b)(1) addresses the Lee incident and prevents its recurrence. See S. Rep. No. 105–250, p. 13 (1998) (explaining that an earlier version of subsection (b)(1) "prevent[s] manipulation of first assistants to include persons highly unlikely to be career officials"). It bars a first assistant from serving under subsection (a)(1) while nominated unless the person was the first assistant for a significant period of time before the vacancy arose (90 of the previous 365 days) or the person is the Senate-confirmed first assistant to the vacant office.

In contrast, there is no indication of an intent to depart further from the century-old practice under the Vacancies Act of 1868 and prohibit acting service by other officials nominated to a vacant office. No one has identified congressional statements expressing concern with such service or calling for a broader prohibition. Indeed, an earlier version of subsection (b)(1) unquestionably applied only to first assistants serving under subsection (a)(1), even though the bill permitted the President to designate a PAS official as the acting official instead of the first assistant. See *id.*, at 25. The legislative history does not document the reason for the changes to this subsection. The Court suggests that an unspoken congressional compromise led to an expanded subsection (b)(1). *Ante*, at 306–307. While the compromise it hypothesizes is possible, no evidence supports it, and the absence of any hint that the compromise was hoped for during the development of or debate on the FVRA means that it is not probable.

Second, under the Court's reading of subsection (b)(1), the Executive Branch began violating the FVRA almost immediately after its enactment. Within months, the Department of Justice's Office of Legal Counsel (OLC) advised Executive Branch agencies that the prohibition in subsection (b)(1) "applies only to persons who serve as acting officers by virtue of having been the first assistant to the office." Guidance on Application of Federal Vacancies Reform Act of 1998, 23 Op. OLC 60, 64 (1999). The Government Accountability Office, tasked with aiding congressional enforcement of the FVRA, later reached the same conclusion. See Letter from C. Joyner, Dir., Strategic Issues, to F. Thompson, Chairman, U. S. Senate Committee on Governmental Affairs, Subject: Eligibility Criteria for Individuals To Temporarily Fill Vacant Positions Under the Federal Vacancies Reform Act of 1998, pp. 3–4 (GAO–01–468R, Feb. 23, 2001). Since the enactment of the FVRA, the Senate has received over 100 nominations of persons who continued to serve in an acting capacity after their nomination but had not satisfied the con-

ditions in subsection (b)(1) for acting service by a nominee. See App. A to Brief for United States.

And yet, this legion of would-be violations prompted no response. No evidence suggests that the Senate reacted by requiring any of those nominees to cease their acting service. Cf. Pet. for Cert. 28–29 (citing objections raised after the decision below). The failure to object is all the more glaring in light of the enforcement mechanism written into the FVRA. Section 3349 requires each Executive Branch agency to "immediately" notify the Comptroller General, who heads the Government Accountability Office, and both Houses of Congress of "a vacancy . . . and the date such vacancy occurred," "the name of any person serving in an acting capacity and the date such service began," "the name of any person nominated to the Senate to fill the vacancy and the date such nomination is submitted," and the date a nomination is acted upon. This provision leaves no doubt that Congress had all the information it needed to object to any FVRA violations it perceived.

Congressional silence in the face of a decade-plus practice of giving subsection (b)(1) a narrow reach casts serious doubt on the broader interpretation. It indicates that Congress, like the Executive Branch, interpreted subsection (b)(1) in line with its text to reach only first assistants to the vacant office serving pursuant to subsection (a)(1).

* * *

The FVRA prohibits a limited set of acting officials—non-Senate-confirmed first assistants who serve under subsection (a)(1) and did not serve as the first assistant to the vacant office for at least 90 of the 365 days before the vacancy arose—from performing the duties of a vacant office while also serving as the President's nominee to fill that office. Reading the provision more broadly to apply to all acting officials disregards the full text of the FVRA and finds no support in its purpose or history. The Court prefers that reading. I respectfully dissent.

Syllabus

SCA HYGIENE PRODUCTS AKTIEBOLAG ET AL. *v.* FIRST QUALITY BABY PRODUCTS, LLC, ET AL.

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

No. 15–927. Argued November 1, 2016—Decided March 21, 2017

In 2003, petitioners (collectively, SCA) notified respondents (collectively, First Quality) that their adult incontinence products infringed an SCA patent. First Quality responded that its own patent antedated SCA's patent and made it invalid. In 2004, SCA sought reexamination of its patent in light of First Quality's patent, and in 2007, the Patent and Trademark Office confirmed the SCA patent's validity. SCA sued First Quality for patent infringement in 2010. The District Court granted summary judgment to First Quality on the grounds of equitable estoppel and laches. While SCA's appeal was pending, this Court held that laches could not preclude a claim for damages incurred within the Copyright Act's 3-year limitations period. *Petrella* v. *Metro-Goldwyn-Mayer, Inc.*, 572 U. S. 663, 667. A Federal Circuit panel nevertheless affirmed the District Court's laches holding based on Circuit precedent, which permitted laches to be asserted against a claim for damages incurred within the Patent Act's 6-year limitations period, 35 U. S. C. § 286. The en banc court reheard the case in light of *Petrella* and reaffirmed the original panel's laches holding.

Held: Laches cannot be invoked as a defense against a claim for damages brought within § 286's 6-year limitations period. Pp. 333–346.

(a) *Petrella*'s holding rested on both separation-of-powers principles and the traditional role of laches in equity. A statute of limitations reflects a congressional decision that timeliness is better judged by a hard and fast rule instead of a case-specific judicial determination. Applying laches within a limitations period specified by Congress would give judges a "legislation-overriding" role that exceeds the Judiciary's power. 572 U. S., at 680. Moreover, applying laches within a limitations period would clash with the gap-filling purpose for which the defense developed in the equity courts. Pp. 333–335.

(b) *Petrella*'s reasoning easily fits § 286. There, the Court found in the Copyright Act's language a congressional judgment that a claim filed within three years of accrual cannot be dismissed on timeliness grounds. 572 U. S., at 677. By that same logic, § 286 of the Patent Act represents

Congress's judgment that a patentee may recover damages for any infringement committed within six years of the filing of the claim.

First Quality contends that this case differs from *Petrella* because a true statute of limitations runs forward from the date a cause of action accrues, whereas § 286's limitations period runs backward from the filing of the complaint. However, *Petrella* repeatedly characterized the Copyright Act's limitations period as running backward from the date the suit was filed. First Quality also contends that a true statute of limitations begins to run when the plaintiff discovers a cause of action, which is not the case with § 286's limitations period, but ordinarily, a statute of limitations begins to run on the date that the claim accrues, not when the cause of action is discovered. Pp. 336–338.

(c) The Federal Circuit based its decision on the idea that § 282 of the Patent Act, which provides for "defenses in any action involving the validity or infringement of a patent," creates an exception to § 286 by codifying laches as such a defense, and First Quality argues that laches is a defense within § 282(b)(1) based on "unenforceability." Even assuming that § 282(b)(1) incorporates a laches defense *of some dimension*, it does not necessarily follow that the defense may be invoked to bar a claim for damages incurred within the period set out in § 286. Indeed, it would be exceedingly unusual, if not unprecedented, if Congress chose to include in the Patent Act both a statute of limitations for damages and a laches provision applicable to a damages claim. Neither the Federal Circuit, nor any party, has identified a single federal statute that provides such dual protection against untimely claims. Pp. 338–339.

(d) The Federal Circuit and First Quality rely on lower court patent cases decided before the 1952 Patent Act to argue that § 282 codified a pre-1952 practice of permitting laches to be asserted against damages claims. But the most prominent feature of the relevant legal landscape at that time was the well-established rule that laches cannot be invoked to bar a claim for damages incurred within a limitations period specified by Congress. In light of this rule, which *Petrella* confirmed and restated, 572 U. S., at 678, nothing less than a broad and unambiguous consensus of lower court decisions could support the inference that § 282(b)(1) codifies a very different patent-law-specific rule. Pp. 339–340.

(e) The Federal Circuit and First Quality rely on three types of cases: (1) pre-1938 equity cases; (2) pre-1938 claims at law; and (3) cases decided after the merger of law and equity in 1938. None of these establishes a broad, unambiguous consensus in favor of applying laches to damages claims in the patent context.

Syllabus

Many of the pre-1938 equity cases do not even reveal whether the plaintiff asked for damages, and of the cases in which damages were sought, many merely suggest in dicta that laches might limit damages. The handful of cases that apply laches against a damages claim are too few to establish a settled, national consensus. In any event, the most that can possibly be gathered from a pre-1938 equity case is that laches could defeat a damages claim *in an equity court*, not that the defense could entirely prevent a patentee from recovering damages.

Similarly, even if all three pre-1938 cases at law cited by First Quality squarely held that laches could be applied to a damages claim within the limitations period, that number would be insufficient to overcome the presumption that Congress legislates against the background of general common-law principles. First Quality argues that the small number of cases at law should not count against its position because there were few patent cases brought at law after 1870, but it is First Quality's burden to show that Congress departed from the traditional common-law rule.

As for the post-1938 patent case law, there is scant evidence supporting First Quality's claim that courts continued to apply laches to damages claims after the merger of law and equity. Only two Courts of Appeals held that laches could bar a damages claim, and that does not constitute a settled, uniform practice of applying laches to damages claims. Pp. 341–345.

(f) First Quality's additional arguments are unconvincing and do not require extended discussion. It points to post-1952 Court of Appeals decisions holding that laches can be invoked as a defense against a damages claim, but nothing that Congress has done since 1952 has altered § 282's meaning. As for the various policy arguments presented here, this Court cannot overrule Congress's judgment based on its own policy views. Pp. 345–346.

807 F. 3d 1311, vacated in part and remanded.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. BREYER, J., filed a dissenting opinion, *post*, p. 346.

Martin J. Black argued the cause for petitioners. With him on the briefs were *Kevin M. Flannery*, *Teri-Lynn A. Evans*, *Sharon K. Gagliardi*, *G. Eric Brunstad, Jr.*, and *Stephanos Bibas*.

Seth P. Waxman argued the cause for respondents. With him on the brief were *Thomas G. Saunders*, *Matthew Guar-*

nieri, *Jason D. Hirsch*, *Hanna A. Baek*, *Mark C. Fleming*, *Kenneth P. George*, *Charles R. Macedo*, and *Mark Berkowitz*.*

JUSTICE ALITO delivered the opinion of the Court.

We return to a subject that we addressed in *Petrella* v. *Metro-Goldwyn-Mayer, Inc.*, 572 U. S. 663 (2014): the relationship between the equitable defense of laches and claims for damages that are brought within the time allowed by a statute of limitations. In *Petrella*, we held that laches cannot preclude a claim for damages incurred within the Copyright Act's 3-year limitations period. *Id.*, at 667. "[L]aches," we explained, "cannot be invoked to bar legal relief" "in [the] face of a statute of limitations enacted by Congress." *Id.*, at 679. The question in this case

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*Briefs of *amici curiae* urging reversal were filed for Alliance of Inventor Groups by *John R. Hutchins*, *Erik C. Kane*, and *Mark A. Chapman*; for the American Intellectual Property Law Association by *Nancy J. Mertzel* and *Denise W. DeFranco*; for ART+COM Innovationpool GmbH by *Rosemary J. Piergiovanni*; for Medinol Ltd. by *Richard H. Pildes*, *E. Joshua Rosenkranz*, and *Monte Cooper*; and for Law Professors by *Ariel N. Lavinbuk*.

Briefs of *amici curiae* urging affirmance were filed for Cook Medical LLC by *Dominic P. Zanfardino* and *Danielle C. Gillen*; for Dell et al. by *John Thorne*, *Gregory G. Rapawy*, *Ariela M. Migdal*, *Thomas C. Power*, *Krishnendu Gupta*, *Anthony Peterman*, *Thomas A. Brown*, and *Michele K. Connors*; for the Electronic Frontier Foundation et al. by *Vera Ranieri* and *Charles Duan*; for the Intellectual Property Owners Association by *Gregory A. Castanias*, *Sasha Mayergoyz*, *Kevin H. Rhodes*, and *Steven W. Miller*; for Johnson & Johnson et al. by *Gregory L. Diskant* and *Eugene M. Gelernter*; for Roche Molecular Systems, Inc., by *Kevin E. Noonan* and *Kevin A. Marks*; and for the Washington Legal Foundation by *Richard A. Samp*.

Briefs of *amici curiae* were filed for the American Bar Association by *Paulette Brown*, *Donika P. Pentcheva*, and *Thomas L. Stoll*; for Askeladden LLC by *Kevin J. Culligan* and *Brian T. Burgess*; for Briggs & Stratton Corp. et al. by *Matthew M. Wolf*; for the Intellectual Property Law Association of Chicago by *Margaret M. Duncan*, *Michael V. O'Shaughnessy*, and *Charles W. Shifley*; and for Universal Remote Control, Inc., by *Alan Federbush* and *Douglas A. Miro*.

is whether *Petrella*'s reasoning applies to a similar provision of the Patent Act, 35 U. S. C. § 286. We hold that it does.

I

Petitioners SCA Hygiene Products Aktiebolag and SCA Personal Care, Inc. (collectively, SCA), manufacture and sell adult incontinence products. In October 2003, SCA sent a letter to respondents (collectively, First Quality), alleging that First Quality was making and selling products that infringed SCA's rights under U. S. Patent No. 6,375,646 B1 ('646 patent). App. 54a. First Quality responded that one of *its* patents—U. S. Patent No. 5,415,649 (Watanabe patent)—antedated the '646 patent and revealed "the same diaper construction." *Id.*, at 53a. As a result, First Quality maintained, the '646 patent was invalid and could not support an infringement claim. *Ibid.* SCA sent First Quality no further correspondence regarding the '646 patent, and First Quality proceeded to develop and market its products.

In July 2004, without notifying First Quality, SCA asked the Patent and Trademark Office (PTO) to initiate a reexamination proceeding to determine whether the '646 patent was valid in light of the Watanabe patent. *Id.*, at 49a–51a. Three years later, in March 2007, the PTO issued a certificate confirming the validity of the '646 patent.

In August 2010, SCA filed this patent-infringement action against First Quality. First Quality moved for summary judgment based on laches and equitable estoppel, and the District Court granted that motion on both grounds. 2013 WL 3776173, *12 (WD Ky., July 16, 2013).

SCA appealed to the Federal Circuit, but before the Federal Circuit panel issued its decision, this Court decided *Petrella.* The panel nevertheless held, based on a Federal Circuit precedent, *A. C. Aukerman Co.* v. *R. L. Chaides Constr.*

Co., 960 F. 2d 1020 (1992) (en banc), that SCA's claims were barred by laches.[1]

The Federal Circuit then reheard the case en banc in order to reconsider *Aukerman* in light of *Petrella*. But in a 6-to-5 decision, the en banc court reaffirmed *Aukerman*'s holding that laches can be asserted to defeat a claim for damages incurred within the 6-year period set out in the Patent Act. As it had in *Aukerman*, the en banc court concluded that Congress, in enacting the Patent Act, had "codified a laches defense" that "barred recovery of legal remedies." 807 F. 3d 1311, 1323–1329 (2015). Judge Hughes, joined by four other judges, dissented.[2] *Id.*, at 1333–1342 (opinion concurring in part and dissenting in part). We granted certiorari. 578 U. S. 959 (2016).

II

Laches is "a defense developed by courts of equity" to protect defendants against "unreasonable, prejudicial delay in commencing suit." *Petrella*, *supra*, at 678, 667. See also 1 D. Dobbs, Law of Remedies §2.3(5), p. 89 (2d ed. 1993) (Dobbs) ("The equitable doctrine of laches bars the plaintiff whose unreasonable delay in prosecuting a claim or protecting a right has worked a prejudice to the defendant"). Before the separate systems of law and equity were merged in 1938, the ordinary rule was that laches was available only

[1] The panel reversed the District Court's holding on equitable estoppel, concluding that there are genuine disputes of material fact relating to that defense. 767 F. 3d 1339, 1351 (2014).

[2] The dissenting judges concurred in the portion of the majority opinion relating to the application of laches to equitable relief. 807 F. 3d, at 1334, n. 1 (opinion of Hughes, J.); see also *id.*, at 1331–1333 (majority opinion). We do not address that aspect of the Federal Circuit's judgment. Nor do we address the Federal Circuit's reversal of the District Court's equitable estoppel holding. *Id.*, at 1333 (reinstating original panel holding on equitable estoppel).

in equity courts.[3] See *County of Oneida* v. *Oneida Indian Nation of N. Y.*, 470 U. S. 226, 244, n. 16 (1985). This case turns on the application of the defense to a claim for damages, a quintessential legal remedy. We discussed this subject at length in *Petrella*.

Petrella arose out of a copyright dispute relating to the film Raging Bull. 572 U. S., at 673. The Copyright Act's statute of limitations requires a copyright holder claiming infringement to file suit "within three years after the claim accrued." 17 U. S. C. § 507(b). In *Petrella*, the plaintiff sought relief for alleged acts of infringement that accrued within that 3-year period, but the lower courts nevertheless held that laches barred her claims. See *Petrella* v. *Metro-Goldwyn-Mayer, Inc.*, 695 F. 3d 946 (CA9 2012). We reversed, holding that laches cannot defeat a damages claim brought within the period prescribed by the Copyright Act's statute of limitations. *Petrella*, 572 U. S., at 677–680. And in so holding, we spoke in broad terms. See *id.*, at 679 ("[I]n [the] face of a statute of limitations enacted by Congress, laches cannot be invoked to bar legal relief").

Petrella's holding rested on both separation-of-powers principles and the traditional role of laches in equity. Laches provides a shield against untimely claims, *id.*, at 685, and statutes of limitations serve a similar function. When Congress enacts a statute of limitations, it speaks directly to the issue of timeliness and provides a rule for determining whether a claim is timely enough to permit relief. *Id.*, at 677. The enactment of a statute of limitations necessarily reflects a congressional decision that the timeliness of covered claims is better judged on the basis of a generally hard

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[3] "The federal courts always had equity powers as well as law power, but they operated, until the Federal Rules of Civil Procedure, by distinctly separating equity cases and even had separate equity rules." 1 Dobbs § 2.6(1), at 148, n. 2; see also *Gulfstream Aerospace Corp.* v. *Mayacamas Corp.*, 485 U. S. 271, 279 (1988). It is in this sense that we refer in this opinion to federal courts as equity or law courts.

and fast rule rather than the sort of case-specific judicial determination that occurs when a laches defense is asserted. Therefore, applying laches within a limitations period specified by Congress would give judges a "legislation-overriding" role that is beyond the Judiciary's power. *Id.*, at 680. As we stressed in *Petrella*, "courts are not at liberty to jettison Congress' judgment on the timeliness of suit." *Id.*, at 667.

Applying laches within the limitations period would also clash with the purpose for which the defense developed in the equity courts. As *Petrella* recounted, the "principal application" of laches "was, and remains, to claims of an equitable cast for which the Legislature has provided no fixed time limitation." *Id.*, at 678; see also R. Weaver, E. Shoben, & M. Kelly, Principles of Remedies Law 21 (2d ed. 2011); 1 Dobbs § 2.4(4), at 104; 1 J. Story, Commentaries on Equity Jurisprudence § 55(*a*), p. 73 (2d ed. 1839). Laches is a gap-filling doctrine, and where there is a statute of limitations, there is no gap to fill.[4] *Petrella*, *supra*, at 680–681; see also 1 Dobbs § 2.4(4), at 108 ("[I]f the plaintiff has done only what she is permitted to do by statute, and has not misled the defendant [so as to trigger equitable estoppel], the basis for barring the plaintiff seems to have disappeared").

With *Petrella*'s principles in mind, we turn to the present dispute.

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[4] The dissent argues that there is a "gap" in the statutory scheme because the Patent Act's statute of limitations might permit a patentee to wait until an infringing product has become successful before suing for infringement. *Post*, at 347–348 (opinion of BREYER, J.). We rejected a version of this argument in *Petrella*, 572 U. S., at 682–683, and we do so here. The dissent's argument implies that, insofar as the lack of a laches defense could produce policy outcomes judges deem undesirable, there is a "gap" for laches to fill, notwithstanding the presence of a statute of limitations. That is precisely the kind of "legislation-overriding" judicial role that *Petrella* rightly disclaimed. *Id.*, at 680.

III

A

Although the relevant statutory provisions in *Petrella* and this case are worded differently, *Petrella*'s reasoning easily fits the provision at issue here. As noted, the statute in *Petrella* precludes a civil action for copyright infringement "unless it is commenced within three years after the claim accrued." 17 U. S. C. § 507(b). We saw in this language a congressional judgment that a claim filed within three years of accrual cannot be dismissed on timeliness grounds. 572 U. S., at 677; see also *id.*, at 680–681.

The same reasoning applies in this case. Section 286 of the Patent Act provides: "Except as otherwise provided by law, no recovery shall be had for any infringement committed more than six years prior to the filing of the complaint or counterclaim for infringement in the action." By the logic of *Petrella*, we infer that this provision represents a judgment by Congress that a patentee may recover damages for any infringement committed within six years of the filing of the claim.

B

First Quality contends that this case differs from *Petrella* because § 286 of the Patent Act is not a *true* statute of limitations. A true statute of limitations, we are told, "runs forward from the date a cause of action accrues," but § 286 "runs backward from the time of suit." Brief for Respondents 41.

Petrella cannot reasonably be distinguished on this ground. First Quality thinks it critical that § 286 "runs backward from the time of suit," Brief for Respondents 41, but *Petrella* described the Copyright Act's statute of limitations in almost identical terms. We said that this provision "allows plaintiffs . . . to gain retrospective relief *running only three years back from the date the complaint was filed*." 572 U. S., at 672 (emphasis added). See also *id.*, at 677 ("[A]

successful plaintiff can gain retrospective relief only three years back from the time of suit"). And we described the Copyright Act's statute of limitations as "a three-year look-back limitations period." *Id.*, at 670.

First Quality contends that the application of a true statute of limitations, like the defense of laches (but unlike § 286), takes into account the fairness of permitting the adjudication of a *particular* plaintiff's claim. First Quality argues as follows: "When Congress enacts [a true statute of limitations], it can be viewed as having made a considered judgment about how much delay may occur after a plaintiff knows of a cause of action (*i. e.*, after accrual) before the plaintiff must bring suit—thus potentially leaving no room for judges to evaluate the reasonableness of a plaintiff's delay on a case-by-case basis under laches." Brief for Respondents 42. According to First Quality, § 286 of the Patent Act is different because it "turns only on when the infringer is sued, regardless of when the patentee learned of the infringement." *Ibid.*

This argument misunderstands the way in which statutes of limitations generally work. First Quality says that the accrual of a claim, the event that triggers the running of a statute of limitations, occurs when "a plaintiff knows of a cause of action," *ibid.*, but that is not ordinarily true. As we wrote in *Petrella*, "[a] claim ordinarily accrues 'when [a] plaintiff has a complete and present cause of action.'" 572 U. S., at 670; see *Graham County Soil & Water Conservation Dist.* v. *United States ex rel. Wilson*, 545 U. S. 409, 418–419 (2005). While some claims are subject to a "discovery rule" under which the limitations period begins when the plaintiff discovers or should have discovered the injury giving rise to the claim, that is not a universal feature of statutes of limitations. See, *e. g.*, *ibid.* (limitations period in 31 U. S. C. § 3731(b)(1) begins to run when the cause of action accrues); *TRW Inc.* v. *Andrews*, 534 U. S. 19, 28 (2001) (same with regard to 15 U. S. C. § 1681p). And in *Petrella*, we spe-

cifically noted that "we have not passed on the question" whether the Copyright Act's statute of limitations is governed by such a rule. 572 U. S., at 670, n. 4.

For these reasons, *Petrella* cannot be dismissed as applicable only to what First Quality regards as true statutes of limitations. At least for present purposes, nothing depends on this debatable taxonomy. Compare *Automobile Workers* v. *Hoosier Cardinal Corp.*, 383 U. S. 696, 704 (1966) (describing § 286 as "enacting a uniform period of limitations"); 1 Dobbs § 2.4(4), at 107, and n. 33 (same), with *A. Stucki Co.* v. *Buckeye Steel Castings Co.*, 963 F. 2d 360, 363, n. 3 (CA Fed. 1992) (Section 286 "is not, strictly speaking, a statute of limitations"); *Standard Oil Co.* v. *Nippon Shokubai Kagaku Co., Ltd.*, 754 F. 2d 345, 348 (CA Fed. 1985) ("[Section] 286 cannot properly be called a 'statute of limitations' in the sense that it defeats the right to bring suit").

C

The Federal Circuit based its decision on a different footing. Section 286 of the Patent Act begins with the phrase "[e]xcept as otherwise provided by law," and according to the Federal Circuit, § 282 of the Act is a provision that provides otherwise. In its view, § 282 creates an exception to § 286 by codifying laches as a defense to all patent-infringement claims, including claims for damages suffered within § 286's 6-year period. 807 F. 3d, at 1329–1330. Section 282(b), which does not specifically mention laches, provides in relevant part as follows:

> "The following shall be defenses in any action involving the validity or infringement of a patent and shall be pleaded:
>
> "(1) Noninfringement, absence of liability for infringement or unenforceability."

The en banc majority below never identified which word or phrase in § 282 codifies laches as a defense, but First Qual-

ity argues that laches falls within § 282(b)(1) because laches is a defense based on "unenforceability." Brief for Respondents 28–33.

SCA disputes this interpretation of § 282(b)(1), arguing that laches does not make a patent categorically unenforceable. Reply Brief 6–8; see *Aukerman*, 960 F. 2d, at 1030 ("Recognition of laches as a defense . . . does not affect the general enforceability of the patent against others"). We need not decide this question. Even if we assume for the sake of argument that § 282(b)(1) incorporates a laches defense *of some dimension*, it does not necessarily follow that this defense may be invoked to bar a claim for damages incurred within the period set out in § 286. Indeed, it would be exceedingly unusual, if not unprecedented, if Congress chose to include in the Patent Act both a statute of limitations for damages and a laches provision applicable to a damages claim. Neither the Federal Circuit, nor First Quality, nor any of First Quality's *amici* has identified a single federal statute that provides such dual protection against untimely claims.

D

In holding that Congress codified a damages-limiting laches defense, the Federal Circuit relied on patent cases decided by the lower courts prior to the enactment of the Patent Act. After surveying these cases, the Federal Circuit concluded that by 1952 there was a well-established practice of applying laches to such damages claims and that Congress, in adopting § 282, must have chosen to codify such a defense in § 282(b)(1). 807 F. 3d, at 1321–1329. First Quality now presses a similar argument. We have closely examined the cases on which the Federal Circuit and First Quality rely, and we find that they are insufficient to support the suggested interpretation of the Patent Act. The most prominent feature of the relevant legal landscape at the time of enactment of the Patent Act was the well-established general rule, often repeated by this Court, that laches cannot be

invoked to bar a claim for damages incurred within a limitations period specified by Congress. See *Holmberg* v. *Armbrecht*, 327 U. S. 392, 395 (1946) ("If Congress explicitly puts a limit upon the time for enforcing a right which it created, there is an end of the matter"); *United States* v. *Mack*, 295 U. S. 480, 489 (1935) ("Laches within the term of the statute of limitations is no defense at law"); *Wehrman* v. *Conklin*, 155 U. S. 314, 326 (1894) ("Though a good defense in equity, laches is no defense at law. If the plaintiff at law has brought his action within the period fixed by the statute of limitations, no court can deprive him of his right to proceed"); *Cross* v. *Allen*, 141 U. S. 528, 537 (1891) ("So long as the demands secured were not barred by the statute of limitations, there could be no laches in prosecuting a suit"). *Petrella* confirmed and restated this longstanding rule. 572 U. S., at 678 ("[T]his Court has cautioned against invoking laches to bar legal relief"). If Congress examined the relevant legal landscape when it adopted 35 U. S. C. § 282, it could not have missed our cases endorsing this general rule.

The Federal Circuit and First Quality dismiss the significance of this Court's many reiterations of the general rule because they were not made in patent cases. But as the dissenters below noted, "[p]atent law is governed by the same common-law principles, methods of statutory interpretation, and procedural rules as other areas of civil litigation." 807 F. 3d, at 1333 (opinion of Hughes, J.).

In light of the general rule regarding the relationship between laches and statutes of limitations, nothing less than a broad and unambiguous consensus of lower court decisions could support the inference that § 282(b)(1) codifies a very different patent-law-specific rule. No such consensus is to be found.[5]

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[5] Because we conclude that First Quality fails to show that there was a special laches rule in the patent context, we need not address whether it is ever reasonable to assume that Congress legislated against the background of a lower court consensus rather than the contrary decisions of

IV

The pre-1952 cases on which First Quality relies fall into three groups: (1) cases decided by equity courts before 1938; (2) cases decided by law courts before 1938; and (3) cases decided after the merger of equity and law in 1938. We will discuss each group separately.

A

Pre-1938 Equity Cases

The pre-1938 equity cases are unpersuasive for several, often overlapping reasons. Many do not even reveal whether the plaintiff asked for damages. Indeed, some say nothing at all about the form of relief that was sought, see, *e. g.*, *Cummings* v. *Wilson & Willard Mfg. Co.*, 4 F. 2d 453 (CA9 1925), and others state only that the plaintiff wanted an accounting of profits, *e. g.*, *Westco-Chippewa Pump Co.* v. *Delaware Elec. & Supply Co.* 64 F. 2d 185, 186 (CA3 1933); *Wolf Mineral Process Corp.* v. *Minerals Separation North Am. Corp.*, 18 F. 2d 483, 484 (CA4 1927). The equitable remedy of an accounting, however, was not the same as damages. The remedy of damages seeks to compensate the victim for its loss, whereas the remedy of an accounting, which Congress abolished in the patent context in 1946,[6] sought disgorgement of ill-gotten profits. See *Birdsall* v. *Coolidge*, 93 U. S. 64, 68–69 (1876); 1 Dobbs § 4.3(5), at 611 ("Accounting holds the defendant liable for his profits, not for damages"); A. Walker, Patent Laws § 573, p. 401 (1886) (distinguishing between the two remedies); G. Curtis, Law of Patents

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this Court. Cf. 807 F. 3d, at 1338 (opinion of Hughes, J.) ("For even if there were differing views in the lower [federal] courts, it would be nearly impossible to conclude that there was a uniform understanding of the common law that was inconsistent with Supreme Court precedent. In our judicial system, the Supreme Court's understanding is controlling").

[6] See 60 Stat. 778; see also *Aro Mfg. Co.* v. *Convertible Top Replacement Co.*, 377 U. S. 476, 505 (1964).

§ 341(*a*), p. 461 (4th ed. 1873); 2 J. Pomeroy, Equitable Remedies § 568, p. 977 (1905).

First Quality argues that courts sometimes used the term "accounting" imprecisely to refer to both an accounting of profits and a calculation of damages, Brief for Respondents 19–20, but even if that is true, this loose usage shows only that a reference to "accounting" *might* refer to damages. For that reason, the Federal Circuit did not rely on cases seeking only an accounting, 807 F. 3d, at 1326, n. 7, and we likewise exclude such cases from our analysis.

Turning to the cases that actually refer to damages, we note that many of the cases merely suggest in dicta that laches might limit recovery of damages. See, *e. g.*, *Hartford-Empire Co.* v. *Swindell Bros.*, 96 F. 2d 227, 233, modified on reh'g, 99 F. 2d 61 (CA4 1938). Such dicta "settles nothing." *Jama* v. *Immigration and Customs Enforcement*, 543 U. S. 335, 351, n. 12 (2005). See also *Hartford Underwriters Ins. Co.* v. *Union Planters Bank, N. A.*, 530 U. S. 1, 9–10 (2000); *Metropolitan Stevedore Co.* v. *Rambo*, 515 U. S. 291, 300 (1995).

As for the cases in which laches was actually held to bar a claim for damages, *e. g.*, *Wolf, Sayer & Heller* v. *United States Slicing Mach. Co.*, 261 F. 195, 197–198 (CA7 1919); *A. R. Mosler & Co.* v. *Lurie*, 209 F. 364, 369–370 (CA2 1913), these cases are too few to establish a settled, national consensus. See *Hartford Underwriters*, *supra*, at 10.

Moreover, the most that can possibly be gathered from a pre-1938 equity case is that laches could defeat a damages claim *in an equity court*, not that the defense could entirely prevent a patentee from recovering damages. Before 1870, a patentee wishing to obtain both an injunction against future infringement and damages for past infringement was required to bring two suits, one in an equity court (where injunctive relief but not damages was available), and one in a court of law (where damages but not injunctive relief could be sought). See Beauchamp, The First Patent Litigation Explosion, 125 Yale L. J. 848, 913–914 (2016). To rectify this

situation, Congress enacted a law in 1870 authorizing equity courts to award damages in patent-infringement actions. Rev. Stat. § 4921. And although statutes of limitations did not generally apply in equity, Congress in 1897 enacted a statute that, like the current § 286, imposed a 6-year limitations period for damages claims and made that statute applicable in both law and equity. § 6, 29 Stat. 694. Pointing to cases decided between 1897 and 1938 in which an equity court permitted a defendant in an infringement case to invoke the defense of laches, First Quality contends that Congress, aware of these cases, assumed that the 1952 Act would likewise allow a defendant in an infringement case to claim laches with respect to a claim for damages occurring within a limitations period.

This argument overlooks the fact that a patentee, during the period in question, could always sue for damages in law, where the equitable doctrine of laches did not apply, and could thus avoid any possible laches defense. Thus, accepting First Quality's argument would not return patentees to the position they held from 1897 to 1938. Instead, it would go much further and permit laches entirely to defeat claims like SCA's.[7]

B

Pre-1938 Claims at Law

First Quality cites three Court of Appeals cases in which laches was raised in a proceeding at law and in which, according to First Quality, the defense was held to bar a damages claim. See *Universal Coin Lock Co.* v. *American Sanitary Lock Co.*, 104 F. 2d 781 (CA7 1939); *Banker* v. *Ford Motor Co.*, 69 F. 2d 665 (CA3 1934); *Ford* v. *Huff*, 296 F. 652 (CA5 1924). But even if all of these cases squarely held that

[7] The dissent misunderstands this point and thinks that we dismiss the relevance of the equity cases because they applied laches "to equitable claims without statutes of limitations." *Post*, at 350. But we are well aware that a statute of limitations applied in equity when these cases arose. See *supra* this page.

laches could be applied to a damages claim at law within the limitations period, they would still constitute only a handful of decisions out of the corpus of pre-1952 patent cases, and that would not be enough to overcome the presumption that Congress legislates against the background of general common-law principles. See H. McClintock, Handbook of the Principles of Equity § 28, p. 75 (2d ed. 1948) ("The majority of the courts which have considered the question have refused to enjoin an action at law on the ground of the laches of the plaintiff at law").

In any event, these cases, like the equity cases, offer minimal support for First Quality's position. Not one of these cases even mentions the statute of limitations. One of the three, *Ford*, is not even a patent-infringement case; it is a breach-of-contract case arising out of a patent dispute, 296 F., at 654, and it is unclear whether the ground for decision was laches or equitable estoppel. See 807 F. 3d, at 1340 (opinion of Hughes, J.). Another, *Universal Coin*, applied laches to a legal damages claim without any analysis of the propriety of doing so. 104 F. 2d, at 783.

First Quality protests that the paucity of supporting cases at law should not count against its argument since very few patent-infringement cases were brought at law after 1870. Brief for Respondents 25–26. But the fact remains that it is First Quality's burden to show that Congress departed from the traditional common-law rule highlighted in our cases.[8]

C

Post-Merger Cases

First Quality claims that courts continued to apply laches to damages claims after the merger of law and equity in 1938,

[8] For the same reason, the dissent misses the mark when it demands that we cite cases "holding that laches could *not* bar a patent claim for damages." *Post*, at 352.

but First Quality's evidence is scant. During this period, two Courts of Appeals stated in dicta that laches could bar legal damages claims. See *Chicago Pneumatic Tool Co.* v. *Hughes Tool Co.*, 192 F. 2d 620, 625 (CA10 1951); *Shaffer* v. *Rector Well Equip. Co.*, 155 F. 2d 344, 347 (CA5 1946). And two others actually held that laches could bar a damages claim. See, *e. g.*, *Brennan* v. *Hawley Prods. Co.*, 182 F. 2d 945, 948 (CA7 1950); *Lukens Steel Co.* v. *American Locomotive Co.*, 197 F. 2d 939, 941 (CA2 1952) (alternative holding). This does not constitute a settled, uniform practice of applying laches to damages claims.

After surveying the pre-1952 case law, we are not convinced that Congress, in enacting § 282 of the Patent Act, departed from the general rule regarding the application of laches to damages suffered within the time for filing suit set out in a statute of limitations.

V

First Quality's additional arguments do not require extended discussion. First Quality points to post-1952 Court of Appeals decisions holding that laches can be invoked as a defense against a damages claim. Noting that Congress has amended § 282 without altering the " 'unenforceability' " language that is said to incorporate a laches defense, First Quality contends that Congress has implicitly ratified these decisions. Brief for Respondents 35–36.

We reject this argument. Nothing that Congress has done since 1952 has altered the meaning of § 282. See *Central Bank of Denver, N. A.* v. *First Interstate Bank of Denver, N. A.*, 511 U. S. 164, 186 (1994); *West Virginia Univ. Hospitals, Inc.* v. *Casey*, 499 U. S. 83, 100, 101, and n. 7 (1991).

First Quality and its supporting *amici* also make various policy arguments, but we cannot overrule Congress's judgment based on our own policy views. We note, however, as we did in *Petrella*, that the doctrine of equitable estoppel provides protection against some of the problems that First

Quality highlights, namely, unscrupulous patentees inducing potential targets of infringement suits to invest in the production of arguably infringing products. 572 U. S., at 684–685. Indeed, the Federal Circuit held that there are genuine disputes of material fact as to whether equitable estoppel bars First Quality's claims in this very case. See 807 F. 3d, at 1333.

* * *

Laches cannot be interposed as a defense against damages where the infringement occurred within the period prescribed by § 286. The judgment of the Court of Appeals is vacated in part, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE BREYER, dissenting.

Laches is a doctrine that bars a plaintiff's claim when there has been unreasonable, prejudicial delay in commencing suit. See 1 D. Dobbs, Law of Remedies § 2.3(5), p. 89 (2d ed. 1993). The question before us is whether a court can apply this doctrine in a patent infringement action for damages brought within the statute of limitations. The Court holds that a court cannot. Laches, it says, is a "gap-filling doctrine," generally applicable where there is no statute of limitations. But the 1952 Patent Act contains a statute of limitations. Hence there is "no gap to fill." *Ante*, at 335.

In my view, however, the majority has ignored the fact that, despite the 1952 Act's statute of limitations, there remains a "gap" to fill. See *infra*, at 347–348. Laches fills this gap. And for more than a century courts with virtual unanimity have applied laches in patent damages cases. Congress, when it wrote the 1952 statute, was aware of and intended to codify that judicial practice. I fear that the majority, in ignoring this legal history, opens a new "gap" in the patent law, threatening harmful and unfair legal consequences.

I

Consider the relevant statutory language. Section 286 of the Patent Act says: "*Except as otherwise provided by law*, no recovery shall be had for any infringement committed more than six years prior to the filing of the complaint or counterclaim for infringement in the action." 35 U. S. C. § 286 (emphasis added). Section 282 says what the word "otherwise" means. It tells us that "unenforceability" shall be a defense "in *any* action involving the validity or infringement of a patent." § 282(b) (emphasis added).

Two features of this statutory language are important. First, the limitations provision, unlike those in many other statutes, does *not* set forth a period of time in which to sue, beginning when a claim accrues and then expiring some time later. (The False Claims Act, for example, gives a plaintiff six years from the date of the violation or three years from the date of discovery to file his suit, 31 U. S. C. § 3731(b).) Rather, it permits a patentee to sue at any time after an infringement takes place. It simply limits damages to those caused within the preceding six years. That means that a patentee, after learning of a possible infringement in year 1, might wait until year 10 or year 15 or year 20 to bring a lawsuit. And if he wins, he can collect damages for the preceding six years of infringement.

This fact creates a gap. Why? Because a patentee might wait for a decade or more while the infringer (who perhaps does not know or believe he is an infringer) invests heavily in the development of the infringing product (of which the patentee's invention could be only a small component), while evidence that the infringer might use to, say, show the patent is invalid disappears with time. Then, if the product is a success, the patentee can bring his lawsuit, hoping to collect a significant recovery. And if business-related circumstances make it difficult or impossible for the infringer to abandon its use of the patented invention (*i. e.*, if the infringer is "locked in"), then the patentee can keep bringing

lawsuits, say, in year 10 (collecting damages from years 4 through 10), in year 16 (collecting damages from years 10 through 16), and in year 20 (collecting any remaining damages). The possibility of this type of outcome reveals a "gap." Laches works to fill the gap by barring recovery when the patentee unreasonably and prejudicially delays suit.

Second, the Patent Act's language strongly suggests that Congress, when writing the statutory provisions before us, intended to permit courts to continue to use laches to fill this gap. The statute says that there are "except[ions]" to its 6-year damages limitation rule. It lists "unenforceability" as one of those exceptions. At common law, the word "unenforceability" had a meaning that encompassed laches. See, *e. g.*, *United States* v. *New Orleans Pacific R. Co.*, 248 U. S. 507, 511 (1919) (considering whether an agreement "had become unenforceable by reason of inexcusable laches"). We often read statutes as incorporating common-law meanings. See *Neder* v. *United States*, 527 U. S. 1, 21 (1999). And here there are good reasons for doing so. For one thing, the principal technical drafter of the Patent Act (in a commentary upon which this Court has previously relied, *e. g.*, *Warner-Jenkinson Co.* v. *Hilton Davis Chemical Co.*, 520 U. S. 17, 28 (1997)) stated that § 282 was meant to codify "equitable defenses such as laches." P. Federico, Commentary on the New Patent Act, 35 U. S. C. A. 1, 55 (West 1954). For another thing, there is a long history of prior case law that shows with crystal clarity that Congress intended the statute to keep laches as a defense.

II

The pre-1952 case law that I shall discuss is directly relevant because, as this Court has recognized, the 1952 Patent Act was primarily intended to codify existing law. See *Halo Electronics* v. *Pulse Electronics, Inc.*, 579 U. S. 93, 100 (2016); accord, H. R. Rep. No. 1923, 82d Cong., 2d Sess., 3

(1952) (stating that the "main purpose" of the Patent Act was "codification and enactment" of existing law); 98 Cong. Rec. 9323 (1952) (drafter of the Act stating that it was generally intended to "codif[y] the present patent laws").

Now consider the existing law that the Patent Act's drafters intended the Act to reflect. The decisions that find or say or hold that laches can bar monetary relief in patent infringement actions stretch in a virtually unbroken chain from the late 19th century through the Patent Act's enactment in 1952. They number in the dozens and include every federal appeals court to have considered the matter. (We have found only two contrary decisions, both from the same District Court: *Thorpe* v. *Wm. Filene's Sons Co.*, 40 F. 2d 269 (Mass. 1930); and *Concord* v. *Norton*, 16 F. 477 (CC Mass. 1883).).

Here are the cases from the Federal Courts of Appeals alone: *Lukens Steel Co.* v. *American Locomotive Co.*, 197 F. 2d 939, 941 (CA2 1952); *Chicago Pneumatic Tool Co.* v. *Hughes Tool Co.*, 192 F. 2d 620, 625 (CA10 1951); *Brennan* v. *Hawley Prods. Co.*, 182 F. 2d 945, 948 (CA7 1950); *Shaffer* v. *Rector Well Equip. Co.*, 155 F. 2d 344, 345–347 (CA5 1946); *Rome Grader & Mach. Corp.* v. *J. D. Adams Mfg. Co.*, 135 F. 2d 617, 619–620 (CA7 1943); *France Mfg. Co.* v. *Jefferson Elec. Co.*, 106 F. 2d 605, 609–610 (CA6 1939); *Universal Coin Lock Co.* v. *American Sanitary Lock Co.*, 104 F. 2d 781, 781–783 (CA7 1939); *Union Shipbuilding Co.* v. *Boston Iron & Metal Co.*, 93 F. 2d 781, 783 (CA4 1938); *Gillons* v. *Shell Oil Co. of Cal.*, 86 F. 2d 600, 608–610 (CA9 1936); *Holman* v. *Oil Well Supply Co.*, 83 F. 2d 538 (CA2 1936) (*per curiam*); *Dock & Term. Eng. Co.* v. *Pennsylvania R. Co.*, 82 F. 2d 19, 19–20 (CA3 1936); *Banker* v. *Ford Motor Co.*, 69 F. 2d 665, 666 (CA3 1934); *Westco-Chippewa Pump Co.* v. *Delaware Elec. & Supply Co.*, 64 F. 2d 185, 186–188 (CA3 1933); *Window Glass Mach. Co.* v. *Pittsburgh Plate Glass Co.*, 284 F. 645, 650–651 (CA3 1933); *Dwight & Lloyd Sintering Co.* v. *Greenawalt*, 27 F. 2d 823, 827 (CA2 1928); *George J. Meyer*

Mfg. Co. v. *Miller Mfg. Co.*, 24 F. 2d 505, 507–508 (CA7 1928); *Wolf Mineral Process Corp.* v. *Minerals Separation N. Am. Corp.*, 18 F. 2d 483, 490 (CA4 1927); *Cummings* v. *Wilson & Willard Mfg. Co.*, 4 F. 2d 453, 455 (CA9 1925); *Ford* v. *Huff*, 296 F. 652, 654–655 (CA5 1924); *Wolf, Sayer & Heller, Inc.* v. *United States Slicing Mach. Co.*, 261 F. 195, 197–198 (CA7 1919); *A. R. Mosler & Co.* v. *Lurie*, 209 F. 364, 371 (CA2 1913); *Safety Car Heating & Lighting Co.* v. *Consolidated Car Heating Co.*, 174 F. 658, 662 (CA2 1909) (*per curiam*); *Richardson* v. *D. M. Osborne & Co.*, 93 F. 828, 830–831 (CA2 1899); and *Woodmanse & Hewitt Mfg. Co.* v. *Williams*, 68 F. 489, 493–494 (CA6 1895).

The majority replies that this list proves nothing. After all, it says, nearly all of these decisions come from courts of equity. Courts of equity ordinarily applied laches "'to claims of an equitable cast for which the Legislature ha[d] provided no fixed time limitation,'" *ante*, at 335 (quoting *Petrella* v. *Metro-Goldwyn-Mayer, Inc.*, 572 U. S. 663, 678 (2014)), not to requests for damages, "a quintessential legal remedy," *ante*, at 334. Since "laches is a gap-filling doctrine," the fact that it was applied to equitable claims without statutes of limitations says little about whether it should apply to legal damages claims when "there is a statute of limitations," and therefore "no gap to fill." *Ante*, at 335.

Good reply. But no cigar. Why not? (1) Because in 1897 Congress *enacted a statute of limitations*—very much like the one before us now—for patent claims *brought in courts of equity*. Ch. 391, § 6, 29 Stat. 694 ("[I]n any suit or action . . . there shall be no recovery of profits or damages for any infringement committed more than six years before" filing). Thus, after 1897, *there was no statute of limitations gap for equity courts to fill*, and yet they continued to hold that laches applied. See, *e. g.*, *France Mfg.*, *supra*, at 609 ("[N]otwithstanding the statute of limitations, relief may be denied on the ground of laches . . . "); *Dwight & Lloyd*, *supra*, at 827 (Hand, J.) (explaining how laches operates in conjunc-

tion with the statute of limitations to allow an infringer to "garne[r] the harvest of even the earliest of the 6 years to which recovery is in any event limited, with just confidence that he will not be disturbed").

(2) Because in 1870 Congress enacted a statute that gave courts of equity the power to award legal relief, namely, damages, in patent cases. Act of July 8, 1870, § 55, 16 Stat. 206. Congress did not give law courts an equivalent power to grant injunctive relief in patent suits. As a result, from the late 19th century until the merger of law and equity in 1938, nearly all patent litigation—including suits for damages—took place in courts of equity that were applying laches in conjunction with a statute of limitations. See Lemley, Why Do Juries Decide If Patents Are Valid? 99 Va. L. Rev. 1673, 1704 (2013) (discussing the predominance of equity litigation).

(3) Because Congress recognized that damages suits for patent infringement took place almost exclusively in equity courts, not law courts. Whenever Congress wished to modify patent damages law, it rewrote the statutory provisions governing damages in equity, not law. See, *e. g.*, § 8, 42 Stat. 392 (modifying the equity damages statute to allow equity courts to award a "reasonable sum" even if a patentee had difficulty proving actual damages, but making no change to the legal damages provision). The 1952 Congress, seeking to understand whether, or how, laches applied in patent damages cases, would almost certainly have looked to equity practice.

(4) Because, in any event, in those few pre-law/equity-merger cases in which courts of *law* considered whether laches could bar a patent damages action, they, like their equity counterparts, held that it could. See *Universal Coin*, *supra*, at 781–783; *Banker*, *supra*, at 666; *Ford*, *supra*, at 658. As the majority points out, these cases brought in law courts constitute "only a handful of decisions." *Ante*, at 344. But that is simply because, as I just noted, almost all patent dam-

ages litigation took place in courts of equity. Regardless, before the merger of law and equity both law courts and equity courts recognized laches as a defense. And, after the merger of law and equity in 1938, federal courts *still* applied laches to patent damages claims. *E. g.*, *Brennan*, 182 F. 2d, at 948 (holding that "laches on the part of the plaintiff" can "bar his right to recover damages"). This, of course, would make no sense if laches for patent damages was really an equity-only rule.

Does the majority have any other good reason to ignore the mountain of authority recognizing laches as a defense? It refers to many general statements in opinions and treatises that say that laches is "no defense at law." *United States* v. *Mack*, 295 U. S. 480, 489 (1935). But these statements are not about patent damages cases. They do not claim to encompass the problem at issue here. And they do not prevent Congress from enacting a statute that, recognizing patent litigation's history, combines a statute of limitations with a laches defense. And that is what Congress has done in the Patent Act.

The majority also tries to discredit the persuasiveness of the pre-Patent Act case law authority. It goes through the lengthy list of decisions, finding some judicial statements too vague, others just dicta, and still others having confused an equitable claim for "accounting" with a legal claim for "damages." I agree that it has found weaknesses in the reasoning of some individual cases. But those weaknesses were not sufficient to prevent a 1951 treatise writer from concluding, on the basis of the great weight of authority, that in patent cases, "[l]aches . . . may be interposed in an action at law." 3 A. Deller, Walker on Patents 106 (Cum. Supp. 1951).

In any event, with all its efforts, the majority is unable to identify a single case—not one—from any court of appeals sitting in law or in equity before the merger, or sitting after the merger but before 1952, holding that laches could *not* bar a patent claim for damages. Furthermore, the majority

concedes that it is unable to distinguish, by my count, at least six Court of Appeals cases directly holding that laches *could* bar a patent claim for damages. See *Wolf, Sayer & Heller*, 261 F. 195; *Lurie*, 209 F. 364; *Universal Coin*, 104 F. 2d 781; *Banker*, 69 F. 2d 665; *Brennan*, *supra*; *Lukens*, 197 F. 2d 939. And that is the case law situation that Congress faced when it wrote a statute that, as we have said, sought primarily to codify existing patent law. See *supra*, at 348–349.

The majority tries to minimize the overall thrust of this case law by dividing the cases into subgroups and then concluding that the number of undistinguishable precedents in each subgroup is "too few to establish a settled, national consensus." *Ante*, at 342. The problem with this approach is that, once we look at the body of case law as a whole, rather than in subgroups, we find what I have said and repeated, namely, that *all the cases say the same thing*: Laches applies. The majority's insistence on subdivision makes it sound a little like a Phillies fan who announces that a 9–0 loss to the Red Sox was a "close one." Why close? Because, says the fan, the Phillies lost each inning by only one run.

For the sake of completeness I add that, since 1952, every Federal Court of Appeals to consider the question has held that laches remains available for damages claims brought under the Patent Act. See *A. C. Aukerman Co.* v. *R. L. Chaides Constr. Co.*, 960 F. 2d 1020, 1030 (CA Fed. 1992) (en banc). Yet, Congress has repeatedly reenacted 35 U. S. C. § 282's "unenforceability" language without material change. See, *e. g.*, §§ 15(a), 20(g)(2)(B), 125 Stat. 328, 334. See also *Texas Dept. of Housing and Community Affairs* v. *Inclusive Communities Project, Inc.*, 576 U. S. 519, 536 (2015) (holding that congressional reenactment provides "convincing support for the conclusion that Congress accepted and ratified the unanimous holdings of the Courts of Appeals"); *Microsoft Corp.* v. *i4i Ltd. Partnership*, 564 U. S. 91, 113–114 (2011) (when Congress has "often amended § 282" while "le[aving]

the Federal Circuit's interpretation of § 282 in place," any further "recalibration" should be left to the Legislature).

III

The majority's strongest argument is *Petrella*. There, the Court held that laches could not bar a damages claim brought within the Copyright Act's limitations period. The present case holds roughly the same in respect to the Patent Act, providing a degree of consistency.

There are relevant differences, however, between patent law and copyright law. For one thing, copyright law, unlike patent law, does not contain a century and a half of history during which courts held that laches and a statute of limitations could coexist. When Congress enacted the Patent Act in 1952, patent statutes had already contained a 6-year statute of limitations for 55 years (since 1897), during which time courts had continued to apply laches to patent damages cases. Copyright law, on the other hand, contained no federal statute of limitations until 1957. See *Petrella*, 572 U. S., at 669.

For another thing, the Copyright Act, unlike the Patent Act, has express provisions that mitigate the unfairness of a copyright holder waiting for decades to bring his lawsuit. A copyright holder who tries to lie in wait to see if a defendant's investment will prove successful will discover that the Copyright Act allows that defendant to "prove and offset against profits . . . 'deductible expenses' incurred in generating those profits." *Id.*, at 677 (quoting 17 U. S. C. § 504(b)). Thus, if the defendant invests, say, $50 million in a film, a copyright holder who waits until year 15 (when the film begins to earn a profit) to bring a lawsuit may be limited to recovering the defendant's profits less an apportioned amount of the defendant's initial $50 million investment. But the Patent Act has no such deduction provision.

Further, the Court, in *Petrella*, pointed out that the evidentiary loss that occurs while a copyright holder waits to

bring suit is "at least as likely to affect plaintiffs as it is to disadvantage defendants." 572 U. S., at 684. But that symmetry does not exist to the same degree in patent law. To win a copyright suit the copyright holder must show that the defendant copied his work. The death of witnesses and loss of documents from the time of the alleged infringement can therefore significantly impair the copyright holder's ability to prove his case. There is no such requirement in a patent suit. Patent infringement is a strict-liability offense: There need not be any copying, only an end product (or process) that invades the area the patentee has carved out in his patent.

At the same time, the passage of time may well harm patent *defendants* who wish to show a patent invalid by raising defenses of anticipation, obviousness, or insufficiency. These kinds of defenses can depend upon contemporaneous evidence that may be lost over time, and they arise far more frequently in patent cases than any of their counterparts do in copyright cases. See Brief for Electronic Frontier Foundation et al. as *Amici Curiae* 23 (reporting that of all copyright cases pending as of January 2009, only 2.7% of judgment events resulted in a finding of a lack of ownership or validity of the copyright at issue); Allison, Lemley, & Schwartz, Understanding the Realities of Modern Patent Litigation, 92 Texas L. Rev. 1769, 1778, 1784–1785 (2014) (finding that 70% of summary judgment motions in patent cases filed in 2008–2009 related to anticipation or obviousness). The upshot is an absence here of the symmetrical effect of delay upon which the Court relied in *Petrella*.

Finally, there is a "lock-in" problem that is likely to be more serious where patents are at issue. Once a business chooses to rely on a particular technology, it can become expensive to switch, even if it would have been cheap to do so earlier. See Lee & Melamed, Breaking the Vicious Cycle of Patent Damages, 101 Cornell L. Rev. 385, 409–410 (2016). As a result, a patentee has considerable incentive to delay

suit until the costs of switching—and accordingly the settlement value of a claim—are high. The practical consequences of such delay can be significant, as the facts of this case illustrate: First Quality invested hundreds of millions of dollars in its allegedly infringing technologies during the years that SCA waited to bring its suit. App. to Pet. for Cert. 107a–108a. And *amici* have provided numerous other examples that suggest this fact pattern is far from uncommon. See Brief for Dell et al. 11–19.

I recognize the majority's suggestion that the doctrine of "equitable estoppel" might help alleviate some of these problems. See *ante*, at 344. I certainly hope so. But I would be more "cautious before adopting changes that disrupt the settled expectations of the inventing community." *Festo Corp.* v. *Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U. S. 722, 739 (2002).

I add or confess that I believe that *Petrella* too was wrongly decided. Today's case helps illustrate why I think that *Petrella* started this Court down the wrong track. I would stop, finding adequate grounds to distinguish *Petrella*. But the majority remains "determined to stay the course and continue on, traveling even further away," *Mathis* v. *United States*, 579 U. S. 500, 544 (2016) (ALITO, J., dissenting), from Congress' efforts, in the Patent Act, to promote the "Progress of Science and useful Arts," U. S. Const., Art. I, § 8, cl. 8. Trite but true: Two wrongs don't make a right.

With respect, I dissent.

Syllabus

MANUEL *v.* CITY OF JOLIET, ILLINOIS, ET AL.

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

No. 14–9496. Argued October 5, 2016—Decided March 21, 2017

During a traffic stop, police officers in Joliet, Illinois, searched petitioner Elijah Manuel and found a vitamin bottle containing pills. Suspecting the pills to be illegal drugs, the officers conducted a field test, which came back negative for any controlled substance. Still, they arrested Manuel and took him to the police station. There, an evidence technician tested the pills and got the same negative result, but claimed in his report that one of the pills tested "positive for the probable presence of ecstasy." App. 92. An arresting officer also reported that, based on his "training and experience," he "knew the pills to be ecstasy." *Id.*, at 91. On the basis of those false statements, another officer filed a sworn complaint charging Manuel with unlawful possession of a controlled substance. Relying exclusively on that complaint, a county court judge found probable cause to detain Manuel pending trial.

While Manuel was in jail, the Illinois police laboratory tested the seized pills and reported that they contained no controlled substances. But Manuel remained in custody, spending a total of 48 days in pretrial detention. More than two years after his arrest, but less than two years after his criminal case was dismissed, Manuel filed a 42 U. S. C. § 1983 lawsuit against Joliet and several of its police officers (collectively, the City), alleging that his arrest and detention violated the Fourth Amendment. The District Court dismissed Manuel's suit, holding, first, that the applicable two-year statute of limitations barred his unlawful arrest claim, and, second, that under binding Circuit precedent, pretrial detention following the start of legal process (here, the judge's probable-cause determination) could not give rise to a Fourth Amendment claim. Manuel appealed the dismissal of his unlawful detention claim; the Seventh Circuit affirmed.

Held:

1. Manuel may challenge his pretrial detention on Fourth Amendment grounds. This conclusion follows from the Court's settled precedent. In *Gerstein* v. *Pugh*, 420 U. S. 103, the Court decided that a pretrial detention challenge was governed by the Fourth Amendment, noting that the Fourth Amendment establishes the minimum constitutional "standards and procedures" not just for arrest but also for "detention," *id.*, at 111, and "always has been thought to define" the appropriate

process "for seizures of person[s] . . . in criminal cases, including the detention of suspects pending trial," *id.*, at 125, n. 27. And in *Albright* v. *Oliver*, 510 U. S. 266, a majority of the Court again looked to the Fourth Amendment to assess pretrial restraints on liberty. Relying on *Gerstein*, the plurality reiterated that the Fourth Amendment is the "relevan[t]" constitutional provision to assess the "deprivations of liberty that go hand in hand with criminal prosecutions." *Id.*, at 274; see *id.*, at 290 (Souter, J., concurring in judgment) ("[R]ules of recovery for such harms have naturally coalesced under the Fourth Amendment"). That the pretrial restraints in *Albright* arose pursuant to legal process made no difference, given that they were allegedly unsupported by probable cause.

As reflected in those cases, pretrial detention can violate the Fourth Amendment not only when it precedes, but also when it follows, the start of legal process. The Fourth Amendment prohibits government officials from detaining a person absent probable cause. And where legal process has gone forward, but has done nothing to satisfy the probable-cause requirement, it cannot extinguish a detainee's Fourth Amendment claim. That was the case here: Because the judge's determination of probable cause was based solely on fabricated evidence, it did not expunge Manuel's Fourth Amendment claim. For that reason, Manuel stated a Fourth Amendment claim when he sought relief not merely for his arrest, but also for his pretrial detention. Pp. 364–369.

2. On remand, the Seventh Circuit should determine the claim's accrual date, unless it finds that the City has previously waived its timeliness argument. In doing so, the court should look to the common law of torts for guidance, *Carey* v. *Piphus*, 435 U. S. 247, 257–258, while also closely attending to the values and purposes of the constitutional right at issue. The court may also consider any other still-live issues relating to the elements of and rules applicable to Manuel's Fourth Amendment claim. Pp. 369–373.

590 Fed. Appx. 641, reversed and remanded.

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, and SOTOMAYOR, JJ., joined. THOMAS, J., filed a dissenting opinion, *post*, p. 373. ALITO, J., filed a dissenting opinion, in which THOMAS, J., joined, *post*, p. 374.

Stanley B. Eisenhammer, by appointment of the Court, 577 U. S. 1191, argued the cause for petitioner. With him on the briefs were *Pamela E. Simaga*, *Jeffrey L. Fisher*, *Pamela S. Karlan*, and *Brian Wolfman*.

Ilana H. Eisenstein argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were *Solicitor General Verrilli*, *Principal Deputy Assistant Attorney General Mizer*, *Deputy Solicitor General Gershengorn*, *Douglas N. Letter*, *Barbara L. Herwig*, *Richard Montague*, and *Siegmund F. Fuchs*.

Michael A. Scodro argued the cause for respondents. With him on the brief were *Christopher M. Sheehan*, *Martin J. Shanahan, Jr.*, *Matthew S. Hellman*, *Erica L. Ross*, *David A. Strauss*, and *Sarah M. Konsky*.*

JUSTICE KAGAN delivered the opinion of the Court.

Petitioner Elijah Manuel was held in jail for some seven weeks after a judge relied on allegedly fabricated evidence to find probable cause that he had committed a crime. The primary question in this case is whether Manuel may bring

*Briefs of *amici curiae* urging reversal were filed for the Innocence Network by *Peter D. Isakoff*; for the National Association for Public Defense by *Timothy P. O'Toole* and *Dawn E. Murphy-Johnson*; for the National Association of Criminal Defense Lawyers et al. by *John P. Elwood*, *Joshua S. Johnson*, *David T. Goldberg*, *Jeffrey T. Green*, and *David R. Ortiz*; for the National Police Accountability Project by *Anna Benvenutti Hoffman* and *Alexandra Lampert*; for the U. S. Justice Foundation et al. by *Herbert W. Titus*, *Robert J. Olson*, *William J. Olson*, *Jeremiah L. Morgan*, and *John S. Miller*; and for Albert W. Alschuler by *Mr. Alschuler*, *pro se*, and *Jon Loevy*.

Briefs of *amici curiae* urging affirmance were filed for the State of Illinois et al. by *Lisa Madigan*, Attorney General of Illinois, *Carolyn E. Shapiro*, Solicitor General, and *Brett E. Legner*, Deputy Solicitor General, and by the Attorneys General for their respective jurisdictions as follows: *Cynthia Coffman* of Colorado, *Karl A. Racine* of the District of Columbia, *Douglas S. Chin* of Hawaii, *Derek Schmidt* of Kansas, *Jim Hood* of Mississippi, *Chris Koster* of Missouri, *Michael DeWine* of Ohio, and *Alan Wilson* of South Carolina; for DRI–The Voice of the Defense Bar by *Tillman J. Breckenridge* and *Laura E. Proctor*; for the National Association of Counties et al. by *Lawrence Rosenthal* and *Lisa Soronen*; for the National District Attorney's Association by *Brian J. Murphy* and *Jeffrey R. Johnson*; and for Sheldon H. Nahmod by *Mr. Nahmod*, *pro se*, and *Joshua D. Yount*.

a claim based on the Fourth Amendment to contest the legality of his pretrial confinement. Our answer follows from settled precedent. The Fourth Amendment, this Court has recognized, establishes "the standards and procedures" governing pretrial detention. See, *e. g.*, *Gerstein* v. *Pugh*, 420 U. S. 103, 111 (1975). And those constitutional protections apply even after the start of "legal process" in a criminal case—here, that is, after the judge's determination of probable cause. See *Albright* v. *Oliver*, 510 U. S. 266, 274 (1994) (plurality opinion); *id.*, at 290 (Souter, J., concurring in judgment). Accordingly, we hold today that Manuel may challenge his pretrial detention on the ground that it violated the Fourth Amendment (while we leave all other issues, including one about that claim's timeliness, to the court below).

I

Shortly after midnight on March 18, 2011, Manuel was riding through Joliet, Illinois, in the passenger seat of a Dodge Charger, with his brother at the wheel. A pair of Joliet police officers pulled the car over when the driver failed to signal a turn. See App. 90. According to the complaint in this case, one of the officers dragged Manuel from the car, called him a racial slur, and kicked and punched him as he lay on the ground. See *id.*, at 31–32, 63.[1] The policeman then searched Manuel and found a vitamin bottle containing pills. See *id.*, at 64. Suspecting that the pills were actually illegal drugs, the officers conducted a field test of the bottle's contents. The test came back negative for any controlled substance, leaving the officers with no evidence that Manuel had committed a crime. See *id.*, at 69. Still, the officers arrested Manuel and took him to the Joliet police station. See *id.*, at 70.

[1] Because we here review an order dismissing Manuel's suit, we accept as true all the factual allegations in his complaint. See, *e. g.*, *Leatherman* v. *Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U. S. 163, 164 (1993).

There, an evidence technician tested the pills once again, and got the same (negative) result. See *ibid.* But the technician lied in his report, claiming that one of the pills was "found to be . . . positive for the probable presence of ecstasy." *Id.*, at 92. Similarly, one of the arresting officers wrote in his report that "[f]rom [his] training and experience, [he] knew the pills to be ecstasy." *Id.*, at 91. On the basis of those statements, another officer swore out a criminal complaint against Manuel, charging him with unlawful possession of a controlled substance. See *id.*, at 52–53.

Manuel was brought before a county court judge later that day for a determination of whether there was probable cause for the charge, as necessary for further detention. See *Gerstein*, 420 U. S., at 114 (requiring a judicial finding of probable cause following a warrantless arrest to impose any significant pretrial restraint on liberty); Ill. Comp. Stat., ch. 725, § 5/109–1 (West 2010) (implementing that constitutional rule). The judge relied exclusively on the criminal complaint—which in turn relied exclusively on the police department's fabrications—to support a finding of probable cause. Based on that determination, he sent Manuel to the county jail to await trial. In the somewhat obscure legal lingo of this case, Manuel's subsequent detention was thus pursuant to "legal process"—because it followed from, and was authorized by, the judge's probable-cause determination.[2]

While Manuel sat in jail, the Illinois police laboratory reexamined the seized pills, and on April 1, it issued a report concluding (just as the prior two tests had) that they contained no controlled substances. See App. 51. But for unknown reasons, the prosecution—and, critically for this case,

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[2] Although not addressed in Manuel's complaint, the police department's alleged fabrications did not stop at this initial hearing on probable cause. About two weeks later, on March 30, a grand jury indicted Manuel based on similar false evidence: testimony from one of the arresting officers that "[t]he pills field tested positive" for ecstasy. App. 96 (grand jury minutes).

Manuel's detention—continued for more than another month. Only on May 4 did an assistant state's attorney seek dismissal of the drug charge. See *id.*, at 48, 101. The County Court immediately granted the request, and Manuel was released the next day. In all, he had spent 48 days in pretrial detention.

On April 22, 2013, Manuel brought this lawsuit under 42 U. S. C. § 1983 against the City of Joliet and several of its police officers (collectively, the City). Section 1983 creates a "species of tort liability," *Imbler* v. *Pachtman*, 424 U. S. 409, 417 (1976), for "the deprivation of any rights, privileges, or immunities secured by the Constitution," § 1983. Manuel's complaint alleged that the City violated his Fourth Amendment rights in two ways—first by arresting him at the roadside without any reason, and next by "detaining him in police custody" for almost seven weeks based entirely on made-up evidence. See App. 79–80.[3]

The District Court dismissed Manuel's suit. See 2014 WL 551626 (ND Ill., Feb. 12, 2014). The court first held that the applicable two-year statute of limitations barred Manuel's claim for unlawful arrest, because more than two years had elapsed between the date of his arrest (March 18, 2011) and the filing of his complaint (April 22, 2013). But the court relied on another basis in rejecting Manuel's challenge to his subsequent detention (which stretched from March 18 to May 5, 2011). Binding Circuit precedent, the District Court explained, made clear that pretrial detention following the start of legal process could not give rise to a Fourth Amendment claim. See *id.*, at *1 (citing, *e. g.*, *Newsome* v. *McCabe*,

[3] Manuel's allegation of unlawful detention concerns only the period after the onset of legal process—here meaning, again, after the County Court found probable cause that he had committed a crime. See *supra*, at 361. The police also held Manuel in custody for several hours between his warrantless arrest and his first appearance in court. But throughout this litigation, Manuel has treated that short period as part and parcel of the initial unlawful arrest. See, *e. g.*, Reply Brief 1.

256 F. 3d 747, 750 (CA7 2001)). According to that line of decisions, a § 1983 plaintiff challenging such detention must allege a breach of the Due Process Clause—and must show, to recover on that theory, that state law fails to provide an adequate remedy. See 2014 WL 551626, *1–*2. Because Manuel's complaint rested solely on the Fourth Amendment—and because, in any event, Illinois's remedies were robust enough to preclude the due process avenue—the District Court found that Manuel had no way to proceed. See *ibid.*

The Court of Appeals for the Seventh Circuit affirmed the dismissal of Manuel's claim for unlawful detention (the only part of the District Court's decision Manuel appealed). See 590 Fed. Appx. 641 (2015). Invoking its prior caselaw, the Court of Appeals reiterated that such claims could not be brought under the Fourth Amendment. Once a person is detained pursuant to legal process, the court stated, "the Fourth Amendment falls out of the picture and the detainee's claim that the detention is improper becomes [one of] due process." *Id.*, at 643–644 (quoting *Llovet* v. *Chicago*, 761 F. 3d 759, 763 (CA7 2014)). And again: "When, after the arrest[,] a person is not let go when he should be, the Fourth Amendment gives way to the due process clause as a basis for challenging his detention." 590 Fed. Appx., at 643 (quoting *Llovet*, 761 F. 3d, at 764). So the Seventh Circuit held that Manuel's complaint, in alleging only a Fourth Amendment violation, rested on the wrong part of the Constitution: A person detained following the onset of legal process could at most (although, the court agreed, *not* in Illinois) challenge his pretrial confinement via the Due Process Clause. See 590 Fed. Appx., at 643–644.

The Seventh Circuit recognized that its position makes it an outlier among the Courts of Appeals, with ten others taking the opposite view. See *id.*, at 643; *Hernandez-Cuevas* v. *Taylor*, 723 F. 3d 91, 99 (CA1 2013) ("[T]here is now broad consensus among the circuits that the Fourth Amendment

right to be free from seizure but upon probable cause extends through the pretrial period").[4] Still, the court decided, Manuel had failed to offer a sufficient reason for overturning settled Circuit precedent; his argument, albeit "strong," was "better left for the Supreme Court." 590 Fed. Appx., at 643.

On cue, we granted certiorari. 577 U. S. 1098 (2016).

II

The Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . against unreasonable . . . seizures." Manuel's complaint seeks just that protection. Government officials, it recounts, detained—which is to say, "seiz[ed]"—Manuel for 48 days following his arrest. See App. 79–80; *Brendlin* v. *California*, 551 U. S. 249, 254 (2007) ("A person is seized" whenever officials "restrain[ ] his freedom of movement" such that he is "not free to leave"). And that detention was "unreasonable," the complaint continues, because it was based solely on false evidence, rather than supported by probable cause. See App. 79–80; *Bailey* v. *United States*, 568 U. S. 186, 192 (2013) ("[T]he general rule [is] that Fourth Amendment seizures are 'reasonable' only if based on probable cause to believe that the individual has committed a crime"). By their respective terms, then, Manuel's claim fits the Fourth Amendment, and the Fourth Amendment fits Manuel's claim, as hand in glove.

This Court decided some four decades ago that a claim challenging pretrial detention fell within the scope of the

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[4] See also *Singer* v. *Fulton County Sheriff*, 63 F. 3d 110, 114–118 (CA2 1995); *McKenna* v. *Philadelphia*, 582 F. 3d 447, 461 (CA3 2009); *Lambert* v. *Williams*, 223 F. 3d 257, 260–262 (CA4 2000); *Castellano* v. *Fragozo*, 352 F. 3d 939, 953–954, 959–960 (CA5 2003) (en banc); *Sykes* v. *Anderson*, 625 F. 3d 294, 308–309 (CA6 2010); *Galbraith* v. *County of Santa Clara*, 307 F. 3d 1119, 1126–1127 (CA9 2002); *Wilkins* v. *DeReyes*, 528 F. 3d 790, 797–799 (CA10 2008); *Whiting* v. *Traylor*, 85 F. 3d 581, 584–586 (CA11 1996); *Pitt* v. *District of Columbia*, 491 F. 3d 494, 510–511 (CADC 2007).

Fourth Amendment. In *Gerstein*, two persons arrested without a warrant brought a § 1983 suit complaining that they had been held in custody for "a substantial period solely on the decision of a prosecutor." 420 U. S., at 106. The Court looked to the Fourth Amendment to analyze—and uphold—their claim that such a pretrial restraint on liberty is unlawful unless a judge (or grand jury) first makes a reliable finding of probable cause. See *id.*, at 114, 117, n. 19. The Fourth Amendment, we began, establishes the minimum constitutional "standards and procedures" not just for arrest but also for ensuing "detention." *Id.*, at 111. In choosing that Amendment "as the rationale for decision," the Court responded to a concurring Justice's view that the Due Process Clause offered the better framework: The Fourth Amendment, the majority countered, was "tailored explicitly for the criminal justice system, and it[ ] always has been thought to define" the appropriate process "for seizures of person[s] . . . in criminal cases, including the detention of suspects pending trial." *Id.*, at 125, n. 27. That Amendment, standing alone, guaranteed "a fair and reliable determination of probable cause as a condition for any significant pretrial restraint." *Id.*, at 125. Accordingly, those detained prior to trial without such a finding could appeal to "the Fourth Amendment's protection against unfounded invasions of liberty." *Id.*, at 112; see *id.*, at 114.[5]

[5] The Court repeated the same idea in a follow-on decision to *Gerstein*. In *County of Riverside* v. *McLaughlin*, 500 U. S. 44, 47 (1991), we considered how quickly a jurisdiction must provide the probable-cause determination that *Gerstein* demanded "as a prerequisite to an extended pretrial detention." In holding that the decision should occur within 48 hours of an arrest, the majority understood its "task [as] articulat[ing] more clearly the boundaries of what is permissible under the Fourth Amendment." 500 U. S., at 56. In arguing for still greater speed, the principal dissent invoked the original meaning of "the Fourth Amendment's prohibition of 'unreasonable seizures,' insofar as it applies to seizure of the person." *Id.*, at 60 (Scalia, J., dissenting). The difference between the two opinions was significant, but the commonality still more so: All Justices agreed that the

And so too, a later decision indicates, those objecting to a pretrial deprivation of liberty may invoke the Fourth Amendment when (as here) that deprivation occurs after legal process commences. The § 1983 plaintiff in *Albright* complained of various pretrial restraints imposed after a court found probable cause to issue an arrest warrant, and then bind him over for trial, based on a policeman's unfounded charges. See 510 U. S., at 268–269 (plurality opinion). For uncertain reasons, Albright ignored the Fourth Amendment in drafting his complaint; instead, he alleged that the defendant officer had infringed his substantive due process rights. This Court rejected that claim, with five Justices in two opinions remitting Albright to the Fourth Amendment. See *id.*, at 271 (plurality opinion) ("We hold that it is the Fourth Amendment . . . under which [his] claim must be judged"); *id.*, at 290 (Souter, J., concurring in judgment) ("[I]njuries like those [he] alleges are cognizable in § 1983 claims founded upon . . . the Fourth Amendment") "The Framers," the plurality wrote, "considered the matter of pretrial deprivations of liberty and drafted the Fourth Amendment to address it." *Id.*, at 274. That the deprivations at issue were pursuant to legal process made no difference, given that they were (allegedly) unsupported by probable cause; indeed, neither of the two opinions so much as mentioned that procedural circumstance. Relying on *Gerstein*, the plurality stated that the Fourth Amendment remained the "relevan[t]" constitutional provision to assess the "deprivations of liberty"—most notably, pretrial detention—"that go hand in hand with criminal prosecutions." 510 U. S., at 274; see *id.*, at 290 (Souter, J., concurring in judgment) ("[R]ules of recovery for such harms have naturally coalesced under the Fourth Amendment").

As reflected in *Albright*'s tracking of *Gerstein*'s analysis, pretrial detention can violate the Fourth Amendment not

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Fourth Amendment provides the appropriate lens through which to view a claim involving pretrial detention.

only when it precedes, but also when it follows, the start of legal process in a criminal case. The Fourth Amendment prohibits government officials from detaining a person in the absence of probable cause. See *supra*, at 365. That can happen when the police hold someone without any reason before the formal onset of a criminal proceeding. But it also can occur when legal process itself goes wrong—when, for example, a judge's probable-cause determination is predicated solely on a police officer's false statements. Then, too, a person is confined without constitutionally adequate justification. Legal process has gone forward, but it has done nothing to satisfy the Fourth Amendment's probable-cause requirement. And for that reason, it cannot extinguish the detainee's Fourth Amendment claim—or somehow, as the Seventh Circuit has held, convert that claim into one founded on the Due Process Clause. See 590 Fed. Appx., at 643–644. If the complaint is that a form of legal process resulted in pretrial detention unsupported by probable cause, then the right allegedly infringed lies in the Fourth Amendment.[6]

[6] The opposite view would suggest an untenable result: that a person arrested pursuant to a warrant could not bring a Fourth Amendment claim challenging the reasonableness of even his arrest, let alone any subsequent detention. An arrest warrant, after all, is a way of initiating legal process, in which a magistrate finds probable cause that a person committed a crime. See *Wallace* v. *Kato*, 549 U. S. 384, 389 (2007) (explaining that the seizure of a person was "without legal process" because police officers "did not have a warrant for his arrest"); W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts § 119, pp. 871, 886 (5th ed. 1984) (similar). If legal process is the cut-off point for the Fourth Amendment, then someone arrested (as well as later held) under a warrant procured through false testimony would have to look to the Due Process Clause for relief. But that runs counter to our caselaw. See, *e. g.*, *Whiteley* v. *Warden, Wyo. State Penitentiary*, 401 U. S. 560, 568–569 (1971) (holding that an arrest violated the Fourth Amendment because a magistrate's warrant was not backed by probable cause). And if the Seventh Circuit would reply that arrest warrants are somehow different—that there is legal process and then again there is *legal process*—the next (and in our view unanswerable) question would be why.

For that reason, and contrary to the Seventh Circuit's view, Manuel stated a Fourth Amendment claim when he sought relief not merely for his (pre-legal-process) arrest, but also for his (post-legal-process) pretrial detention.[7] Consider again the facts alleged in this case. Police officers initially arrested Manuel without probable cause, based solely on his possession of pills that had field tested negative for an illegal substance. So (putting timeliness issues aside) Manuel could bring a claim for wrongful arrest under the Fourth Amendment. And the same is true (again, disregarding timeliness) as to a claim for wrongful detention—because Manuel's subsequent weeks in custody were *also* unsupported by probable cause, and so *also* constitutionally unreasonable. No evidence of Manuel's criminality had come to light in between the roadside arrest and the County Court proceeding initiating legal process; to the contrary, yet another test of Manuel's pills had come back negative in that period. All that the judge had before him were police fabrications about the pills' content. The judge's order holding Manuel for trial therefore lacked any proper basis. And that means Manuel's ensuing pretrial detention, no less than his original arrest, violated his Fourth Amendment rights. Or put just a bit differently: Legal process did not expunge Manuel's Fourth Amendment claim because the process he received failed to establish what that Amendment makes es-

[7] Even the City no longer appears to contest that conclusion. On multiple occasions during oral argument in this Court, the City agreed that "a Fourth Amendment right . . . survive[d] the initiation of process" at the hearing in which the county judge found probable cause and ordered detention. Tr. of Oral Arg. 31; see *id.*, at 33 (concurring with the statement that "once [an] individual is brought . . . before a magistrate, and the magistrate using the same bad evidence says, stay here in jail . . . until we get to trial, that that period is a violation of the Fourth Amendment"); *id.*, at 51 (stating that a detainee has "a Fourth Amendment claim" if "misstatements at [such a probable-cause hearing] led to ongoing pretrial seizure").

sential for pretrial detention—probable cause to believe he committed a crime.[8]

III

Our holding—that the Fourth Amendment governs a claim for unlawful pretrial detention even beyond the start of legal process—does not exhaust the disputed legal issues in this

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[8] The dissent goes some way toward claiming that a different kind of pretrial legal process—a grand jury indictment or preliminary examination—does expunge such a Fourth Amendment claim. See *post*, at 382, n. 4 (opinion of ALITO, J.) (raising but "not decid[ing] that question"); *post*, at 383 (suggesting an answer nonetheless). The effect of that view would be to cut off Manuel's claim on the date of his grand jury indictment (March 30)—even though that indictment (like the County Court's probable-cause proceeding) was entirely based on false testimony and even though Manuel remained in detention for 36 days longer. See n. 2, *supra*. Or said otherwise—even though the legal process he received failed to establish the probable cause necessary for his continued confinement. We can see no principled reason to draw that line. Nothing in the nature of the legal proceeding establishing probable cause makes a difference for purposes of the Fourth Amendment: Whatever its precise form, if the proceeding is tainted—as here, by fabricated evidence—and the result is that probable cause is lacking, then the ensuing pretrial detention violates the confined person's Fourth Amendment rights, for all the reasons we have stated. By contrast (and contrary to the dissent's suggestion, see *post*, at 382, n. 3), once a trial has occurred, the Fourth Amendment drops out: A person challenging the sufficiency of the evidence to support both a conviction and any ensuing incarceration does so under the Due Process Clause of the Fourteenth Amendment. See *Jackson* v. *Virginia*, 443 U. S. 307, 318 (1979) (invalidating a conviction under the Due Process Clause when "the record evidence could [not] reasonably support a finding of guilt beyond a reasonable doubt"); *Thompson* v. *Louisville*, 362 U. S. 199, 204 (1960) (striking a conviction under the same provision when "the record [wa]s entirely lacking in evidence" of guilt—such that it could not even establish probable cause). *Gerstein* and *Albright*, as already suggested, both reflected and recognized that constitutional division of labor. See *supra*, at 365–366. In their words, the Framers "drafted the Fourth Amendment" to address "the matter of *pretrial* deprivations of liberty," *Albright*, 510 U. S., at 274 (emphasis added), and the Amendment thus provides "standards and procedures" for "the detention of suspects *pending trial*," *Gerstein*, 420 U. S., at 125, n. 27 (emphasis added).

case. It addresses only the threshold inquiry in a § 1983 suit, which requires courts to "identify the specific constitutional right" at issue. *Albright*, 510 U. S., at 271. After pinpointing that right, courts still must determine the elements of, and rules associated with, an action seeking damages for its violation. See, *e. g.*, *Carey* v. *Piphus*, 435 U. S. 247, 257–258 (1978). Here, the parties particularly disagree over the accrual date of Manuel's Fourth Amendment claim—that is, the date on which the applicable two-year statute of limitations began to run. The timeliness of Manuel's suit hinges on the choice between their proposed dates. But with the following brief comments, we remand that issue to the court below.

In defining the contours and prerequisites of a § 1983 claim, including its rule of accrual, courts are to look first to the common law of torts. See *ibid.* (explaining that tort principles "provide the appropriate starting point" in specifying the conditions for recovery under § 1983); *Wallace* v. *Kato*, 549 U. S. 384, 388–390 (2007) (same for accrual dates in particular). Sometimes, that review of common law will lead a court to adopt wholesale the rules that would apply in a suit involving the most analogous tort. See *id.*, at 388–390; *Heck* v. *Humphrey*, 512 U. S. 477, 483–487 (1994). But not always. Common-law principles are meant to guide rather than to control the definition of § 1983 claims, serving "more as a source of inspired examples than of prefabricated components." *Hartman* v. *Moore*, 547 U. S. 250, 258 (2006); see *Rehberg* v. *Paulk*, 566 U. S. 356, 366 (2012) (noting that "§ 1983 is [not] simply a federalized amalgamation of pre-existing common-law claims"). In applying, selecting among, or adjusting common-law approaches, courts must closely attend to the values and purposes of the constitutional right at issue.

With these precepts as backdrop, Manuel and the City offer competing views about what accrual rule should govern a § 1983 suit challenging post-legal-process pretrial deten-

tion. According to Manuel, that Fourth Amendment claim accrues only upon the dismissal of criminal charges—here, on May 4, 2011, less than two years before he brought his suit. See Reply Brief 2; Brief for United States as *Amicus Curiae* 24–25, n. 16 (taking the same position). Relying on this Court's caselaw, Manuel analogizes his claim to the common-law tort of malicious prosecution. See Reply Brief 9; *Wallace*, 549 U. S., at 389–390. An element of that tort is the "termination of the . . . proceeding in favor of the accused"; and accordingly, the statute of limitations does not start to run until that termination takes place. *Heck*, 512 U. S., at 484, 489. Manuel argues that following the same rule in suits like his will avoid "conflicting resolutions" in § 1983 litigation and criminal proceedings by "preclud[ing] the possibility of the claimant succeeding in the tort action after having been convicted in the underlying criminal prosecution." *Id.*, at 484, 486; see Reply Brief 10–11; Brief for United States as *Amicus Curiae* 24–25, n. 16. In support of Manuel's position, all but two of the ten Courts of Appeals that have recognized a Fourth Amendment claim like his have incorporated a "favorable termination" element and so pegged the statute of limitations to the dismissal of the criminal case. See n. 4, *supra*.[9] That means in the great majority of Circuits, Manuel's claim would be timely.

The City, however, contends that any such Fourth Amendment claim accrues (and the limitations period starts to run) on the date of the initiation of legal process—here, on March 18, 2011, *more* than two years before Manuel filed suit. See Brief for Respondents 33. According to the City, the most analogous tort to Manuel's constitutional claim is not malicious prosecution but false arrest, which accrues when legal process commences. See Tr. of Oral Arg. 47; *Wallace*, 549 U. S., at 389 (noting accrual rule for false arrest suits). And

[9] The two exceptions—the Ninth and D. C. Circuits—have not yet weighed in on whether a Fourth Amendment claim like Manuel's includes a "favorable termination" element.

even if malicious prosecution were the better comparison, the City continues, a court should decline to adopt that tort's favorable-termination element and associated accrual rule in adjudicating a § 1983 claim involving pretrial detention. That element, the City argues, "make[s] little sense" in this context because "the Fourth Amendment is concerned not with the outcome of a prosecution, but with the legality of searches and seizures." Brief for Respondents 16. And finally, the City contends that Manuel forfeited an alternative theory for treating his date of release as the date of accrual: to wit, that his pretrial detention "constitute[d] a continuing Fourth Amendment violation," each day of which triggered the statute of limitations anew. *Id.*, at 29, and n. 6; see Tr. of Oral Arg. 36; see also *Albright*, 510 U. S., at 280 (GINSBURG, J., concurring) (propounding a similar view). So Manuel, the City concludes, lost the opportunity to recover for his pretrial detention by waiting too long to file suit.

We leave consideration of this dispute to the Court of Appeals. "[W]e are a court of review, not of first view." *Cutter* v. *Wilkinson*, 544 U. S. 709, 718, n. 7 (2005). Because the Seventh Circuit wrongly held that Manuel lacked any Fourth Amendment claim once legal process began, the court never addressed the elements of, or rules applicable to, such a claim. And in particular, the court never confronted the accrual issue that the parties contest here.[10] On remand, the

[10] The dissent would have us address these questions anyway, on the ground that "the conflict on the malicious prosecution question was the centerpiece of Manuel's argument in favor of certiorari." *Post*, at 375 (opinion of ALITO, J.). But the decision below did not implicate a "conflict on the malicious prosecution question"—because the Seventh Circuit, in holding that detainees like Manuel could not bring a Fourth Amendment claim at all, never considered whether (and, if so, how) that claim should resemble the malicious prosecution tort. Nor did Manuel's petition for certiorari suggest otherwise. The principal part of his question presented—mirroring the one and only Circuit split involving the decision below—

Court of Appeals should decide that question, unless it finds that the City has previously waived its timeliness argument. See Reply to Brief in Opposition 1–2 (addressing the possibility of waiver); Tr. of Oral Arg. 40–44 (same). And so too, the court may consider any other still-live issues relating to the contours of Manuel's Fourth Amendment claim for unlawful pretrial detention.

* * *

For the reasons stated, we reverse the judgment of the Seventh Circuit and remand the case for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, dissenting.

I join JUSTICE ALITO's opinion in full but write separately regarding the accrual date for a Fourth Amendment unreasonable-seizure claim. JUSTICE ALITO suggests that a claim for unreasonable seizure based on a warrantless arrest might not accrue until the "first appearance" under Illinois law (or the "initial appearance" under federal law)—which ordinarily represents the first judicial determination of probable cause for that kind of arrest—rather than at the time of the arrest. See *post*, at 374, 383 (dissenting opinion); see also *Wallace* v. *Kato*, 549 U. S. 384 (2007) (taking a similar approach). Which of those events is the correct one for pur-

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reads as follows: "[W]hether an individual's Fourth Amendment right to be free from unreasonable seizure continues beyond legal process." Pet. for Cert. i. That is exactly the issue we have resolved. The rest of Manuel's question did indeed express a view as to what would follow from an affirmative answer ("so as to allow a malicious prosecution claim"). *Ibid.* (And as the dissent notes, the Seventh Circuit recounted that he made the same argument in that court. See *post*, at 375–376, n. 1.) But as to that secondary issue, we think (for all the reasons just stated) that Manuel jumped the gun. See *supra*, at 370–372 and this page. And contra the dissent, his doing so provides no warrant for our doing so too.

poses of accrual makes no difference in this case, because both the arrest and the first appearance occurred more than two years before petitioner filed suit. See *ante*, at 362, and n. 3; see also *Wallace*, *supra*, at 387 (petitioner's claim was untimely regardless of whether it accrued on day of arrest or first appearance).

I would leave for another case (one where the question is dispositive) whether an unreasonable-seizure claim would accrue on the date of the first appearance if that appearance occurred on some day after the arrest. I think the answer to that question might turn on the meaning of "seizure," rather than on the presence or absence of any form of legal process. See *post*, at 381–382 (describing the ordinary meaning of "seizure").

JUSTICE ALITO, with whom JUSTICE THOMAS joins, dissenting.

I agree with the Court's holding up to a point: The protection provided by the Fourth Amendment continues to apply after "the start of legal process," *ante*, at 360, if legal process is understood to mean the issuance of an arrest warrant or what is called a "first appearance" under Illinois law and an "initial appearance" under federal law. Ill. Comp. Stat., ch. 725, §§ 5/109–1(a), (e) (West Supp. 2015); Fed. Rule Crim. Proc. 5. But if the Court means more—specifically, that new Fourth Amendment claims continue to accrue as long as pretrial detention lasts—the Court stretches the concept of a seizure much too far.

What is perhaps most remarkable about the Court's approach is that it entirely ignores the question that we agreed to decide, *i. e.*, whether a claim of malicious prosecution may be brought under the Fourth Amendment. I would decide that question and hold that the Fourth Amendment cannot house any such claim. If a malicious prosecution claim may be brought under the Constitution, it must find some other home, presumably the Due Process Clause.

I

The question that was set out in Manuel's petition for a writ of certiorari and that we agreed to decide is as follows:

> "[W]hether an individual's Fourth Amendment right to be free from unreasonable seizure continues beyond legal process *so as to allow a malicious prosecution claim based upon the Fourth Amendment*. This question was raised, but left unanswered, by this Court in *Albright* v. *Oliver*, 510 U. S. 266 (1994). Since then, the First, Second, Third, Fourth, Fifth, Sixth, Ninth, Tenth, Eleventh, and D. C. Circuits have all held that a Fourth Amendment malicious prosecution claim is cognizable through 42 U. S. C. § 1983 ("Section 1983"). Only the Seventh Circuit holds that a Fourth Amendment Section 1983 malicious prosecution claim is not cognizable." Pet. for Cert. i (emphasis added).

The question's reference to "a malicious prosecution claim" was surely no accident. First, the conflict on the malicious prosecution question was the centerpiece of Manuel's argument in favor of certiorari.[1] Second, unless Manuel is given

[1] The Court defends this evasion on the ground that it is resolving "the one and only Circuit split involving the decision below." *Ante*, at 372, n. 10. That is flatly wrong. As the Seventh Circuit acknowledged, its decision in this case and an earlier case on which the decision here relied, *Newsome* v. *McCabe*, 256 F. 3d 747 (2001), conflict with decisions of other Circuits holding that a malicious prosecution claim may be brought under the Fourth Amendment. The decision below states: "Manuel argues that we should reconsider our holding in *Newsome* and recognize a federal claim for malicious prosecution under the Fourth Amendment regardless of the available state remedy. By his count, 10 other Circuits have recognized federal malicious-prosecution claims under the Fourth Amendment." 590 Fed. Appx. 641, 643 (2015). The court refused to overrule *Newsome* and said that "Manuel's argument is better left for the Supreme Court." 590 Fed. Appx., at 643.

Manuel's petition for a writ of certiorari repeatedly made the same point. See Pet. for Cert. 2 ("The Seventh Circuit stands alone among circuits in not allowing a federal malicious prosecution claim grounded on

the benefit of the unique accrual rule for malicious prosecution claims, his claim is untimely, and he is not entitled to relief.

A

I would first consider what I take to be the core of the question presented—whether a "malicious prosecution claim may be brought under the Fourth Amendment." See *ibid.* Manuel asked us to decide that question because it may be critical to his ultimate success in this lawsuit. Why is that so?

The statute of limitations for Manuel's claim is Illinois's general statute of limitations for personal-injury torts, see *Wallace* v. *Kato*, 549 U. S. 384, 387 (2007), which requires suit to be brought within two years of the accrual of the claim,

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the Fourth Amendment"); *id.*, at 10 ("Ten Federal Circuits Correctly Hold That Malicious Prosecution is Actionable as a Fourth Amendment, Section 1983 Claim"); *ibid.* ("[E]ight circuits have held that malicious prosecution is cognizable through a Section 1983 Fourth Amendment claim"). All of the decisions that are cited as being in conflict with the decision below involved malicious prosecution claims and are described as such. See *id.*, at 10–11.

It is certainly true that the question whether a malicious prosecution claim may be brought under the Fourth Amendment subsumes the question whether a Fourth Amendment seizure continues past a first or initial appearance, but answering the latter question does not by any means resolve the Circuit split that Manuel cited and that we took this case to resolve. Suppose that the Seventh Circuit were to hold on remand that a Fourth Amendment seizure may continue up to the date when trial begins but no further. Such a holding would be consistent with the Court's holding in this case, but there would still be a conflict between Seventh Circuit case law and the decisions of other Circuits (on which Manuel relied, see *ibid.*), holding that a standard malicious prosecution claim (which requires a termination favorable to the defendant) may be brought under the Fourth Amendment. See, *e. g.*, *Hernandez-Cuevas* v. *Taylor*, 723 F. 3d 91, 99 (CA1 2013); *Manganiello* v. *New York*, 612 F. 3d 149, 160–161 (CA2 2010); *McKenna* v. *Philadelphia*, 582 F. 3d 447, 461 (CA3 2009); *Evans* v. *Chalmers*, 703 F. 3d 636, 647 (CA4 2012); *Sykes* v. *Anderson*, 625 F. 3d 294, 308 (CA6 2010); *Grider* v. *Auburn*, 618 F. 3d 1240, 1256 (CA11 2010).

see Ill. Comp. Stat., ch. 735, § 5/13–202 (West 2010). Here is the chronology of relevant events in this case:

- March 18, 2011: Manuel is arrested and brought before a State Circuit Court Judge, who makes the required probable-cause finding because Manuel was arrested without a warrant.
- March 31, 2011: Manuel is indicted by a grand jury.
- April 8, 2011: Manuel is arraigned.
- May 4, 2011: An assistant state's attorney moves to dismiss the charges, and the motion is granted.
- May 5, 2011: Manuel is released from jail.
- April 22, 2013: Manuel files his complaint.

Since the statute of limitations requires the commencement of suit within two years of accrual, Manuel's claim is untimely unless it accrued on or after April 22, 2011. And the only events in the above chronology that occurred within that timeframe are the dismissal of the charge against him and his release from custody. A claim of malicious prosecution "does not accrue until the criminal proceedings have terminated in the plaintiff's favor." *Heck* v. *Humphrey*, 512 U. S. 477, 489 (1994); see 3 Restatement (Second) of Torts § 653 (1976). None of the other common-law torts to which Manuel's claim might be compared—such as false arrest or false imprisonment—has such an accrual date. See *Wallace*, *supra*, at 397 (holding that a claim for false imprisonment under the Fourth Amendment accrues when "the claimant becomes detained pursuant to legal process"). Therefore, if Manuel's case is to go forward, it is essential that his claim be treated like a malicious prosecution claim.

B

Although the Court refuses to decide whether Manuel's claim should be so treated, the answer to that question—the

one that the Court actually agreed to review—is straightforward: A malicious prosecution claim cannot be based on the Fourth Amendment.

"The first inquiry in any § 1983 suit," the Court has explained, is "to isolate the precise constitutional violation with which [the defendant] is charged." *Baker* v. *McCollan*, 443 U. S. 137, 140 (1979). In this case, Manuel charges that he was seized without probable cause in violation of the Fourth Amendment. In order to flesh out the elements of this constitutional tort, we must look for "tort analogies." *Wilson* v. *Garcia*, 471 U. S. 261, 277 (1985). Manuel says that the appropriate analog is the tort of malicious prosecution, so we should look to the elements of that tort.

To make out a claim for malicious prosecution, a plaintiff generally must show three things: (1) "that the criminal proceeding was initiated or continued *by the defendant* without 'probable cause,'" W. Keeton, D. Dobbs, P. Keeton, & D. Owen, Prosser and Keeton on Law of Torts 876 (5th ed. 1984) (Prosser and Keeton) (emphasis added); (2) "that the defendant instituted the proceeding 'maliciously,'" *id.*, at 882; and (3) that "the proceedings have terminated in favor of the accused," 3 Restatement (Second) of Torts § 653(b); see also *Heck*, *supra*, at 489.

There is a severe mismatch between these elements and the Fourth Amendment. First, the defendants typically named in Fourth Amendment seizure cases—namely, law enforcement officers—lack the authority to initiate or dismiss a prosecution. See Prosser and Keeton 876. That authority lies in the hands of prosecutors. A law enforcement officer, including the officer responsible for the defendant's arrest, may testify before a grand jury, at a preliminary examination, see Ill. Comp. Stat., ch. 725, §§ 5/109–3(b), 5/109–3.1(b) (West 2010), or hearing, see Fed. Rule Crim. Proc. 5.1, and at trial. But when that occurs, the officer is simply a witness and is not responsible for "the decision to press criminal charges." *Rehberg* v. *Paulk*, 566 U. S. 356, 371 (2012).

Second, while subjective bad faith, *i. e.*, malice, is the core element of a malicious prosecution claim, it is firmly established that the Fourth Amendment standard of reasonableness is fundamentally objective. See *Ashcroft* v. *al-Kidd*, 563 U. S. 731, 736 (2011). These two standards—one subjective and the other objective—cannot coexist. In some instances, importing a malice requirement into the Fourth Amendment would leave culpable conduct unpunished. An officer could act unreasonably, thereby violating the Fourth Amendment, without even a hint of bad faith. In other cases, the malice requirement would cast too wide a net. An officer could harbor intense personal ill will toward an arrestee but still act in an objectively reasonable manner in carrying out an arrest.

Finally, malicious prosecution's favorable-termination element makes no sense when the claim is that a seizure violated the Fourth Amendment. The Fourth Amendment, after all, prohibits *all* unreasonable seizures—regardless of whether a prosecution is ever brought or how a prosecution ends. A "Fourth Amendment wrong" "is fully accomplished," *United States* v. *Calandra*, 414 U. S. 338, 354 (1974), when an impermissible seizure occurs. The Amendment is violated and the injury is inflicted no matter what happens in any later proceedings.

Our cases concerning Fourth Amendment claims brought under 42 U. S. C. § 1983 prove the point. For example, we have recognized that there is no favorable-termination element for a Fourth Amendment false imprisonment claim. See *Wallace*, 549 U. S., at 389–392.[2] An arrestee can file such a claim while his prosecution is pending—and, in at least some situations—will need to do so to ensure that the claim is not time barred. See *id.*, at 392–395. By the same token, an individual may seek damages for pretrial Fourth

[2] In *Wallace*, the Court noted that "[f]alse arrest and false imprisonment overlap" and decided to "refer to the two torts together as false imprisonment." 549 U. S., at 388–389.

Amendment violations *even after a valid conviction*. For example, in *Haring* v. *Prosise*, 462 U. S. 306, 308 (1983), the respondent pleaded guilty to a drug crime without raising any Fourth Amendment issues. He then brought a § 1983 suit, challenging the constitutionality of the search that led to the discovery of the drugs on which his criminal charge was based. The Court held that respondent's suit could proceed—despite his valid conviction. *Id.*, at 323; see also *Heck*, 512 U. S., at 487, n. 7 ("[A] suit for damages attributable to an allegedly unreasonable search may lie even if the challenged search produced evidence that was introduced in a state criminal trial resulting in the § 1983 plaintiff's still-outstanding conviction").

The favorable-termination element is similarly irrelevant to claims like Manuel's. Manuel alleges that he was arrested and held based entirely on falsified evidence. In such a case, it makes no difference whether the prosecution was eventually able to gather and introduce legitimate evidence and to obtain a conviction at trial. The unlawful arrest and detention would still provide grounds for recovery. Accordingly, there is no good reason why the accrual of a claim like Manuel's should have to await a favorable termination of the prosecution.

For all these reasons, malicious prosecution is a strikingly inapt "tort analog[y]," *Wilson*, 471 U. S., at 277, for Fourth Amendment violations. So the answer to the question presented in Manuel's certiorari petition is that the Fourth Amendment does *not* give rise to a malicious prosecution claim, and this means that Manuel's suit is untimely. I would affirm the Seventh Circuit on that basis.

II

Instead of deciding the question on which we granted review, the Court ventures in a different direction. The Court purports to refrain from deciding any issue of timeliness, see *ante*, at 368, but the Court's opinion is certain to be read by some to mean that every moment of pretrial confinement

without probable cause constitutes a violation of the Fourth Amendment. And if that is so, it would seem to follow that new Fourth Amendment claims continue to accrue as long as the pretrial detention lasts.

A

That proposition—that every moment in pretrial detention constitutes a "seizure"—is hard to square with the ordinary meaning of the term. The term "seizure" applies most directly to the act of taking a person into custody or otherwise depriving the person of liberty. It is not generally used to refer to a prolonged detention. Dictionary definitions from around the time of the adoption of the Fourth Amendment define the term "seizure" as a single event—and not a continuing condition. See, *e. g.*, 2 N. Webster, An American Dictionary of the English Language 67 (1828) (Webster) (defining "seizure" as "the act of laying hold on suddenly"); 1 S. Johnson, A Dictionary of the English Language (6th ed. 1785) (defining "seizure" as "the act of taking forcible possession"); 1 T. Dyche & W. Pardon, A New General English Dictionary (14th ed. 1771) (defining "seize" as "to lay or take hold of violently or at unawares, wrongfully, or by force"). As the Court has explained before, "[f]rom the time of the founding to the present, the word 'seizure' has meant a 'taking possession.'" *California* v. *Hodari D.*, 499 U. S. 621, 624 (1991) (quoting 2 Webster 67). And we have cautioned against "stretch[ing] the Fourth Amendment beyond its words and beyond the meaning of arrest." 499 U. S., at 627. The Members of Congress who proposed the Fourth Amendment and the state legislatures that ratified the Amendment would have expected to see a more expansive term, such as "detention" or "confinement," if a Fourth Amendment seizure could be a long event that continued throughout the entirety of the pretrial period.

In my view, a period of detention spanning weeks or months cannot be viewed as one long, continuing seizure, and a pretrial detainee is not "seized" over and over again as

long as he remains in custody.[3] Of course, the damages resulting from an unlawful seizure may continue to mount during the period of confinement caused by the seizure, but no new Fourth Amendment seizure claims accrue after that date.[4] Thus, any possible Fourth Amendment claim that Manuel could bring is time barred.

B

The Court is mistaken in saying that its decision "follows from settled precedent." *Ante*, at 360. The Court reads *Albright* v. *Oliver*, 510 U. S. 266 (1994), and *Gerstein* v. *Pugh*, 420 U. S. 103 (1975), to mean that the Fourth Amendment can be violated "when legal process itself goes wrong," *ante*, at 367, but the accuracy of that interpretation depends on the meaning of "legal process." The Court's reading is correct

[3] By the Court's logic, there is no apparent reason why even a judgment of conviction should cut off the accrual of new Fourth Amendment claims based on the use of fabricated evidence. The Court writes that "[n]othing in the nature of the legal proceeding establishing probable cause makes a difference for purposes of the Fourth Amendment." *Ante*, at 369, n. 8. "[I]f the proceeding is tainted—as here, by fabricated evidence—and the result is that probable cause is lacking," the Court continues, "then the ensuing pretrial detention violates the confined person's Fourth Amendment rights, for all the reasons we have stated." *Ibid.* Although the Court inserts the word "pretrial" in this sentence, its logic provides no reason for that limitation. If a Fourth Amendment seizure continues as long as a person is detained, there is no reason why incarceration after conviction cannot be regarded as a continuing seizure. The Court asserts that the Fourth Amendment "drops out" of the picture after trial, *ibid.*, but it does not explain why this is so. There are facilities that house both pretrial detainees and prisoners serving sentences. If a detainee is transferred following conviction from the section for detainees to the section for prisoners, does the transfer render this person "unseized"?

[4] There is authority for the proposition that a grand jury indictment or a determination of probable cause after an adversary proceeding may be an intervening cause that cuts off liability for an unlawful arrest. See *Wallace* v. *Kato*, 549 U. S. 384, 390 (2007); Prosser and Keeton 885. I would not decide that question here.

if by "legal process" the Court means a determination of probable cause at a first or initial appearance. See Ill. Comp. Stat., ch. 725, § 5/109–1 (West Supp. 2015); Fed. Rule Crim. Proc. 5(b). When an arrest warrant is obtained, the probable-cause determination is made at that time, and there is thus no need for a repeat determination at the first or initial appearance. But when an arrest is made without a warrant, the arrestee, generally within 48 hours, must be brought before a judicial officer, *County of Riverside* v. *McLaughlin*, 500 U. S. 44, 56 (1991), who then completes the arrest process by making the same determination that would have been made as part of the warrant application process. See Ill. Comp. Stat., ch. 725, §§ 5/109–1(a), (b); Fed. Rules Crim. Proc. 4(a), 5(b). Thus, this appearance is an integral part of the process of taking the arrestee into custody and easily falls within the meaning of the term "seizure." But other forms of "legal process," for example, a grand jury indictment or a determination of probable cause at a preliminary examination or hearing, do not fit within the concept of a "seizure," and the cases cited by the Court do not suggest otherwise.

Take *Albright* first. A detective named Oliver procured a warrant for the arrest of Albright for distributing a "look-alike" substance. See *Albright* v. *Oliver*, 975 F. 2d 343, 344 (CA7 1992). The warrant was based on information given to Oliver by the purchaser of the substance. *Ibid.* After learning of the warrant, Albright turned himself in, was booked, and was released on bond. *Ibid.* Oliver testified at what Illinois calls a preliminary examination and apparently related the information provided by the alleged purchaser. *Ibid.* The judge found probable cause, but the charges were later dismissed. *Ibid.* According to the Seventh Circuit, probable cause was sorely lacking, *id.*, at 345, and Albright sued Oliver under 42 U. S. C. § 1983, claiming that Oliver had violated his substantive due process right not to be prosecuted without probable cause. All that this Court held was

that Albright's claim had to be analyzed under the Fourth Amendment, not substantive due process.

The Court now reads *Albright* to mean that a Fourth Amendment seizure continues "after the start of 'legal process,'" *ante*, at 360, but three forms of what might be termed "legal process" were issued in *Albright*: the arrest warrant, the order releasing him on bond after his first appearance, and the order holding him over for trial after the preliminary examination. I agree that Albright's seizure did not end with the issuance of the warrant (that would be ridiculous since he had not even been arrested at that point) or the first appearance, see *ante*, at 366–367, and n. 6, but it is impossible to read anything more into the holding in *Albright*. The terse plurality opinion joined by four Justices said no more; the opinion of Justice Scalia, who joined the plurality opinion, referred only to Albright's "arrest," 510 U. S., at 275 (concurring opinion); and JUSTICES KENNEDY and THOMAS, who concurred in the judgment, did so only because Albright's "allegation of arrest without probable cause must be analyzed under the Fourth Amendment." *Id.*, at 281 (KENNEDY, J., concurring in judgment). To read anything more into *Albright* is to adopt the position taken by just one Member of the plurality, see *id.*, at 279 (GINSBURG, J., concurring) (seizure continues throughout the period of pretrial detention), and the two Justices in dissent, see *id.*, at 307 (Stevens, J., dissenting) (same).

The other precedent on which the Court relies, *Gerstein*, goes no further than *Albright*. All that the Court held in *Gerstein* was that *if* there is no probable-cause finding by a neutral magistrate *before* an arrest, there must be one *after* the arrest. 420 U. S., at 111–116. The Court reasoned that "the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest." *Id.*, at 114. The Court said nothing about whether a claim for a seizure in violation of the Fourth Amendment could accrue after an initial appearance.

The Court thus is forced to rely on dicta—taken out of context—from *Gerstein*. For example, the Court cites *Gerstein*'s statement that "[t]he Fourth Amendment was tailored explicitly for the criminal justice system" and that it "always has been thought to define the 'process that is due' for seizures of person[s] . . . in criminal cases, including the detention of suspects pending trial." *Id.*, at 125, n. 27. This statement hardly shows that a Fourth Amendment seizure continues throughout a period of pretrial detention, and the Court does not mention the very next sentence in *Gerstein*—which suggests that the Fourth Amendment might govern "only the first stage" of a prosecution, eventually giving way to other protections that are also part of our "elaborate system, unique in jurisprudence, designed to safeguard the rights of those accused of criminal conduct." *Ibid.* (emphasis deleted). In the end, *Gerstein* stands for the proposition that the Fourth Amendment requires a post-arrest probable-cause finding by a neutral magistrate; it says nothing about whether the Fourth Amendment extends beyond that or any other "legal process."

* * *

A well-known medical maxim—"first, do no harm"—is a good rule of thumb for courts as well. The Court's decision today violates that rule by avoiding the question presented in order to reach an unnecessary and tricky issue. The resulting opinion will, I fear, inject much confusion into Fourth Amendment law. And it has the potential to do much harm—by dramatically expanding Fourth Amendment liability under § 1983 in a way that does violence to the text of the Fourth Amendment. I respectfully dissent.

Syllabus

ENDREW F., A MINOR, BY AND THROUGH HIS PARENTS AND NEXT FRIENDS, JOSEPH F. ET AL. *v.* DOUGLAS COUNTY SCHOOL DISTRICT RE–1

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

No. 15–827. Argued January 11, 2017—Decided March 22, 2017

The Individuals with Disabilities Education Act (IDEA) offers States federal funds to assist in educating children with disabilities. The Act conditions that funding on compliance with certain statutory requirements, including the requirement that States provide every eligible child a "free appropriate public education," or FAPE, by means of a uniquely tailored "individualized education program," or IEP. 20 U. S. C. §§ 1401(9)(D), 1412(a)(1).

This Court first addressed the FAPE requirement in *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty.* v. *Rowley*, 458 U. S. 176. The Court held that the Act guarantees a substantively adequate program of education to all eligible children, and that this requirement is satisfied if the child's IEP sets out an educational program that is "reasonably calculated to enable the child to receive educational benefits." *Id.*, at 207. For children fully integrated in the regular classroom, this would typically require an IEP "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." *Id.*, at 204. Because the IEP challenged in *Rowley* plainly met this standard, the Court declined "to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the Act," instead "confin[ing] its analysis" to the facts of the case before it. *Id.*, at 202.

Petitioner Endrew F., a child with autism, received annual IEPs in respondent Douglas County School District from preschool through fourth grade. By fourth grade, Endrew's parents believed his academic and functional progress had stalled. When the school district proposed a fifth grade IEP that resembled those from past years, Endrew's parents removed him from public school and enrolled him in a specialized private school, where he made significant progress. School district representatives later presented Endrew's parents with a new fifth grade IEP, but they considered it no more adequate than the original plan. They then sought reimbursement for Endrew's private school tuition by filing a complaint under the IDEA with the Colorado Department of Education. Their claim was denied, and a Federal District Court af-

firmed that determination. The Tenth Circuit also affirmed. That court interpreted *Rowley* to establish a rule that a child's IEP is adequate as long as it is calculated to confer an "educational benefit [that is] merely . . . more than *de minimis*," 798 F. 3d 1329, 1338 (internal quotation marks omitted), and concluded that Endrew's IEP had been "reasonably calculated to enable [him] to make *some* progress," *id.*, at 1342 (internal quotation marks omitted). The court accordingly held that Endrew had received a FAPE.

Held: To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. Pp. 397–404.

(a) *Rowley* and the language of the IDEA point to the approach adopted here. The "reasonably calculated" qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials, informed by their own expertise and the views of a child's parents or guardians; any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal. An IEP must aim to enable the child to make progress; the essential function of an IEP is to set out a plan for pursuing academic and functional advancement. And the degree of progress contemplated by the IEP must be appropriate in light of the child's circumstances, which should come as no surprise. This reflects the focus on the particular child that is at the core of the IDEA, and the directive that States offer instruction "*specially* designed" to meet a child's "*unique* needs" through an "[*i*]*ndividualized* education program." §§ 1401(29), (14) (emphasis added).

Rowley sheds light on what appropriate progress will look like in many cases: For a child fully integrated in the regular classroom, an IEP typically should be "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." 458 U. S., at 204. This guidance is grounded in the statutory definition of a FAPE. One component of a FAPE is "special education," defined as "specially designed instruction . . . to meet the unique needs of a child with a disability." §§ 1401(9), (29). In determining what it means to "meet the unique needs" of a child with a disability, the provisions of the IDEA governing the IEP development process provide guidance. These provisions reflect what the Court said in *Rowley* by focusing on "progress in the general education curriculum." §§ 1414(d)(1)(A)(i)(I)(aa), (II)(aa), (IV)(bb).

Rowley did not provide concrete guidance with respect to a child who is not fully integrated in the regular classroom and not able to achieve on grade level. A child's IEP need not aim for grade-level advancement

if that is not a reasonable prospect. But that child's educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.

This standard is more demanding than the "merely more than *de minimis*" test applied by the Tenth Circuit. It cannot be right that the IDEA generally contemplates grade-level advancement for children with disabilities who are fully integrated in the regular classroom, but is satisfied with barely more than *de minimis* progress for children who are not. Pp. 397–403.

(b) Endrew's parents argue that the Act goes even further and requires States to provide children with disabilities educational opportunities that are "substantially equal to the opportunities afforded children without disabilities." Brief for Petitioner 40. But the lower courts in *Rowley* adopted a strikingly similar standard, and this Court rejected it in clear terms. Mindful that Congress has not materially changed the statutory definition of a FAPE since *Rowley* was decided, this Court declines to interpret the FAPE provision in a manner so plainly at odds with the Court's analysis in that case. P. 403.

(c) The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created. This absence of a bright-line rule should not be mistaken for "an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review." *Rowley*, 458 U. S., at 206. At the same time, deference is based on the application of expertise and the exercise of judgment by school authorities. The nature of the IEP process ensures that parents and school representatives will fully air their respective opinions on the degree of progress a child's IEP should pursue; thus, by the time any dispute reaches court, school authorities will have had the chance to bring their expertise and judgment to bear on areas of disagreement. See §§ 1414, 1415; *Rowley*, 458 U. S., at 208–209. At that point, a reviewing court may fairly expect those authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances. Pp. 403–404.

798 F. 3d 1329, vacated and remanded.

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

Jeffrey L. Fisher argued the cause for petitioner. With him on the briefs were *David T. Goldberg*, *Pamela S. Kar-*

lan, *Jack D. Robinson*, *Brian Wolfman*, and *Wyatt G. Sassman*.

Irving L. Gornstein argued the cause for the United States as *amicus curiae* urging vacatur. With him on the brief were *Acting Solicitor General Gershengorn*, *Principal Deputy Assistant Attorney General Gupta*, *Roman Martinez*, *Sharon M. McGowan*, *Jennifer Levin Eichhorn*, *James Cole, Jr.*, *Francisco Lopez*, and *Eric Moll*.

Neal Kumar Katyal argued the cause for respondent. With him on the brief were *Frederick Liu*, *Eugene A. Sokoloff*, *W. Stuart Stuller*, *Daniel D. Domenico*, and *William E. Trachman*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Delaware et al. by *Matthew P. Denn*, Attorney General of Delaware, *Aaron R. Goldstein*, State Solicitor, and *Patricia A. Davis* and *Laura B. Makransky*, Deputy Attorneys General, *Maura Healy*, Attorney General of Massachusetts, and *Hector H. Balderas*, Attorney General of New Mexico; for Advocates for Children of New York et al. by *Alan E. Schoenfeld* and *Daniel Winik*; for the Coalition of Texans with Disabilities et al. by *Andrew K. Cuddy* and *Sonja D. Kerr*; for the Council of Parent Attorneys and Advocates et al. by *Caroline J. Heller*, *Selene Almazan-Altobelli*, *Alexis Casillas*, *Catherine Merino Reisman*, and *Ellen Saideman*; for Disability Rights Organizations et al. by *Gregory J. Wallance*, *Michael Churchill*, *Daniel R. Unumb*, *Gary S. Mayerson*, and *Maria C. McGinley*; for Former Officials of the U. S. Department of Education by *Aaron M. Panner* and *Ira A. Burnim*; for the National Center for Special Education in Charter Schools et al. by *William P. Bethke* and *Lisa T. Scruggs*; for the National Disability Rights Network et al. by *Marc A. Hearron*, *Linda A. Arnsbarger*, *Bryan J. Leitch*, *Samuel R. Bagenstos*, *Arlene B. Mayerson*, and *Ronald M. Hager*; for the National Education Association by *Alice O'Brien*, *Jason Walta*, and *Lubna A. Alam*; and for 118 Members of Congress by *Matthew S. Hellman*, *David A. Strauss*, *Sarah M. Konsky*, and *Michael A. Scodro*.

Briefs of *amici curiae* urging affirmance were filed for the Colorado State Board of Education et al. by *Cynthia H. Coffman*, Attorney General of Colorado, *Frederick R. Yarger*, Solicitor General, *Glenn E. Roper*, Deputy Solicitor General, and *Julie C. Tolleson*, First Assistant Attorney General; for AASA, The School Superintendents Association et al. by *Ruthanne M. Deutsch*, *Hyland Hunt*, and *Christopher P. Borreca*; for the Council of the Great City Schools by *John W. Borkowski*, *Julie Wright*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Thirty-five years ago, this Court held that the Individuals with Disabilities Education Act establishes a substantive right to a "free appropriate public education" for certain children with disabilities. *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty.* v. *Rowley*, 458 U. S. 176 (1982). We declined, however, to endorse any one standard for determining "when handicapped children are receiving sufficient educational benefits to satisfy the requirements of the Act." *Id.*, at 202. That "more difficult problem" is before us today. *Ibid.*

I

A

The Individuals with Disabilities Education Act (IDEA or Act) offers States federal funds to assist in educating children with disabilities. 84 Stat. 175, as amended, 20 U. S. C. § 1400 *et seq.*; see *Arlington Central School Dist. Bd. of Ed.* v. *Murphy*, 548 U. S. 291, 295 (2006). In exchange for the funds, a State pledges to comply with a number of statutory conditions. Among them, the State must provide a free appropriate public education—a FAPE, for short—to all eligible children. § 1412(a)(1).

A FAPE, as the Act defines it, includes both "special education" and "related services." § 1401(9). "Special education" is "specially designed instruction . . . to meet the unique needs of a child with a disability"; "related services" are the support services "required to assist a child . . . to benefit from" that instruction. §§ 1401(26), (29). A State covered by the IDEA must provide a disabled child with such

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Halbert, *Derek T. Teeter*, and *Michael T. Raupp*; and for the National School Boards Association et al. by *Francisco M. Negrón, Jr.*, and *Emily E. Sugrue.*

Stephen A. Miller filed a brief for the National Association of State Directors of Special Education as *amicus curiae.*

special education and related services "in conformity with the [child's] individualized education program," or IEP. § 1401(9)(D).

The IEP is "the centerpiece of the statute's education delivery system for disabled children." *Honig* v. *Doe*, 484 U. S. 305, 311 (1988). A comprehensive plan prepared by a child's "IEP Team" (which includes teachers, school officials, and the child's parents), an IEP must be drafted in compliance with a detailed set of procedures. § 1414(d)(1)(B) (internal quotation marks omitted). These procedures emphasize collaboration among parents and educators and require careful consideration of the child's individual circumstances. § 1414. The IEP is the means by which special education and related services are "tailored to the unique needs" of a particular child. *Rowley*, 458 U. S., at 181.

The IDEA requires that every IEP include "a statement of the child's present levels of academic achievement and functional performance," describe "how the child's disability affects the child's involvement and progress in the general education curriculum," and set out "measurable annual goals, including academic and functional goals," along with a "description of how the child's progress toward meeting" those goals will be gauged. §§ 1414(d)(1)(A)(i)(I)–(III). The IEP must also describe the "special education and related services . . . that will be provided" so that the child may "advance appropriately toward attaining the annual goals" and, when possible, "be involved in and make progress in the general education curriculum." § 1414(d)(1)(A)(i)(IV).

Parents and educators often agree about what a child's IEP should contain. But not always. When disagreement arises, parents may turn to dispute resolution procedures established by the IDEA. The parties may resolve their differences informally, through a "[p]reliminary meeting," or, somewhat more formally, through mediation. §§ 1415(e), (f)(1)(B)(i). If these measures fail to produce accord, the parties may proceed to what the Act calls a "due process

hearing" before a state or local educational agency. §§ 1415(f)(1)(A), (g). And at the conclusion of the administrative process, the losing party may seek redress in state or federal court. § 1415(i)(2)(A).

B

This Court first addressed the FAPE requirement in *Rowley*.[1] Plaintiff Amy Rowley was a first grader with impaired hearing. Her school district offered an IEP under which Amy would receive instruction in the regular classroom and spend time each week with a special tutor and a speech therapist. The district proposed that Amy's classroom teacher speak into a wireless transmitter and that Amy use an FM hearing aid designed to amplify her teacher's words; the district offered to supply both components of this system. But Amy's parents argued that the IEP should go further and provide a sign-language interpreter in all of her classes. Contending that the school district's refusal to furnish an interpreter denied Amy a FAPE, Amy's parents initiated administrative proceedings, then filed a lawsuit under the Act. *Rowley*, 458 U. S., at 184–185.

The District Court agreed that Amy had been denied a FAPE. The court acknowledged that Amy was making excellent progress in school: She was "perform[ing] better than the average child in her class" and "advancing easily from grade to grade." *Id.*, at 185 (internal quotation marks omitted). At the same time, Amy "under[stood] considerably less of what goes on in class than she could if she were not deaf." *Ibid.* (internal quotation marks omitted). Concluding that "it has been left entirely to the courts and the hearing officers to give content to the requirement of an 'ap-

[1] The requirement was initially set out in the Education of the Handicapped Act, which was later amended and renamed the IDEA. See Pub. L. 101–476, § 901(a), 104 Stat. 1141. For simplicity's sake—and to avoid "acronym overload"—we use the latter title throughout this opinion. *Fry* v. *Napoleon Community Schools*, 580 U. S. 154, 160, n. 1 (2017).

propriate education,'" 483 F. Supp. 528, 533 (SDNY 1980), the District Court ruled that Amy's education was not "appropriate" unless it provided her "an opportunity to achieve [her] full potential commensurate with the opportunity provided to other children." *Rowley*, 458 U. S., at 185–186 (internal quotation marks omitted). The Second Circuit agreed with this analysis and affirmed.

In this Court, the parties advanced starkly different understandings of the FAPE requirement. Amy's parents defended the approach of the lower courts, arguing that the school district was required to provide instruction and services that would provide Amy an "equal educational opportunity" relative to children without disabilities. *Id.*, at 198 (internal quotation marks omitted). The school district, for its part, contended that the IDEA "did not create substantive individual rights"; the FAPE provision was instead merely aspirational. Brief for Petitioners in *Rowley*, O. T. 1981, No. 80–1002, pp. 28, 41.

Neither position carried the day. On the one hand, this Court rejected the view that the IDEA gives "courts *carte blanche* to impose upon the States whatever burden their various judgments indicate should be imposed." *Rowley*, 458 U. S., at 190, n. 11. After all, the statutory phrase "free appropriate public education" was expressly defined in the Act, even if the definition "tend[ed] toward the cryptic rather than the comprehensive." *Id.*, at 188. This Court went on to reject the "equal opportunity" standard adopted by the lower courts, concluding that "free appropriate public education" was a phrase "too complex to be captured by the word 'equal' whether one is speaking of opportunities or services." *Id.*, at 199. The Court also viewed the standard as "entirely unworkable," apt to require "impossible measurements and comparisons" that courts were ill suited to make. *Id.*, at 198.

On the other hand, the Court also rejected the school district's argument that the FAPE requirement was actually no

requirement at all. *Id.*, at 200. Instead, the Court carefully charted a middle path. Even though "Congress was rather sketchy in establishing substantive requirements" under the Act, *id.*, at 206, the Court nonetheless made clear that the Act guarantees a substantively adequate program of education to all eligible children, *id.*, at 200–202, 207; see *id.*, at 193, n. 15 (describing the "substantive standard . . . implicit in the Act"). We explained that this requirement is satisfied, and a child has received a FAPE, if the child's IEP sets out an educational program that is "reasonably calculated to enable the child to receive educational benefits." *Id.*, at 207. For children receiving instruction in the regular classroom, this would generally require an IEP "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." *Id.*, at 204; see also *id.*, at 203, n. 25.

In view of Amy Rowley's excellent progress and the "substantial" suite of specialized instruction and services offered in her IEP, we concluded that her program satisfied the FAPE requirement. *Id.*, at 202. But we went no further. Instead, we expressly "confine[d] our analysis" to the facts of the case before us. *Ibid.* Observing that the Act requires States to "educate a wide spectrum" of children with disabilities and that "the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end," we declined "to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the Act." *Ibid.*

C

Petitioner Endrew F. was diagnosed with autism at age two. Autism is a neurodevelopmental disorder generally marked by impaired social and communicative skills, "engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences."

34 CFR § 300.8(c)(1)(i) (2016); see Brief for Petitioner 8. A child with autism qualifies as a "[c]hild with a disability" under the IDEA, and Colorado (where Endrew resides) accepts IDEA funding. § 1401(3)(A). Endrew is therefore entitled to the benefits of the Act, including a FAPE provided by the State.

Endrew attended school in respondent Douglas County School District from preschool through fourth grade. Each year, his IEP Team drafted an IEP addressed to his educational and functional needs. By Endrew's fourth grade year, however, his parents had become dissatisfied with his progress. Although Endrew displayed a number of strengths—his teachers described him as a humorous child with a "sweet disposition" who "show[ed] concern[ ] for friends"—he still "exhibited multiple behaviors that inhibited his ability to access learning in the classroom." Supp. App. 182a; 798 F. 3d 1329, 1336 (CA10 2015). Endrew would scream in class, climb over furniture and other students, and occasionally run away from school. *Id.*, at 1336. He was afflicted by severe fears of commonplace things like flies, spills, and public restrooms. As Endrew's parents saw it, his academic and functional progress had essentially stalled: Endrew's IEPs largely carried over the same basic goals and objectives from one year to the next, indicating that he was failing to make meaningful progress toward his aims. His parents believed that only a thorough overhaul of the school district's approach to Endrew's behavioral problems could reverse the trend. But in April 2010, the school district presented Endrew's parents with a proposed fifth grade IEP that was, in their view, pretty much the same as his past ones. So his parents removed Endrew from public school and enrolled him at Firefly Autism House, a private school that specializes in educating children with autism.

Endrew did much better at Firefly. The school developed a "behavioral intervention plan" that identified Endrew's most problematic behaviors and set out particular strategies

for addressing them. See Supp. App. 198a–201a. Firefly also added heft to Endrew's academic goals. Within months, Endrew's behavior improved significantly, permitting him to make a degree of academic progress that had eluded him in public school.

In November 2010, some six months after Endrew started classes at Firefly, his parents again met with representatives of the Douglas County School District. The district presented a new IEP. Endrew's parents considered the IEP no more adequate than the one proposed in April, and rejected it. They were particularly concerned that the stated plan for addressing Endrew's behavior did not differ meaningfully from the plan in his fourth grade IEP, despite the fact that his experience at Firefly suggested that he would benefit from a different approach.

In February 2012, Endrew's parents filed a complaint with the Colorado Department of Education seeking reimbursement for Endrew's tuition at Firefly. To qualify for such relief, they were required to show that the school district had not provided Endrew a FAPE in a timely manner prior to his enrollment at the private school. See § 1412(a)(10)(C)(ii). Endrew's parents contended that the final IEP proposed by the school district was not "reasonably calculated to enable [Endrew] to receive educational benefits" and that Endrew had therefore been denied a FAPE. *Rowley*, 458 U. S., at 207. An Administrative Law Judge (ALJ) disagreed and denied relief.

Endrew's parents sought review in Federal District Court. Giving "due weight" to the decision of the ALJ, the District Court affirmed. 2014 WL 4548439, *5 (D Colo., Sept. 15, 2014) (quoting *Rowley*, 458 U. S., at 206). The court acknowledged that Endrew's performance under past IEPs "did not reveal immense educational growth." 2014 WL 4548439, *9. But it concluded that annual modifications to Endrew's IEP objectives were "sufficient to show a pattern of, at the least, minimal progress." *Ibid.* Because En-

drew's previous IEPs had enabled him to make this sort of progress, the court reasoned, his latest, similar IEP was reasonably calculated to do the same thing. In the court's view, that was all *Rowley* demanded. 2014 WL 4548439, *9.

The Tenth Circuit affirmed. The Court of Appeals recited language from *Rowley* stating that the instruction and services furnished to children with disabilities must be calculated to confer "*some* educational benefit." 798 F. 3d, at 1338 (quoting *Rowley*, 458 U. S., at 200; emphasis added by Tenth Circuit). The court noted that it had long interpreted this language to mean that a child's IEP is adequate as long as it is calculated to confer an "educational benefit [that is] merely . . . more than *de minimis*." 798 F. 3d, at 1338 (internal quotation marks omitted). Applying this standard, the Tenth Circuit held that Endrew's IEP had been "reasonably calculated to enable [him] to make *some* progress." *Id.*, at 1342 (internal quotation marks omitted). Accordingly, he had not been denied a FAPE.

We granted certiorari. 579 U. S. 969 (2016).

II

A

The Court in *Rowley* declined "to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the Act." 458 U. S., at 202. The school district, however, contends that *Rowley* nonetheless established that "an IEP need not promise any particular *level* of benefit," so long as it is " 'reasonably calculated' to provide *some* benefit, as opposed to *none*." Brief for Respondent 15.

The district relies on several passages from *Rowley* to make its case. It points to our observation that "any substantive standard prescribing the level of education to be accorded" children with disabilities was "[n]oticeably absent from the language of the statute." 458 U. S., at 189; see Brief for Respondent 14. The district also emphasizes the

Court's statement that the Act requires States to provide access to instruction "sufficient to confer *some* educational benefit," reasoning that any benefit, however minimal, satisfies this mandate. Brief for Respondent 15 (quoting *Rowley*, 458 U. S., at 200). Finally, the district urges that the Court conclusively adopted a "some educational benefit" standard when it wrote that "the intent of the Act was more to open the door of public education to handicapped children . . . than to guarantee any particular level of education." *Id.*, at 192; see Brief for Respondent 14.

These statements in isolation do support the school district's argument. But the district makes too much of them. Our statement that the face of the IDEA imposed no explicit substantive standard must be evaluated alongside our statement that a substantive standard was "implicit in the Act." *Rowley*, 458 U. S., at 193, n. 15. Similarly, we find little significance in the Court's language concerning the requirement that States provide instruction calculated to "confer some educational benefit." *Id.*, at 200. The Court had no need to say anything more particular, since the case before it involved a child whose progress plainly demonstrated that her IEP was designed to deliver more than adequate educational benefits. See *id.*, at 202, 209–210. The Court's principal concern was to correct what it viewed as the surprising rulings below: that the IDEA effectively empowers judges to elaborate a federal common law of public education, and that a child performing *better* than most in her class had been denied a FAPE. The Court was not concerned with precisely articulating a governing standard for closer cases. See *id.*, at 202. And the statement that the Act did not "guarantee any particular level of education" simply reflects the unobjectionable proposition that the IDEA cannot and does not promise "any particular [educational] outcome." *Id.*, at 192 (internal quotation marks omitted). No law could do that—for any child.

More important, the school district's reading of these isolated statements runs headlong into several points on which

Rowley is crystal clear. For instance—just after saying that the Act requires instruction that is "sufficient to confer some educational benefit"—we noted that "[t]he determination of when handicapped children are receiving *sufficient* educational benefits . . . presents a . . . difficult problem." *Id.*, at 200, 202 (emphasis added). And then we expressly declined "to establish any one test for determining the *adequacy* of educational benefits" under the Act. *Id.*, at 202 (emphasis added). It would not have been "difficult" for us to say when educational benefits are sufficient if we had just said that *any* educational benefit was enough. And it would have been strange to refuse to set out a test for the adequacy of educational benefits if we had just done exactly that. We cannot accept the school district's reading of *Rowley*.

B

While *Rowley* declined to articulate an overarching standard to evaluate the adequacy of the education provided under the Act, the decision and the statutory language point to a general approach: To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

The "reasonably calculated" qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials. *Id.*, at 207. The Act contemplates that this fact-intensive exercise will be informed not only by the expertise of school officials, but also by the input of the child's parents or guardians. *Id.*, at 208–209. Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal. *Id.*, at 206–207.

The IEP must aim to enable the child to make progress. After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement. See §§1414(d)(1)(A)(i)(I)–(IV). This reflects the broad purpose of the IDEA, an "ambitious" piece of legislation enacted "in

response to Congress' perception that a majority of handicapped children in the United States 'were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to "drop out."'" *Rowley*, 458 U. S., at 179 (quoting H. R. Rep. No. 94–332, p. 2 (1975)). A substantive standard not focused on student progress would do little to remedy the pervasive and tragic academic stagnation that prompted Congress to act.

That the progress contemplated by the IEP must be appropriate in light of the child's circumstances should come as no surprise. A focus on the particular child is at the core of the IDEA. The instruction offered must be "*specially* designed" to meet a child's "*unique* needs" through an "[*i*]*ndividualized* education program." §§ 1401(29), (14) (emphasis added). An IEP is not a form document. It is constructed only after careful consideration of the child's present levels of achievement, disability, and potential for growth. §§ 1414(d)(1)(A)(i)(I)–(IV), (d)(3)(A)(i)–(iv). As we observed in *Rowley*, the IDEA "requires participating States to educate a wide spectrum of handicapped children," and "the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite variations in between." 458 U. S., at 202.

Rowley sheds light on what appropriate progress will look like in many cases. There, the Court recognized that the IDEA requires that children with disabilities receive education in the regular classroom "whenever possible." *Ibid.* (citing § 1412(a)(5)). When this preference is met, "the system itself monitors the educational progress of the child." *Id.*, at 202–203. "Regular examinations are administered, grades are awarded, and yearly advancement to higher grade levels is permitted for those children who attain an adequate knowledge of the course material." *Id.*, at 203. Progress through this system is what our society generally

means by an "education." And access to an "education" is what the IDEA promises. *Ibid.* Accordingly, for a child fully integrated in the regular classroom, an IEP typically should, as *Rowley* put it, be "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." *Id.*, at 203–204.

This guidance is grounded in the statutory definition of a FAPE. One of the components of a FAPE is "special education," defined as "specially designed instruction . . . to meet the unique needs of a child with a disability." §§ 1401(9), (29). In determining what it means to "meet the unique needs" of a child with a disability, the provisions governing the IEP development process are a natural source of guidance: It is through the IEP that "[t]he 'free appropriate public education' required by the Act is tailored to the unique needs of" a particular child. *Id.*, at 181.

The IEP provisions reflect *Rowley*'s expectation that, for most children, a FAPE will involve integration in the regular classroom and individualized special education calculated to achieve advancement from grade to grade. Every IEP begins by describing a child's present level of achievement, including explaining "how the child's disability affects the child's involvement and progress in the general education curriculum." § 1414(d)(1)(A)(i)(I)(aa). It then sets out "a statement of measurable annual goals . . . designed to . . . enable the child to be involved in and make progress in the general education curriculum," along with a description of specialized instruction and services that the child will receive. §§ 1414(d)(1)(A)(i)(II), (IV). The instruction and services must likewise be provided with an eye toward "progress in the general education curriculum." § 1414(d)(1)(A)(i)(IV)(bb). Similar IEP requirements have been in place since the time the States began accepting funding under the IDEA.

The school district protests that these provisions impose only procedural requirements—a checklist of items the IEP

must address—not a substantive standard enforceable in court. Tr. of Oral Arg. 50–51. But the procedures are there for a reason, and their focus provides insight into what it means, for purposes of the FAPE definition, to "meet the unique needs" of a child with a disability. §§ 1401(9), (29). When a child is fully integrated in the regular classroom, as the Act prefers, what that typically means is providing a level of instruction reasonably calculated to permit advancement through the general curriculum.[2]

Rowley had no need to provide concrete guidance with respect to a child who is not fully integrated in the regular classroom and not able to achieve on grade level. That case concerned a young girl who was progressing smoothly through the regular curriculum. If that is not a reasonable prospect for a child, his IEP need not aim for grade-level advancement. But his educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.

Of course this describes a general standard, not a formula. But whatever else can be said about it, this standard is markedly more demanding than the "merely more than *de minimis*" test applied by the Tenth Circuit. It cannot be the case that the Act typically aims for grade-level advancement for children with disabilities who can be educated in the regular classroom, but is satisfied with barely more than *de minimis* progress for those who cannot.

When all is said and done, a student offered an educational program providing "merely more than *de minimis*" progress from year to year can hardly be said to have been offered

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[2] This guidance should not be interpreted as an inflexible rule. We declined to hold in *Rowley*, and do not hold today, that "every handicapped child who is advancing from grade to grade . . . is automatically receiving a [FAPE]." *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty.* v. *Rowley*, 458 U. S. 176, 203, n. 25 (1982).

an education at all. For children with disabilities, receiving instruction that aims so low would be tantamount to "sitting idly . . . awaiting the time when they were old enough to 'drop out.'" *Rowley*, 458 U. S., at 179 (some internal quotation marks omitted). The IDEA demands more. It requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

C

Endrew's parents argue that the Act goes even further. In their view, a FAPE is "an education that aims to provide a child with a disability opportunities to achieve academic success, attain self-sufficiency, and contribute to society that are substantially equal to the opportunities afforded children without disabilities." Brief for Petitioner 40.

This standard is strikingly similar to the one the lower courts adopted in *Rowley*, and it is virtually identical to the formulation advanced by Justice Blackmun in his separate writing in that case. See 458 U. S., at 185–186; *id.*, at 211 (opinion concurring in judgment) ("[T]he question is whether Amy's program . . . offered her an opportunity to understand and participate in the classroom that was substantially equal to that given her non-handicapped classmates"). But the majority rejected any such standard in clear terms. *Id.*, at 198 ("The requirement that States provide 'equal' educational opportunities would . . . seem to present an entirely unworkable standard requiring impossible measurements and comparisons"). Mindful that Congress (despite several intervening amendments to the IDEA) has not materially changed the statutory definition of a FAPE since *Rowley* was decided, we decline to interpret the FAPE provision in a manner so plainly at odds with the Court's analysis in that case. Compare § 1401(18) (1976 ed.) with § 1401(9) (2012 ed.).

D

We will not attempt to elaborate on what "appropriate" progress will look like from case to case. It is in the nature

of the Act and the standard we adopt to resist such an effort: The adequacy of a given IEP turns on the unique circumstances of the child for whom it was created. This absence of a bright-line rule, however, should not be mistaken for "an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review." *Rowley*, 458 U. S., at 206.

At the same time, deference is based on the application of expertise and the exercise of judgment by school authorities. The Act vests these officials with responsibility for decisions of critical importance to the life of a disabled child. The nature of the IEP process, from the initial consultation through state administrative proceedings, ensures that parents and school representatives will fully air their respective opinions on the degree of progress a child's IEP should pursue. See §§ 1414, 1415; *id.*, at 208–209. By the time any dispute reaches court, school authorities will have had a complete opportunity to bring their expertise and judgment to bear on areas of disagreement. A reviewing court may fairly expect those authorities to be able to offer a cogent and responsive explanation for their decisions that shows the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances.

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

It is so ordered.

Syllabus

STAR ATHLETICA, L. L. C. *v.* VARSITY BRANDS, INC., ET AL.

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

No. 15–866. Argued October 31, 2016—Decided March 22, 2017

The Copyright Act of 1976 makes "pictorial, graphic, or sculptural features" of the "design of a useful article" eligible for copyright protection as artistic works if those features "can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article." 17 U. S. C. § 101.

Respondents have more than 200 copyright registrations for two-dimensional designs—consisting of various lines, chevrons, and colorful shapes—appearing on the surface of the cheerleading uniforms that they design, make, and sell. They sued petitioner, who also markets cheerleading uniforms, for copyright infringement. The District Court granted petitioner summary judgment, holding that the designs could not be conceptually or physically separated from the uniforms and were therefore ineligible for copyright protection. In reversing, the Sixth Circuit concluded that the graphics could be "identified separately" and were "capable of existing independently" of the uniforms under § 101.

Held: A feature incorporated into the design of a useful article is eligible for copyright protection only if the feature (1) can be perceived as a two- or three-dimensional work of art separate from the useful article and (2) would qualify as a protectable pictorial, graphic, or sculptural work—either on its own or fixed in some other tangible medium of expression—if it were imagined separately from the useful article into which it is incorporated. That test is satisfied here. Pp. 410–424.

(a) Separability analysis is necessary in this case. Respondents claim that two-dimensional surface decorations are always separable, even without resorting to a § 101 analysis, because they are "*on* a useful article" rather than "*designs of* a useful article." But this argument is inconsistent with § 101's text. "[P]ictorial" and "graphic" denote two-dimensional features such as pictures, paintings, or drawings. Thus, by providing protection for "pictorial, graphical, and sculptural works" incorporated into the "design of a useful article," § 101 necessarily contemplates that such a design can include two-dimensional features. This Court will not adjudicate in the first instance the Government's distinct argument against applying separability analysis, which was neither raised below nor advanced here by any party. Pp. 412–413.

Syllabus

(b) Whether a feature incorporated into a useful article "can be identified separately from," and is "capable of existing independently of," the article's "utilitarian aspects" is a matter of "statutory interpretation." *Mazer* v. *Stein*, 347 U. S. 201, 214. Pp. 413–417.

(1) Section 101's separate-identification requirement is met if the decisionmaker is able to look at the useful article and spot some two- or three-dimensional element that appears to have pictorial, graphic, or sculptural qualities. To satisfy the independent-existence requirement, the feature must be able to exist as its own pictorial, graphic, or sculptural work once it is imagined apart from the useful article. If the feature could not exist as a pictorial, graphic, or sculptural work on its own, it is simply one of the article's utilitarian aspects. And to qualify as a pictorial, graphic, or sculptural work on its own, the feature cannot be a useful article or "[a]n article that is normally a part of a useful article," § 101. Neither could one claim a copyright in a useful article by creating a replica of it in another medium. Pp. 414–415.

(2) The statute as a whole confirms this interpretation. Section 101, which protects art first fixed in the medium of a useful article, is essentially the mirror image of § 113(a), which protects art first fixed in a medium other than a useful article and subsequently applied to a useful article. Together, these provisions make clear that copyright protection extends to pictorial, graphic, and sculptural works regardless of whether they were created as freestanding art or as features of useful articles. P. 415.

(3) This interpretation is also consistent with the Copyright Act's history. In *Mazer*, a case decided under the 1909 Copyright Act, the Court held that respondents owned a copyright in a statuette created for use as a lamp base. In so holding, the Court approved a Copyright Office regulation extending protection to works of art that might also serve a useful purpose and held that it was irrelevant to the copyright inquiry whether the statuette was initially created as a freestanding sculpture or as a lamp base. Soon after, the Copyright Office enacted a regulation implementing *Mazer*'s holding that anticipated the language of § 101, thereby introducing the modern separability test to copyright law. Congress essentially lifted the language from those post-*Mazer* regulations and placed it in § 101 of the 1976 Act. Pp. 415–417.

(c) Applying the proper test here, the surface decorations on the cheerleading uniforms are separable and therefore eligible for copyright protection. First, the decorations can be identified as features having pictorial, graphic, or sculptural qualities. Second, if those decorations were separated from the uniforms and applied in another medium, they would qualify as two-dimensional works of art under § 101. Imagina-

tively removing the decorations from the uniforms and applying them in another medium also would not replicate the uniform itself.

The dissent argues that the decorations are ineligible for copyright protection because, when imaginatively extracted, they form a picture of a cheerleading uniform. Petitioner similarly claims that the decorations cannot be copyrighted because, even when extracted from the useful article, they retain the outline of a cheerleading uniform. But this is not a bar to copyright. Just as two-dimensional fine art correlates to the shape of the canvas on which it is painted, two-dimensional applied art correlates to the contours of the article on which it is applied. The only feature of respondents' cheerleading uniform eligible for a copyright is the two-dimensional applied art on the surface of the uniforms. Respondents may prohibit the reproduction only of the surface designs on a uniform or in any other medium of expression. Respondents have no right to prevent anyone from manufacturing a cheerleading uniform that is identical in shape, cut, or dimensions to the uniforms at issue here. Pp. 417–419.

(d) None of the objections raised by petitioner or the Government is meritorious. Pp. 419–424.

(1) Petitioner and the Government focus on the relative utility of the plain white uniform that would remain if the designs were physically removed from the uniform. But the separability inquiry focuses on the extracted feature and not on any aspects of the useful article remaining after the imaginary extraction. The statute does not require the imagined remainder to be a fully functioning useful article at all. Nor can an artistic feature that would be eligible for copyright protection on its own lose that protection simply because it was first created as a feature of the design of a useful article, even if it makes that article more useful. This has been the rule since *Mazer*, and it is consistent with the statute's explicit protection of "applied art." In rejecting petitioner's view, the Court necessarily abandons the distinction between "physical" and "conceptual" separability adopted by some courts and commentators. Pp. 419–422.

(2) Petitioner also suggests incorporating two "objective" components into the test—one requiring consideration of evidence of the creator's design methods, purposes, and reasons, and one looking to the feature's marketability. The Court declines to incorporate these components because neither is grounded in the statute's text. Pp. 422–423.

(3) Finally, petitioner claims that protecting surface decorations is inconsistent with Congress' intent to entirely exclude industrial design from copyright. But Congress has given limited copyright protection to certain features of industrial design. Approaching the statute with presumptive hostility toward protection for industrial design would un-

dermine that choice. In any event, the test adopted here does not render the underlying uniform eligible for copyright protection. Pp. 423–424.

799 F. 3d 468, affirmed.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and ALITO, SOTOMAYOR, and KAGAN, JJ., joined. GINSBURG, J., filed an opinion concurring in the judgment, *post*, p. 425. BREYER, J., filed a dissenting opinion, in which KENNEDY, J., joined, *post*, p. 439.

John J. Bursch argued the cause for petitioner. With him on the briefs were *Matthew T. Nelson*, *Conor B. Dugan*, *Steven M. Crosby*, *Stephen E. Feldman*, *Michael F. Rafferty*, and *Emily Hamm Huseth*.

William M. Jay argued the cause for respondents. With him on the brief were *Brian T. Burgess*, *Grady M. Garrison*, *Adam S. Baldridge*, *Thomas Kjellberg*, and *Robert D. Carroll*.

Eric J. Feigin argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Acting Solicitor General Gershengorn*, *Principal Deputy Assistant Attorney General Mizer*, *Deputy Solicitor General Stewart*, *Mark R. Freeman*, and *Sarang Vijay Damle*.*

*Briefs of *amici curiae* urging reversal were filed for Public Knowledge et al. by *Charles Duan*; for the Royal Manticorn Navy: The Official Honor Harrington Fan Association, Inc., by *Judith S. Sherwin*; and for Christopher Buccafusco et al. by *Meir Feder* and *Jeanne C. Fromer*, *pro se*.

Briefs of *amici curiae* urging affirmance were filed for Chosun International, Inc., by *Anthony H. Handal*; for the Council of Fashion Designers of America, Inc., by *Charles E. Boulbol*; for the Fashion Law Institute et al. by *Michelle Mancino Marsh*; for the Intellectual Property Owners Association by *Kevin Rhodes*, *Steven W. Miller*, *David Leichtman*, and *Sherli Furst*; and for Jeannie Suk Gersen et al. by *Scott B. Wilkens*, *Matthew S. Hellman*, and *C. Scott Hemphill*, *pro se*.

Briefs of *amici curiae* were filed for the American Intellectual Property Law Association by *Denise W. DeFranco*, *Amie Peele Carter*, and *Nicholas J. Nelson*; for the Intellectual Property Law Association of Chicago by *David L. Applegate*, *Jeffrey B. Burgan*, and *Charles W. Shifley*; for Intellectual Property Professors by *Mark Lemley*; and for the New York Intellectual Property Law Association by *Lauren B. Emerson*, *Walter*

JUSTICE THOMAS delivered the opinion of the Court.

Congress has provided copyright protection for original works of art, but not for industrial designs. The line between art and industrial design, however, is often difficult to draw. This is particularly true when an industrial design incorporates artistic elements. Congress has afforded limited protection for these artistic elements by providing that "pictorial, graphic, or sculptural features" of the "design of a useful article" are eligible for copyright protection as artistic works if those features "can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article." 17 U. S. C. § 101.

We granted certiorari to resolve widespread disagreement over the proper test for implementing § 101's separate-identification and independent-existence requirements. 578 U. S. 959 (2016). We hold that a feature incorporated into the design of a useful article is eligible for copyright protection only if the feature (1) can be perceived as a two- or three-dimensional work of art separate from the useful article and (2) would qualify as a protectable pictorial, graphic, or sculptural work—either on its own or fixed in some other tangible medium of expression—if it were imagined separately from the useful article into which it is incorporated. Because that test is satisfied in this case, we affirm.

I

Respondents Varsity Brands, Inc., Varsity Spirit Corporation, and Varsity Spirit Fashions & Supplies, Inc., design, make, and sell cheerleading uniforms. Respondents have obtained or acquired more than 200 U. S. copyright registrations for two-dimensional designs appearing on the surface of their uniforms and other garments. These designs are primarily "combinations, positionings, and arrangements of

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E. Hanley, Jr., *Charles R. Macedo*, *David P. Goldberg*, *Mitchell C. Stein*, and *Joseph Farco.*

elements" that include "chevrons . . . , lines, curves, stripes, angles, diagonals, inverted [chevrons], coloring, and shapes." App. 237. At issue in this case are Designs 299A, 299B, 074, 078, and 0815. See Appendix, *infra*.

Petitioner Star Athletica, L. L. C., also markets and sells cheerleading uniforms. Respondents sued petitioner for infringing their copyrights in the five designs. The District Court entered summary judgment for petitioner on respondents' copyright claims on the ground that the designs did not qualify as protectable pictorial, graphic, or sculptural works. It reasoned that the designs served the useful, or "utilitarian," function of identifying the garments as "cheerleading uniforms" and therefore could not be "physically or conceptually" separated under § 101 "from the utilitarian function" of the uniform. 2014 WL 819422, *8–*9 (WD Tenn., Mar. 1, 2014).

The Court of Appeals for the Sixth Circuit reversed. 799 F. 3d 468, 471 (2015). In its view, the "graphic designs" were "separately identifiable" because the designs "and a blank cheerleading uniform can appear 'side by side'—one as a graphic design, and one as a cheerleading uniform." *Id.*, at 491 (quoting Compendium of U. S. Copyright Office Practices § 924.2(B) (3d ed. 2014) (Compendium)). And it determined that the designs were "'capable of existing independently'" because they could be incorporated onto the surface of different types of garments, or hung on the wall and framed as art. 799 F. 3d, at 491, 492.

Judge McKeague dissented. He would have held that, because "identifying the wearer as a cheerleader" is a utilitarian function of a cheerleading uniform and the surface designs were "integral to" achieving that function, the designs were inseparable from the uniforms. *Id.*, at 495–496.

II

The first element of a copyright-infringement claim is "ownership of a valid copyright." *Feist Publications, Inc.*

v. *Rural Telephone Service Co.*, 499 U. S. 340, 361 (1991). A valid copyright extends only to copyrightable subject matter. See 4 M. Nimmer & D. Nimmer, Copyright § 13.01[A] (2010) (Nimmer). The Copyright Act of 1976 defines copyrightable subject matter as "original works of authorship fixed in any tangible medium of expression." 17 U. S. C. § 102(a).

"Works of authorship" include "pictorial, graphic, and sculptural works," § 102(a)(5), which the statute defines to include "two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, diagrams, models, and technical drawings, including architectural plans," § 101. And a work of authorship is " 'fixed' in a tangible medium of expression when it[is] embodi[ed] in a" "material objec[t] . . . from which the work can be perceived, reproduced, or otherwise communicated." *Ibid.* (definitions of "fixed" and "copies").

The Copyright Act also establishes a special rule for copyrighting a pictorial, graphic, or sculptural work incorporated into a "useful article," which is defined as "an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information." *Ibid.* The statute does not protect useful articles as such. Rather, "the design of a useful article" is "considered a pictorial, graphical, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article." *Ibid.*

Courts, the Copyright Office, and commentators have described the analysis undertaken to determine whether a feature can be separately identified from, and exist independently of, a useful article as "separability." In this case, our task is to determine whether the arrangements of lines, chevrons, and colorful shapes appearing on the surface of respondents' cheerleading uniforms are eligible for copyright

protection as separable features of the design of those cheerleading uniforms.

A

As an initial matter, we must address whether separability analysis is necessary in this case.

1

Respondents argue that "[s]eparability is only implicated when a [pictorial, graphic, or sculptural] work is the 'design of a useful article.'" Brief for Respondents 25. They contend that the surface decorations in this case are "two-dimensional graphic designs that appear *on* useful articles," but are not themselves designs *of* useful articles. *Id.*, at 52. Consequently, the surface decorations are protected two-dimensional works of graphic art without regard to any separability analysis under § 101. *Ibid.*; see 2 W. Patry, Copyright § 3:151, p. 3–485 (2016) (Patry) ("Courts looking at two-dimensional design claims should not apply the separability analysis regardless of the three-dimensional form that design is embodied in"). Under this theory, two-dimensional artistic features on the surface of useful articles are "inherently separable." Brief for Respondents 26.

This argument is inconsistent with the text of § 101. The statute requires separability analysis for any "pictorial, graphic, or sculptural features" incorporated into the "design of a useful article." "Design" refers here to "the combination" of "details" or "features" that "go to make up" the useful article. 3 Oxford English Dictionary 244 (def. 7, first listing) (1933) (OED). Furthermore, the words "pictorial" and "graphic" include, in this context, two-dimensional features such as pictures, paintings, or drawings. See 4 *id.*, at 359 (defining "[g]raphic" to mean "[o]f or pertaining to drawing or painting"); 7 *id.*, at 830 (defining "[p]ictorial" to mean "of or pertaining to painting or drawing"). And the statute expressly defines "[p]ictorial, graphical, and sculptural works" to include "two-dimensional . . . works of . . . art." § 101.

The statute thus provides that the "design of a useful article" can include two-dimensional "pictorial" and "graphic" features, and separability analysis applies to those features just as it does to three-dimensional "sculptural" features.

2

The United States makes a related but distinct argument against applying separability analysis in this case, which respondents do not and have not advanced. As part of their copyright registrations for the designs in this case, respondents deposited with the Copyright Office drawings and photographs depicting the designs incorporated onto cheerleading uniforms. App. 213–219; Appendix, *infra*. The Government argues that, assuming the other statutory requirements were met, respondents obtained a copyright in the deposited drawings and photographs and have simply reproduced those copyrighted works on the surface of a useful article, as they would have the exclusive right to do under the Copyright Act. See Brief for United States as *Amicus Curiae* 14–15, 17–22. Accordingly, the Government urges, separability analysis is unnecessary on the record in this case. We generally do not entertain arguments that were not raised below and that are not advanced in this Court by any party, *Burwell* v. *Hobby Lobby Stores, Inc.*, 573 U. S. 682, 721 (2014), because "[i]t is not the Court's usual practice to adjudicate either legal or predicate factual questions in the first instance," *CRST Van Expedited, Inc.* v. *EEOC*, 578 U. S. 419, 435 (2016). We decline to depart from our usual practice here.

B

We must now decide when a feature incorporated into a useful article "can be identified separately from" and is "capable of existing independently of" "the utilitarian aspects" of the article. This is not a free-ranging search for the best copyright policy, but rather "depends solely on statutory interpretation." *Mazer* v. *Stein*, 347 U. S. 201, 214 (1954).

"The controlling principle in this case is the basic and unexceptional rule that courts must give effect to the clear meaning of statutes as written." *Estate of Cowart* v. *Nicklos Drilling Co.*, 505 U. S. 469, 476 (1992). We thus begin and end our inquiry with the text, giving each word its "ordinary, contemporary, common meaning." *Walters* v. *Metropolitan Ed. Enterprises, Inc.*, 519 U. S. 202, 207 (1997) (internal quotation marks omitted). We do not, however, limit this inquiry to the text of § 101 in isolation. "[I]nterpretation of a phrase of uncertain reach is not confined to a single sentence when the text of the whole statute gives instruction as to its meaning." *Maracich* v. *Spears*, 570 U. S. 48, 65 (2013). We thus "look to the provisions of the whole law" to determine § 101's meaning. *United States* v. *Heirs of Boisdoré*, 8 How. 113, 122 (1849).

1

The statute provides that a "pictorial, graphic, or sculptural featur[e]" incorporated into the "design of a useful article" is eligible for copyright protection if it (1) "can be identified separately from," and (2) is "capable of existing independently of, the utilitarian aspects of the article." § 101. The first requirement—separate identification—is not onerous. The decisionmaker need only be able to look at the useful article and spot some two- or three-dimensional element that appears to have pictorial, graphic, or sculptural qualities. See 2 Patry § 3:146, at 3–474 to 3–475.

The independent-existence requirement is ordinarily more difficult to satisfy. The decisionmaker must determine that the separately identified feature has the capacity to exist apart from the utilitarian aspects of the article. See 2 OED 88 (def. 5) (defining "[c]apable" of as "[h]aving the needful capacity, power, or fitness for"). In other words, the feature must be able to exist as its own pictorial, graphic, or sculptural work as defined in § 101 once it is imagined apart from the useful article. If the feature is not capable of existing as a pictorial, graphic, or sculptural work once separated from the useful article, then it was not a pictorial, graphic,

or sculptural feature of that article, but rather one of its utilitarian aspects.

Of course, to qualify as a pictorial, graphic, or sculptural work on its own, the feature cannot itself be a useful article or "[a]n article that is normally a part of a useful article" (which is itself considered a useful article). § 101. Nor could someone claim a copyright in a useful article merely by creating a replica of that article in some other medium—for example, a cardboard model of a car. Although the replica could itself be copyrightable, it would not give rise to any rights in the useful article that inspired it.

2

The statute as a whole confirms our interpretation. The Copyright Act provides "the owner of [a] copyright" with the "exclusive righ[t] . . . to reproduce the copyrighted work in copies." § 106(1). The statute clarifies that this right "includes the right to reproduce the [copyrighted] work in or on any kind of article, whether useful or otherwise." § 113(a). Section 101 is, in essence, the mirror image of § 113(a). Whereas § 113(a) protects a work of authorship first fixed in some tangible medium other than a useful article and subsequently applied to a useful article, § 101 protects art first fixed in the medium of a useful article. The two provisions make clear that copyright protection extends to pictorial, graphic, and sculptural works regardless of whether they were created as freestanding art or as features of useful articles. The ultimate separability question, then, is whether the feature for which copyright protection is claimed would have been eligible for copyright protection as a pictorial, graphic, or sculptural work had it originally been fixed in some tangible medium other than a useful article before being applied to a useful article.

3

This interpretation is also consistent with the history of the Copyright Act. In *Mazer*, a case decided under the 1909

Copyright Act, the respondents copyrighted a statuette depicting a dancer. The statuette was intended for use as a lamp base, "with electric wiring, sockets and lamp shades attached." 347 U. S., at 202. Copies of the statuette were sold both as lamp bases and separately as statuettes. *Id.*, at 203. The petitioners copied the statuette and sold lamps with the statuette as the base. They defended against the respondents' infringement suit by arguing that the respondents did not have a copyright in a statuette intended for use as a lamp base. *Id.*, at 204–205.

Two of *Mazer*'s holdings are relevant here. First, the Court held that the respondents owned a copyright in the statuette even though it was intended for use as a lamp base. See *id.*, at 214. In doing so, the Court approved the Copyright Office's regulation extending copyright protection to works of art that might also serve a useful purpose. See *ibid.* (approving 37 CFR § 202.8(a) (1949) (protecting "works of artistic craftsmanship, in so far as their form but not their mechanical or utilitarian aspects are concerned")).

Second, the Court held that it was irrelevant to the copyright inquiry whether the statuette was initially created as a freestanding sculpture or as a lamp base. 347 U. S., at 218–219 ("Nor do we think the subsequent registration of a work of art published as an element in a manufactured article, is a misuse of copyright. This is not different from the registration of a statuette and its later embodiment in an industrial article"). *Mazer* thus interpreted the 1909 Act consistently with the rule discussed above: If a design would have been copyrightable as a standalone pictorial, graphic, or sculptural work, it is copyrightable if created first as part of a useful article.

Shortly thereafter, the Copyright Office enacted a regulation implementing the holdings of *Mazer*. See 1 Nimmer § 2A.08[B][1][b] (2016). As amended, the regulation introduced the modern separability test to copyright law:

> "If the sole intrinsic function of an article is its utility, the fact that the article is unique and attractively shaped

> will not qualify it as a work of art. However, if the shape of a utilitarian article incorporates features, such as artistic sculpture, carving, or pictorial representation, which can be identified separately and are capable of existing independently as a work of art, such features will be eligible for registration." 37 CFR § 202.10(c) (1960) (punctuation altered).

Congress essentially lifted the language governing protection for the design of a useful article directly from the post-*Mazer* regulations and placed it into § 101 of the 1976 Act. Consistent with *Mazer*, the approach we outline today interprets §§ 101 and 113 in a way that would afford copyright protection to the statuette in *Mazer* regardless of whether it was first created as a standalone sculptural work or as the base of the lamp. See 347 U. S., at 218–219.

C

In sum, a feature of the design of a useful article is eligible for copyright if, when identified and imagined apart from the useful article, it would qualify as a pictorial, graphic, or sculptural work either on its own or when fixed in some other tangible medium.

Applying this test to the surface decorations on the cheerleading uniforms is straightforward. First, one can identify the decorations as features having pictorial, graphic, or sculptural qualities. Second, if the arrangement of colors, shapes, stripes, and chevrons on the surface of the cheerleading uniforms were separated from the uniform and applied in another medium—for example, on a painter's canvas—they would qualify as "two-dimensional . . . works of . . . art," § 101. And imaginatively removing the surface decorations from the uniforms and applying them in another medium would not replicate the uniform itself. Indeed, respondents have applied the designs in this case to other media of expression—different types of clothing—without replicating the uniform. See App. 273–279. The decorations are

therefore separable from the uniforms and eligible for copyright protection.[1]

The dissent argues that the designs are not separable because imaginatively removing them from the uniforms and placing them in some other medium of expression—a canvas, for example—would create "pictures of cheerleader uniforms." *Post*, at 447 (opinion of BREYER, J.). Petitioner similarly argues that the decorations cannot be copyrighted because, even when extracted from the useful article, they retain the outline of a cheerleading uniform. Brief for Petitioner 48–49.

This is not a bar to copyright. Just as two-dimensional fine art corresponds to the shape of the canvas on which it is painted, two-dimensional applied art correlates to the contours of the article on which it is applied. A fresco painted on a wall, ceiling panel, or dome would not lose copyright protection, for example, simply because it was designed to track the dimensions of the surface on which it was painted. Or consider, for example, a design etched or painted on the surface of a guitar. If that entire design is imaginatively removed from the guitar's surface and placed on an album cover, it would still resemble the shape of a guitar. But the image on the cover does not "replicate" the guitar as a useful article. Rather, the design is a two-dimensional work of art that corresponds to the shape of the useful article to which it was applied. The statute protects that work of art whether it is first drawn on the album cover and then applied to the guitar's surface, or vice versa. Failing to protect that art would create an anomaly: It would extend protection to two-dimensional designs that cover a part of a useful article but would not protect the same design if it covered the entire

[1] We do not today hold that the surface decorations are copyrightable. We express no opinion on whether these works are sufficiently original to qualify for copyright protection, see *Feist Publications, Inc.* v. *Rural Telephone Service Co.*, 499 U. S. 340, 358–359 (1991), or on whether any other prerequisite of a valid copyright has been satisfied.

article. The statute does not support that distinction, nor can it be reconciled with the dissent's recognition that "artwork printed on a t-shirt" could be protected. *Post*, at 442 (brackets and internal quotation marks omitted).

To be clear, the only feature of the cheerleading uniform eligible for a copyright in this case is the two-dimensional work of art fixed in the tangible medium of the uniform fabric. Even if respondents ultimately succeed in establishing a valid copyright in the surface decorations at issue here, respondents have no right to prohibit any person from manufacturing a cheerleading uniform of identical shape, cut, and dimensions to the ones on which the decorations in this case appear. They may prohibit only the reproduction of the surface designs in any tangible medium of expression—a uniform or otherwise.[2]

D

Petitioner and the Government raise several objections to the approach we announce today. None is meritorious.

1

Petitioner first argues that our reading of the statute is missing an important step. It contends that a feature may exist independently only if it can stand alone as a copyrightable work *and* if the useful article from which it was extracted would remain equally useful. In other words, copy-

[2] The dissent suggests that our test would lead to the copyrighting of shovels. *Post*, at 444; Appendix to opinion of BREYER, J., fig. 4, *post*. But a shovel, like a cheerleading uniform, even if displayed in an art gallery, is "an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information." 17 U. S. C. § 101. It therefore cannot be copyrighted. A drawing of a shovel could, of course, be copyrighted. And, if the shovel included any artistic features that could be perceived as art apart from the shovel, and which would qualify as protectable pictorial, graphic, or sculptural works on their own or in another medium, they too could be copyrighted. But a shovel as a shovel cannot.

right extends only to "solely artistic" features of useful articles. Brief for Petitioner 33. According to petitioner, if a feature of a useful article "advance[s] the utility of the article," *id.*, at 38, then it is categorically beyond the scope of copyright, *id.*, at 33. The designs here are not protected, it argues, because they are necessary to two of the uniforms' "inherent, essential, or natural functions"—identifying the wearer as a cheerleader and enhancing the wearer's physical appearance. *Id.*, at 38, 48; Reply Brief 2, 16. Because the uniforms would not be equally useful without the designs, petitioner contends that the designs are inseparable from the "utilitarian aspects" of the uniform. Brief for Petitioner 50.

The Government raises a similar argument, although it reaches a different result. It suggests that the appropriate test is whether the useful article with the artistic feature removed would "remai[n] *similarly* useful." Brief for United States as *Amicus Curiae* 29 (emphasis added). In the view of the United States, however, a plain white cheerleading uniform is "similarly useful" to uniforms with respondents' designs. *Id.*, at 27–28.

The debate over the relative utility of a plain white cheerleading uniform is unnecessary. The focus of the separability inquiry is on the extracted feature and not on any aspects of the useful article that remain after the imaginary extraction. The statute does not require the decisionmaker to imagine a fully functioning useful article without the artistic feature. Instead, it requires that the separated feature qualify as a nonuseful pictorial, graphic, or sculptural work on its own.

Of course, because the removed feature may not be a useful article—as it would then not qualify as a pictorial, graphic, or sculptural work—there necessarily would be some aspects of the original useful article "left behind" if the feature were conceptually removed. But the statute does not require the imagined remainder to be a fully functioning useful article at all, much less an equally useful one. In-

deed, such a requirement would deprive the *Mazer* statuette of protection had it been created first as a lamp base rather than as a statuette. Without the base, the "lamp" would be just a shade, bulb, and wires. The statute does not require that we imagine a nonartistic replacement for the removed feature to determine whether that *feature* is capable of an independent existence.

Petitioner's argument follows from its flawed view that the statute protects only "solely artistic" features that have no effect whatsoever on a useful article's utilitarian function. This view is inconsistent with the statutory text. The statute expressly protects two- and three-dimensional "applied art." § 101. "Applied art" is art "employed in the decoration, design, *or execution* of useful objects," Webster's Third New International Dictionary 105 (1976) (emphasis added), or "those arts or crafts that have a *primarily utilitarian function*, or . . . the designs and decorations used in these arts," Random House Dictionary 73 (1966) (emphasis added); see also 1 OED 576 (2d ed. 1989) (defining "applied" as "[p]ut to practical use"). An artistic feature that would be eligible for copyright protection on its own cannot lose that protection simply because it was first created as a feature of the design of a useful article, even if it makes that article more useful.

Indeed, this has been the rule since *Mazer*. In holding that the statuette was protected, the Court emphasized that the 1909 Act abandoned any "distinctions between purely aesthetic articles and useful works of art." 347 U. S., at 211. Congress did not enact such a distinction in the 1976 Act. Were we to accept petitioner's argument that the only protectable features are those that play absolutely no role in an article's function, we would effectively abrogate the rule of *Mazer* and read "applied art" out of the statute.

Because we reject the view that a useful article must remain after the artistic feature has been imaginatively separated from the article, we necessarily abandon the distinction

between "physical" and "conceptual" separability, which some courts and commentators have adopted based on the Copyright Act's legislative history. See H. R. Rep. No. 94–1476, p. 55 (1976). According to this view, a feature is *physically* separable from the underlying useful article if it can "be physically separated from the article by ordinary means while leaving the utilitarian aspects of the article completely intact." Compendium § 924.2(A); see also *Chosun Int'l, Inc.* v. *Chrisha Creations, Ltd.*, 413 F. 3d 324, 329 (CA2 2005). *Conceptual* separability applies if the feature physically could not be removed from the useful article by ordinary means. See Compendium § 924.2(B); but see 1 P. Goldstein, Copyright § 2.5.3, p. 2:77 (3d ed. 2016) (explaining that the lower courts have been unable to agree on a single conceptual separability test); 2 Patry §§ 3:140–3:144.40 (surveying the various approaches in the lower courts).

The statutory text indicates that separability is a conceptual undertaking. Because separability does not require the underlying useful article to remain, the physical-conceptual distinction is unnecessary.

2

Petitioner next argues that we should incorporate two "objective" components, Reply Brief 9, into our test to provide guidance to the lower courts: (1) "whether the design elements can be identified as reflecting the designer's artistic judgment exercised independently of functional influence," Brief for Petitioner 34 (emphasis deleted; internal quotation marks omitted), and (2) whether "there is [a] substantial likelihood that the pictorial, graphic, or sculptural feature would still be marketable to some significant segment of the community without its utilitarian function," *id.*, at 35 (emphasis deleted; internal quotation marks omitted).

We reject this argument because neither consideration is grounded in the text of the statute. The first would require the decisionmaker to consider evidence of the creator's design methods, purposes, and reasons. *Id.*, at 48. The stat-

ute's text makes clear, however, that our inquiry is limited to how the article and feature are perceived, not how or why they were designed. See *Brandir Int'l, Inc.* v. *Cascade Pacific Lumber Co.*, 834 F. 2d 1142, 1152 (CA2 1987) (Winter, J., concurring in part and dissenting in part) (The statute "expressly states that the legal test is how the final article is perceived, not how it was developed through various stages").

The same is true of marketability. Nothing in the statute suggests that copyrightability depends on market surveys. Moreover, asking whether some segment of the market would be interested in a given work threatens to prize popular art over other forms, or to substitute judicial aesthetic preferences for the policy choices embodied in the Copyright Act. See *Bleistein* v. *Donaldson Lithographing Co.*, 188 U. S. 239, 251 (1903) ("It would be a dangerous undertaking for persons trained only to the law to constitute themselves final judges of the worth of pictorial illustrations, outside of the narrowest and most obvious limits").

3

Finally, petitioner argues that allowing the surface decorations to qualify as a "work of authorship" is inconsistent with Congress' intent to entirely exclude industrial design from copyright. Petitioner notes that Congress refused to pass a provision that would have provided limited copyright protection for industrial designs, including clothing, when it enacted the 1976 Act, see Brief for Petitioner 9–11 (citing S. 22, Tit. II, 94th Cong., 2d Sess., 122 Cong. Rec. 3856–3859 (1976)), and that it has enacted laws protecting designs for specific useful articles—semiconductor chips and boat hulls, see 17 U. S. C. §§ 901–914, 1301–1332—while declining to enact other industrial design statutes, Brief for Petitioner 29, 43. From this history of failed legislation petitioner reasons that Congress intends to channel intellectual property claims for industrial design into design patents. It there-

fore urges us to approach this question with a presumption against copyrightability. *Id.*, at 27.

We do not share petitioner's concern. As an initial matter, "[c]ongressional inaction lacks persuasive significance" in most circumstances. *Pension Benefit Guaranty Corporation* v. *LTV Corp.*, 496 U. S. 633, 650 (1990) (internal quotation marks omitted). Moreover, we have long held that design patent and copyright are not mutually exclusive. See *Mazer*, 347 U. S., at 217. Congress has provided for limited copyright protection for certain features of industrial design, and approaching the statute with presumptive hostility toward protection for industrial design would undermine Congress' choice. In any event, as explained above, our test does not render the shape, cut, and physical dimensions of the cheerleading uniforms eligible for copyright protection.

III

We hold that an artistic feature of the design of a useful article is eligible for copyright protection if the feature (1) can be perceived as a two- or three-dimensional work of art separate from the useful article and (2) would qualify as a protectable pictorial, graphic, or sculptural work either on its own or in some other medium if imagined separately from the useful article. Because the designs on the surface of respondents' cheerleading uniforms in this case satisfy these requirements, the judgment of the Court of Appeals is affirmed.

It is so ordered.

[Appendix to opinion of the Court follows this page.]

APPENDIX TO OPINION OF THE COURT

Design 299A

Design 299B

Design 074

Design 078

Design 0815

JUSTICE GINSBURG, concurring in the judgment.

I concur in the Court's judgment but not in its opinion. Unlike the majority, I would not take up in this case the separability test appropriate under 17 U. S. C. § 101.[1] Consideration of that test is unwarranted because the designs at issue are not designs *of* useful articles. Instead, the designs are themselves copyrightable pictorial or graphic works *reproduced on* useful articles.[2]

A pictorial, graphic, or sculptural work (PGS work) is copyrightable. § 102(a)(5). PGS works include "two-dimensional and three-dimensional works of fine, graphic, and applied art." § 101. Key to this case, a copyright in a standalone PGS work "includes the right to reproduce the work in or on any kind of article, whether useful or otherwise." § 113(a). Because the owner of a copyright in a preexisting PGS work may exclude a would-be infringer from reproducing that work on a useful article, there is no need

[1] Courts "have struggled mightily to formulate a test" for the separability analysis. 799 F. 3d 468, 484 (CA6 2015); see 2 W. Patry, Copyright § 3:136, p. 3–420 (2016) (noting "widespread interpretative disarray" over the separability test); Ginsburg, "Courts Have Twisted Themselves into Knots": U. S. Copyright Protection for Applied Art, 40 Colum. J. L. & Arts 1, 2 (2016) ("The 'separability' test . . . has resisted coherent application . . . ."); 1 M. Nimmer & D. Nimmer, Copyright § 2A.08[B][6], p. 2A–84 (2016) (separability is a "perennially tangled aspect of copyright doctrine").

[2] Like the Court, I express no opinion on whether the designs otherwise meet the requirements for copyrightable subject matter. See *ante*, at 418, n. 1; 17 U. S. C. § 102(a) ("Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated."). In view of the dissent's assertion that Varsity's designs are "plainly unoriginal," *post*, at 448, however, I note this Court's recognition that "the requisite level of creativity [for copyrightability] is extremely low; even a slight amount will suffice," *Feist Publications, Inc.* v. *Rural Telephone Service Co.*, 499 U. S. 340, 345 (1991); see *Atari Games Corp.* v. *Oman*, 979 F. 2d 242 (CADC 1992).

to engage in any separability inquiry to resolve the instant petition.

The designs here in controversy are standalone pictorial and graphic works that respondents Varsity Brands, Inc., et al. (Varsity) reproduce on cheerleading uniforms. Varsity's designs first appeared as pictorial and graphic works that Varsity's design team sketched on paper. App. 281. Varsity then sought copyright protection for those two-dimensional designs, not for cheerleading uniforms; its registration statements claimed "2-Dimensional artwork" and "fabric design (artwork)." Appendix, *infra*, at 428–431, 433–434, 436–438. Varsity next reproduced its two-dimensional graphic designs on cheerleading uniforms, also on other garments, including T-shirts and jackets. See, *e. g.*, App. 274, 276.[3]

In short, Varsity's designs are not themselves useful articles meet for separability determination under § 101; they

[3] That Varsity's designs can be p aced on jackets or T-shirts without replicating a cheerleader's uniform supports their qualification as fabric designs. The dissent acknowledges that fabric designs are copyrightable, but maintains that Varsity's designs do not count because Varsity's submissions depict clothing, not fabric designs. *Post*, at 448–449. But registrants claiming copyrightable designs may submit drawings or photos of those designs as they appear on useful articles. See Compendium of U. S. Copyright Office Practices § 1506 (3d ed. 2014) ("To register a copyrightable design that has been applied to the back of a useful article, such as a chair, the applicant may submit drawings of the design as it appears on the chair."), online at https://www.copyright.gov/comp3/docs/compendium.pdf (as last visited Mar. 8, 2017). And, as noted in text, Varsity's registration statements claimed "2-Dimensional artwork" and "fabric design (artwork)." Appendix, *infra*, at 428–431, 433–434, 436–438.

The dissent also acknowledges that artwork printed on a T-shirt is copyrightable. *Post*, at 441–442. Varsity's colored shapes and patterns can be, and indeed are, printed on T-shirts. See, *e. g.*, App. 274. Assuming Varsity's designs meet the other requirements for copyrightable subject matter, they would fit comfortably within the Copyright Office guidance featured by the dissent. See *post*, at 441–442 (citing Compendium of U. S. Copyright Office Practices, *supra*, § 924.2(B)).

are standalone PGS works that may gain copyright protection as such, including the exclusive right to reproduce the designs on useful articles.[4]

[4] The majority declines to address this route to decision because, it says, Varsity has not advanced it. *Ante*, at 413. I read Varsity's brief differently. See Brief for Respondents 25 (explaining that the Copyright Act "expressly provides that PGS designs do not lose their protection when they appear 'in or on' a useful article," quoting § 113(a)); *id.*, at 52 (disclaiming the need for separability analysis because the designs are themselves PGS works).

APPENDIX

EXHIBIT 15

Certificate of Registration
Additional certificate (17 U.S.C. 706)

[Seal of the United States Copyright Office 1870]

This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Form VA

For a Work of the Visual Arts

UNITED STATES COPYRIGHT OFFICE

RE VA 1-417-427

EFFECTIVE DATE OF REGISTRATION

5 21 07
Month Day Year

Maria A. Pallante

Acting Register of Copyrights, United States of America

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET

1 **Title of This Work**
Design Number 078

NATURE OF THIS WORK See instructions
2-dimensional artwork

Previous or Alternative Titles

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. **Title of Collective Work**

If published in a periodical or serial give:
Volume Number Issue Date On Pages

---

2 NOTE Under the law the "author" of a "**work made for hire**" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

a **NAME OF AUTHOR**
Varsity Brands, Inc.

DATES OF BIRTH AND DEATH
Year Born Year Died

Was this contribution to the work a "work made for hire"? ☒ Yes ☐ No

Author's Nationality or Domicile
Name of Country
Citizen of _____
or
Domiciled in United States

Was this Author's Contribution to the Work
Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es) **See Instructions**

☐ 3-Dimensional sculpture
☒ 2-Dimensional artwork

EXHIBIT 16

Certificate of Registration
Additional certificate (17 U.S.C. 706)

[Seal of the United States Copyright Office 1870]

This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Registration Number:
VA 1-675-905

Effective date of registration:
May 12, 2008

Maria A. Pallante
Acting Register of Copyrights, United States of America

Title _____

Title of Work: 0815
Nature of Work: 2-dimensional artwork

Completion/Publication _____

Year of Completion: 2007
Date of 1st Publication: January 2, 2008
Nation of 1st Publication: United States

Author _____

Author: Varsity Brands, Inc.
Author Created: 2-dimensional artwork
Work made for hire: Yes
Domiciled in: United States
Anonymous: No
Pseudonymous: No

Copyright claimant _____

Copyright Claimant: Varsity Brands, Inc.

EXHIBIT 17

Certificate of Registration
Additional certificate (17 U.S.C. 706)
[Seal of the United States Copyright Office 1870]

This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Form VA
For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE
RE VA 1-319-228
EFFECTIVE DATE OF REGISTRATION
April 29 2005
Month Day Year

Maria A. Pallante
Acting Register of Copyrights, United States of America

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET

---

1 **Title of This Work**

299A

NATURE OF THIS WORK See instructions

FABRIC DESIGN (ARTWORK)

Previous or Alternative Titles

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. **Title of Collective Work**

If published in a periodical or serial give:
Volume Number Issue Date On Pages

---

2 NOTE Under the law the "author" of a "**work made for hire**" is generally the employer not the employee (see instructions) For any part of this work that was *made for hire* check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part and leave the space for dates of birth and death blank.

a **NAME OF AUTHOR**
VARSITY SPIRIT FASHIONS & SUPPLIES INC

DATES OF BIRTH AND DEATH
Year Born Year Died

Was this contribution to the work a "work made for hire"? ☒ Yes ☐ No

Author's Nationality or Domicile
Name of Country
Citizen of _____
or
Domiciled in United States

Was this Author's Contribution to the Work
Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No
If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es) **See Instructions**

☐ 3 Dimensional sculpture

☒ 2 Dimensional artwork

☐ Reproduction of work of art

☐ Map

☐ Photograph

☐ Jewelry design

☐ Technical drawing

☐ Text

☐ Architectural work

b **Name of Author**

_____

Dates of Birth and Death

Year Born Year Died

_____ _____

Was this contribution to the work a "work made for hire"? ☐ Yes ☐ No

Author's Nationality or Domicile

Name of Country

Citizen of _____

or

Domiciled at _____

Was this Author's Contribution to the Work

Anonymous? ☐ Yes ☐ No

Pseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es) **See Instructions**

☐ 3 Dimensional sculpture

EXHIBIT 18

Certificate of Registration
Additional certificate (17 U.S.C. 706)

[Seal of the United States Copyright Office 1870]

This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Form VA
For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

RE VA 1-319-226
EFFECTIVE DATE OF REGISTRATION
Month Day Year
April 29 2005

Maria A. Pallante
Acting Register of Copyrights, United States of America

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET

---

1 **Title of This Work**
299B

NATURE OF THIS WORK See instructions
FABRIC DESIGN (ARTWORK)

Previous or Alternative Titles

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared.

Title of Collective Work

If published in a periodical or serial give: **Volume Number Issue Date On Pages**

2 NOTE Under the law the "author" of a "**work made for hire**" is generally the employer not the employee (see Instructions) For any part of this work that was made for hire, check Yes in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part and leave the space for dates of birth and death blank.

a **NAME OF AUTHOR**
VARSITY SPIRIT FASHIONS & SUPPLIES INC

DATES OF BIRTH AND DEATH
Year Born Year Died

Was this contribution to the work a "work made for hire"? ☒ Yes ☐ No

Author's Nationality or Domicile
Name of Country
Citizen of _____
or
Domiciled in USA

Was this Author's Contribution to the Work:
Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es) **See Instructions**

☐ 3 Dimensional sculpture
☒ 2 Dimensional artwork ←
☐ Reproduction of work of art
☐ Map
☐ Photograph
☐ Jewelry design
☐ Technical drawing
☐ Text
☐ Architectural work

---

b **Name of Author**

_____

Dates of Birth and Death
Year Born _____ Year Died _____

Was this contribution to the work a "work made for hire"? ☐ Yes ☐ No

Author's Nationality or Domicile
Name of Country
Citizen of _____
or
Domiciled in _____

Was this Author's Contribution to the Work
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es) **See Instructions**

AMENDED EXHIBIT 19

Certificate of Registration
[Seal of the United States Copyright Office 1870]

This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

[Marybeth Peters]
Register of Copyrights,
United States of America

Form VA

For a Work of the Visual Arts

UNITED STATES COPYRIGHT OFFICE

RE VA 1-411-535

[BARCODE]

EFFECTIVE DATE OF REGISTRATION

May 09 2007
Month Day Year

RATE CONTINUATION SHEET:

---

1 Title of This Work
Design Number 074

NATURE OF THIS WORK See instructions
2-dimensional artwork

Previous or Alternative Titles

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work

---

If published in a periodical or serial give:
Volume Number Issue Date On Pages

---

2 NOTE Under the law the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the "work" was prepared) as "Author" of that part and leave the space for dates of birth and death blank

a NAME OF AUTHOR
Varsity Brands, Inc.

DATES OF BIRTH AND DEATH
Year Born _____ Year Died _____

Was this contribution to the work a "work made for hire"? ☒ Yes ☐ No

Author & Nationality or Domicile
Name of Country
Citizen of _____
or
Domiciled at United States

Was this Author a Contribution to the Work
Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

Nature of Authorship Check appropriate box(es)
See Instructions

☐ 3 Dimensional sculpture
☒ 2 Dimensional artwork
☐ Reproduction of work of art

JUSTICE BREYER, with whom JUSTICE KENNEDY joins, dissenting.

I agree with much in the Court's opinion. But I do not agree that the designs that Varsity Brands, Inc., submitted to the Copyright Office are eligible for copyright protection. Even applying the majority's test, the designs *cannot* "be perceived as . . . two- or three-dimensional work[s] of art separate from the useful article." *Ante*, at 409.

Look at the designs that Varsity submitted to the Copyright Office. See Appendix to opinion of the Court, *ante*. You will see only pictures of cheerleader uniforms. And cheerleader uniforms are useful articles. A picture of the relevant design features, whether separately "perceived" on paper or in the imagination, is a picture of, and thereby "replicate[s]," the underlying useful article of which they are a part. *Ante*, at 409, 417. Hence the design features that Varsity seeks to protect are not "capable of existing independently o[f] the utilitarian aspects of the article." 17 U. S. C. § 101.

I

The relevant statutory provision says that the "design of a useful article" is copyrightable "only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article." *Ibid.* But what, we must ask, do the words "identified separately" mean? Just when is a design separate from the "utilitarian aspect of the [useful] article?" The most direct, helpful aspect of the Court's opinion answers this question by stating:

> "Nor could someone claim a copyright in a useful article merely by creating a replica of that article in some other medium—for example, a cardboard model of a car. Although the replica could itself be copyrightable, it would not give rise to any rights in the useful article that inspired it." *Ante*, at 415.

Exactly so. These words help explain the Court's statement that a copyrightable work of art must be "perceived as a two- or three-dimensional work of art separate from the useful article." *Ante*, at 409, 424. They help clarify the concept of separateness. Cf. 1 M. Nimmer & D. Nimmer, Nimmer on Copyright § 2A.08[A][1] (2016) (Nimmer) (describing courts' difficulty in applying that concept). They are consistent with Congress' own expressed intent. 17 U. S. C. § 101; H. R. Rep. No. 94–1476, pp. 55, 105 (1976) (H. R. Rep.). And they reflect long held views of the Copyright Office. See Compendium of U. S. Copyright Office Practices § 924.2(B) (3d ed. 2014), online at http://www.copyright.gov/comp3/docs/compendium.pdf (as last visited Mar. 7, 2017) (Compendium).

Consider, for example, the explanation that the House Report for the Copyright Act of 1976 provides. It says:

> "Unless the shape of an automobile, airplane, ladies' dress, food processor, television set, or any other industrial product contains some element that, *physically or conceptually*, can be identified as separable from the utilitarian aspects of that article, the design would not be copyrighted . . . ." H. R. Rep., at 55 (emphasis added).

These words suggest two exercises, one physical, one mental. Can the design features (the picture, the graphic, the sculpture) be physically removed from the article (and considered separately), all the while leaving the fully functioning utilitarian object in place? If not, can one nonetheless conceive of the design features separately without replicating a picture of the utilitarian object? If the answer to either of these questions is "yes," then the design is eligible for copyright protection. Otherwise, it is not. The abstract nature of these questions makes them sound difficult to apply. But with the Court's words in mind, the difficulty tends to disappear.

An example will help. Imagine a lamp with a circular marble base, a vertical 10-inch tall brass rod (containing wires) inserted off center on the base, a light bulb fixture emerging from the top of the brass rod, and a lampshade sitting on top. In front of the brass rod a porcelain Siamese cat sits on the base facing outward. Obviously, the Siamese cat is *physically separate* from the lamp, as it could be easily removed while leaving both cat and lamp intact. And, assuming it otherwise qualifies, the designed cat is eligible for copyright protection.

Now suppose there is no long brass rod; instead the cat sits in the middle of the base and the wires run up through the cat to the bulbs. The cat is not physically separate from the lamp, as the reality of the lamp's construction is such that an effort to physically separate the cat and lamp will destroy both cat and lamp. The two are integrated into a single functional object, like the similar configuration of the ballet dancer statuettes that formed the lamp bases at issue in *Mazer* v. *Stein*, 347 U. S. 201 (1954). But we can easily imagine the cat on its own, as did Congress when conceptualizing the ballet dancer. See H. R. Rep., at 55 (the statuette in *Mazer* was "incorporated into a product without losing its ability to exist independently as a work of art"). In doing so, we do not create a mental picture of a lamp (or, in the Court's words, a "replica" of the lamp), which is a useful article. We simply perceive the cat separately, as a small cat figurine that could be a copyrightable design work standing alone that does not replicate the lamp. Hence the cat is *conceptually separate* from the utilitarian article that is the lamp. The pair of lamps pictured at figures 1 and 2 in the appendix to this opinion illustrate this principle.

Case law, particularly case law that Congress and the Copyright Office have considered, reflects the same approach. Congress cited examples of copyrightable design works, including "a carving on the back of a chair" and "a floral relief design on silver flatware." H. R. Rep., at 55.

Copyright Office guidance on copyrightable designs in useful articles include "an engraving on a vase," "[a]rtwork printed on a t-shirt," "[a] colorful pattern decorating the surface of a shopping bag," "[a] drawing on the surface of wallpaper," and "[a] floral relief decorating the handle of a spoon." Compendium § 924.2(B). Courts have found copyrightable matter in a plaster ballet dancer statuette encasing the lamp's electric cords and forming its base, see *Mazer*, *supra*, as well as carvings engraved onto furniture, see *Universal Furniture Int'l, Inc.* v. *Collezione Europa USA, Inc.*, 618 F. 3d 417, 431–435 (CA4 2010) (*per curiam*), and designs on laminated floor tiles, see *Home Legend, LLC* v. *Mannington Mills, Inc.*, 784 F. 3d 1404, 1412–1413 (CA11 2015). See generally Brief for Intellectual Property Professors as *Amici Curiae.*

By way of contrast, Van Gogh's painting of a pair of old shoes, though beautifully executed and copyrightable as a painting, would not qualify for a shoe design copyright. See Appendix, fig. 3, *infra;* 17 U. S. C. §§ 113(a)–(b). Courts have similarly denied copyright protection to objects that begin as three-dimensional designs, such as measuring spoons shaped like heart-tipped arrows, *Bonazoli* v. *R. S. V. P. Int'l, Inc.*, 353 F. Supp. 2d 218, 226–227 (RI 2005); candleholders shaped like sailboats, *Design Ideas, Ltd.* v. *Yankee Candle Co.*, 889 F. Supp. 2d 1119, 1128 (CD Ill. 2012); and wire spokes on a wheel cover, *Norris Industries, Inc.* v. *International Tel. & Tel. Corp.*, 696 F. 2d 918, 922–924 (CA11 1983). None of these designs could qualify for copyright protection that would prevent others from selling spoons, candleholders, or wheel covers with the same design. Why not? Because in each case the design is not separable from the utilitarian aspects of the object to which it relates. The designs cannot be physically separated because they themselves make up the shape of the spoon, candleholders, or wheel covers of which they are a part. And spoons, candleholders, and wheel covers are useful objects, as are the old shoes depicted in Van Gogh's painting. More importantly,

one cannot easily imagine or otherwise conceptualize the design of the spoons or the candleholders or the shoes *without that picture, or image, or replica being a picture of spoons, or candleholders, or wheel covers, or shoes*. The designs necessarily bring along the underlying utilitarian object. Hence each design is not conceptually separable from the physical useful object.

The upshot is that one could copyright the floral design on a soupspoon but one could not copyright the shape of the spoon itself, no matter how beautiful, artistic, or esthetically pleasing that shape might be: A picture of the shape of the spoon is also a picture of a spoon; the picture of a floral design is not. See Compendium § 924.2(B).

To repeat: A separable design feature must be "capable of existing independently" of the useful article as a separate artistic work that is not itself the useful article. If the claimed feature could be extracted without replicating the useful artic e of which it is a part, and the result would be a copyrightable artistic work standing alone, then there is a separable design. But if extracting the claimed features would necessarily bring along the underlying useful article, the design is not separable from the useful article. In many or most cases, to decide whether a design or artistic feature of a useful article is conceptually separate from the article itself, it is enough to imagine the feature on its own and ask, "Have I created a picture of a (useful part of a) useful article?" If so, the design is not separable from the useful article. If not, it is.

In referring to imagined pictures and the like, I am not speaking technically. I am simply trying to explain an intuitive idea of what separation is about, as well as how I understand the majority's opinion. So understood, the opinion puts design copyrights in their rightful place. The law has long recognized that drawings or photographs of real world objects are copyrightable as drawings or photographs, but the copyright does not give protection against others making

the underlying useful objects. See, *e. g.*, *Burrow-Giles Lithographic Co.* v. *Sarony*, 111 U. S. 53 (1884). That is why a copyright on Van Gogh's painting would prevent others from reproducing that painting, but it would not prevent others from reproducing and selling the comfortable old shoes that the painting depicts. Indeed, the purpose of § 113(b) was to ensure that "'copyright in a pictorial, graphic, or sculptural work, portraying a useful article as such, does not extend to the manufacture of the useful article itself.'" H. R. Rep., at 105.

II

To ask this kind of simple question—does the design picture the useful article?—will not provide an answer in every case, for there will be cases where it is difficult to say whether a picture of the design is, or is not, also a picture of the useful article. But the question will avoid courts focusing primarily upon what I believe is an unhelpful feature of the inquiry, namely, whether the design can be imagined as a "two- or three-dimensional work of art." *Ante*, at 409, 424. That is because virtually any industrial design can be thought of separately as a "work of art": Just imagine a frame surrounding the design, or its being placed in a gallery. Consider Marcel Duchamp's "readymades" series, the functional mass-produced objects he designated as art. See Appendix, fig. 4, *infra*. What is there in the world that, viewed through an esthetic lens, cannot be seen as a good, bad, or indifferent work of art? What design features could not be imaginatively reproduced on a painter's canvas? Indeed, great industrial design may well include design that is inseparable from the useful article—where, as Frank Lloyd Wright put it, "form and function are one." F. Wright, An Autobiography 146 (1943) (reprint 2005). Where they are one, the designer may be able to obtain 15 years of protection through a design patent. 35 U. S. C. §§ 171, 173; see also McKenna & Strandburg, Progress and Competition in Design, 17 Stan. Tech. L. Rev. 1, 48–51 (2013). But, if they are one,

Congress did not intend a century or more of copyright protection.

III

The conceptual approach that I have described reflects Congress' answer to a problem that is primarily practical and economic. Years ago Lord Macaulay drew attention to the problem when he described copyright in books as a "tax on readers for the purpose of giving a bounty to writers." 56 Parl. Deb. (3d Ser.) (1841) 341, 350. He called attention to the main benefit of copyright protection, which is to provide an incentive to produce copyrightable works and thereby "promote the Progress of Science and useful Arts." U. S. Const., Art. I, § 8, cl. 8. But Macaulay also made clear that copyright protection imposes costs. Those costs include the higher prices that can accompany the grant of a copyright monopoly. They also can include (for those wishing to display, sell, or perform a design, film, work of art, or piece of music, for example) the costs of discovering whether there are previous copyrights, of contacting copyright holders, and of securing permission to copy. *Eldred* v. *Ashcroft*, 537 U. S. 186, 248–252 (2003) (BREYER, J., dissenting). Sometimes, as Thomas Jefferson wrote to James Madison, costs can outweigh "the benefit even of limited monopolies." Letter from Thomas Jefferson to James Madison (July 31, 1788), in 13 Papers of Thomas Jefferson 443 (J. Boyd ed. 1956) (Jefferson Letter). And that is particularly true in light of the fact that Congress has extended the "limited Times" of protection, U. S. Const., Art. I, § 8, cl. 8, from the "14 years" of Jefferson's day to potentially more than a century today. Jefferson Letter 443; see also *Eldred*, *supra*, at 246–252 (opinion of BREYER, J.).

The Constitution grants Congress primary responsibility for assessing comparative costs and benefits and drawing copyright's statutory lines. Courts must respect those lines and not grant copyright protection where Congress has decided not to do so. And it is clear that Congress has not

extended broad copyright protection to the fashion design industry. See, *e. g.*, 1 Nimmer §2A.08[H][3][c] (describing how Congress rejected proposals for fashion design protection within the 1976 Act and has rejected every proposed bill to this effect since then); *Esquire, Inc.* v. *Ringer*, 591 F. 2d 796, 800, n. 12 (CADC 1978) (observing that at the time of the 1976 Copyright Act, Congress had rejected every one of the approximately 70 design protection bills that had been introduced since 1914); *e. g.*, H. R. 5055, 109th Cong., 2d Sess.: "To Amend title 17, United States Code, to provide protection for fashion design" (introduced Mar. 30, 2006; unenacted). Congress has left "statutory . . . protection . . . largely unavailable for dress designs." 1 Nimmer §2A.08[H][3][a]; Raustiala & Sprigman, The Piracy Paradox: Innovation and Intellectual Property in Fashion Design, 92 Va. L. Rev. 1687, 1698–1705 (2006).

Congress' decision not to grant full copyright protection to the fashion industry has not left the industry without protection. Patent design protection is available. 35 U. S. C. §§171, 173. A maker of clothing can obtain trademark protection under the Lanham Act for signature features of the clothing. 15 U. S. C. §1051 *et seq.* And a designer who creates an original textile design can receive copyright protection for that pattern as placed, for example, on a bolt of cloth, or anything made with that cloth. *E. g.*, Compendium §924.3(A)(1). "[T]his [type of] claim . . . is generally made by the fabric producer rather than the garment or costume designer," and is "ordinarily made when the two-dimensional design is applied to the textile fabric and before the garment is cut from the fabric." 56 Fed. Reg. 56531 (1991).

The fashion industry has thrived against this backdrop, and designers have contributed immeasurably to artistic and personal self-expression through clothing. But a decision by this Court to grant protection to the design of a garment would grant the designer protection that Congress refused to provide. It would risk increased prices and unforesee-

able disruption in the clothing industry, which in the United States alone encompasses nearly $370 billion in annual spending and 1.8 million jobs. Brief for Council of Fashion Designers of America, Inc., as *Amicus Curiae* 3–4 (citing U. S. Congress, Joint Economic Committee, The New Economy of Fashion 1 (2016)). That is why I believe it important to emphasize those parts of the Court's opinion that limit the scope of its interpretation. That language, as I have said, makes clear that one may not "claim a copyright in a useful article merely by creating a replica of that article in some other medium," which "would not give rise to any rights in the useful article that inspired it." *Ante*, at 415.

IV

If we ask the "separateness" question correctly, the answer here is not difficult to find. The majority's opinion, in its appendix, depicts the cheerleader dress designs that Varsity submitted to the Copyright Office. Can the design features in Varsity's pictures exist separately from the utilitarian aspects of a dress? Can we extract those features as copyrightable design works standing alone, without bringing along, via picture or design, the dresses of which they constitute a part?

Consider designs 074, 078, and 0815. They certainly look like cheerleader uniforms. That is to say, they look like pictures of cheerleader uniforms, just like Van Gogh's old shoes look like shoes. I do not see how one could see them otherwise. Designs 299A and 299B present slightly closer questions. They omit some of the dresslike context that the other designs possess. But the necklines, the sleeves, and the cut of the skirt suggest that they too are pictures of dresses. Looking at all five of Varsity's pictures, I do not see how one could conceptualize the design features in a way that does not picture, not just artistic designs, but dresses as well.

Were I to accept the majority's invitation to "imaginatively remov[e]" the chevrons and stripes *as they are arranged* on the neckline, waistline, sleeves, and skirt of each uniform, and apply them on a "painter's canvas," *ante*, at 417, that painting would be of a cheerleader's dress. The esthetic elements on which Varsity seeks protection exist only as part of the uniform design—there is nothing to separate out but for dress-shaped lines that replicate the cut and style of the uniforms. Hence, each design is not physically separate, nor is it conceptually separate, from the useful article it depicts, namely, a cheerleader's dress. They cannot be copyrighted.

Varsity, of course, could have sought a design patent for its designs. Or, it could have sought a copyright on a textile design, even one with a similar theme of chevrons and lines.

But that is not the nature of Varsity's copyright claim. It has instead claimed ownership of the particular "'treatment and arrangement'" of the chevrons and lines of the design as they appear at the neckline, waist, skirt, sleeves, and overall cut of each uniform. Brief for Respondents 50. The majority imagines that Varsity submitted something different—that is, only the surface decorations of chevrons and stripes, as in a textile design. As the majority sees it, Varsity's copyright claim would be the same had it submitted a plain rectangular space depicting chevrons and stripes, like swaths from a bolt of fabric. But considered on their own, the simple stripes are plainly unoriginal. Varsity, then, seeks to do indirectly what it cannot do directly: bring along the design and cut of the dresses by seeking to protect surface decorations whose "treatment and arrangement" are *coextensive with that design and cut*. As Varsity would have it, it would prevent its competitors from making useful three-dimensional cheerleader uniforms by submitting plainly unoriginal chevrons and stripes as cut and arranged on a useful article. But with that cut and arrangement, the resulting pictures on which Varsity seeks protection do not

simply depict designs. They depict clothing. They depict the useful articles of which the designs are inextricable parts. And Varsity cannot obtain copyright protection that would give them the power to prevent others from making those useful uniforms, any more than Van Gogh can copyright comfortable old shoes by painting their likeness.

I fear that, in looking past the three-dimensional design inherent in Varsity's claim by treating it as if it were no more than a design for a bolt of cloth, the majority has lost sight of its own important limiting principle. One may not "claim a copyright in a useful article merely by creating a replica of that article in some other medium," such as in a picture. *Ante*, at 415. That is to say, one cannot obtain a copyright that would give its holder "any rights in the useful article that inspired it." *Ibid.*

With respect, I dissent.

[Appendix to opinion of BREYER, J., follows this page.]

APPENDIX TO OPINION OF BREYER, J.

Fig. 1

Fig. 2

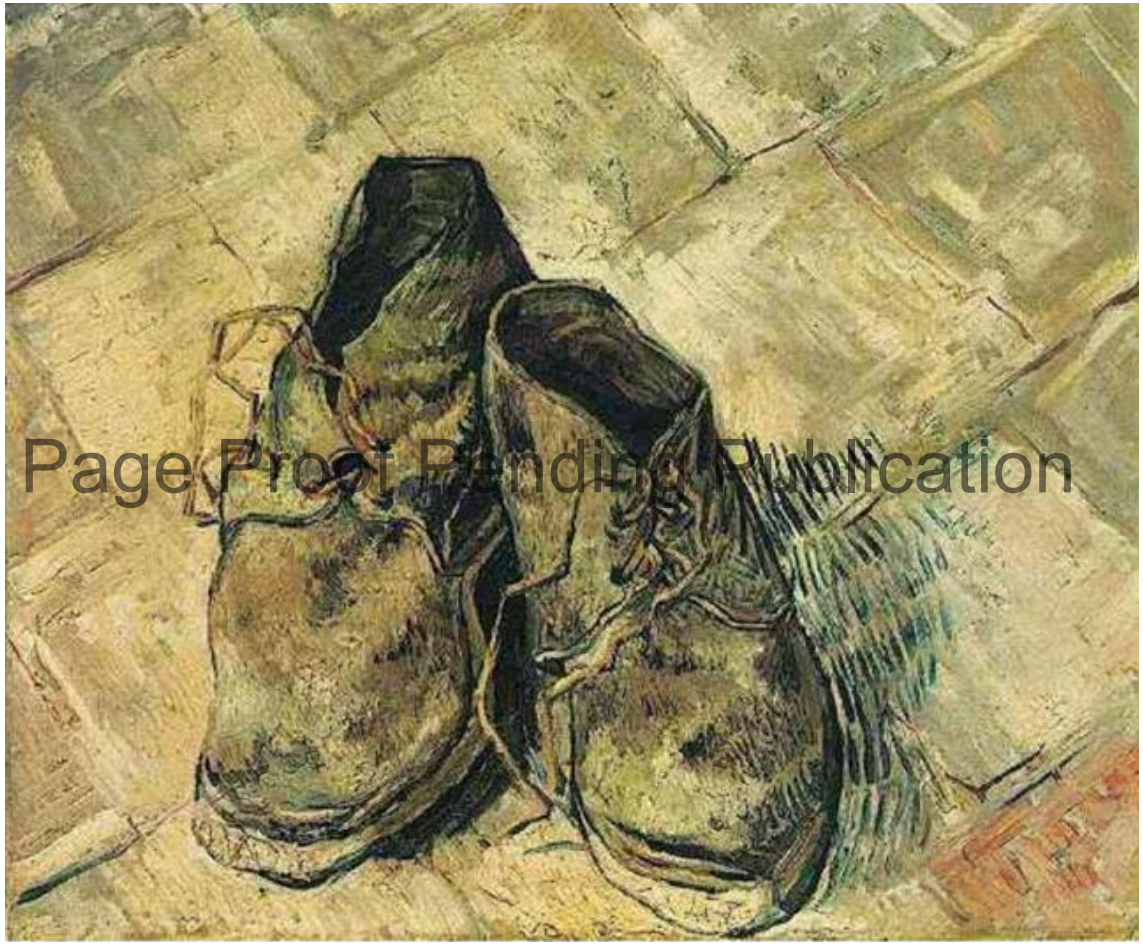

Fig. 3: Vincent Van Gogh, “Shoes”

Fig. 4: Marcel Duchamp,
"In Advance of the Broken Arm"

Syllabus

CZYZEWSKI ET AL. *v.* JEVIC HOLDING CORP. ET AL.

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

No. 15–649. Argued December 7, 2016—Decided March 22, 2017

There are three possible conclusions to a Chapter 11 bankruptcy. First, debtor and creditors may negotiate a plan to govern the distribution of the estate's value. See, *e. g.*, 11 U. S. C. §§ 1121, 1123, 1129, 1141. Second, the bankruptcy court may convert the case to Chapter 7 for liquidation of the business and distribution of its assets to creditors. §§ 1112(a), (b), 726. Finally, the bankruptcy court may dismiss the case. § 1112(b). A court ordering a dismissal ordinarily attempts to restore the prepetition financial status quo. § 349(b)(3). Yet if perfect restoration proves difficult or impossible, the court may, "for cause," alter the dismissal's normal restorative consequences, § 349(b)—*i. e.*, it may order a "structured dismissal." The Bankruptcy Code also establishes basic priority rules for determining the order in which the court will distribute an estate's assets. The Code makes clear that distributions in a Chapter 7 liquidation must follow this prescribed order. §§ 725, 726. Chapter 11 permits some flexibility, but a court still cannot confirm a plan that contains priority-violating distributions over the objection of an impaired creditor class. §§ 1129(a)(7), (b)(2). The Code does not explicitly state what priority rules—if any—apply to the distribution of assets in a structured dismissal.

Respondent Jevic Transportation filed for Chapter 11 bankruptcy after being purchased in a leveraged buyout. The bankruptcy prompted two lawsuits. In the first, a group of former Jevic truckdrivers, petitioners here, was awarded a judgment against Jevic for Jevic's failure to provide proper notice of termination in violation of state and federal Worker Adjustment and Retraining Notification (WARN) Acts. Part of that judgment counted as a priority wage claim under § 507(a)(4), entitling the workers to payment ahead of general unsecured claims against the Jevic estate. In the second suit, a court-authorized committee representing Jevic's unsecured creditors sued Sun Capital and CIT Group, respondents here, for fraudulent conveyance in connection with the leveraged buyout of Jevic. These parties negotiated a settlement agreement that called for a structured dismissal of Jevic's Chapter 11 bankruptcy. Under the proposed structured dismissal, petitioners would receive nothing on their WARN claims, but lower-priority general unsecured creditors would be paid. Petitioners argued that the

distribution scheme accordingly violated the Code's priority rules by paying general unsecured claims ahead of their own. The Bankruptcy Court nevertheless approved the settlement agreement and dismissed the case, reasoning that because the proposed payouts would occur pursuant to a structured dismissal rather than an approved plan, the failure to follow ordinary priority rules did not bar approval. The District Court and the Third Circuit affirmed.

Held:

1. Petitioners have Article III standing. Respondents argue that petitioners have not "suffered an injury in fact," or at least one "likely to be redressed by a favorable judicial decision," *Spokeo, Inc.* v. *Robins*, 578 U. S. 330, 338, because petitioners would have gotten nothing even if the Bankruptcy Court had never approved the structured dismissal and will still get nothing if the structured dismissal is undone now. That argument rests upon the assumptions that (1) without a violation of ordinary priority rules, there will be no settlement, and (2) without a settlement, the fraudulent-conveyance lawsuit has no value. The record, however, indicates both that a settlement that respects ordinary priorities remains a reasonable possibility and that the fraudulent-conveyance claim could have litigation value. Therefore, as a consequence of the Bankruptcy Court's approval of the structured dismissal, petitioners lost a chance to obtain a settlement that respected their priorities or, if not that, the power to assert the fraudulent-conveyance claim themselves. A decision in their favor is likely to redress that loss. Pp. 462–464.

2. Bankruptcy courts may not approve structured dismissals that provide for distributions that do not follow ordinary priority rules without the consent of affected creditors. Pp. 464–471.

(a) Given the importance of the priority system, this Court looks for an affirmative indication of intent before concluding that Congress means to make a major departure. See *Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457, 468. Nothing in the statute evinces such intent. Insofar as the dismissal sections of Chapter 11 foresee any transfer of assets, they seek a restoration of the prepetition financial status quo. Read in context, § 349(b), which permits a bankruptcy judge, "for cause, [to] orde[r] otherwise," seems designed to give courts the flexibility to protect reliance interests acquired in the bankruptcy, not to make general end-of-case distributions that would be flatly impermissible in a Chapter 11 plan or Chapter 7 liquidation. Precedent does not support a contrary position. *E. g.*, *In re Iridium Operating LLC*, 478 F. 3d 452 (CA2), distinguished. Cases in which courts have approved deviations from ordinary priority rules generally involve interim

Syllabus

distributions serving significant Code-related objectives. That is not the case here, where, *e. g.*, the priority-violating distribution is attached to a final disposition, does not preserve the debtor as a going concern, does not make the disfavored creditors better off, does not promote the possibility of a confirmable plan, does not help to restore the *status quo ante*, and does not protect reliance interests. Pp. 464–469.

(b) Congress did not authorize a "rare case" exception that permits courts to disregard priority in structured dismissals for "sufficient reasons." The fact that it is difficult to give precise content to the concept of "sufficient reasons" threatens to turn the court below's exception into a more general rule, resulting in uncertainty that has potentially serious consequences—*e. g.*, departure from the protections granted particular classes of creditors, changes in the bargaining power of different classes of creditors even in bankruptcies that do not end in structured dismissals, risks of collusion, and increased difficulty in achieving settlements. Courts cannot deviate from the strictures of the Code, even in "rare cases." Pp. 469–471.

787 F. 3d 173, reversed and remanded.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed a dissenting opinion, in which ALITO, J., joined, *post*, p. 471.

Danielle Spinelli argued the cause for petitioners. With her on the briefs were *Craig Goldblatt*, *Joel Millar*, *Matthew Guarnieri*, *Jack A. Raisner*, *Rene S. Roupinian*, and *Christopher D. Loizides*.

Sarah E. Harrington argued the cause for the United States as *amicus curiae* urging reversal. With her on the brief were *Acting Solicitor General Gershengorn*, *Principal Deputy Assistant Attorney General Mizer*, *Deputy Solicitor General Stewart*, *Michael S. Raab*, *Dana Kaersvang*, *Ramona D. Elliott*, *P. Matthew Sutko*, and *Wendy Cox*.

Christopher Landau argued the cause for respondents. With him on the brief were *James P. Gillespie*, *Jason M. Wilcox*, *Robert J. Feinstein*, *Richard P. Norton*, and *Linda Richenderfer*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Illinois et al. by *Lisa Madigan*, Attorney General of Illinois, *David L. Franklin*, Solicitor General, *Brett E. Legner*, Deputy Solicitor General, and

JUSTICE BREYER delivered the opinion of the Court.

Bankruptcy Code Chapter 11 allows debtors and their creditors to negotiate a plan for dividing an estate's value. See 11 U. S. C. §§ 1123, 1129, 1141. But sometimes the parties cannot agree on a plan. If so, the bankruptcy court may decide to dismiss the case. § 1112(b). The Code then ordinarily provides for what is, in effect, a restoration of the prepetition financial status quo. § 349(b).

In the case before us, a Bankruptcy Court dismissed a Chapter 11 bankruptcy. But the court did not simply restore the prepetition status quo. Instead, the court ordered a distribution of estate assets that gave money to high-priority secured creditors and to low-priority general unsecured creditors but which skipped certain dissenting mid-priority creditors. The skipped creditors would have been

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James D. Newbold, Assistant Attorney General, and by the Attorneys General for their respective jurisdictions as follows: *Jahna Lindemuth* of Alaska, *Mark Brnovich* of Arizona, *Kamala D. Harris* of California, *George Jepsen* of Connecticut, *Karl A. Racine* of the District of Columbia, *Sam Olens* of Georgia, *Douglas S. Chin* of Hawaii, *Lawrence G. Wasden* of Idaho, *Gregory F. Zoeller* of Indiana, *Tom Miller* of Iowa, *Derek Schmidt* of Kansas, *Andy Beshear* of Kentucky, *Jeff Landry* of Louisiana, *Janet T. Mills* of Maine, *Brian E. Frosh* of Maryland, *Maura Healy* of Massachusetts, *Bill Schuette* of Michigan, *Lori Swanson* of Minnesota, *Tim Fox* of Montana, *Adam Paul Laxalt* of Nevada, *Joseph A. Foster* of New Hampshire, *Hector H. Balderas* of New Mexico, *Eric T. Schneiderman* of New York, *Wayne Stenehjem* of North Dakota, *Michael DeWine* of Ohio, *Ellen F. Rosenblum* of Oregon, *Bruce R. Beemer* of Pennsylvania, *Peter F. Kilmartin* of Rhode Island, *Alan Wilson* of South Carolina, *Herbert H. Slatery III* of Tennessee, *Ken Paxton* of Texas, *Sean D. Reyes* of Utah, *Robert W. Ferguson* of Washington, *Patrick Morrisey* of West Virginia, and *Peter K. Michael* of Wyoming; for the Loan Syndications and Trading Association by *Ronald J. Mann* and *Elliot Ganz*; for the National Employment Law Project et al. by *Simon A. Steel*, *Catherine K. Ruckelshaus*, *Sally Greenberg*, *Seymour W. James, Jr.*, and *Kenneth Kimerling*; and for Law Professors by *Jonathan C. Lipson*.

Briefs of *amici curiae* urging affirmance were filed for Jagdeep S. Bhandari et al. by *Richard Lieb* and *John Collen*; and for Law Professors by *David R. Kuney*.

entitled to payment ahead of the general unsecured creditors in a Chapter 11 *plan* (or in a Chapter 7 liquidation). See §§ 507, 725, 726, 1129. The question before us is whether a bankruptcy court has the legal power to order this priority-skipping kind of distribution scheme in connection with a Chapter 11 *dismissal*.

In our view, a bankruptcy court does not have such a power. A distribution scheme ordered in connection with the dismissal of a Chapter 11 case cannot, without the consent of the affected parties, deviate from the basic priority rules that apply under the primary mechanisms the Code establishes for final distributions of estate value in business bankruptcies.

I

A

1

We begin with a few fundamentals: A business may file for bankruptcy under either Chapter 7 or Chapter 11. In Chapter 7, a trustee liquidates the debtor's assets and distributes them to creditors. See § 701 *et seq.* In Chapter 11, debtor and creditors try to negotiate a plan that will govern the distribution of valuable assets from the debtor's estate and often keep the business operating as a going concern. See, *e. g.,* §§ 1121, 1123, 1129, 1141 (setting out the framework in which the parties negotiate).

Filing for Chapter 11 bankruptcy has several relevant legal consequences. First, an estate is created comprising all property of the debtor. § 541(a)(1). Second, a fiduciary is installed to manage the estate in the interest of the creditors. §§ 1106, 1107(a). This fiduciary, often the debtor's existing management team, acts as "debtor in possession." §§ 1101(1), 1104. It may operate the business, §§ 363(c)(1), 1108, and perform certain bankruptcy-related functions, such as seeking to recover for the estate preferential or fraudulent transfers made to other persons, § 547 (transfers made

before bankruptcy that unfairly preferred particular creditors); § 548 (fraudulent transfers, including transfers made before bankruptcy for which the debtor did not receive fair value). Third, an "automatic stay" of all collection proceedings against the debtor takes effect. § 362(a).

It is important to keep in mind that Chapter 11 foresees three possible outcomes. The first is a bankruptcy-court-confirmed plan. Such a plan may keep the business operating but, at the same time, help creditors by providing for payments, perhaps over time. See §§ 1123, 1129, 1141. The second possible outcome is conversion of the case to a Chapter 7 proceeding for liquidation of the business and a distribution of its remaining assets. §§ 1112(a), (b), 726. That conversion in effect confesses an inability to find a plan. The third possible outcome is dismissal of the Chapter 11 case. § 1112(b). A dismissal typically "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case"—in other words, it aims to return to the prepetition financial status quo. § 349(b)(3).

Nonetheless, recognizing that conditions may have changed in ways that make a perfect restoration of the status quo difficult or impossible, the Code permits the bankruptcy court, "for cause," to alter a Chapter 11 dismissal's ordinary restorative consequences. § 349(b). A dismissal that does so (or which has other special conditions attached) is often referred to as a "structured dismissal," defined by the American Bankruptcy Institute as a

> "hybrid dismissal and confirmation order . . . that . . . typically dismisses the case while, among other things, approving certain distributions to creditors, granting certain third-party releases, enjoining certain conduct by creditors, and not necessarily vacating orders or unwinding transactions undertaken during the case." American Bankruptcy Institute Commission To Study the Reform of Chapter 11, 2012–2014 Final Report and Recommendations 270 (2014).

Although the Code does not expressly mention structured dismissals, they "appear to be increasingly common." *Ibid.*, n. 973.

2

The Code also sets forth a basic system of priority, which ordinarily determines the order in which the bankruptcy court will distribute assets of the estate. Secured creditors are highest on the priority list, for they must receive the proceeds of the collateral that secures their debts. 11 U. S. C. § 725. Special classes of creditors, such as those who hold certain claims for taxes or wages, come next in a listed order. §§ 507, 726(a)(1). Then come low-priority creditors, including general unsecured creditors. § 726(a)(2). The Code places equity holders at the bottom of the priority list. They receive nothing until all previously listed creditors have been paid in full. § 726(a)(6).

The Code makes clear that distributions of assets in a Chapter 7 liquidation must follow this prescribed order. §§ 725, 726. It provides somewhat more flexibility for distributions pursuant to Chapter 11 plans, which may impose a different ordering with the consent of the affected parties. But a bankruptcy court cannot confirm a plan that contains priority-violating distributions over the objection of an impaired creditor class. §§ 1129(a)(7), (b)(2).

The question here concerns the interplay between the Code's priority rules and a Chapter 11 dismissal. Here, the Bankruptcy Court neither liquidated the debtor under Chapter 7 nor confirmed a Chapter 11 plan. But the court, instead of reverting to the prebankruptcy status quo, ordered a distribution of the estate assets to creditors by attaching conditions to the dismissal (*i. e.*, it ordered a structured dismissal). The Code does not explicitly state what priority rules—if any—apply to a distribution in these circumstances. May a court consequently provide for distributions that deviate from the ordinary priority rules that would apply to a Chapter 7 liquidation or a Chapter 11 plan? Can it approve conditions that give estate assets to members of a lower pri-

ority class while skipping objecting members of a higher priority class?

B

In 2006, Sun Capital Partners, a private equity firm, acquired Jevic Transportation Corporation with money borrowed from CIT Group in a "leveraged buyout." In a leveraged buyout, the buyer (B) typically borrows from a third party (T) a large share of the funds needed to purchase a company (C). B then pays the money to C's shareholders. Having bought the stock, B owns C. B then pledges C's assets to T so that T will have security for its loan. Thus, if the selling price for C is $50 million, B might use $10 million of its own money, borrow $40 million from T, pay $50 million to C's shareholders, and then pledge C assets worth $40 million (or more) to T as security for T's $40 million loan. If B manages C well, it might make enough money to pay T back the $40 million and earn a handsome profit on its own $10 million investment. But, if the deal sours and C descends into bankruptcy, beware of what might happen: Instead of C's $40 million in assets being distributed to its existing creditors, the money will go to T to pay back T's loan—the loan that allowed B to buy C. (T will receive what remains of C's assets because T is now a secured creditor, putting it at the top of the priority list). Since C's shareholders receive money while C's creditors lose their claim to C's remaining assets, unsuccessful leveraged buyouts often lead to fraudulent-conveyance suits alleging that the purchaser (B) transferred the company's assets without receiving fair value in return. See Lipson & Vandermeuse, *Stern*, Seriously: The Article I Judicial Power, Fraudulent Transfers, and Leveraged Buyouts, 2013 Wis. L. Rev. 1161, 1220–1221.

This is precisely what happened here. Just two years after Sun's buyout, Jevic (C in our leveraged buyout example) filed for Chapter 11 bankruptcy. At the time of filing, it owed $53 million to senior secured creditors Sun and CIT

(B and T in our example), and over $20 million to tax and general unsecured creditors.

The circumstances surrounding Jevic's bankruptcy led to two lawsuits. First, petitioners, a group of former Jevic truckdrivers, filed suit in Bankruptcy Court against Jevic and Sun. Petitioners pointed out that, just before entering bankruptcy, Jevic had halted almost all its operations and had told petitioners that they would be fired. Petitioners claimed that Jevic and Sun had thereby violated state and federal Worker Adjustment and Retraining Notification (WARN) Acts—laws that require a company to give workers at least 60 days' notice before their termination. See 29 U. S. C. § 2102; N. J. Stat. Ann. § 34:21–2 (West 2011). The Bankruptcy Court granted summary judgment for petitioners against Jevic, leaving them (and *this* is the point to remember) with a judgment that petitioners say is worth $12.4 million. See *In re Jevic Holding Corp.*, 496 B. R. 151 (Bkrtcy. Ct. Del. 2013). Some $8.3 million of that judgment counts as a priority wage claim under 11 U. S. C. § 507(a)(4), and is therefore entitled to payment ahead of general unsecured claims against the Jevic estate.

Petitioners' WARN suit against Sun continued throughout most of the litigation now before us. But eventually Sun prevailed on the ground that Sun was not the workers' employer at the relevant times. See *In re Jevic Holding Corp.*, 656 Fed. Appx. 617 (CA3 2016).

Second, the Bankruptcy Court authorized a committee representing Jevic's unsecured creditors to sue Sun and CIT. The Bankruptcy Court and the parties were aware that any proceeds from such a suit would belong not to the unsecured creditors, but to the bankruptcy estate. See §§ 541(a)(1), (6); *Official Comm. of Unsecured Creditors of Cybergenics Corp.* v. *Chinery*, 330 F. 3d 548, 552–553 (CA3 2003) (en banc) (holding that a creditor's committee can bring a derivative action on behalf of the estate). The committee alleged that Sun and CIT, in the course of their leveraged buyout, had "has-

tened Jevic's bankruptcy by saddling it with debts that it couldn't service." *In re Jevic Holding Corp.*, 787 F. 3d 173, 176 (CA3 2015). In 2011, the Bankruptcy Court held that the committee had adequately pleaded claims of preferential transfer under § 547 and of fraudulent transfer under § 548. *In re Jevic Holding Corp.*, 2011 WL 4345204 (Bkrtcy. Ct. Del., Sept. 15, 2011).

Sun, CIT, Jevic, and the committee then tried to negotiate a settlement of this "fraudulent-conveyance" lawsuit. By that point, the depleted Jevic estate's only remaining assets were the fraudulent-conveyance claim itself and $1.7 million in cash, which was subject to a lien held by Sun.

The parties reached a settlement agreement. It provided (1) that the Bankruptcy Court would dismiss the fraudulent-conveyance action with prejudice; (2) that CIT would deposit $2 million into an account earmarked to pay the committee's legal fees and administrative expenses; (3) that Sun would assign its lien on Jevic's remaining $1.7 million to a trust, which would pay taxes and administrative expenses and distribute the remainder on a pro rata basis to the low-priority general unsecured creditors, *but which would not distribute anything to petitioners* (who, by virtue of their WARN judgment, held an $8.3 million mid-level-priority wage claim against the estate); and (4) that Jevic's Chapter 11 bankruptcy would be dismissed.

Apparently Sun insisted on a distribution that would skip petitioners because petitioners' WARN suit against Sun was still pending and Sun did not want to help finance that litigation. See 787 F. 3d, at 177–178, n. 4 (Sun's counsel acknowledging before the Bankruptcy Court that "'Sun probably does care where the money goes because you can take judicial notice that there's a pending WARN action against Sun by the WARN plaintiffs. And if the money goes to the WARN plaintiffs, then you're funding someone who is suing you who otherwise doesn't have funds and is doing it on a contingent fee basis'"). The essential point is that, regard-

less of the reason, the proposed settlement called for a structured dismissal that provided for distributions that did not follow ordinary priority rules.

Sun, CIT, Jevic, and the committee asked the Bankruptcy Court to approve the settlement and dismiss the case. Petitioners and the U. S. Trustee objected, arguing that the settlement's distribution plan violated the Code's priority scheme because it skipped petitioners—who, by virtue of their WARN judgment, had mid-level priority claims against estate assets—and distributed estate money to low-priority general unsecured creditors.

The Bankruptcy Court agreed with petitioners that the settlement's distribution scheme failed to follow ordinary priority rules. App. to Pet. for Cert. 58a. But it held that this did not bar approval. *Ibid.* That, in the Bankruptcy Court's view, was because the proposed payouts would occur pursuant to a structured dismissal of a Chapter 11 petition rather than an approval of a Chapter 11 plan. *Ibid.* The court accordingly decided to grant the motion in light of the "dire circumstances" facing the estate and its creditors. *Id.*, at 57a. Specifically, the court predicted that without the settlement and dismissal, there was "no realistic prospect" of a meaningful distribution for anyone other than the secured creditors. *Id.*, at 58a. A confirmable Chapter 11 plan was unattainable. And there would be no funds to operate, investigate, or litigate were the case converted to a proceeding in Chapter 7. *Ibid.*

The District Court affirmed the Bankruptcy Court. It recognized that the settlement distribution violated ordinary priority rules. But those rules, it wrote, were "not a bar to the approval of the settlement as [the settlement] is not a reorganization plan." *In re Jevic Holding Corp.*, 2014 WL 268613, *3 (D Del., Jan. 24, 2014).

The Third Circuit affirmed the District Court by a vote of 2 to 1. 787 F. 3d, at 175; *id.*, at 186 (Scirica, J., concurring in part and dissenting in part). The majority held that

structured dismissals need not always respect priority. Congress, the court explained, had only "codified the absolute priority rule . . . in the specific context of plan confirmation." *Id.*, at 183. As a result, courts could, "in rare instances like this one, approve structured dismissals that do not strictly adhere to the Bankruptcy Code's priority scheme." *Id.*, at 180.

Petitioners (the workers with the WARN judgment) sought certiorari. We granted their petition.

II

Respondents initially argue that petitioners lack standing because they have suffered no injury, or at least no injury that will be remedied by a decision in their favor. See *Spokeo, Inc.* v. *Robins*, 578 U. S. 330, 338 (2016) (explaining that, for Article III standing, a plaintiff must have "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision"). Respondents concede that the structured dismissal approved by the Bankruptcy Court contained distribution conditions that skipped over petitioners, ensuring that petitioners received nothing on their multimillion-dollar WARN claim against the Jevic estate. But respondents still assert that petitioners suffered no loss.

The reason, respondents say, is that petitioners would have gotten nothing even if the Bankruptcy Court had never approved the structured dismissal in the first place, and will still get nothing if the structured dismissal is undone now. Reversal will eliminate the settlement of the committee's fraudulent-conveyance lawsuit, which was conditioned on the Bankruptcy Court's approval of the priority-violating structured dismissal. If the Bankruptcy Court cannot approve that dismissal, respondents contend, Sun and CIT will no longer agree to settle. Nor will petitioners ever be able to obtain a litigation recovery. Hence there will be no lawsuit

money to distribute. And in the absence of lawsuit money, Jevic's assets amount to about $1.7 million, all pledged to Sun, leaving nothing for anyone else, let alone petitioners. Thus, even if petitioners are right that the structured dismissal was impermissible, it cost them nothing. And a judicial decision in their favor will gain them nothing. No loss. No redress.

This argument, however, rests upon respondents' claims that (1) without a violation of ordinary priority rules, there will be no settlement, and (2) without a settlement, the fraudulent-conveyance lawsuit has no value. In our view, the record does not support either of these propositions.

As to the first, the record indicates that a settlement that respects ordinary priorities remains a reasonable possibility. It makes clear (as counsel made clear before our Court, see Tr. of Oral Arg. 58) that Sun insisted upon a settlement that gave petitioners nothing only because it did not want to help fund petitioners' WARN lawsuit against it. See 787 F. 3d, at 177–178, n. 4. But Sun has now won that lawsuit. See 656 Fed. Appx. 617. If Sun's given reason for opposing distributions to petitioners has disappeared, why would Sun not settle while permitting some of the settlement money to go to petitioners?

As to the second, the record indicates that the fraudulent-conveyance claim could have litigation value. CIT and Sun, after all, settled the lawsuit for $3.7 million, which would make little sense if the action truly had no chance of success. The Bankruptcy Court could convert the case to Chapter 7, allowing a Chapter 7 trustee to pursue the suit against Sun and CIT. Or the court could simply dismiss the Chapter 11 bankruptcy, thereby allowing petitioners to assert the fraudulent-conveyance claim themselves. Given these possibilities, there is no reason to believe that the claim could not be pursued with counsel obtained on a contingency basis. Of course, the lawsuit—like any lawsuit—*might* prove fruitless, but the mere *possibility* of failure does not eliminate

the value of the claim or petitioners' injury in being unable to bring it.

Consequently, the Bankruptcy Court's approval of the structured dismissal cost petitioners something. They lost a chance to obtain a settlement that respected their priority. Or, if not that, they lost the power to bring their own lawsuit on a claim that had a settlement value of $3.7 million. For standing purposes, a loss of even a small amount of money is ordinarily an "injury." See, *e. g.*, *McGowan* v. *Maryland*, 366 U. S. 420, 430–431 (1961) (finding that appellants fined $5 plus costs had standing to assert an Establishment Clause challenge). And the ruling before us could well have cost petitioners considerably more. See *Clinton* v. *City of New York*, 524 U. S. 417, 430–431 (1998) (imposition of a "substantial contingent liability" qualifies as an injury). A decision in petitioners' favor is likely to redress that loss. We accordingly conclude that petitioners have standing.

III

We turn to the basic question presented: Can a bankruptcy court approve a structured dismissal that provides for distributions that do not follow ordinary priority rules without the affected creditors' consent? Our simple answer to this complicated question is "no."

The Code's priority system constitutes a basic underpinning of business bankruptcy law. Distributions of estate assets at the termination of a business bankruptcy normally take place through a Chapter 7 liquidation or a Chapter 11 plan, and both are governed by priority. In Chapter 7 liquidations, priority is an absolute command—lower-priority creditors cannot receive anything until higher-priority creditors have been paid in full. See 11 U. S. C. §§ 725, 726. Chapter 11 plans provide somewhat more flexibility, but a priority-violating plan still cannot be confirmed over the objection of an impaired class of creditors. See § 1129(b).

The priority system applicable to those distributions has long been considered fundamental to the Bankruptcy Code's operation. See H. R. Rep. No. 103–835, p. 33 (1994) (explaining that the Code is "designed to enforce a distribution of the debtor's assets in an orderly manner . . . in accordance with established principles rather than on the basis of the inside influence or economic leverage of a particular creditor"); Roe & Tung, Breaking Bankruptcy Priority: How Rent-Seeking Upends the Creditors' Bargain, 99 Va. L. Rev. 1235, 1243, 1236 (2013) (arguing that the first principle of bankruptcy is that "distribution conforms to predetermined statutory and contractual priorities," and that priority is, "quite appropriately, bankruptcy's most important and famous rule"); Markell, Owners, Auctions, and Absolute Priority in Bankruptcy Reorganizations, 44 Stan. L. Rev. 69, 123 (1991) (stating that a fixed priority scheme is recognized as "the cornerstone of reorganization practice and theory").

The importance of the priority system leads us to expect more than simple statutory silence if, and when, Congress were to intend a major departure. See *Whitman* v. *American Trucking Assns., Inc.*, 531 U. S. 457, 468 (2001) ("Congress . . . does not, one might say, hide elephants in mouseholes"). Put somewhat more directly, we would expect to see some affirmative indication of intent if Congress actually meant to make structured dismissals a backdoor means to achieve the exact kind of nonconsensual priority-violating final distributions that the Code prohibits in Chapter 7 liquidations and Chapter 11 plans.

We can find nothing in the statute that evinces this intent. The Code gives a bankruptcy court the power to "dismiss" a Chapter 11 case. § 1112(b). But the word "dismiss" itself says nothing about the power to make nonconsensual priority-violating distributions of estate value. Neither the word "structured," nor the word "conditions," nor anything else about distributing estate value to creditors pursuant to a dismissal appears in any relevant part of the Code.

Insofar as the dismissal sections of Chapter 11 foresee any transfer of assets, they seek a restoration of the prepetition financial status quo. See § 349(b)(1) (dismissal ordinarily reinstates a variety of avoided transfers and voided liens); § 349(b)(2) (dismissal ordinarily vacates certain types of bankruptcy orders); § 349(b)(3) (dismissal ordinarily "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case"); see also H. R. Rep. No. 95–595, p. 338 (1977) (dismissal's "basic purpose . . . is to undo the bankruptcy case, as far as practicable, and to restore all property rights to the position in which they were found at the commencement of the case").

Section 349(b), we concede, also says that a bankruptcy judge may, "for cause, orde[r] otherwise." But, read in context, this provision appears designed to give courts the flexibility to "make the appropriate orders to protect rights acquired in reliance on the bankruptcy case." *Id.*, at 338; cf., *e. g.*, *Wiese* v. *Community Bank of Central Wis.*, 552 F. 3d 584, 590 (CA7 2009) (upholding, under § 349(b), a Bankruptcy Court's decision not to reinstate a debtor's claim against a bank that gave up a lien in reliance on the claim being released in the debtor's reorganization plan). Nothing else in the Code authorizes a court ordering a dismissal to make general end-of-case distributions of estate assets to creditors of the kind that normally take place in a Chapter 7 liquidation or Chapter 11 plan—let alone final distributions that do not help to restore the *status quo ante* or protect reliance interests acquired in the bankruptcy, and that would be flatly impermissible in a Chapter 7 liquidation or a Chapter 11 plan because they violate priority without the impaired creditors' consent. That being so, the word "cause" is too weak a reed upon which to rest so weighty a power. See *United Sav. Assn. of Tex.* v. *Timbers of Inwood Forest Associates, Ltd.*, 484 U. S. 365, 371 (1988) (noting that "[s]tatutory construction . . . is a holistic endeavor" and that a court should select

a "meanin[g that] produces a substantive effect that is compatible with the rest of the law"); *Kelly* v. *Robinson*, 479 U. S. 36, 43 (1986) (in interpreting a statute, a court "must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy" (internal quotation marks omitted)); cf. *In re Sadler*, 935 F. 2d 918, 921 (CA7 1991) (" 'Cause' under § 349(b) means an acceptable reason. Desire to make an end run around a statute is not an adequate reason").

We have found no contrary precedent, either from this Court, or, for that matter, from lower court decisions reflecting common bankruptcy practice. The Third Circuit referred briefly to *In re Buffet Partners, L. P.*, 2014 WL 3735804 (Bkrtcy. Ct. ND Tex., July 28, 2014). The court in that case approved a structured dismissal. (We express no view about the legality of structured dismissals in general.) But at the same time it pointed out "that not one party with an economic stake in the case has objected to the dismissal in this manner." *Id.*, at *4.

The Third Circuit also relied upon *In re Iridium Operating LLC*, 478 F. 3d 452 (CA2 2007). But *Iridium* did not involve a structured dismissal. It addressed an *interim* distribution of settlement proceeds to fund a litigation trust that would press claims on the estate's behalf. See *id.*, at 459–460. The *Iridium* court observed that, when evaluating this type of preplan settlement, "[i]t is difficult to employ the rule of priorities" because "the nature and extent of the Estate and the claims against it are *not yet fully resolved*." *Id.*, at 464 (emphasis added). The decision does not state or suggest that the Code authorizes nonconsensual departures from ordinary priority rules in the context of a dismissal—which is a *final* distribution of estate value—and in the absence of any further unresolved bankruptcy issues.

We recognize that *Iridium* is not the only case in which a court has approved interim distributions that violate ordinary priority rules. But in such instances one can generally

find significant Code-related objectives that the priority-violating distributions serve. Courts, for example, have approved "first-day" wage orders that allow payment of employees' prepetition wages, "critical vendor" orders that allow payment of essential suppliers' prepetition invoices, and "roll-ups" that allow lenders who continue financing the debtor to be paid first on their prepetition claims. See *Cybergenics*, 330 F. 3d, at 574, n. 8; D. Baird, Elements of Bankruptcy 232–234 (6th ed. 2014); Roe, 99 Va. L. Rev., at 1250–1264. In doing so, these courts have usually found that the distributions at issue would "enable a successful reorganization and make even the disfavored creditors better off." *In re Kmart Corp.*, 359 F. 3d 866, 872 (CA7 2004) (discussing the justifications for critical-vendor orders); see also *Toibb* v. *Radloff*, 501 U. S. 157, 163–164 (1991) (recognizing "permitting business debtors to reorganize and restructure their debts in order to revive the debtors' businesses" and "maximizing the value of the bankruptcy estate" as purposes of the Code). By way of contrast, in a structured dismissal like the one ordered below, the priority-violating distribution is attached to a final disposition; it does not preserve the debtor as a going concern; it does not make the disfavored creditors better off; it does not promote the possibility of a confirmable plan; it does not help to restore the *status quo ante*; and it does not protect reliance interests. In short, we cannot find in the violation of ordinary priority rules that occurred here any significant offsetting bankruptcy-related justification.

Rather, the distributions at issue here more closely resemble proposed transactions that lower courts have refused to allow on the ground that they circumvent the Code's procedural safeguards. See, *e. g.*, *In re Braniff Airways, Inc.*, 700 F. 2d 935, 940 (CA5 1983) (prohibiting an attempt to "short circuit the requirements of Chapter 11 for confirmation of a reorganization plan by establishing the terms of the plan *sub rosa* in connection with a sale of assets"); *In re Lionel*

Corp., 722 F. 2d 1063, 1069 (CA2 1983) (reversing a Bankruptcy Court's approval of an asset sale after holding that § 363 does not "gran[t] the bankruptcy judge *carte blanche*" or "swallo[w] up Chapter 11's safeguards"); *In re Biolitec, Inc.*, 528 B. R. 261, 269 (Bkrtcy. Ct. NJ 2014) (rejecting a structured dismissal because it "seeks to alter parties' rights without their consent and lacks many of the Code's most important safeguards"); cf. *In re Chrysler LLC*, 576 F. 3d 108, 118 (CA2 2009) (approving a § 363 asset sale because the Bankruptcy Court demonstrated "proper solicitude for the priority between creditors and deemed it essential that the [s]ale in no way upset that priority"), vacated as moot, 592 F. 3d 370 (CA2 2010) (*per curiam*).

IV

We recognize that the Third Circuit did not approve nonconsensual priority-violating structured dismissals in general. To the contrary, the court held that they were permissible only in those "rare case[s]" in which courts could find "sufficient reasons" to disregard priority. 787 F. 3d, at 175, 186. Despite the "rare case" limitation, we still cannot agree.

For one thing, it is difficult to give precise content to the concept "sufficient reasons." That fact threatens to turn a "rare case" exception into a more general rule. Consider the present case. The Bankruptcy Court feared that (1) without the worker-skipping distribution, there would be no settlement, (2) without a settlement, all the unsecured creditors would receive nothing, and consequently (3) its distributions would make some creditors (high- and low-priority creditors) better off without making other (mid-priority) creditors worse off (for they would receive nothing regardless). But, as we have pointed out, the record provides equivocal support for the first two propositions. See *supra*, at 462–464. And one can readily imagine other cases that turn on comparably dubious predictions. The result is uncer-

tainty. And uncertainty will lead to similar claims being made in many, not just a few, cases. See Rudzik, A Priority Is a Priority Is a Priority—Except When It Isn't, 34 Am. Bkrtcy. Inst. J. 16, 79 (2015) ("[O]nce the floodgates are opened, debtors and favored creditors can be expected to make every case that 'rare case' ").

The consequences are potentially serious. They include departure from the protections Congress granted particular classes of creditors. See, *e. g.*, *United States* v. *Embassy Restaurant, Inc.*, 359 U. S. 29, 32 (1959) (Congress established employee wage priority "to alleviate in some degree the hardship that unemployment usually brings to workers and their families" when an employer files for bankruptcy); H. R. Rep. No. 95–595, at 187 (explaining the importance of ensuring that employees do not "abandon a failing business for fear of not being paid"). They include changes in the bargaining power of different classes of creditors even in bankruptcies that do not end in structured dismissals. See Warren, A Theory of Absolute Priority, 1991 Ann. Survey Am. L. 9, 30. They include risks of collusion, *i. e.*, senior secured creditors and general unsecured creditors teaming up to squeeze out priority unsecured creditors. See *Bank of America Nat. Trust and Sav. Assn.* v. *203 North LaSalle Street Partnership*, 526 U. S. 434, 444 (1999) (discussing how the absolute priority rule was developed in response to "concern with 'the ability of a few insiders, whether representatives of management or major creditors, to use the reorganization process to gain an unfair advantage' " (quoting H. R. Doc. No. 93–137, pt. I, p. 255 (1973))). And they include making settlement more difficult to achieve. See Landes & Posner, Legal Precedent: A Theoretical and Empirical Analysis, 19 J. Law & Econ. 249, 271 (1976) (arguing that "the ratio of lawsuits to settlements is mainly a function of the amount of uncertainty, which leads to divergent estimates by the parties of the probable outcome"); see also *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U. S. 639,

649 (2012) (noting the importance of clarity and predictability in light of the fact that the "Bankruptcy Code standardizes an expansive (and sometimes unruly) area of law").

For these reasons, as well as those set forth in Part III, we conclude that Congress did not authorize a "rare case" exception. We cannot "alter the balance struck by the statute," *Law* v. *Siegel*, 571 U. S. 415, 427 (2014), not even in "rare cases." Cf. *Norwest Bank Worthington* v. *Ahlers*, 485 U. S. 197, 207 (1988) (explaining that courts cannot deviate from the procedures "specified by the Code," even when they sincerely "believ[e] that . . . creditors would be better off"). The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE THOMAS, with whom JUSTICE ALITO joins, dissenting.

Today, the Court answers a novel and important question of bankruptcy law. Unfortunately, it does so without the benefit of any reasoned opinions on the dispositive issue from the courts of appeals (apart from the Court of Appeals' opinion in this case) and with briefing on that issue from only one of the parties. That is because, having persuaded us to grant certiorari on one question, petitioners chose to argue a different question on the merits. In light of that switch, I would dismiss the writ of certiorari as improvidently granted.

We granted certiorari to decide "[w]hether a bankruptcy court may authorize the distribution of settlement proceeds in a manner that violates the statutory priority scheme." Pet. for Cert. i. According to petitioners, the decision below "deepened an existing . . . split" among the Courts of Appeals on this question. *Id.*, at 8; see *id.*, at 15–16 (citing *In re AWECO, Inc.*, 725 F. 2d 293, 298 (CA5 1984), and *In re Iridium Operating LLC*, 478 F. 3d 452, 464 (CA2 2007)). After

we granted certiorari, however, petitioners recast the question presented to ask "[w]hether a Chapter 11 case may be terminated by a 'structured dismissal' that distributes estate property in violation of the Bankruptcy Code's priority scheme." Brief for Petitioners i. Although both questions involve priority-skipping distributions of estate assets, the recast question is narrower—and different—than the one on which we granted certiorari. It is also not the subject of a circuit conflict.

I think it is unwise for the Court to decide the reformulated question today, for two reasons. First, it is a "novel question of bankruptcy law" arising in the rapidly developing field of structured dismissals. *In re Jevic Holding Corp.*, 787 F. 3d 173, 175 (CA3 2015). Experience shows that we would greatly benefit from the views of additional courts of appeals on this question. We also would have benefited from full, adversarial briefing. In reliance on this Court's Rules prohibiting parties from changing the substance of the question presented, see Rule 24.1(a); see also Rule 14.1(a), respondents declined to brief the question that the majority now decides, see Brief for Respondents 52. Second, deciding this question may invite future petitioners to seek review of a circuit conflict only then to change the question to one that seems more favorable. "I would not reward such bait-and-switch tactics." *City and County of San Francisco* v. *Sheehan*, 575 U. S. 600, 620 (2015) (Scalia, J., concurring in part and dissenting in part); see also *Visa, Inc.* v. *Osborn*, *post*, p. 993.

Accordingly, I would dismiss the writ as improvidently granted. I respectfully dissent.

REPORTER'S NOTE

The next page is purposely numbered 801. The numbers between 472 and 801 were intentionally omitted, in order to make it possible to publish the orders with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

ORDERS FOR OCTOBER 3, 2016, THROUGH
MARCH 27, 2017

OCTOBER 3, 2016

Certiorari Granted—Vacated and Remanded

No. 15–1493. MANN *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Birchfield* v. *North Dakota*, 579 U. S. 438 (2016). Reported below: 2016 ND 53, 876 N. W. 2d 710.

No. 15–7813. LINDSEY *v.* INDIANA. Ct. App. Ind. 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 Indiana in its brief for respondent filed May 23, 2016. THE CHIEF JUSTICE, JUSTICE THOMAS, and JUSTICE ALITO dissent for the reasons stated in *Nunez* v. *United States*, 554 U. S. 911, 912 (2008) (Scalia, J., dissenting). Reported below: 40 N. E. 3d 532.

No. 15–7902. BROOKS *v.* LOUISIANA. Ct. App. La., 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Montgomery* v. *Louisiana*, 577 U. S. 190 (2016).

JUSTICE THOMAS, with whom JUSTICE ALITO joins, concurring.

In granting this petition and now vacating and remanding the judgment below, the Court has not assessed whether petitioner's asserted entitlement to retroactive relief "is properly presented in the case." *Montgomery* v. *Louisiana*, 577 U. S. 190, 205 (2016). On remand, courts should understand that the Court's disposition of this petition does not reflect any view regarding petitioner's entitlement to relief. The Court's disposition does not, for example, address whether an adequate and independent state ground bars relief, whether petitioner forfeited or waived any entitlement to relief (by, for example, entering into a plea agreement waiving any entitlement to relief), or whether petition-

er's sentence actually qualifies as a mandatory life without parole sentence.

No. 15–9501. BOMAN *v.* UNITED STATES. C. A. 8th Cir. Reported below: 810 F. 3d 534;

No. 15–9716. SYKES *v.* UNITED STATES. C. A. 8th Cir. Reported below: 809 F. 3d 435;

No. 15–9883. CONLEY *v.* UNITED STATES. C. A. 5th Cir. Reported below: 644 Fed. Appx. 294; and

No. 16–5164. WRIGHT *v.* UNITED STATES. C. A. 5th Cir. Reported below: 642 Fed. Appx. 486. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Mathis* v. *United States*, 579 U. S. 500 (2016).

No. 15–9918. RUSSELL *v.* ALABAMA. Ct. Crim. App. Ala. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Hurst* v. *Florida*, 577 U. S. 92 (2016). Reported below: 261 So. 3d 397.

Certiorari Dismissed

No. 15–9100. DAVID *v.* AMERICAN TELEPHONE & TELEGRAPH CO. ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 15–9228. MCFADDEN *v.* A. O. SMITH CORP. 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. 15–9241. MARTIN *v.* FOX, 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. 15–9372. TAYLOR *v.* RICHARD III, LLC, ET AL. Dist. Ct. App. Fla., 4th Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 187 So. 3d 1260.

No. 15–9445. HARPER *v.* TUSCARAWAS COUNTY JOB & FAMILY SERVICES 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. 15–9455. ACKER *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 15–9466. SCHEFFLER *v.* MINNESOTA COMMISSIONER OF PUBLIC SAFETY. Ct. App. Minn. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 15–9467. SCHEFFLER *v.* MINNESOTA COMMISSIONER OF PUBLIC SAFETY. Ct. App. Minn. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 15–9615. SKAMFER *v.* WISCONSIN. Ct. App. Wis. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. 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. 15–9697. REYNOLDS *v.* QUINTANA, WARDEN. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 619 Fed. Appx. 55.

No. 15–9708. DAKER *v.* GEORGIA. Sup. Ct. Ga. 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. 15–9777. DIXON *v.* UNITED STATES ET AL. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* de-

nied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 15–9785. MADURA ET AL. *v.* BANK OF AMERICA, N. A. C. A. 11th Cir. Motion of petitioners for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioners have repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioners unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 15–9847. DAVIS *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 15–9848. GREEN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. 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: 113 App. Div. 3d 793, 978 N. Y. S. 2d 884.

No. 15–9879. MOSLEY *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. 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. 15–9922. WEBB *v.* SCOTT 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*). Reported below: 643 Fed. Appx. 711.

No. 16–5103. GLEAN *v.* SIKES, WARDEN. 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. 16–5163. ROSS *v.* TODD. 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. 16–5173. WARE *v.* ALPHA CAPITAL AKTIENGESELLSCHAFT ET AL. C. A. 11th Cir.; and

No. 16–5174. WARE *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 11th Cir. Motions of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 16–5308. PARKER *v.* JOHNSON, ADMINISTRATOR, NEW JERSEY STATE PRISON, 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. 16–5400. STROUSE *v.* WILSON, WARDEN, ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 16–5479. SEWELL *v.* PRINCE GEORGE'S COUNTY DEPARTMENT OF SOCIAL SERVICES. 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: 645 Fed. Appx. 286.

No. 16–5530. NAILS *v.* MCDONALD, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 651 Fed. Appx. 1006.

No. 16–5737. REDDY *v.* PRECYSE SOLUTIONS, LLC, ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. 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–2888. IN RE DISBARMENT OF NAEGELE. Disbarment entered. [For earlier order herein, see 578 U. S. 971.]

No. D–2897. IN RE DISBARMENT OF PETERS-HAMLIN. Disbarment entered. [For earlier order herein, see 578 U. S. 972.]

No. D–2914. IN RE DISBARMENT OF AGOLA. Disbarment entered. [For earlier order herein, see 579 U. S. 959.]

No. D–2915. IN RE MOSES. Timothy Eugene Moses, of Augusta, Ga., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on July 18, 2016, [579 U. S. 960] is discharged.

No. D–2918. IN RE GLUCKSMAN. L. Morris Glucksman, of Stamford, Conn., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on August 8, 2016, [579 U. S. 963] is discharged.

No. D–2920. In re Vila. Gustavo Vila, of Yorktown Heights, N. Y., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on August 8, 2016, [579 U. S. 963] is discharged.

No. 16M1. Orlick *v.* Grand Forks Housing Authority et al.;

No. 16M9. Watson *v.* United States District Court for the District of Columbia;

No. 16M18. Watson *v.* Jarvis, Warden; and

No. 16M25. In re Demery. Motions for leave to proceed as veterans denied.

No. 16M2. Robinson *v.* Mayor and Baltimore City Council;

No. 16M3. Ogunsula *v.* Holder, Former Attorney General, et al.;

No. 16M4. Johnson *v.* Kelly, Warden;

No. 16M5. Dismuke *v.* Stemmet et al.;

No. 16M11. Newsome *v.* Florida;

No. 16M12. Stach *v.* Amazon Services, LLC;

No. 16M13. Bell *v.* Weyerhaeuser NR Co.;

No. 16M14. Shelton *v.* Crookshank;

No. 16M15. Barnes *v.* Sam's East Wholesale Club #8220 et al.;

No. 16M16. Turrentine *v.* United States;

No. 16M17. Golemon *v.* McDonald, Secretary of Veterans Affairs;

No. 16M19. Manigault *v.* Commissioner of Internal Revenue;

No. 16M20. Boatner *v.* Kamar et al.;

No. 16M21. Ball *v.* Franklin-Williamson Properties, Inc., et al.;

No. 16M22. Ball *v.* Franklin-Williamson Properties, Inc.;

No. 16M27. Roberson *v.* Enloe, Warden; and

No. 16M28. Deaton *v.* Arkansas Department of Correction et al. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 16M6. LOGAN *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 16M7. STREAMBEND PROPERTIES II, LLC, ET AL. *v.* IVY TOWER MINNEAPOLIS, LLC, ET AL.;

No. 16M8. STREAMBEND PROPERTIES III, LLC, ET AL. *v.* SEXTON LOFTS, LLC, ET AL.; and

No. 16M24. BROWN *v.* UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time under this Court's Rule 14.5 denied.

No. 16M10. IN RE JACKSON. Motion for leave to proceed as a veteran or a seaman denied.

No. 16M23. APPLICANT *v.* COMMITTEE ON CHARACTER AND FITNESS. Motion for leave to file petition for writ of certiorari under seal denied.

No. 16M26. BONNER *v.* BONNER. Motion of petitioner for leave to proceed *in forma pauperis* with declaration of indigency under seal granted.

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 $12,227.20 for the period July 1, 2015, through June 30, 2016, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 577 U. S. 808.]

No. 145, Orig. DELAWARE *v.* PENNSYLVANIA ET AL.; and

No. 146, Orig. ARKANSAS ET AL. *v.* DELAWARE. Motions for leave to file bills of complaint and for leave to file counterclaims granted. Cases consolidated and the parties are allowed 30 days within which to file answers to the complaints and the counterclaims.

No. 15–214. MURR ET AL. *v.* WISCONSIN ET AL. Ct. App. Wis. [Certiorari granted, 577 U. S. 1098.] Motions of respondents Wisconsin and St. Croix County for divided argument granted. Motion of the Acting Solicitor General for enlargement of time for oral argument, for leave to participate in oral argument as *amicus curiae*, and for divided argument granted, and the time is divided as follows: 35 minutes for petitioners, 15 minutes for respondent Wisconsin, 10 minutes for respondent St. Croix County, and 10 minutes for the Acting Solicitor General.

No. 15–961. VISA INC. ET AL. *v.* OSBORN ET AL.; and
No. 15–962. VISA INC. ET AL. *v.* STOUMBOS ET AL. C. A. D. C. Cir. [Certiorari granted, 579 U. S. 940.] Motion of petitioners to dispense with printing joint appendix granted.

No. 15–1191. LYNCH, ATTORNEY GENERAL *v.* MORALES-SANTANA. C. A. 2d Cir. [Certiorari granted, 579 U. S. 940.] Motion of petitioner to dispense with printing joint appendix granted.

No. 15–1223. SOUTHWEST SECURITIES, FSB *v.* SEGNER. C. A. 5th Cir.;
No. 15–1305. BEAVEX, INC. *v.* COSTELLO ET AL. C. A. 7th Cir.;
No. 15–1345. ALI *v.* WARFAA; and
No. 15–1464. WARFAA *v.* ALI. C. A. 4th Cir.;
No. 15–1439. CYAN, INC., ET AL. *v.* BEAVER COUNTY EMPLOYEES RETIREMENT FUND ET AL. Ct. App. Cal., 1st App. Dist., Div. 4;
No. 15–1509. U. S. BANK N. A., TRUSTEE, ET AL. *v.* VILLAGE AT LAKERIDGE, LLC, ET AL. C. A. 9th Cir.; and
No. 16–130. UNITED STATES EX REL. ADVOCATES FOR BASIC LEGAL EQUALITY, INC. *v.* U. S. BANK N. A. C. A. 6th Cir. The Acting Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 15–1251. NATIONAL LABOR RELATIONS BOARD *v.* SW GENERAL, INC., DBA SOUTHWEST AMBULANCE. C. A. D. C. Cir. [Certiorari granted, 579 U. S. 917.] Motion of petitioner to dispense with printing joint appendix granted.

No. 15–8441. IN RE GREENE. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [578 U. S. 974] denied.

No. 15–8600. MCFADDEN *v.* DETROIT UNITED INSURANCE ET AL. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [578 U. S. 1001] denied.

No. 15–8803. SEWELL *v.* WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY. C. A. 4th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [578 U. S. 1020] denied.

No. 15–8882. RANDOLPH *v.* FLORIDA ET AL. Dist. Ct. App. Fla., 1st Dist. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [578 U. S. 1020] denied.

No. 15–8912. AHMED *v.* SHELDON, WARDEN. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [578 U. S. 1001] denied.

No. 15–9200. LOI NGOC NGHIEM *v.* KERESTES, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [579 U. S. 916] denied.

No. 15–9313. CALKINS *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [579 U. S. 902] denied.

No. 15–9353. TOWNSEND *v.* CITY OF BELOIT, WISCONSIN. Sup. Ct. Wis.;

No. 15–9477. BENITEZ *v.* MISSISSIPPI. Ct. App. Miss.;

No. 15–9481. HAJDA *v.* UNIVERSITY OF KANSAS HOSPITAL AUTHORITY ET AL. Ct. App. Kan.;

No. 15–9484. MOORE *v.* KLEIN. Ct. App. Idaho;

No. 15–9493. CHOY *v.* COMCAST CABLE COMMUNICATIONS, LLC. C. A. 3d Cir.;

No. 15–9498. R. E. *v.* M. S. Sup. Ct. Ind.;

No. 15–9532. JEWEL *v.* UAW INTERNATIONAL ET AL. C. A. 6th Cir.;

No. 15–9585. KEMPTON *v.* J. C. PENNEY CORP., INC. C. A. 5th Cir.;

No. 15–9631. OKWARA *v.* LYNCH, ATTORNEY GENERAL. C. A. 4th Cir.;

No. 15–9666. WESLEY-ROSA *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept.;

No. 15–9695. ROBERTS *v.* WORKERS' COMPENSATION APPEAL BOARD OF PENNSYLVANIA. Commw. Ct. Pa.;

No. 15–9700. BELL *v.* MATTHEWS. C. A. 4th Cir.;

No. 15–9725. MCDONALD *v.* MCHUGH, SECRETARY OF THE ARMY. C. A. 5th Cir.;

No. 15–9776. CHEPAK *v.* NEW YORK CITY HEALTH AND HOSPITALS CORPORATION. C. A. 2d Cir.;

No. 15–9784. Zong *v.* Merrill Lynch, Pierce, Fenner & Smith Inc. C. A. 3d Cir.;

No. 15–9794. Slade *v.* City of Marshall, Texas, et al. C. A. 5th Cir.;

No. 15–9803. Nyanjom *v.* Hawker Beechcraft Corp. C. A. 10th Cir.;

No. 15–9811. Miller *v.* Miller et al. Ct. Sp. App. Md.;

No. 15–9814. Hudson *v.* United States. C. A. 5th Cir.;

No. 15–9843. Evans *v.* United States. C. A. 8th Cir.;

No. 16–5003. Hopkins et al. *v.* Mayor and Baltimore City Council. C. A. 4th Cir.;

No. 16–5009. MacPheat *v.* Reed. Sup. Ct. Mont.;

No. 16–5099. Adkins *v.* Jochem et al. C. A. 4th Cir.;

No. 16–5135. Apgar *v.* McDonald, Secretary of Veterans Affairs. C. A. Fed. Cir.;

No. 16–5186. Gonzalez Santana *v.* New Jersey. Super. Ct. N. J., App. Div.;

No. 16–5215. Rubang *v.* United States et al. C. A. 9th Cir.;

No. 16–5240. Nhuong Van Nguyen *v.* Superior Court of California, Riverside County, et al. Ct. App. Cal., 4th App. Dist., Div. 2;

No. 16–5268. Price *v.* United States. C. A. 11th Cir.;

No. 16–5314. Feldman et vir *v.* H. A. Berkheimer, Inc., dba Berkheimer Tax Administrator, et al. C. A. 3d Cir.;

No. 16–5337. Randolph et ux. *v.* Solutia, Inc. Sup. Ct. Fla.;

No. 16–5339. Trane *v.* Northrop Grumman Corp. C. A. 2d Cir.;

No. 16–5370. Foster *v.* Holder. C. A. 5th Cir.;

No. 16–5371. Foster *v.* Holder. C. A. 5th Cir.;

No. 16–5373. Rezapour *v.* United States. C. A. 4th Cir.;

No. 16–5393. Holland *v.* Department of Veterans Affairs. C. A. 8th Cir.;

No. 16–5469. James *v.* Merit Systems Protection Board. C. A. Fed. Cir.; and

No. 16–5558. Padmanabhan *v.* Burwell, Secretary of Health and Human Services. C. A. Fed. Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until October 24, 2016, 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. 16–5468. FORD *v.* ROHR ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until October 24, 2016, 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 ALITO took no part in the consideration or decision of this motion.

No. 15–8902. IN RE MORELAND;
No. 15–9792. IN RE SMITH;
No. 15–9868. IN RE WRIGHT;
No. 15–9919. IN RE PETERS;
No. 16–5036. IN RE STURGIS;
No. 16–5048. IN RE BOOSE;
No. 16–5051. IN RE PHILLIPS;
No. 16–5213. IN RE BRACKEN;
No. 16–5409. IN RE TRUITT;
No. 16–5423. IN RE SUDBERRY;
No. 16–5505. IN RE PHILLIPS;
No. 16–5511. IN RE SINGLETON

No. 16–5512. IN RE BROKAW;
No. 16–5522. IN RE BERRY;
No. 16–5581. IN RE WELLS-ALI;
No. 16–5621. IN RE DUARTE;
No. 16–5659. IN RE TURNER;
No. 16–5693. IN RE JIMENEZ;
No. 16–5733. IN RE ZONE;
No. 16–5768. IN RE DIXON;
No. 16–5803. IN RE SEDLAK; and
No. 16–5807. IN RE NILES. Petitions for writs of habeas corpus denied.

No. 16–5030. IN RE BUI PHU XUAN. 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. 15–9276. IN RE WHITTAKER;
No. 15–9350. IN RE BROWN;
No. 15–9470. IN RE PENNINGTON-THURMAN;
No. 15–9619. IN RE SANTOS-PINEDA;
No. 15–9667. IN RE TAYLOR;
No. 15–9739. IN RE RUSSELL;
No. 15–9797. IN RE YUNQUE;
No. 16–103. IN RE RUBIN;
No. 16–164. IN RE THORNTON;
No. 16–5179. IN RE LESTER;
No. 16–5183. IN RE SHAH;
No. 16–5235. IN RE BLANEY;
No. 16–5288. IN RE WILLIAMSON;
No. 16–5313. IN RE JONES;
No. 16–5342. IN RE RAMON;
No. 16–5394. IN RE SALLIS; and
No. 16–5528. IN RE MUZIO. Petitions for writs of mandamus denied.

No. 16–5137. IN RE AKEL; and
No. 16–5555 IN RE THOMPSON. Petitions for writs of mandamus denied. JUSTICE KAGAN took no part in the consideration or decision of these petitions.

No. 15–9742. IN RE ROBERTSON. 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. 16–5556. IN RE CRAWFORD. Petition for writ of mandamus and/or prohibition denied.

No. 15–9506. IN RE MADURA ET AL. Motion of petitioners 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. As petitioners have repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioners unless the docketing fee re-

quired 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. 15–9141. In re Brascom. Petition for writ of prohibition denied.

Certiorari Denied

No. 15–673. Sullivan *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 74 M. J. 448.

No. 15–843. Spaulding et al. *v.* Welch. C. A. 6th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 479.

No. 15–906. Dunnet Bay Construction Co. *v.* Blankenhorn, Secretary, Illinois Department of Transportation, et al. C. A. 7th Cir. Certiorari denied. Reported below: 799 F. 3d 676.

No. 15–1047. Aranda-Galvan *v.* Lynch, Attorney General. C. A. 5th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 217.

No. 15–1054. Scott *v.* McDonald, Secretary of Veterans Affairs. C. A. Fed. Cir. Certiorari denied. Reported below: 789 F. 3d 1375.

No. 15–1075. GEA Process Engineering, Inc. *v.* Steuben Foods, Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 618 Fed. Appx. 667.

No. 15–1086. Joseph H. *v.* California. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied. Reported below: 237 Cal. App. 4th 517, 188 Cal. Rptr. 3d 171.

No. 15–1115. Washington *v.* Indiana. Ct. App. Ind. Certiorari denied. Reported below: 42 N. E. 3d 521.

No. 15–1134. Peake *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 804 F. 3d 81.

No. 15–1141. Gourley et al. *v.* Google Inc. et al. C. A. 3d Cir. Certiorari denied. Reported below: 806 F. 3d 125.

No. 15–1153. Mondaca-Vega *v.* Lynch, Attorney General. C. A. 9th Cir. Certiorari denied. Reported below: 808 F. 3d 413.

No. 15–1158. RODELLA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 804 F. 3d 1317.

No. 15–1167. O'BANNON, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED *v.* NATIONAL COLLEGIATE ATHLETIC ASSN.; and
No. 15–1388. NATIONAL COLLEGIATE ATHLETIC ASSN. *v.* O'BANNON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 802 F. 3d 1049.

No. 15–1174. SCARBER *v.* PALMER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 808 F. 3d 1093.

No. 15–1190. HEBERT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 813 F. 3d 551.

No. 15–1208. KIRKBRIDE *v.* TEREX USA, LLC, DBA CEDARAPIDS. C. A. 10th Cir. Certiorari denied. Reported below: 798 F. 3d 1343.

No. 15–1211. FCA US LLC, FKA CHRYSLER GROUP LLC *v.* CENTER FOR AUTO SAFETY. C. A. 9th Cir. Certiorari denied. Reported below: 809 F. 3d 1092.

No. 15–1213. DEERE & CO. ET AL. *v.* NEW HAMPSHIRE ET AL. Sup. Ct. N. H. Certiorari denied. Reported below: 168 N. H. 460, 130 A. 3d 1197.

No. 15–1217. BAILEY *v.* SMOOT, CHAIR, UNITED STATES PAROLE COMMISSION, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 793 F. 3d 127.

No. 15–1224. PERL *v.* EDEN PLACE, LLC. C. A. 9th Cir. Certiorari denied. Reported below: 811 F. 3d 1120.

No. 15–1232. ESTRADA-MARTINEZ *v.* LYNCH, ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 809 F. 3d 886.

No. 15–1242. SCOUT PETROLEUM, LLC, ET AL. *v.* CHESAPEAKE APPALACHIA, LLC. C. A. 3d Cir. Certiorari denied. Reported below: 809 F. 3d 746.

No. 15–1257. AKBAR *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 74 M. J. 364.

No. 15–1266. GUTIERREZ-ROSTRAN *v.* LYNCH, ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 810 F. 3d 497.

No. 15–1271. DAVIS *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 15–1273. DAVIS *v.* MINNESOTA COMMISSIONER OF PUBLIC SAFETY. Ct. App. Minn. Certiorari denied.

No. 15–1276. DUIT CONSTRUCTION CO., INC. *v.* ARKANSAS STATE CLAIMS COMMISSION ET AL. Sup. Ct. Ark. Certiorari denied. Reported below: 2015 Ark. 462, 476 S. W. 3d 791.

No. 15–1283. INITIATIVE LEGAL GROUP APC ET AL. *v.* MAXON. Ct. App. Cal., 1st App. Dist., Div. 2. Certiorari denied.

No. 15–1289. DUMSTREY *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 2016 WI 3, 366 Wis. 2d 64, 873 N. W. 2d 502.

No. 15–1315. ARMEL *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 15–1317. VANESSA G. *v.* TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES. Sup. Ct. Tenn. Certiorari denied. Reported below: 483 S. W. 3d 507.

No. 15–1319. DEMARCO ET UX. *v.* MEDICAL MALPRACTICE JOINT UNDERWRITING ASSOCIATION OF RHODE ISLAND. Sup. Ct. N. J. Certiorari denied. Reported below: 223 N. J. 363, 125 A. 3d 367.

No. 15–1321. DART, SHERIFF, COOK COUNTY, ILLINOIS *v.* BACKPAGE.COM, LLC. C. A. 7th Cir. Certiorari denied. Reported below: 807 F. 3d 229.

No. 15–1323. TEXAS *v.* BURKS. Ct. App. Tex., 2d Dist. Certiorari denied. Reported below: 454 S. W. 3d 705.

No. 15–1325. LUNDAHL *v.* HALABI ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 600 Fed. Appx. 596.

No. 15–1326. ARMEL *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 15–1328. Koch et al. *v.* Pechota et al. C. A. 2d Cir. Certiorari denied. Reported below: 632 Fed. Appx. 24.

No. 15–1329. Sterling Jewelers Inc. *v.* Equal Employment Opportunity Commission. C. A. 2d Cir. Certiorari denied. Reported below: 801 F. 3d 96.

No. 15–1331. Geneste *v.* AGMA, Inc., dba Sands Point Center, et al. C. A. 2d Cir. Certiorari denied.

No. 15–1332. Hedges *v.* Superior Court of California, Los Angeles County. C. A. 9th Cir. Certiorari denied.

No. 15–1334. Vuksich *v.* Imaging3, Inc. C. A. 9th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 172.

No. 15–1335. EMI Feist Catalog, Inc. *v.* Baldwin et al. C. A. 2d Cir. Certiorari denied. Reported below: 805 F. 3d 18.

No. 15–1336. Air Liquide Industrial U. S. LP *v.* Garrido. Ct. App. Cal., 2d App. Dist., Div. 2. Certiorari denied. Reported below: 241 Cal. App. 4th 833, 194 Cal. Rptr. 3d 297.

No. 15–1337. Housing Authority of the City of Los Angeles et al. *v.* Nozzi et al. C. A. 9th Cir. Certiorari denied. Reported below: 806 F. 3d 1178.

No. 15–1342. Dixxon Co. et al. *v.* South Norfolk Jordan Bridge, LLC, fka Figg Bridge Developers, LLC. Sup. Ct. Va. Certiorari denied.

No. 15–1343. Edwards et al. *v.* Blackman et al. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 2015 ME 165, 129 A. 3d 971.

No. 15–1346. GEICO General Insurance Co. et al. *v.* Calderon, Individually and on Behalf of All Others Similarly Situated, et al. C. A. 4th Cir. Certiorari denied. Reported below: 809 F. 3d 111.

No. 15–1348. Henderson *v.* Ammons et al.; and Henderson *v.* Eaton et al. C. A. 4th Cir. Certiorari denied.

No. 15–1352. Shahid *v.* FNBN I, LLC, by PennyMac Loan Services, LLC, et al. C. A. 8th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 393.

No. 15–1357. KEEN *v.* JUDICIAL ALTERNATIVES OF GEORGIA, INC. C. A. 11th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 546.

No. 15–1364. NEVADA RESTAURANT SERVICES, INC., DBA DOTTY'S *v.* CLARK COUNTY, NEVADA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 590.

No. 15–1365. SJURSET, INDIVIDUALLY AND AS NEXT FRIEND OF N. S. ET AL. *v.* BUTTON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 810 F. 3d 609.

No. 15–1366. COMMON SENSE ALLIANCE *v.* SAN JUAN COUNTY, WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 189 Wash. App. 1026.

No. 15–1367. ZAUNBRECHER ET AL. *v.* GAUDIN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 340.

No. 15–1368. VERNON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 814 F. 3d 1091.

No. 15–1370. SALDANA ZAVALA *v.* FREITAS, SHERIFF, SONOMA COUNTY, CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 15–1371. BAILEY *v.* U. S. BANK N. A. C. A. 5th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 361.

No. 15–1372. BAILEY *v.* FELTMANN. C. A. 8th Cir. Certiorari denied. Reported below: 810 F. 3d 589.

No. 15–1374. WILLIAMS *v.* PEREZ, SECRETARY OF LABOR. C. A. D. C. Cir. Certiorari denied.

No. 15–1375. SOUSA ET UX. *v.* BRANCH BANKING & TRUST CO. Sup. Ct. Nev. Certiorari denied. Reported below: 132 Nev. 1031.

No. 15–1377. SWEARINGEN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 478 S. W. 3d 716.

No. 15–1378. LAWSON ET AL. *v.* LAWSON ET AL. Ct. App. N. C. Certiorari denied. Reported below: 241 N. C. App. 399, 775 S. E. 2d 36.

No. 15–1380. VILLAGE OF PINEHURST, NORTH CAROLINA, ET AL. *v.* ESTATE OF ARMSTRONG, BY AND THROUGH HIS ADMIN-

ISTRATRIX, LOPEZ. C. A. 4th Cir. Certiorari denied. Reported below: 810 F. 3d 892.

No. 15–1381. HOWARD *v.* OHIO. Ct. App. Ohio, 5th App. Dist., Stark County. Certiorari denied. Reported below: 2015-Ohio-2053.

No. 15–1383. STEVENSON, PERSONAL REPRESENTATIVE OF THE ESTATE OF STEVENSON, DECEASED *v.* MOHON ET AL. Ct. App. Ky. Certiorari denied.

No. 15–1385. SUN LIFE ASSURANCE COMPANY OF CANADA *v.* IMPERIAL PREMIUM FINANCE, LLC. C. A. 11th Cir. Certiorari denied.

No. 15–1389. ANDERSON *v.* CARTER, SECRETARY OF DEFENSE, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 802 F. 3d 4.

No. 15–1392. NAMER, DBA VOICE OF AMERICA *v.* BROADCASTING BOARD OF GOVERNORS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 910.

No. 15 1394. RUBEY *v.* VANNETT. Ct. App. Minn. Certiorari denied.

No. 15–1395. ISRAEL SANCHEZ *v.* KERRY, SECRETARY OF STATE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 648 Fed. Appx. 386.

No. 15–1397. ROBINSON *v.* NORTH CAROLINA (Reported below: 368 N. C. 596, 780 S. E. 2d 151); and AUGUSTINE ET AL. *v.* NORTH CAROLINA (368 N. C. 594, 780 S. E. 2d 552). Sup. Ct. N. C. Certiorari denied.

No. 15–1399. PRINCIPAL INVESTMENTS, INC., ET AL. *v.* HARRISON ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 132 Nev. 9, 366 P. 3d 688.

No. 15–1400. ANDERSON, INDIVIDUALLY AND ON BEHALF OF THE WRONGFUL DEATH BENEFICIARIES OF ANDERSON *v.* MARSHALL COUNTY, MISSISSIPPI, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 127.

No. 15–1401. VON MAACK *v.* 1199 SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL. C. A. 2d Cir. Certiorari denied. Reported below: 638 Fed. Appx. 66.

No. 15–1402. AMPHASTAR PHARMACEUTICALS, INC., ET AL. *v.* MOMENTA PHARMACEUTICALS, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 809 F. 3d 610.

No. 15–1404. K. D. ET AL. *v.* FACEBOOK, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 594.

No. 15–1405. FITZPATRICK *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 15–1410. HANSJURGENS *v.* BAILEY. C. A. 11th Cir. Certiorari denied.

No. 15–1412. MECH *v.* SCHOOL BOARD OF PALM BEACH COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 806 F. 3d 1070.

No. 15–1414. RHODES *v.* ZOELLER, ATTORNEY GENERAL OF INDIANA. C. A. 7th Cir. Certiorari denied.

No. 15–1415. SAFE HARBOR RETREAT LLC *v.* TOWN OF EAST HAMPTON, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 629 Fed. Appx. 63.

No. 15–1417. SANTIAGO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 769.

No. 15–1418. LAGIOS *v.* GOLDMAN ET AL. Sup. Ct. Ark. Certiorari denied. Reported below: 2016 Ark. 59, 483 S. W. 3d 810.

No. 15–1420. SCHULMAN *v.* LEXISNEXIS RISK & INFORMATION ANALYTICS GROUP, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 807 F. 3d 600.

No. 15–1422. WILLIAMS *v.* BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY. Ct. Sp. App. Md. Certiorari denied. Reported below: 223 Md. App. 768 and 782.

No. 15–1423. BLUE *v.* DISTRICT OF COLUMBIA. C. A. D. C. Cir. Certiorari denied. Reported below: 811 F. 3d 14.

No. 15–1426. LIPETZKY *v.* FARROW ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 986.

No. 15–1427. ABM INDUSTRIES INC. ET AL. *v.* CASTRO ET AL. C. A. 9th Cir. Certiorari denied.

No. 15–1428. BAGWE *v.* SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 811 F. 3d 866.

No. 15–1430. HYLIND *v.* XEROX CORP. C. A. 4th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 114.

No. 15–1431. GLOBALTRANZ ENTERPRISES, INC., ET AL. *v.* ROSENFIELD. C. A. 9th Cir. Certiorari denied. Reported below: 811 F. 3d 282.

No. 15–1432. AFFORDABLE COMMUNITIES OF MISSOURI *v.* FEDERAL NATIONAL MORTGAGE ASSOCIATION. C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 3d 1130.

No. 15–1433. BLAIZE *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 51 N. E. 3d 97.

No. 15–1434. FOXX *v.* MY VINTAGE BABY, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 318.

No. 15–1435. HUSSAINI ET UX. *v.* LYNCH, ATTORNEY GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 403.

No. 15–1436. ACOLI, FKA SQUIRE *v.* NEW JERSEY STATE PAROLE BOARD. Sup. Ct. N. J. Certiorari denied. Reported below: 224 N. J. 213, 130 A. 3d 1228.

No. 15–1441. SERRA *v.* BANK OF NEW YORK MELLON. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 182 So. 3d 654.

No. 15–1443. BANK OF NEW YORK MELLON *v.* AMERICAN FIDELITY ASSURANCE CO. C. A. 10th Cir. Certiorari denied. Reported below: 810 F. 3d 1234.

No. 15–1445. KLINGENSCHMITT *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 623 Fed. Appx. 1013.

No. 15–1447. MURPHY-DUBAY *v.* MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS ET AL. Ct. App. Mich. Certiorari denied. Reported below: 311 Mich. App. 539, 876 N. W. 2d 598.

No. 15–1449. WALDO ET UX. *v.* BANK OF NEW YORK MELLON ET AL. Ct. App. Utah. Certiorari denied.

No. 15–1450. TELEGUZ *v.* ZOOK, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 806 F. 3d 803.

No. 15–1451. GRAUER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 15–1452. CAMERON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 490 S. W. 3d 57.

No. 15–1453. LUTZ ET AL. *v.* HUNTINGTON BANCSHARES, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 3d 988.

No. 15–1454. MED RX/SYSTEMS, P. L. L. C., DBA ALIMENTOS ET AL. *v.* TEXAS DEPARTMENT OF STATE HEALTH SERVICES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 607.

No. 15–1457. IVORY COAST, AKA REPUBLIC OF THE COTE D'IVOIRE *v.* UNITED STATES. C. A 9th Cir. Certiorari denied. Reported below: 635 Fed. Appx. 358.

No. 15–1458. FRIED *v.* STIEFEL LABORATORIES, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 814 F. 3d 1288.

No. 15–1459. FREER *v.* MCDOWELL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–1465. THORPE *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 185 So. 3d 1239.

No. 15–1466. SHIMOMURA *v.* DAVIS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 811 F. 3d 349.

No. 15–1468. REED *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 132 A. 3d 1177.

No. 15–1469. GELLERMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 810 F. 3d 544.

No. 15–1470. HATEMI *v.* M&T BANK CORP. C. A. 2d Cir. Certiorari denied. Reported below: 633 Fed. Appx. 47.

No. 15–1471. GOBLE *v.* WARD ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 692.

No. 15–1472. ROCHA *v.* TULARE COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 623.

No. 15–1473. OCHOA-BENITEZ, AKA OCHOA *v.* LYNCH, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 624 Fed. Appx. 42.

No. 15–1475. SMITH ET AL. *v.* SIPI, LLC, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 811 F. 3d 228.

No. 15–1476. CHINNIAH ET UX. *v.* EAST PENNSBORO TOWNSHIP, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 639 Fed. Appx. 89.

No. 15–1477. MEADOWS ET AL. *v.* ENYEART ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 496.

No. 15–1478. LEISER LAW FIRM, PLLC *v.* SUPREME COURT OF VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 127.

No. 15–1480. CECIL *v.* CECIL. Ct. App. Ky. Certiorari denied.

No. 15–1481. GAILEY *v.* UTAH. Ct. App. Utah. Certiorari denied. Reported below: 2015 UT App 249, 360 P. 3d 805.

No. 15–1483. TARSADIA HOTELS ET AL. *v.* BEAVER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 816 F. 3d 1170.

No. 15–1484. SINGH ET AL. *v.* MICHIGAN BOARD OF LAW EXAMINERS. Sup. Ct. Mich. Certiorari denied. Reported below: 499 Mich. 898, 876 N. W. 2d 826.

No. 15–1487. KEEPERS, INC. *v.* CITY OF MILFORD, CONNECTICUT. C. A. 2d Cir. Certiorari denied. Reported below: 807 F. 3d 24.

No. 15–1488. LEOR *v.* ENOVATIVE TECHNOLOGIES, LLC. C. A. 4th Cir. Certiorari denied.

No. 15–1495. Southeast Arkansas Hospice, Inc. *v.* Burwell, Secretary of Health and Human Services. C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 3d 448.

No. 15–1497. Malcolm *v.* Honeoye Falls-Lima Central School District et al. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 132 App. Div. 3d 1023, 17 N. Y. S. 3d 511.

No. 15–1501. Mahmood *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 820 F. 3d 177.

No. 15–1502. Jericho Systems Corp. *v.* Axiomatics, Inc., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 642 Fed. Appx. 979.

No. 15–1506. Gomes *v.* Bank of America, N. A., et al. C. A. 9th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 346.

No. 15–1508. Commander *v.* New Jersey. Super. Ct. N. J., App. Div. Certiorari denied.

No. 15–1510. Fusto et al. *v.* Morse. C. A. 2d Cir. Certiorari denied. Reported below: 804 F. 3d 538.

No. 15–1513. Hutchinson Consultants, PC, et al. *v.* Titus et al. C. A. 11th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 905.

No. 15–1514. Howard *v.* Department of the Army. C. A. Fed. Cir. Certiorari denied. Reported below: 628 Fed. Appx. 759.

No. 15–1515. Bank of the Ozarks, Inc., et al. *v.* Walker et al. Sup. Ct. Ark. Certiorari denied. Reported below: 2016 Ark. 116, 487 S. W. 3d 808.

No. 15–1516. Trading Technologies International, Inc. *v.* Lee, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office. C. A. Fed. Cir. Certiorari denied.

No. 15–1517. Caronia et al. *v.* Orphan Medical, Inc., et al. C. A. 2d Cir. Certiorari denied. Reported below: 643 Fed. Appx. 61.

No. 15–1518. DRIESSEN ET UX. *v.* SONY MUSIC ENTERTAINMENT ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 640 Fed. Appx. 892.

No. 15–1519. KOZIOL *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 15–1520. MOORE *v.* LIGHTSTORM ENTERTAINMENT, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 232.

No. 15–1521. DEMBIE *v.* OHIO. Ct. App. Ohio, 9th App. Dist., Lorain County. Certiorari denied. Reported below: 2015-Ohio-2888.

No. 15–1522. WHITAKER *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 642 Fed. Appx. 1003.

No. 15–1523. BURNIAC *v.* WELLS FARGO BANK, N. A., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 810 F. 3d 429.

No. 15–1524 ANTONACCI *v.* CITY OF CHICAGO, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 640 Fed. Appx. 553.

No. 15–1525. SERGEANTS BENEVOLENT ASSOCIATION HEALTH AND WELFARE FUND ET AL. *v.* SANOFI-AVENTIS U. S. LLP ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 806 F. 3d 71.

No. 15–1526. BIRCHER *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 446 Md. 458, 132 A. 3d 292.

No. 15–1529. ESTATE OF BRUST ET AL. *v.* DELAWARE RIVER PORT AUTHORITY ET AL. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 443 N. J. Super. 103, 127 A. 3d 729.

No. 15–1531. JOHNSON ET AL. *v.* CITY OF SHELBY, MISSISSIPPI. C. A. 5th Cir. Certiorari denied. Reported below: 642 Fed. Appx. 380.

No. 15–1532. BEST *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 639 Fed. Appx. 848.

No. 15–1533. SIMCOX *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2015 IL App (3d) 130086–U.

No. 15–1534. FLUTE ET AL. *v.* UNITED STATES ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 808 F. 3d 1234.

No. 15–1535. DATTA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 15–1536. HUBBARD *v.* PLAZA BONITA, L. P., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 681.

No. 15–1540. S. M. *v.* OXFORD HEALTH PLANS (NY), INC., AKA OXFORD HEALTH INSURANCE, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 644 Fed. Appx. 81.

No. 15–1541. KONN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 634 Fed. Appx. 818.

No. 15–1542. MCGEE *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 15–1543. TERRELL ET AL. *v.* YELLEN, CHAIR, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM. C. A. D. C. Cir. Certiorari denied.

No. 15–1544. TOBINICK *v.* OLMARKER ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 626 Fed. Appx. 1008.

No. 15–1546. BUCARO *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 15–7532. DAVIS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 174 So. 3d 997.

No. 15–7860. RAPHAEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 15–7910. DOAK *v.* JOHNSON, SECRETARY OF HOMELAND SECURITY. C. A. D. C. Cir. Certiorari denied. Reported below: 798 F. 3d 1096.

No. 15–8259. WAKEFIELD *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 236 W. Va. 445, 781 S. E. 2d 222.

No. 15–8276. REED *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 145.

No. 15–8280. GUZMAN-IBAREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 792 F. 3d 1094.

No. 15–8365. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 806 F. 3d 1323.

No. 15–8399. KIRBY *v.* NORTH CAROLINA STATE UNIVERSITY. C. A. 4th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 136.

No. 15–8404. KIRKSEY *v.* BAKER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 612 Fed. Appx. 459.

No. 15–8434. CRUZ *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 15–8448. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 227.

No. 15–8497. JOHNSON *v.* BALDWIN, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 552.

No. 15–8501. MUJAHID *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 799 F. 3d 1228.

No. 15–8505. FLAUGHER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 805 F. 3d 1249.

No. 15–8510. FLORES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 802 F. 3d 1028.

No. 15–8528. MULDER *v.* MCDONALD, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 805 F. 3d 1342.

No. 15–8565. BARRETT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 797 F. 3d 1207.

No. 15–8606. BELL *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 795 F. 3d 88.

No. 15–8613. RODRIGUEZ INFANTE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 5. Certiorari denied.

No. 15–8614. WILSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 795 F. 3d 88.

No. 15–8701. STEMPLE *v.* SHEARIN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 610 Fed. Appx. 337.

No. 15–8725. MITCHELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 790 F. 3d 881.

No. 15–8746. GRASSO *v.* EMA DESIGN AUTOMATION, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 618 Fed. Appx. 36.

No. 15–8753. HAMM *v.* ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 752.

No. 15–8775. DEUERLEIN *v.* NEBRASKA ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 627 Fed. Appx. 5.

No. 15–8809. DUNLAP *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied. Reported below: 159 Idaho 280, 360 P. 3d 289.

No. 15–8815. DANIELS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 809 F. 3d 588.

No. 15–8823. WALTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 15–8825. TOWNSEND *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 373.

No. 15–8826. TRIMBLE *v.* JENKINS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 804 F. 3d 767.

No. 15–8829. PEREZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 699.

No. 15–8866. HARDWICK *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 803 F. 3d 541.

No. 15–8875. KRUM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 664.

No. 15–8880. NAGIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 810 F. 3d 348.

No. 15–8890. TAYLOR *v.* KERNAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 811 F. 3d 326.

No. 15–8901. McClain *v.* Kelly, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 422.

No. 15–8946. Shaffer *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 807 F. 3d 943.

No. 15–8955. Dahl *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 807 F. 3d 900.

No. 15–8974. Crouch *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 335.

No. 15–8975. Solomon-Eaton *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 627 Fed. Appx. 47.

No. 15–8990. McIvery *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 806 F. 3d 645.

No. 15–9002. Morris *v.* Westbrooks, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 802 F. 3d 825.

No. 15–9040. Stogsdill *v.* South Carolina Department of Health and Human Services. Ct. App. S. C. Certiorari denied. Reported below: 410 S. C. 273, 763 S. E. 2d 638.

No. 15–9076. Shockley *v.* Missouri. Sup. Ct. Mo. Certiorari denied.

No. 15–9084. Guarino *v.* Arizona. Sup. Ct. Ariz. Certiorari denied. Reported below: 238 Ariz. 437, 362 P. 3d 484.

No. 15–9102. Reyes-Zarate *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 671.

No. 15–9109. Isom *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 244.

No. 15–9112. Hurdle *v.* Sheahan, Superintendent, Five Points Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 15–9113. Gaddy *v.* DeGeorgis. C. A. 4th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 640.

No. 15–9117. Austin *v.* Alameda County, California, et al. C. A. 9th Cir. Certiorari denied.

No. 15–9118. SVEUM *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 15–9127. WOODSON *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 208 So. 3d 95.

No. 15–9131. TOY *v.* ASUNCION, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–9133. ROGERS *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2015 IL App (2d) 130412, 49 N. E. 3d 70.

No. 15–9134. FLOWERS *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 15–9136. TORRES *v.* UNKNOWN PARTY. Sup. Ct. Fla. Certiorari denied.

No. 15–9138. MILLER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 799 F. 3d 1097.

No. 15–9140. REYNOLDS *v.* STEWART, WARDEN. C. A. 6th Cir. Certiorari denied

No. 15–9144. SMITH *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 635 Pa. 38, 131 A. 3d 467.

No. 15–9148. CRIDER *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 15–9153. BRYNER *v.* CANYONS SCHOOL DISTRICT. Ct. App. Utah. Certiorari denied. Reported below: 2015 UT App 131, 351 P. 3d 852.

No. 15–9157. MANOKU *v.* BAUMAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–9160. POPAL *v.* ARTUS, SUPERINTENDENT, WENDE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 15–9161. HANEY *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 634 Pa. 690, 131 A. 3d 24.

No. 15–9163. GANT *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 2015 WI App 83, 365 Wis. 2d 510, 872 N. W. 2d 137.

No. 15–9165. SCIPIO *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 15–9169. CARRANSA-VELASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 604.

No. 15–9170. TEMPLE *v.* OWEN MCCLELLAND LLC ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 131.

No. 15–9171. TORRES *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 185 So. 3d 1246.

No. 15–9172. WATKINS *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 15–9174. WEDDINGTON *v.* ZATECKY, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 15–9178. ZAVALA *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 15–9179. SMALLWOOD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 911.

No. 15–9181. SHEROD *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 334 Ga. App. 314, 779 S. E. 2d 94.

No. 15–9183. MORRIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 457.

No. 15–9186. SCARLETT *v.* BRONX SUPREME COURT ET AL. C. A. 2d Cir. Certiorari denied.

No. 15–9187. AMARAL *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 239 Ariz. 217, 368 P. 3d 925.

No. 15–9188. ELLASON *v.* LIVINGSTON, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir. Certiorari denied.

No. 15–9190. HANCOCK *v.* DUCKWORTH, INTERIM WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 798 F. 3d 1002.

No. 15–9191. BURTON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied. Reported below: 243 Cal. App. 4th 129, 196 Cal. Rptr. 3d 392.

No. 15–9192. FRIES *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 185 So. 3d 1254.

No. 15–9193. MORRIS *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 15–9195. GIBSON *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 43 N. E. 3d 231.

No. 15–9196. ARMANDO *v.* KENNELLY. C. A. 5th Cir. Certiorari denied.

No. 15–9203. HILL *v.* KAUFFMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–9204. HILL *v.* KAUFFMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SMITHFIELD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–9206. BELL *v.* COUNTY OF GALVESTON, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 295.

No. 15–9207. PRATER *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 629 Fed. Appx. 176.

No. 15–9208. RODGERS *v.* CURATORS OF THE UNIVERSITY OF MISSOURI SYSTEM ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 598.

No. 15–9213. PEOPLES *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 62 Cal. 4th 718, 365 P. 3d 230.

No. 15–9215. VOLPICELLI *v.* BYRNE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–9221. VOLPICELLI *v.* BYRNE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–9224. Ramirez *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 312.

No. 15–9226. Brantley *v.* University of Maryland Eastern Shore et al. C. A. 4th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 206.

No. 15–9230. Wright *v.* Maynard. Sup. Ct. Va. Certiorari denied.

No. 15–9233. Castillo *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 640 Fed. Appx. 283.

No. 15–9234. Rankine *v.* Overmyer, Superintendent, State Correctional Institution at Forest, et al. C. A. 3d Cir. Certiorari denied.

No. 15–9235. Deck *v.* Jones, Secretary, Florida Department of Corrections et al. C. A. 11th Cir. Certiorari denied

No. 15–9236. Claiborne *v.* Zhang et al. C. A. 9th Cir. Certiorari denied.

No. 15–9238. Koan *v.* Hoffner, Warden. C. A. 6th Cir. Certiorari denied.

No. 15–9242. Jones *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 15–9243. Merritte *v.* Illinois. App. Ct. Ill., 3d Dist. Certiorari denied.

No. 15–9244. Pryor *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 230.

No. 15–9249. Solano *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 812 F. 3d 573.

No. 15–9251. Taylor *v.* Goodwin, Warden. C. A. 5th Cir. Certiorari denied.

No. 15–9255. RICE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 813 F. 3d 704.

No. 15–9257. SPELL *v.* ALLEGHENY COUNTY, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 642 Fed. Appx. 105.

No. 15–9259. BAE HYUK SHIN *v.* SOTO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 300.

No. 15–9263. VAN-CLEAVE *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 15–9264. WARD *v.* COOKE ET AL. C. A. 4th Cir. Certiorari denied.

No. 15–9266. VURIMINDI *v.* ANHALT, JUDGE, COURT OF COMMON PLEAS OF PENNSYLVANIA, FIRST JUDICIAL DISTRICT, ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 634 Pa. 648, 130 A. 3d 1282.

No. 15–9267. PEREZ LOPEZ *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 15–9270. MARTIN *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 298 Ga. 259, 779 S. E. 2d 342.

No. 15–9272. MORALES *v.* HOLLAND, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–9274. RUGAMBA *v.* ROCKLEDGE BUS TOUR INC. ET AL. C. A. 2d Cir. Certiorari denied.

No. 15–9275. SKIEF *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 15–9278. TENDRICH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 980.

No. 15–9283. BYRD-GREEN *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 15–9284. HUMMEL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 15–9285. GRIER *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 15–9286. Eric F. *v.* Dalrymple et al. Sup. Ct. App. W. Va. Certiorari denied.

No. 15–9289. Plancarte *v.* Falk, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 945.

No. 15–9291. Bolden *v.* Pash, Warden. C. A. 8th Cir. Certiorari denied.

No. 15–9292. Bryant *v.* Kelley, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied.

No. 15–9293. De Adams *v.* Muniz, Warden. C. A. 9th Cir. Certiorari denied.

No. 15–9297. Talaga *v.* Washington. Ct. App. Wash. Certiorari denied. Reported below: 189 Wash. App. 1004.

No. 15–9298. Ramirez *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 15–9301. Fountain *v.* United States. C. A D. C. Cir. Certiorari denied. Reported below: 622 Fed. Appx. 3.

No. 15–9304. Kadonsky *v.* Johnson, Administrator, New Jersey State Prison, et al. C. A. 3d Cir. Certiorari denied.

No. 15–9306. Charles *v.* Megwa. Ct. App. Ariz. Certiorari denied.

No. 15–9309. Coleman *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 635 Fed. Appx. 875.

No. 15–9312. Burley *v.* Ali. Ct. App. Ariz. Certiorari denied.

No. 15–9314. Ullrich *v.* Idaho et al. C. A. 9th Cir. Certiorari denied.

No. 15–9315. Ullrich *v.* Idaho Supreme Court et al. C. A. 9th Cir. Certiorari denied.

No. 15–9316. Ciotta *v.* Brazelton, Warden. C. A. 9th Cir. Certiorari denied.

No. 15–9317. V. E. *v.* Maine Department of Health and Human Services et al. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 2016 ME 1, 131 A. 3d 898.

No. 15–9318. Heather S. *v.* Connecticut Department of Children and Families. App. Ct. Conn. Certiorari denied.

No. 15–9319. Daniel *v.* Lynch, Attorney General. C. A. 11th Cir. Certiorari denied.

No. 15–9322. Bazzo *v.* Asuncion, Acting Warden. C. A. 9th Cir. Certiorari denied.

No. 15–9326. Jackson *v.* California (two judgments). Sup. Ct. Cal. Certiorari denied.

No. 15–9328. Stockman *v.* Berghuis, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 470.

No. 15–9332. Culbert *v.* Fisher, Commissioner, Mississippi Department of Corrections. C. A. 5th Cir. Certiorari denied.

No. 15–9339. Lockhart *v.* Hunt, Superintendent, Columbus Correctional Facility. C. A. 4th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 830.

No. 15–9340. Koller *v.* Michigan. Ct. App. Mich. Certiorari denied.

No. 15–9342. Modrall *v.* Guyton, Magistrate Judge, United States District Court for the Eastern District of Tennessee. C. A. 6th Cir. Certiorari denied.

No. 15–9343. Moffett *v.* Foster, Warden. C. A. 7th Cir. Certiorari denied.

No. 15–9344. Milton *v.* Miller, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 812 F. 3d 1252.

No. 15–9345. Schwarz *v.* Meinberg et al. C. A. 9th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 374.

No. 15–9346. Robinson *v.* Chesapeake Bank of Maryland et al. Ct. Sp. App. Md. Certiorari denied.

No. 15–9348. BAUTISTA *v.* LEE-BAUTISTA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 148.

No. 15–9351. BABERS *v.* PFEIFFER, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–9352. BURTON *v.* SPEARMAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–9354. JIMERSON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 15–9355. KENNEDY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 15–9359. HUTCHINSON *v.* WEXFORD HEALTH SERVICES, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 930.

No. 15–9364. GRIFFITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 786 F. 3d 1098.

No. 15–9368. FRAZIER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 604 Fed. Appx. 306.

No. 15–9369. TANNER *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 15–9370. YOUNG-BEY *v.* YOUNG. Ct. App. D. C. Certiorari denied. Reported below: 132 A. 3d 1176.

No. 15–9371. VALENCIA-VILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 623.

No. 15–9373. BESADA *v.* UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 879.

No. 15–9374. MONTGOMERY *v.* WOOD, CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied.

No. 15–9377. HOVER *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 132 Nev. 981.

No. 15–9378. SURIS *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 15–9379. CASTILLO-NUNEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 621.

No. 15–9383. TAFOYA *v.* COLORADO ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 617.

No. 15–9385. ZUNO *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 140440–U.

No. 15–9386. STORY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 15–9390. HEAD *v.* LACKNER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–9392. DAVIS *v.* MCCARTHY ET AL. C. A. 11th Cir. Certiorari denied.

No. 15–9393. RAMIREZ *v.* ADVENTIST MEDICAL CENTER ET AL. Ct. App. Ore. Certiorari denied. Reported below: 273 Ore. App. 821, 362 P. 3d 1215.

No. 15–9394. SHABAZZ *v.* OVERMYER SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FOREST, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–9395. GREEN *v.* LEE, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 15–9397. SMALL *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2014 IL App (1st) 130190–U.

No. 15–9398. BROWNLEE *v.* RIVARD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–9399. BURTON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 15–9401. JONES *v.* FINESILVER. Sup. Ct. Fla. Certiorari denied.

No. 15–9404. JIMENEZ *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 15–9405. FULWOOD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 569 Fed. Appx. 691.

No. 15–9409. Okey *v.* Strebig, Warden, et al. C. A. 3d Cir. Certiorari denied. Reported below: 617 Fed. Appx. 123.

No. 15–9410. A. S. *v.* L. F. Super. Ct. N. J., App. Div. Certiorari denied.

No. 15–9411. Dean *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 146 Ohio St. 3d 106, 2015-Ohio-4347, 54 N. E. 3d 80.

No. 15–9417. Altman *v.* Brewer, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 637.

No. 15–9420. Wallace *v.* Louisiana et al. C. A. 5th Cir. Certiorari denied.

No. 15–9421. Rivera *v.* New York et al. C. A. 2d Cir. Certiorari denied.

No. 15–9422. Cesar Reyes *v.* Montgomery, Warden. C. A. 9th Cir. Certiorari denied.

No. 15–9423. Nynetjer El Bey, fka Snead *v.* Bank of New York Mellon. C. A. 6th Cir. Certiorari denied.

No. 15–9426. Donovan *v.* Environmental Protection Agency. C. A. 4th Cir. Certiorari denied. Reported below: 625 Fed. Appx. 215.

No. 15–9427. Caseros *v.* Davey, Warden. C. A. 9th Cir. Certiorari denied.

No. 15–9429. Leonard *v.* McDaniel, Warden. Sup. Ct. Nev. Certiorari denied. Reported below: 131 Nev. 1312.

No. 15–9431. Beltran *v.* Montgomery, Warden. C. A. 9th Cir. Certiorari denied.

No. 15–9432. Wright *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 812 F. 3d 27.

No. 15–9433. Vichitvongsa *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 819 F. 3d 260.

No. 15–9434. Wanton *v.* Baughman, Warden. C. A. 9th Cir. Certiorari denied.

No. 15–9435. FATOUROS *v.* LAMBRAKIS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 627 Fed. Appx. 84.

No. 15–9436. NARCISSE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 15–9437. SINGH *v.* COMMISSIONER OF INTERNAL REVENUE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 457.

No. 15–9438. SHARP *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 42 N. E. 3d 587.

No. 15–9439. FOSTER-ADAMS *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 177 So. 3d 623.

No. 15–9441. GARDNER *v.* WOODS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–9442. HART *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 442 Md. 516, 113 A. 3d 625.

No. 15–9443. HOOD *v.* BRENNAN, POSTMASTER GENERAL (two judgments). C. A. 6th Cir. Certiorari denied.

No. 15–9444. HOMONEY *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–9446. HAWKINS, FKA LACEY *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 15–9447. ROBERTS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 128 App. Div. 3d 858, 9 N. Y. S. 3d 124.

No. 15–9450. NICKERSON-MALPHER *v.* UNITED STATES FEDERAL CORPORATION ET AL. C. A. D. C. Cir. Certiorari denied.

No. 15–9451. PRECIADO *v.* SEIBEL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–9452. PULLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 402.

No. 15–9453. CAGNO *v.* WARREN, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 642 Fed. Appx. 189.

No. 15–9456. Bravata *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 636 Fed. Appx. 277.

No. 15–9459. Lopez-Valenzuela *v.* Ryan, Director, Arizona Department of Correction, et al. C. A. 9th Cir. Certiorari denied.

No. 15–9460. Jarmon *v.* Minnesota. Ct. App. Minn. Certiorari denied.

No. 15–9464. Brown *v.* Vannoy, Warden. C. A. 5th Cir. Certiorari denied.

No. 15–9465. Aponte *v.* Jones, Secretary, Florida Department of Corrections. Sup. Ct. Fla. Certiorari denied.

No. 15–9471. Mpaka *v.* Guevara. Sup. Ct. Fla. Certiorari denied.

No. 15–9473. Gray *v.* Zook, Warden; and
No. 15–9474. Gray *v.* Zook, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 806 F. 3d 783.

No. 15–9475. Vurimindi *v.* Feder, Clerk, Court of Common Pleas of Pennsylvania, First Judicial District. Sup. Ct. Pa. Certiorari denied. Reported below: 633 Pa. 701, 127 A. 3d 1291.

No. 15–9478. Byrd *v.* McLaughlin, Warden. Sup. Ct. Ga. Certiorari denied.

No. 15–9480. Sanders *v.* Illinois. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 2015 IL App (4th) 130881, 34 N. E. 3d 219.

No. 15–9483. Thompson *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 176.

No. 15–9486. King *v.* City of Norfolk, Virginia. C. A. 4th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 841.

No. 15–9487. Malone *v.* California. Ct. App. Cal., 1st App. Dist., Div. 5. Certiorari denied.

No. 15–9488. Stone *v.* Holland, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 341.

No. 15–9492. TIPLER *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 178 So. 3d 404.

No. 15–9494. DUNNINGTON *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 15–9495. STOCKENAUER *v.* BALL, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 15–9496. MACARTHUR *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 805 F. 3d 385.

No. 15–9497. SCOTT *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 15–9499. BLAKE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 814 F. 3d 851.

No. 15–9500. BANKS *v.* DAVEY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 379.

No. 15–9502. REYNOLDS *v.* GERSTEL. C. A. 9th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 522.

No. 15–9503. MODRALL *v.* FOWLKES. C. A. 6th Cir. Certiorari denied.

No. 15–9504. PARISI *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 2016 WI 10, 367 Wis. 2d 1, 875 N. W. 2d 619.

No. 15–9505. PETRANO *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied.

No. 15–9507. JUAN NEGRON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 898.

No. 15–9509. DAVES *v.* WILSON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 470.

No. 15–9510. CHERRY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 829.

No. 15–9511. CHACON *v.* DUCART, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–9512. POPLAWSKI *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 634 Pa. 517, 130 A. 3d 697.

No. 15–9513. MITCHELL *v.* DENMARK, SUPERINTENDENT, CENTRAL MISSISSIPPI CORRECTIONAL FACILITY, ET AL. C. A. 5th Cir. Certiorari denied.

No. 15–9514. KORSCHGEN *v.* MCKINNEY, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 15–9518. WILLIAMS *v.* ANDREWS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 15–9520. WHEELER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 15–9521. CASTILLO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 15–9523. GOLF *v.* NEW YORK CITY DEPARTMENT OF FINANCE ET AL. C. A. 2d Cir. Certiorari denied.

No. 15–9524. GOODRICK *v.* CARLIN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 222.

No. 15–9525. HOPKINS *v.* SHELDON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–9526. HUNT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 622 Fed. Appx. 656.

No. 15–9527. MADRIGAL-SOLORIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 278.

No. 15–9528. SIMS *v.* BITER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 555.

No. 15–9529. SIMS *v.* LESINAK. C. A. 9th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 559.

No. 15–9530. SIMPSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 15–9531. QUINN *v.* FORSHEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–9534. KIRBY *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 43 N. E. 3d 272.

No. 15–9536. CHANTHAKOUMMANE *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 816 F. 3d 62.

No. 15–9537. MASHAK *v.* CAPITAL ONE BANK, N. A. Ct. App. Minn. Certiorari denied.

No. 15–9538. CREDDILLE *v.* MTA NEW YORK CITY TRANSIT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 626 Fed. Appx. 343.

No. 15–9540. MORGAN *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. Ct. Crim. App. Tex. Certiorari denied.

No. 15–9545. WOODARD *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 634 Pa. 162, 129 A. 3d 480.

No. 15–9546. TRICOME *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 120 A. 3d 1059.

No. 15–9547. STEPHENSON *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 15–9548. ROMILUS *v.* IOWA. Ct. App. Iowa. Certiorari denied. Reported below: 871 N. W. 2d 521.

No. 15–9549. ROBINSON *v.* TRUSTMARK NATIONAL BANK ET AL. Ct. App. Miss. Certiorari denied. Reported below: 179 So. 3d 1146.

No. 15–9550. SANTOS *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 88 Mass. App. 1117, 42 N. E. 3d 210.

No. 15–9551. SOLOMON *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 209 So. 3d 585.

No. 15–9552. QUINONES-CHAVEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 722.

No. 15–9553. EMBRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 565.

No. 15–9554. RUBIO-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 636 Fed. Appx. 717.

No. 15–9555. CARRASCO *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 124 App. Div. 3d 445, 1 N. Y. S. 3d 69.

No. 15–9556. CAGE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 62 Cal. 4th 256, 362 P. 3d 376.

No. 15–9557. DUHS *v.* CAPRA, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 639 Fed. Appx. 691.

No. 15–9558. BLANCAS-ROSAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 855.

No. 15–9559. DEL ANGEL *v.* UNITED STATES (Reported below: 635 Fed. Appx. 153); and ARENAS-ORTIZ *v.* UNITED STATES (646 Fed. Appx. 352). C. A. 5th Cir. Certiorari denied.

No. 15–9560. GRIFFIN *v.* SCNURR ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 640 Fed. Appx. 710.

No. 15–9561. HAXHIA *v.* LEE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 637 Fed. Appx. 634.

No. 15–9562. LOPEZ *v.* ROARK ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 520.

No. 15–9563. EDWARDS *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 15–9564. STEIGELMAN *v.* MCDANIEL ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 667.

No. 15–9565. NISBET *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 2016 ME 36, 134 A. 3d 840.

No. 15–9566. NELSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 979.

No. 15–9567. MODESTE *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 186 So. 3d 1041.

No. 15–9568. SMALLWOOD *v.* HAWAII. Sup. Ct. Haw. Certiorari denied.

No. 15–9569. GUERRERO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 813 F. 3d 462.

No. 15–9570. HOWARD *v.* DAVEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–9572. GRIFFIN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 15–9573. MODRALL *v.* TENNESSEE COURT OF THE JUDICIARY ET AL. C. A. 6th Cir. Certiorari denied.

No. 15–9575. RISING *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 610.

No. 15–9576. ARMOLT *v.* DELBALSO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–9577. BATES *v.* JENKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–9578. BELL *v.* LOUISIANA. Ct. App. La. Certiorari denied. Reported below: 14–735 (La. App. 5 Cir. 3/11/15), 169 So. 3d 574.

No. 15–9579. BURGETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 15–9580. AMIR-SHARIF *v.* STEPHENS ET AL. C. A. 5th Cir. Certiorari denied.

No. 15–9581. BASHAW *v.* PARAMO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–9583. CARABALLO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 643 Fed. Appx. 163.

No. 15–9584. MAYMI-MAYSONET *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 812 F. 3d 233.

No. 15–9586. JOSEPH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 15–9587. EVANOFF *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 15–9588. AVILA *v.* DAVEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–9589. BUI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 636 Fed. Appx. 788.

No. 15–9590. COOKS *v.* JOHNSON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–9591. CARTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 15–9592. BARRY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 15–9593. BOERSTLER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 15–9594. ANGLE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 15–9595. OBEGINSKI *v.* DANFORTH, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 15–9596. SEBBERN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 641 Fed. Appx. 18.

No. 15–9597. GODINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 640 Fed. Appx. 385.

No. 15–9598. BEASLEY *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 15–9599. ALMANZAR *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 15–9601. CUELLAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 574.

No. 15–9602. CARRAWELL *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 481 S. W. 3d 833.

No. 15–9603. LACY *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2016 Ark. 38, 480 S. W. 3d 856.

No. 15–9604. OHNSTAD *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 640 Fed. Appx. 885.

No. 15–9605. SANDERSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 15–9606. SCHNEIDER *v.* MACLAREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–9607. TABATABAI *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 15–9608. TAVAREZ *v.* LARKIN, SUPERINTENDENT, EASTERN NEW YORK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 814 F. 3d 644.

No. 15–9609. THOMPSON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 106 A. 3d 742.

No. 15–9610. TORRES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 15–9611. SORO *v.* LOPEZ. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 207 So. 3d 886.

No. 15–9612. SESMA-BAGUE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 970.

No. 15–9613. SIQUEIROS *v.* KNIPP, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 731.

No. 15–9614. ROBERTS *v.* WALKER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 634.

No. 15–9616. ROSS ET AL. *v.* COLVIN, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 188.

No. 15–9617. ROCHE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 643 Fed. Appx. 210.

No. 15–9618. SERRANO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 640 Fed. Appx. 94.

No. 15–9620. TANN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 643 Fed. Appx. 86.

No. 15–9621. SYDNOR ET VIR *v.* LAKEFRONT INVESTORS, LLC, ET AL. C. A. 4th Cir. Certiorari denied.

No. 15–9622. MARIN *v.* LA PALOMA HEALTHCARE CENTER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 636 Fed. Appx. 586.

No. 15–9623. MARTIN *v.* GOOGLE INC. Ct. App. Cal., 1st App. Dist., Div. 2. Certiorari denied.

No. 15–9624. JONES *v.* DUCKWORTH, INTERIM WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 805 F. 3d 1213.

No. 15–9625. LANKFORD *v.* CITY OF HENDERSONVILLE, TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied.

No. 15–9626. BUSSIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 102.

No. 15–9627. BARCLAY *v.* OREGON ET AL. C. A. 9th Cir. Certiorari denied.

No. 15–9628. BRUNO *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 127 App. Div. 3d 986, 7 N. Y. S. 3d 408.

No. 15–9629. BELANUS *v.* CLARK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 796 F. 3d 1021.

No. 15–9630. IBARRA-AYON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 640 Fed. Appx. 245.

No. 15–9632. PIANKA *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied.

No. 15–9633. PIANKA *v.* DEROSA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 15–9634. PEELER *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 320 Conn. 567, 133 A. 3d 864.

No. 15–9635. WELTON *v.* RELIANT MEDICAL GROUP. C. A. 1st Cir. Certiorari denied.

No. 15–9636. VALENTINE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 961.

No. 15–9637. VARELLAS *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 15–9639. Ruiz Sanchez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 755.

No. 15–9640. Mendoza *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 62 Cal. 4th 856, 365 P. 3d 297.

No. 15–9641. Perez *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 819 F. 3d 541.

No. 15–9642. Villazano *v.* Jones, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 15–9643. Jones *v.* Lamb et al. C. A. 5th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 255.

No. 15–9644. Jackson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 336.

No. 15–9645. Johnson *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 15–9646 Latson *v* Texas. Ct. Crim App. Tex. Certiorari denied.

No. 15–9647. Hanson *v.* Meadows. Ct. App. Wis. Certiorari denied.

No. 15–9648. Padgett *v.* Kentucky. Ct. App. Ky. Certiorari denied.

No. 15–9649. Sumpter *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 15–9650. Reed *v.* Kernan, Secretary, California Department of Corrections and Rehabilitation. C. A. 9th Cir. Certiorari denied.

No. 15–9651. Beene *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 818 F. 3d 157.

No. 15–9652. Beckham *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 15–9654. Smith *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 216.

No. 15–9655. SPEAR *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 15–9656. STANCIK *v.* DEUTSCHE NATIONAL BANK. Ct. App. Ohio, 8th App. Dist., Cuyahoga County. Certiorari denied. Reported below: 2015-Ohio-2517.

No. 15–9657. SANDOVAL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 62 Cal. 4th 394, 363 P. 3d 41.

No. 15–9658. TAYLOR *v.* MCCAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 15–9659. WYATT *v.* RICHWOOD CORRECTIONAL CENTER ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 274.

No. 15–9660. TOLEN *v.* CASSADY, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 15–9661. WILLIAMS *v.* MCDONALD, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 635 Fed. Appx. 888.

No. 15–9662. ZAHRAIE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 15–9663. WOFFORD *v.* OHIO. Ct. App. Ohio, 12th App. Dist., Butler County. Certiorari denied. Reported below: 2015-Ohio-3708.

No. 15–9664. THOMPSON *v.* VILLMER, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 15–9665. REEVES *v.* HARRINGTON, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied.

No. 15–9668. RAHMANI *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 15–9669. WATSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 383.

No. 15–9670. CAMP *v.* POTTER COUNTY, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 408.

No. 15–9671. MOORE *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 15–9672. MCDONALD *v.* HARDY, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 821 F. 3d 882.

No. 15–9673. POWELL *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 132733–U.

No. 15–9674. POWELL *v.* ASSISTANT WARDEN HARRIS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 679.

No. 15–9675. MELGOZA PEREZ *v.* BITER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–9676. PIMENTAL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 15–9677. PURNELL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 15–9678. PITTMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 816 F. 3d 419.

No. 15–9679. MENDEZ BERNAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 379.

No. 15–9680. BROWN *v.* ANNUCCI, ACTING COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION. C. A. 2d Cir. Certiorari denied.

No. 15–9681. BROWN *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 15–9682. BERGERUD *v.* CHAPDELAINE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 642 Fed. Appx. 864.

No. 15–9683. LAY *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2015–2332 (La. 2/26/16), 184 So. 3d 1271.

No. 15–9684. KENNEDY *v.* MACKIE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 285.

No. 15–9686. DANHACH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 815 F. 3d 228.

No. 15–9687. RICO *v.* DUCART, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 533.

No. 15–9688. CEGLEDI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 638 Fed. Appx. 169.

No. 15–9689. CASTILLO SANCHEZ *v.* DUCKWORTH, INTERIM WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 636 Fed. Appx. 971.

No. 15–9690. ALSTON *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 396.

No. 15–9691. EASTER *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 2014–1630 (La. App. 1 Cir. 4/24/15), 170 So. 3d 1051.

No. 15–9692. DELUCK *v.* O'BRIEN, SUPERINTENDENT, MASSACHUSETTS TREATMENT CENTER. C. A. 1st Cir. Certiorari denied.

No. 15–9693. DIAZ *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2015 IL App (2d) 130974–U.

No. 15–9694. RODRIGUEZ-GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 377.

No. 15–9696. H. M. *v.* PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES, FKA PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE. Commw. Ct. Pa. Certiorari denied.

No. 15–9698. HUFFMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 416.

No. 15–9699. CLARK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 816 F. 3d 350.

No. 15–9701. WHITE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 15–9702. ADAMS *v.* KNIGHT, SUPERINTENDENT, CORRECTIONAL INDUSTRIAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 15–9703. PERKINS *v.* BRAZELTON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–9704. O'Malley *v.* California. Sup. Ct. Cal. Certiorari denied. Reported below: 62 Cal. 4th 944, 365 P. 3d 790.

No. 15–9705. Reeves *v.* Illinois. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 2016 IL App (5th) 130261–U.

No. 15–9706. Deqiang Song *v.* Santoro, Acting Warden. C. A. 9th Cir. Certiorari denied.

No. 15–9707. Conyers *v.* Virginia Housing Development Authority et al. C. A. 4th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 579.

No. 15–9709. Calhoun *v.* Burt, Warden. C. A. 6th Cir. Certiorari denied.

No. 15–9710. Cephus *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 15–9711. Everett *v.* Conley, Warden. C. A. 11th Cir. Certiorari denied.

No. 15–9712. Jamison-Laws *v.* Mackie, Warden. C. A. 6th Cir. Certiorari denied.

No. 15–9713. Jones *v.* Klee, Warden, et al. C. A. 6th Cir. Certiorari denied.

No. 15–9714. Marquez-Fuentes *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 797.

No. 15–9715. Rubio-Mendoza *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 349.

No. 15–9717. Rainone *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 816 F. 3d 490.

No. 15–9719. Virgile *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 608 Fed. Appx. 881.

No. 15–9720. Taylor *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 158.

No. 15–9721. Tate *v.* Bauman, Warden. C. A. 6th Cir. Certiorari denied.

No. 15–9722. Smith *v.* Smith. Sup. Ct. Nev. Certiorari denied.

No. 15–9723. VOSE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 588.

No. 15–9724. WEAST *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 811 F. 3d 743.

No. 15–9726. NJAKA *v.* KENNEDY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 568.

No. 15–9727. BANKS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 122 A. 3d 1121.

No. 15–9728. NOVA *v.* CAIN. C. A. 9th Cir. Certiorari denied.

No. 15–9729. PRIETO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 812 F. 3d 6.

No. 15–9730. TAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 349.

No. 15–9731. MARSHALL *v.* EDMONDS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 278.

No. 15–9732. DE LA CRUZ *v.* SANTORO, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–9734. OLIVAREZ *v.* DIAZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–9735. RANDOLPH *v.* DEPARTMENT OF JUSTICE. C. A. 4th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 250.

No. 15–9736. SOLOMON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 15–9737. CADENA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 642 Fed. Appx. 306.

No. 15–9740. SINGLETON *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 185 So. 3d 1249.

No. 15–9741. SHEPARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 15–9743. CHAMBERS *v.* AMAZON.COM INC. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 742.

No. 15–9744. ROGERS *v.* BLICKENSDORF. C. A. 6th Cir. Certiorari denied.

No. 15–9745. FLOWERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 640 Fed. Appx. 456.

No. 15–9746. SMITH *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 226 Md. App. 725.

No. 15–9747. SHERIFF *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 15–9748. ANDERSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 644 Fed. Appx. 192.

No. 15–9749. ALEXANDER *v.* CITY OF PHILADELPHIA, PENNSYLVANIA, ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 122 A. 3d 1200.

No. 15–9750. BLOND *v.* GRAHAM, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 15–9751. BRUNY *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 2015 IL App (5th) 150113–U.

No. 15–9752. BROADENAX *v.* RIVARD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–9753. BLACK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 284.

No. 15–9754. ROGERS *v.* 34TH JUDICIAL DISTRICT COURT OF MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 15–9755. MURRAY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 15–9756. LEWIS *v.* HOLT, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 878.

No. 15–9757. LYNCH *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 131 A. 3d 85.

No. 15–9758. LASCHKEWITSCH *v.* LINCOLN LIFE & ANNUITY, INC. C. A. 4th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 102.

No. 15–9759. SPEIGHT-BEY *v.* WILLIAMS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 969.

No. 15–9760. DAME *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 473 Mass. 524, 45 N. E. 3d 69.

No. 15–9761. CRUM *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 643 Fed. Appx. 33.

No. 15–9762. JENNINGS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 192 So. 3d 38.

No. 15–9763. ARNOLD *v.* RIVARD, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 15–9764. AUBRY *v.* BAUGHMAN, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–9765. BERREONDO *v.* AKANNO. C. A. 9th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 485.

No. 15–9766. BLANCHARD *v.* FRANK ET AL. C. A. 8th Cir. Certiorari denied.

No. 15–9767. HODGES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 529.

No. 15–9768. GARZA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 109.

No. 15–9769. GENARD *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied.

No. 15–9771. RHOADES *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2016 Ark. 142.

No. 15–9772. BATISTA-VELEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 15–9773. BESTER *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 188 So. 3d 526.

No. 15–9774. GREEN *v.* HODGES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 577 Fed. Appx. 234.

No. 15–9775. GREEN *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 15–9778. SCOTT *v.* DELBALSO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–9779. ROMERO *v.* SAUSCEDA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 386.

No. 15–9780. RODRIGUEZ REYNA *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 15–9781. BALICE *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied. Reported below: 634 Fed. Appx. 349.

No. 15–9782. BAATZ *v.* PRINGLE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 15–9783. WHITE *v.* JORDAN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 690.

No. 15–9786. MCDONALD *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 586.

No. 15–9787. NORWOOD *v.* HAYNES, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 579.

No. 15–9788. MASSEY *v.* QUALITY CORRECTIONAL HEALTH CARE ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 777.

No. 15–9789. ROUNDTREE *v.* MAINE MEDICAL CENTER ET AL. Sup. Jud. Ct. Me. Certiorari denied.

No. 15–9790. CASH *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 297 Ga. 859, 778 S. E. 2d 785.

No. 15–9791. CRUZ *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 15–9793. RINGGOLD *v.* ST. JOSEPH'S MEDICAL CENTER ET AL. Ct. App. Md. Certiorari denied. Reported below: 446 Md. 706, 133 A. 3d 1111.

No. 15–9795. Douglas *v.* Richards & Associates et al. C. A. 6th Cir. Certiorari denied.

No. 15–9796. Ellis *v.* Fisher, Commissioner, Mississippi Department of Corrections, et al. C. A. 5th Cir. Certiorari denied.

No. 15–9799. Rodriguez-Milian *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 820 F. 3d 26.

No. 15–9800. Buenaventura-Velasquez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 557.

No. 15–9801. Summers *v.* Colvin, Acting Commissioner of Social Security. C. A. 7th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 590.

No. 15–9802. Nunez Sardinas *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 597.

No. 15–9804. Padro *v.* Johnson, Administrator, New Jersey State Prison, et al. C. A. 3d Cir. Certiorari denied.

No. 15–9805. Tobanche *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 781.

No. 15–9806. Walker *v.* Pennsylvania et al. C. A. 3d Cir. Certiorari denied.

No. 15–9807. Shaffer *v.* Brazelton, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 15–9808. Langan *v.* ZB, N. A., et al. Sup. Ct. Ariz. Certiorari denied.

No. 15–9809. Dvorin *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 817 F. 3d 438.

No. 15–9810. Cly *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 648 Fed. Appx. 726.

No. 15–9812. Polanco *v.* Ducart, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 628.

No. 15–9813. Friend, fka Hodges *v.* Valley View Community Unit School District 365U et al. C. A. 7th Cir. Certiorari denied. Reported below: 789 F. 3d 707.

No. 15–9816. HARDY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 612 Fed. Appx. 186.

No. 15–9817. HILLS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 15–9818. CABRERA *v.* PIERCE, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–9819. VIVED *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 6. Certiorari denied.

No. 15–9820. TRACZYK *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 2013–1191 (La. App. 4 Cir. 2/2/15).

No. 15–9821. SUTTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 15–9822. RAY *v.* LEAL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 401.

No. 15–9824. BAKER *v.* SENIOR EMERGENCY HOME REPAIR ECONOMIC OPPORTUNITY PLANNING ASSN. ET AL. Ct. App. Ohio, 6th App. Dist., Lucas County. Certiorari denied. Reported below: 2015-Ohio-3083.

No. 15–9825. BUTLER *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 604.

No. 15–9826. AMARO-SANTIAGO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 824 F. 3d 154.

No. 15–9827. SANCHEZ-GARCIA, AKA MARTINEZ HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 15–9828. MAZARIEGO-GOMEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 648 Fed. Appx. 698.

No. 15–9829. HOWER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 15–9830. OWENS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 298 Ga. 813, 783 S. E. 2d 611.

No. 15–9831. MOLINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 528 and 633 Fed. Appx. 458.

No. 15–9832. WARDLOW *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 15–9833. HICKS *v.* TUCKER. C. A. 11th Cir. Certiorari denied.

No. 15–9834. DESPER *v.* WOODSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 212.

No. 15–9836. TOLIVER *v.* VECTREN ENERGY DELIVERY OF OHIO, INC. Sup. Ct. Ohio. Certiorari denied. Reported below: 145 Ohio St. 3d 346, 2015-Ohio-5055, 49 N. E. 3d 1240.

No. 15–9837. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 238.

No. 15–9839. HATCHER *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 195 So. 3d 388.

No. 15–9840. HARRIS *v.* GOEBEL, JUDGE, DELTA COUNTY, MICHIGAN PROBATE COURT, ET AL. C. A. 6th Cir. Certiorari denied.

No. 15–9841. GLICK *v.* EDWARDS. C. A. 9th Cir. Certiorari denied. Reported below: 803 F. 3d 505.

No. 15–9842. DAKER *v.* NATIONAL BROADCASTING CO. ET AL. C. A. 2d Cir. Certiorari denied.

No. 15–9844. FERNANDEZ *v.* ROMERO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–9845. FERNANDO GURROLA *v.* MCDONALD, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 601.

No. 15–9846. HENDERSON *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–9849. GIL-CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 808 F. 3d 274.

No. 15–9850. GARDNER *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 179 So. 3d 458.

No. 15–9851. FRATICELLI *v.* VARANO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–9852. GONYEA *v.* TERRIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–9853. FOSTER *v.* HOLDER. C. A. 5th Cir. Certiorari denied.

No. 15–9854. HOLLAND *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 726.

No. 15–9855. SPIVEY *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 15–9856. CUETO, AKA MARTIN, AKA RIVERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 881.

No. 15–9857. CASTONGUAY *v.* NEBRASKA. Ct. App. Neb. Certiorari denied. Reported below: 23 Neb. App. xxix.

No. 15–9858. FOUNTAIN *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, ET AL. C. A. 5th Cir. Certiorari denied.

No. 15–9859. JOYNER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 15–9860. MCDADE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 4. Certiorari denied.

No. 15–9861. NAILS *v.* UNIFIED GOVERNMENT OF WYANDOTTE COUNTY AND KANSAS CITY, KANSAS. Ct. App. Kan. Certiorari denied.

No. 15–9862. CONDIFF *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 8. Certiorari denied.

No. 15–9863. CHILDS *v.* BONDI, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 15–9864. ANDREWS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 134 A. 3d 316.

No. 15–9865. SEATON *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 15–9866. JOHNSTON *v.* PLUMLEY, WARDEN. Sup. Ct. App. W. Va. Certiorari denied.

No. 15–9867. COLE *v.* TICE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 15–9869. CARTER *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 292 Neb. 481, 877 N. W. 2d 211.

No. 15–9870. GATHERS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 15–9871. HISLE *v.* PERAMO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–9873. HILL *v.* UNITED STATES C. A. 4th Cir. Certiorari denied.

No. 15–9874. GARCIA-PENA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 15–9875. HIBBERT *v.* LEMPKE, SUPERINTENDENT, WENDE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 15–9876. HOUSE *v.* DANIELS, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 950.

No. 15–9877. HUGHES *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 15–9878. MONTES-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 293.

No. 15–9880. PEJOUHESH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 603 Fed. Appx. 347.

No. 15–9881. HASKINS *v.* HAWK. C. A. 4th Cir. Certiorari denied. Reported below: 603 Fed. Appx. 233.

No. 15–9882. COLEMAN *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2014–0402 (La. 2/26/16), 188 So. 3d 174.

No. 15–9884. CIMINO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 639 Fed. Appx. 26.

No. 15–9885. HAMILTON *v.* MESLE, JUDGE, CIRCUIT COURT OF MISSOURI, JACKSON COUNTY, ET AL. C. A. 8th Cir. Certiorari denied.

No. 15–9886. DIAZ *v.* BLEDSOE, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 630 Fed. Appx. 148.

No. 15–9887. JACKSON *v.* DOW CHEMICAL CO. ET AL. Sup. Ct. Del. Certiorari denied. Reported below: 132 A. 3d 1161.

No. 15–9888. GALVEZ-MACHADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 733.

No. 15–9889. MCCAY *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 476 S. W. 3d 640.

No. 15–9890. HERNANDEZ *v.* BRYAN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 680.

No. 15–9891. IVORY *v.* MULLINS, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 600 Fed. Appx. 670.

No. 15–9892. CREAMER *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 15–9893. FAVELA HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 376.

No. 15–9894. HAGGERTY *v.* COURT OF COMMON PLEAS OF PENNSYLVANIA, INDIANA COUNTY. Sup. Ct. Pa. Certiorari denied.

No. 15–9895. HINES *v.* UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT. C. A. 2d Cir. Certiorari denied.

No. 15–9896. HILL *v.* PENNSYLVANIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Pa. Certiorari denied. Reported below: 635 Pa. 101, 131 A. 3d 986.

No. 15–9897. HUGUELY *v.* LARSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–9898. JONES *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 934.

No. 15–9899. GOMEZ-MARTINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 847.

No. 15–9900. GRAHAM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 795.

No. 15–9901. HARRISON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 466.

No. 15–9902. GOMEZ-NAVARRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 642 Fed. Appx. 344.

No. 15–9903. GUIDRY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 817 F. 3d 997.

No. 15–9904. CHEEK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 622 Fed. Appx. 449.

No. 15–9905. FREE *v.* HUMPHREYS, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 15–9906. HARRIS *v.* MESSITTE, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 107.

No. 15–9908. CEJA-VARGAS, AKA RENTERIA-VARGAS, AKA HERNANDEZ-CARDENAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 341.

No. 15–9909. CREDICO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 15–9910. EBEH *v.* COSEY ET AL. Sup. Ct. Fla. Certiorari denied.

No. 15–9911. FLOYD *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 909.

No. 15–9912. FAVORS *v.* CARUSO ET AL. C. A. 6th Cir. Certiorari denied.

No. 15–9913. HERNANDEZ *v.* MCDONALD, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–9914. HAMILTON *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 15–9915. HINES *v.* DREW. C. A. 4th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 918.

No. 15–9916. LOPINTO *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 15–9917. FRANKLIN *v.* CURTIN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–9920. KE-JENG HU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 602.

No. 15–9921. VARGAS-GUZMAN *v* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 465.

No. 15–9923. DINGLE *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 15–9924. CAVNESS-BEY *v.* DAVIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 15–9926. BURNS *v.* BURNS ET AL. Ct. App. Tenn. Certiorari denied.

No. 16–1. SPIRITS INTERNATIONAL B. V., FKA SPIRITS INTERNATIONAL N. V., ET AL. *v.* FEDERAL TREASURY ENTERPRISE SOJUZPLODOIMPORT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 809 F. 3d 737.

No. 16–2. MAMMARO *v.* NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 814 F. 3d 164.

No. 16–3. BLAKE *v.* GIUSTIBELLI ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 182 So. 3d 881.

No. 16–4. AFJEH *v.* VILLAGE OF OTTAWA HILLS, OHIO, ET AL. Ct. App. Ohio, 6th App. Dist., Lucas County. Certiorari denied. Reported below: 2015-Ohio-3483.

No. 16–5. SAYLOR *v.* KOHL ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 812 F. 3d 637.

No. 16–6. SERVICO MARINA SUPERIOR, L. L. C. *v.* JAB ENERGY SOLUTIONS II, L. L. C. C. A. 5th Cir. Certiorari denied. Reported below: 640 Fed. Appx. 373.

No. 16–7. DUNBAR *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 499 Mich. 60, 879 N. W. 2d 229.

No. 16–8. UNITED STATES EX REL. WALTERSPIEL *v.* BAYER AG ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 164.

No. 16–10. CULLIN *v.* SILVERMAN, CHAPTER 7 TRUSTEE OF AGAPE WORLD, INC. C. A. 2d Cir. Certiorari denied. Reported below: 633 Fed. Appx. 16.

No. 16–11. KILGO *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 499 Mich. 873, 876 N. W. 2d 238.

No. 16–12. MARZETT *v.* MCCRAW ET AL. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 511 S. W. 3d 210.

No. 16–13. ELLIOTT *v.* CRUZ. Sup. Ct. Pa. Certiorari denied. Reported below: 635 Pa. 212, 134 A. 3d 51.

No. 16–15. GONZALEZ *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 16–16. TEEMAC *v.* FRITO-LAY INC. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 331.

No. 16–18. KENNEDY *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 51 Kan. App. 2d xxx, 353 P. 3d 472.

No. 16–19. BARNUM *v.* OHIO STATE UNIVERSITY MEDICAL CENTER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 642 Fed. Appx. 525.

No. 16–21. VALERINO *v.* HOOVER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 643 Fed. Appx. 139.

No. 16–22. WILEY *v.* SAM'S EAST, INC. C. A. 6th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 263.

No. 16–23. VOGEL *v.* TULAPHORN, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 344.

No. 16–25. BASHAR *v.* COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS. Sup. Ct. N. Mar. I. Certiorari denied. Reported below: 2015 MP 4.

No. 16–27. ROBERTS *v.* LAURA A. NEWMAN, LLC, DBA HERB'S ET AL. Sup. Ct. Colo. Certiorari denied. Reported below: 365 P. 3d 972.

No. 16–28. WILLIAMS, COLORADO SECRETARY OF STATE *v.* COALITION FOR SECULAR GOVERNMENT. C. A. 10th Cir. Certiorari denied. Reported below: 815 F. 3d 1267.

No. 16–29. RUSSELL *v.* DEPARTMENT OF HEALTH AND HUMAN SERVICES. C. A. Fed. Cir. Certiorari denied. Reported below: 641 Fed. Appx. 957.

No. 16–30. MORLEY *v* CENTRAL INTELLIGENCE AGENCY. C. A. D. C. Cir. Certiorari denied. Reported below: 810 F. 3d 841.

No. 16–31. DUNHAM *v.* MCFADDEN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 307.

No. 16–36. RITE AID CORP. *v.* HUSEBY ET AL. (Reported below: 130 App. Div. 3d 1518, 13 N. Y. S. 3d 753); and RITE AID CORP. *v.* HAYWOOD ET AL. (130 App. Div. 3d 1510, 15 N. Y. S. 3d 523). App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied.

No. 16–38. CROTTS *v.* HEALEY ET AL. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 16–39. ISABELLA D. ET AL. *v.* CONNECTICUT DEPARTMENT OF CHILDREN AND FAMILIES. Sup. Ct. Conn. Certiorari denied. Reported below: 320 Conn. 215, 128 A. 3d 916.

No. 16–40. HOUSTON ET AL. *v.* QUEEN ET AL. C. A. 5th Cir. Certiorari denied.

No. 16–41. JOHNSON ET AL. *v.* POPE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 106.

No. 16–42. Gomez *v.* Lynch, Attorney General. C. A. 9th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 431.

No. 16–43. Hammond *v.* United States Liability Insurance Company & Group. C. A. 3d Cir. Certiorari denied. Reported below: 643 Fed. Appx. 92.

No. 16–44. Shek *v.* ACE–USA/ESIS et al. C. A. 9th Cir. Certiorari denied.

No. 16–45. Michael's Enterprises of Virginia, Inc., et al. *v.* Branch Banking & Trust Co. C. A. 4th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 304.

No. 16–46. Hargrave *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 16–47. Peraica *v.* Village of McCook, Illinois, et al. C. A. 7th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 586.

No. 16–48. Neev *v.* Alcon Lensx, Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 644 Fed Appx. 1024.

No. 16–49. Pennsylvania Department of Education *v.* King, Acting Secretary of Education. C. A. 3d Cir. Certiorari denied. Reported below: 643 Fed. Appx. 89.

No. 16–51. Roper *v.* Kawasaki Heavy Industries, Ltd., et al. C. A. 11th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 706.

No. 16–52. Special Situations Fund III QP, L. P., et al. *v.* Deloitte Touche Tohmatsu CPA, Ltd., et al. C. A. 2d Cir. Certiorari denied. Reported below: 645 Fed. Appx. 72.

No. 16–53. Kruppenbacher *v.* Kirkpatrick, Superintendent, Clinton Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 16–55. Okelberry et al. *v.* Wasatch County, Utah. Ct. App. Utah. Certiorari denied. Reported below: 2015 UT App 192, 357 P. 3d 586.

No. 16–56. Callahan *v.* City of Chicago, Illinois. C. A. 7th Cir. Certiorari denied. Reported below: 813 F. 3d 658.

No. 16–57. FLINT *v.* METLIFE INSURANCE CO. C. A. 6th Cir. Certiorari denied.

No. 16–58. FLINT *v.* MCDONALD-BURKMAN, JUDGE, CIRCUIT COURT OF KENTUCKY, 30TH JUDICIAL CIRCUIT. C. A. 6th Cir. Certiorari denied.

No. 16–59. WHITAKER *v.* DEPARTMENT OF STATE ET AL. C. A. D. C. Cir. Certiorari denied.

No. 16–60. FLINT *v.* ACREE, JUDGE, KENTUCKY COURT OF APPEALS, ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–61. LAPAZ *v.* BARNABAS HEALTH SYSTEM ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 634 Fed. Appx. 367.

No. 16–62. POWERS *v.* FREIHAMMER ET AL. Ct. App. Minn. Certiorari denied.

No. 16–65. ROGERS, DBA HUMAN UTILITIES WHOLE ARMOUR *v.* RAYCOM MEDIA, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 324.

No. 16–68. JASSY *v.* DAVIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–69. SITTHIDET ET AL. *v.* FIRST HORIZON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 407.

No. 16–70. SEBBA *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 16–71. MCADOO *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 625 Fed. Appx. 218.

No. 16–72. JONES ET AL. *v.* NORTON ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 809 F. 3d 564.

No. 16–73. SZEINBACH *v.* OHIO STATE UNIVERSITY. C. A. 6th Cir. Certiorari denied. Reported below: 820 F. 3d 814.

No. 16–75. TANAKA *v.* SANTIAGO, AS TRUSTEE OF THE LOUIS ROBERT SANTIAGO REVOCABLE LIVING TRUST DATED NOVEMBER 17, 1999, ET AL. Sup. Ct. Haw. Certiorari denied.

No. 16–77. CETNER, AS TRUSTEE OF THE CETNER FAMILY TRUST *v.* CARTER ET AL., AS TRUSTEES OF THE CARTER FAMILY TRUST DATED MARCH 1, 1991. Ct. App. Cal., 2d App. Dist., Div. 8. Certiorari denied.

No. 16–78. FLORES *v.* UNITED STATES; and
No. 16–79. FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 418.

No. 16–80. MARVIN *v.* HEALTHCARE AUTHORITY FOR BAPTIST HEALTH, AN AFFILIATE OF UAB HEALTH SYSTEM, DBA BAPTIST MEDICAL CENTER SOUTH, ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 204 So. 3d 863.

No. 16–81. NAM SOON JEON, INDIVIDUALLY AND AS ESTATE ADMINISTRATOR OF HER DECEASED HUSBAND, JUN SUNG KWAK *v.* 445 SEASIDE, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 378.

No. 16–82. ROGERS *v.* INTERNAL REVENUE SERVICE. C. A. 6th Cir. Certiorari denied. Reported below: 822 F. 3d 854.

No. 16–83. DIRECCION GENERAL DE FABRICACIONES MILITARES, AKA FABRICA MILITAR FRAY LUIS BELTRAN ET AL. *v.* ROTE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 816 F. 3d 383.

No. 16–84. HARRIS *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 16–85. TRI QUOC DU *v.* VIRGINIA BOARD OF BAR EXAMINERS. Sup. Ct. Va. Certiorari denied.

No. 16–87. ORANGE, S. A., ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 818 F. 3d 956.

No. 16–88. ARDILA OLIVARES *v.* TRANSPORTATION SECURITY ADMINISTRATION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 819 F. 3d 454.

No. 16–90. DARKINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–91. BRIDGEVIEW HEALTH CARE CENTER, LTD., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

v. Clark, dba Affordable Digital Hearing. C. A. 7th Cir. Certiorari denied. Reported below: 816 F. 3d 935.

No. 16–93. Holstad *v.* First American Title Insurance Co. Ct. App. Minn. Certiorari denied.

No. 16–96. Boseski *v.* Borough of North Arlington, New Jersey, et al. C. A. 3d Cir. Certiorari denied. Reported below: 621 Fed. Appx. 131.

No. 16–97. Hance *v.* BNSF Railway Co. C. A. 6th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 356.

No. 16–99. Keating *v.* Pittston City, Pennsylvania, et al. C. A. 3d Cir. Certiorari denied. Reported below: 643 Fed. Appx. 219.

No. 16–100. Eggenberger *v.* West Albany Township, Minnesota, et al. C. A. 8th Cir. Certiorari denied. Reported below: 820 F. 3d 938.

No. 16–101. Andrews et al. *v.* Fremantlemedia, N. A., Inc., et al. C. A. 2d Cir. Certiorari denied. Reported below: 613 Fed. Appx. 67.

No. 16–102. Burr *v.* Denn, Attorney General of Delaware, et al. C. A. 3d Cir. Certiorari denied. Reported below: 641 Fed. Appx. 194.

No. 16–105. Pickett *v.* City of Frederick, Maryland, et al. Ct. Sp. App. Md. Certiorari denied. Reported below: 225 Md. App. 702 and 710.

No. 16–106. Crimone et ux. *v.* Nationstar Mortgage, LLC, et al. C. A. 3d Cir. Certiorari denied. Reported below: 634 Fed. Appx. 375.

No. 16–110. Jimenez *v.* Wizel et al. C. A. 11th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 868.

No. 16–112. Reymundo-Lima *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 668.

No. 16–113. Flowers *v.* Romanowski, Warden. C. A. 6th Cir. Certiorari denied.

No. 16–114. FREEMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 784.

No. 16–115. FLINT *v.* STUMBO ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–117. MORRIS ET UX. *v.* ZIMMER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 637 Fed. Appx. 654.

No. 16–118. HAAS *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 189 So. 3d 785.

No. 16–119. RICKS *v.* QUALITY CARRIERS, INC., ET AL. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 16–120. AVOKI ET UX. *v.* FEREBEE ET AL. Ct. App. N. C. Certiorari denied.

No. 16–124. KAISER GYPSUM CO., INC. *v.* CASEY. Ct. App. Cal., 1st App. Dist., Div. 4. Certiorari denied.

No. 16–126. RAYMOURS FURNITURE CO., INC., ET AL. *v.* MORGAN. Super. Ct. N. J., App. Div. Certiorari denied. Reported below: 443 N. J. Super. 338, 128 A. 3d 1127.

No. 16–129. ARIZONA *v.* BROWN. Sup. Ct. Ariz. Certiorari denied. Reported below: 239 Ariz. 521, 373 P. 3d 538.

No. 16–131. UNITED STATES EX REL. CAUSE OF ACTION *v.* CHICAGO TRANSIT AUTHORITY. C. A. 7th Cir. Certiorari denied. Reported below: 815 F. 3d 267.

No. 16–132. SAENZ JARA *v.* LYNCH, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 647 Fed. Appx. 39.

No. 16–139. NEW YORK *v.* CEDENO. Ct. App. N. Y. Certiorari denied. Reported below: 27 N. Y. 3d 110, 50 N. E. 3d 901.

No. 16–140. MAJETTE *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 264.

No. 16–143. INMAN *v.* VIRGINIA (two judgments). Sup. Ct. Va. Certiorari denied.

No. 16–145. TITUS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–156. HARRY *v.* COLVIN, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 819 F. 3d 112.

No. 16–158. HAEG *v.* RICHARDS, ATTORNEY GENERAL OF ALASKA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–159. HANLEY INDUSTRIES, INC. *v.* FANNING, SECRETARY OF THE ARMY. C. A. Fed. Cir. Certiorari denied. Reported below: 628 Fed. Appx. 763.

No. 16–161. BATAMULA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 823 F. 3d 237.

No. 16–162. HAGEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 611 Fed. Appx. 159.

No. 16–168. DANIELS ET UX. *v.* FEDERAL HOME LOAN MORTGAGE CORPORATION. C. A. 5th Cir. Certiorari denied. Reported below: 617 Fed. Appx. 358.

No. 16–170. BLEVINS *v.* HUDSON ET AL. Sup. Ct. Ark. Certiorari denied. Reported below: 2016 Ark. 150, 489 S. W. 3d 165.

No. 16–174. JONES *v.* TICE, ACTING SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–176. SCORPIO GOLD (US) CORP. *v.* JONES. C. A. 9th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 333.

No. 16–177. SCHEER *v.* KELLY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 817 F. 3d 1183.

No. 16–179. OSTENDORP *v.* OFFICE OF DISCIPLINARY COUNSEL. Sup. Ct. Haw. Certiorari denied.

No. 16–185. MA *v.* AMERICAN ELECTRIC POWER, INC. C. A. 6th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 641.

No. 16–187. GRECCO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 16–188. Genetic Technologies Ltd. *v.* Merial L. L. C. et al. C. A. Fed. Cir. Certiorari denied. Reported below: 818 F. 3d 1369.

No. 16–191. Shaw *v.* California. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 16–195. Essociate, Inc. *v.* Clickbooth.com, LLC, et al. C. A. Fed. Cir. Certiorari denied. Reported below: 641 Fed. Appx. 1006.

No. 16–205. Pactiv LLC *v.* Lee, Under Secretary of Commerce for Intellectual Property and Director, United States Patent and Trademark Office. C. A. Fed. Cir. Certiorari denied. Reported below: 642 Fed. Appx. 993.

No. 16–207. Castronuovo *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 904.

No. 16–209. Caldwell *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 75 M. J. 276.

No. 16–225. Grapevine Diamond, L. P., et al. *v.* City Bank. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 16–233. Morriss *v.* BNSF Railway Co. C. A. 8th Cir. Certiorari denied. Reported below: 817 F. 3d 1104.

No. 16–247. Stibal et al. *v.* Alexander. Sup. Ct. Idaho. Certiorari denied. Reported below: 161 Idaho 253, 385 P. 3d 431.

No. 16–270. Edstrom et al. *v.* Anheuser-Busch Inbev SA/NV et al. C. A. 9th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 733.

No. 16–5001. Grier *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 227.

No. 16–5002. Hosby *v.* Garman, Superintendent, State Correctional Institution at Rockview, et al. C. A. 3d Cir. Certiorari denied.

No. 16–5004. Garrett *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 16–5005. GUERRA *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 16–5006. DOMINGO CEBALLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 604.

No. 16–5007. CHAVEZ-SUAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 289.

No. 16–5008. CLINKSCALE *v.* SCHWEITZER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 347.

No. 16–5010. MARSHALL *v.* WALLER ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–5011. MARIANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 636 Fed. Appx. 532.

No. 16–5012. LEAVITT *v.* SANDIE, ACTING WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–5013. OBENG-AMPONSAH *v* CHASE HOME FINANCE, LLC, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 459.

No. 16–5014. OSIER *v.* PRINGLE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 16–5015. MENDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 418.

No. 16–5017. MCNEAL *v.* UNITED STATES; and
No. 16–5018. STODDARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 818 F. 3d 141.

No. 16–5019. MCCLAM *v.* LAKE CITY FITNESS CENTER, FKA IH3 WELLNESS CENTER, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 635 Fed. Appx. 137.

No. 16–5020. ROBINSON *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 303 Kan. 11, 363 P. 3d 875.

No. 16–5021. STEWART *v.* TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 648 Fed. Appx. 478.

No. 16–5022. NEEL *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 187 So. 3d 1237.

No. 16–5023. BROOKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 988.

No. 16–5024. ADIGUN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 16–5025. BOWSER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–5026. JOHNSON *v.* RUPERT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 407.

No. 16–5027. MAZZEI *v.* FISHER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–5028. JOHNSON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 16–5029. RODRIGUEZ *v.* THOMAS, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 645 Fed. Appx. 110.

No. 16–5031. WRIGHT *v.* CHATMAN, WARDEN. Sup. Ct. Ga. Certiorari denied.

No. 16–5032. WIDI *v.* DOLBIER ET AL. C. A. 1st Cir. Certiorari denied.

No. 16–5033. TUFFA ET AL. *v.* FLIGHT SERVICES & SYSTEMS, INC. C. A. 10th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 853.

No. 16–5034. SCHOTTENBAUER *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–5035. RODRIGUEZ *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 163 Conn. App. 262, 135 A. 3d 740.

No. 16–5037. MOSKONVIAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–5038. LOPES ORELLANA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 559.

No. 16–5039. MILLER *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 16–5040. CREDICO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 646 Fed. Appx. 248.

No. 16–5041. KEATON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–5042. WALLGREN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 16–5043. WESTER *v.* BUTLER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 16–5044. BERRY *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2015 IL App (3d) 140050–U.

No. 16–5045. ADKINS *v.* LEE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–5047. CARLIN *v.* BEZOS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 649 Fed. Appx. 181.

No. 16–5049. JONES *v.* GARMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–5050. LUNSFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 249.

No. 16–5052. VILLAGRAN *v.* MCDOWELL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–5053. COLLAZO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 818 F. 3d 247.

No. 16–5056. PADEN *v.* CARTLEDGE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 635 Fed. Appx. 113.

No. 16–5057. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–5058. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 818 F. 3d 1230.

No. 16–5059. AHART *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 88 Mass. App. 1114, 40 N. E. 3d 1057.

No. 16–5060. LOISEAU *v.* PIXLEY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 940.

No. 16–5061. CIOTTA *v.* BRAZELTON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–5062. CARSON *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 16–5063. MCCRAY *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–5064. PARKER *v.* LANE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE. C. A. 3d Cir. Certiorari denied.

No. 16–5065. JOHNSON *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 791 F. 3d 127.

No. 16–5066. NELSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 237.

No. 16–5067. ENDACOTT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–5068. JAVIER PEDRAZA *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 16–5069. MOAN *v.* WISE. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 183 So. 3d 364.

No. 16–5070. COLLAZO *v.* MOUNT AIRY #1, LLC. Commw. Ct. Pa. Certiorari denied. Reported below: 122 A. 3d 1200.

No. 16–5071. COX *v.* HALL, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 16–5072. MARCHBANKS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 386.

No. 16–5073. DEL CASTILLO-BARRON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 817 F. 3d 479.

No. 16–5076. NELSON *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 27 N. Y. 3d 361, 53 N. E. 3d 691.

No. 16–5077. CRUZ-MENDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 811 F. 3d 1172.

No. 16–5078. NAREZ-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 819 F. 3d 146.

No. 16–5079. MORSE *v.* RESCAP BORROWER CLAIMS TRUST. C. A. 2d Cir. Certiorari denied. Reported below: 628 Fed. Appx. 63.

No. 16–5080. PATULSKI *v.* THOMPSON, PERSONAL REPRESENTATIVE FOR THE ESTATE OF PATULSKI. Ct. App. Mich. Certiorari denied.

No. 16–5081. EDELIN *v.* UNITED STATES; and
No. 16–5125. EDELIN *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 791 F. 3d 127.

No. 16–5082. DUCKSWORTH *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 188 So. 3d 575.

No. 16–5083. DORSEY *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 171 So. 3d 735.

No. 16–5084. CLAUDIO *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–5085. CABRERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 635 Fed. Appx. 801.

No. 16–5086. JONES *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 16–5087. JAMES *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 2014–1590 (La. App. 1 Cir. 4/24/15).

No. 16–5088. JOHNSON *v.* APPLE, INC., ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–5089. RAMOS *v.* UNITED STATES; and
No. 16–5090. RAMOS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 814 F. 3d 910.

No. 16–5091. SAMMOUR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 816 F. 3d 1328.

No. 16–5092. GALLARDO-MEDINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 490.

No. 16–5093. GRESHAM *v.* GIDLEY. C. A. 6th Cir. Certiorari denied.

No. 16–5094. GREEN *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–5095. HUNT *v.* WARNER. C. A. 9th Cir. Certiorari denied.

No. 16–5096. BOHNING *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–5097. THOMPSON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–5098. WARNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 961.

No. 16–5100. ABE *v.* MICHIGAN STATE UNIVERSITY BOARD OF TRUSTEES. C. A. 6th Cir. Certiorari denied.

No. 16–5101. WHINDLETON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 797 F. 3d 105.

No. 16–5102. BODDIE *v.* PRISLEY. C. A. 6th Cir. Certiorari denied.

No. 16–5104. IVEY *v.* NEW YORK STATE HIGHER EDUCATION SERVICES CORPORATION ET AL. C. A. 2d Cir. Certiorari denied.

No. 16–5105. MARCELINO CASTRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 642 Fed. Appx. 484.

No. 16–5106. CHELBERG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 536.

No. 16–5107. HENDERSON *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 178 So. 3d 408.

No. 16–5108. A. F. *v.* Florida Department of Children and Families et al. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 182 So. 3d 653.

No. 16–5109. Hudson *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 158 So. 3d 567.

No. 16–5110. Harrell *v.* Foster, Warden. C. A. 7th Cir. Certiorari denied.

No. 16–5111. Curran *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 638 Fed. Appx. 149.

No. 16–5112. Johnson *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 240.

No. 16–5113. Linderman *v.* Lackner, Warden. C. A. 9th Cir. Certiorari denied.

No. 16–5114. Jones *v.* Baca, Warden. C. A. 9th Cir. Certiorari denied.

No. 16–5115. Martinez *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 16–5116. Rojas-Diaz *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 279.

No. 16–5117. Taylor *v.* Brooks et al. C. A. 4th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 206.

No. 16–5118. Tejada *v.* New York. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 133 App. Div. 3d 799, 19 N. Y. S. 3d 178.

No. 16–5119. Beverly *v.* Jones, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 16–5120. Kelsey *v.* Bailey, Chief Judge of the Little River Band of Ottawa Indians Tribal Court. C. A. 6th Cir. Certiorari denied. Reported below: 809 F. 3d 849.

No. 16–5121. Arterberry *v.* Lizarraga, Warden. C. A. 9th Cir. Certiorari denied.

No. 16–5122. BANNER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 132974–U.

No. 16–5123. AL-SAADY *v.* JACKSON, ACTING WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–5126. MCCOY *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 16–5127. POINDEXTER *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 608 Fed. Appx. 163.

No. 16–5128. PITTMAN *v.* PENNSYLVANIA GENERAL ASSEMBLY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 642 Fed. Appx. 87.

No. 16–5129. PATEL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 468.

No. 16–5130. PROPHET *v.* BALLARD, WARDEN. Sup. Ct. App. W. Va. Certiorari denied.

No. 16–5131. JAMES *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 150 So. 3d 864.

No. 16–5133. UDOH *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 16–5134. LATIMER ET AL. *v.* CITY OF CHARLOTTE, NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 642 Fed. Appx. 269.

No. 16–5136. QUEVEDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 653.

No. 16–5138. AMBERT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–5139. FREDERICK *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 16–5140. HOPKINS *v.* JPMORGAN CHASE BANK, N. A., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 880.

No. 16–5141. HAIPE *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 769 F. 3d 1189.

No. 16–5143. THRASHER-STAROBIN *v.* STAROBIN. Sup. Ct. Ga. Certiorari denied. Reported below: 299 Ga. 12, 785 S. E. 2d 302.

No. 16–5144. THETFORD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 806 F. 3d 442.

No. 16–5145. WILLIAMS, AKA STEWART *v.* PENNSYLVANIA DEPARTMENT OF CORRECTIONS ET AL. Commw. Ct. Pa. Certiorari denied.

No. 16–5146. GRISSOM *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. Sup. Ct. Ark. Certiorari denied. Reported below: 2015 Ark. 449, 476 S. W. 3d 160.

No. 16–5147. GRAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 233.

No. 16–5148. FRAZIER *v.* REYNOLDS. C. A. 11th Cir. Certiorari denied.

No. 16–5149. RONDAN *v.* LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES. C. A. 9th Cir. Certiorari denied.

No. 16–5150. ROMAN *v.* BANK OF NEW YORK MELLON ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 122 A. 3d 1121.

No. 16–5152. ANDERSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 131143–U.

No. 16–5153. GEORGIADIS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 819 F. 3d 4.

No. 16–5154. VARGAS-DE JESUS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 813 F. 3d 414.

No. 16–5155. KEITT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 157.

No. 16–5156. LEWIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 636 Fed. Appx. 749.

No. 16–5157. MAGUIRE *v.* AMSBERRY. C. A. 9th Cir. Certiorari denied.

No. 16–5158. JACKSON *v.* GERMERAAD. C. A. 7th Cir. Certiorari denied.

No. 16–5159. BILL *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 16–5160. PFEFFERLE *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 16–5161. RAMIREZ-FIGUEROA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 642 Fed. Appx. 488.

No. 16–5162. SHEW *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 234.

No. 16–5165. VELEZ-LUCIANO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 814 F. 3d 553.

No. 16–5166. THOMAS *v.* OLENS, ATTORNEY GENERAL OF GEORGIA, ET AL. Sup. Ct. Ga. Certiorari denied.

No. 16–5167. TRIPLETT *v.* LEBLANC, SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 642 Fed. Appx. 457.

No. 16–5168. WERNTZ *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 16–5169. YARBOURGH *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 16–5170. ROBINSON *v.* GEORGIA DEPARTMENT OF HUMAN SERVICES. Ct. App. Ga. Certiorari denied.

No. 16–5171. RAINEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–5172. LURZ *v.* ILLINOIS; and TINEYBEY *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied.

No. 16–5175. FOWLER *v.* MCGINLEY, ACTING SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–5176. SMITH *v.* KING'S DAUGHTERS AND SONS HOME. Ct. App. Tenn. Certiorari denied.

No. 16–5177. JOHNSON *v.* PALMETTO CITIZENS FEDERAL CREDIT UNION. C. A. 4th Cir. Certiorari denied. Reported below: 622 Fed. Appx. 302.

No. 16–5178. LOPEZ-GOMEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 313.

No. 16–5180. JONES *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 1. Certiorari denied.

No. 16–5181. MARCELENO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 819 F. 3d 1267.

No. 16–5182. KNECHT *v.* LAW OFFICES OF CHET ELIOT WEINBAUM, P. A., ET AL. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 191 So. 3d 474.

No. 16–5184. ROMANS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 823 F. 3d 299.

No. 16–5185. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 500.

No. 16–5187. HALL *v.* SEPANEK, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–5188. PINEDA GOMEZ *v.* DUCART, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–5189. BASIC *v.* STECK, ACTING UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF KENTUCKY. C. A. 6th Cir. Certiorari denied. Reported below: 819 F. 3d 897.

No. 16–5190. BOSTON *v.* MCGINLEY, ACTING SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–5191. GRAY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 16–5192. HULL *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 2. Certiorari denied.

No. 16–5193. Shelton *v.* Mapes, Warden. C. A. 8th Cir. Certiorari denied. Reported below: 821 F. 3d 941.

No. 16–5194. Griffin *v.* Alfaro, Warden. C. A. 9th Cir. Certiorari denied.

No. 16–5195. Netherton *v.* Parnell, Superintendent, Washington Corrections Center for Women. C. A. 9th Cir. Certiorari denied. Reported below: 642 Fed. Appx. 687.

No. 16–5196. Rivera *v.* Illinois. Sup. Ct. Ill. Certiorari denied.

No. 16–5197. Alvarez *v.* Davey, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 533.

No. 16–5198. Armstrong *v.* Andrews et al. C. A. 11th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 705.

No. 16–5199. Cristobal *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 653.

No. 16–5200. Jackson *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 16–5201. Ogunleye *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 343.

No. 16–5202. Johnson *v.* United States District Court for the Northern District of California. C. A. 9th Cir. Certiorari denied.

No. 16–5204. Orjuela *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 638 Fed. Appx. 9.

No. 16–5205. Murray *v.* Ferguson, Superintendent, State Correctional Institution at Benner, et al. C. A. 3d Cir. Certiorari denied.

No. 16–5206. Capalbo, as Personal Representative of Cosentino and Guardian ad Litem for D. B. et al., et al. *v.* Kurtz et al. C. A. 9th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 538.

No. 16–5207. Rhodes *v.* Gordon et al. C. A. 9th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 358.

No. 16–5208. PAYNE *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–5209. POPAL *v.* SLOVIS. C. A. 2d Cir. Certiorari denied. Reported below: 646 Fed. Appx. 35.

No. 16–5210. BROWN *v.* HARRIS, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 434.

No. 16–5211. BERRIOS-BONILLA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 822 F. 3d 25.

No. 16–5212. FLORES *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–5214. BARNES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 635 Fed. Appx. 110.

No. 16–5216. ROWE *v.* GOLDSBORO WAYNE TRANSPORTATION AUTHORITY. C. A. 4th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 183.

No. 16–5217. REYNOLDS *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–5218. SHAMSUD-DIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 16–5219. ROGERS *v.* NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 126.

No. 16–5220. ROBINSON *v.* OUTLAW, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 16–5221. ROLLINS *v.* WILLETT ET AL. C. A. 7th Cir. Certiorari denied.

No. 16–5222. REDDING *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 132 App. Div. 3d 700, 17 N. Y. S. 3d 495.

No. 16–5223. SCOTT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 637 Fed. Appx. 10.

No. 16–5224. MOORE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–5226. TAPIA-OSORIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 343.

No. 16–5227. BURGESS *v.* SPEARMAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–5228. ANEKWU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–5231. DAY *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 247.

No. 16–5233. BOOTS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 816 F. 3d 971.

No. 16–5234. JOHNSON *v.* LOUISIANA. 39th Jud. Dist. Ct. La., Red River Parish. Certiorari denied.

No. 16–5236 BUTLER *v* GORDY WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–5237. CHANG, AKA SUNG BUM CHANG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 601.

No. 16–5238. SMITH *v.* PSZCZOLKOWSKI, WARDEN. Sup. Ct. App. W. Va. Certiorari denied.

No. 16–5239. BARKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 820 F. 3d 167.

No. 16–5242. RICHARDS *v.* MITCHEFF ET AL. C. A. 7th Cir. Certiorari denied.

No. 16–5243. LAWLER *v.* CHATMAN, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 905.

No. 16–5244. KIMBRELL *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 16–5245. SALVADOR RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 436.

No. 16–5246. OLGUIN-CARDENAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 347.

No. 16–5248. WEBSTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 820 F. 3d 944.

No. 16–5249. VALENTIN *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–5251. ONGAGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 820 F. 3d 152.

No. 16–5252. BUCCI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 809 F. 3d 23.

No. 16–5253. GRIM *v.* FISHER, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 816 F. 3d 296.

No. 16–5254. RAHMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 16–5255. MCDONALD *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 16–5256. CAMPBELL *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 16–5257. FELTON *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 87 Mass. App. 1134, 33 N. E. 3d 1267.

No. 16–5258. HOWARD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 639 Fed. Appx. 686.

No. 16–5260. GILMORE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 317.

No. 16–5262. FERGUSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–5263. RAGLAND *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 16–5264. GARCIA-MELENDRES *v.* UNITED STATES (Reported below: 643 Fed. Appx. 407); PEREZ-GAONA *v.* UNITED

STATES (645 Fed. Appx. 335); RAMOS-MARRON *v.* UNITED STATES (646 Fed. Appx. 354); SANCHEZ-ALBA *v.* UNITED STATES (645 Fed. Appx. 337); SANTACRUZ-HERNANDEZ *v.* UNITED STATES (645 Fed. Appx. 336); SILVA-MENDOZA *v.* UNITED STATES (646 Fed. Appx. 339); TAMEZ-TOSCANO *v.* UNITED STATES (646 Fed. Appx. 353); and TAPIA-OSORIO *v.* UNITED STATES (646 Fed. Appx. 343). C. A. 5th Cir. Certiorari denied.

No. 16–5265. ARIZMENDI-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 459.

No. 16–5266. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 16–5267. PIERCE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 500.

No. 16–5269. ODOMS *v.* NEVADA BOARD OF STATE PRISON COMMISSIONERS ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–5270. LLOYD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below 645 Fed. Appx. 273.

No. 16–5271. LONG *v.* BARRETT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–5272. LARRY *v.* GIDLEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–5273. KELLY *v.* AMBROSKI ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–5274. BUITRON *v.* CROSS, WARDEN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 526.

No. 16–5275. ALEXANDER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 222 So. 3d 381.

No. 16–5276. DAMOND *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied.

No. 16–5277. SMITH *v.* BAGLEY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 642 Fed. Appx. 579.

No. 16–5279. APHAYAVONG *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 16–5280. CRESPO *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–5281. ROEBUCK *v.* SUPREME COURT OF MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 16–5282. REYNOLDS *v.* BARTELL, SHERIFF, WILLIAMSBURG COUNTY, SOUTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 241.

No. 16–5283. ROBINSON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 141 A. 3d 598.

No. 16–5285. BROWN *v.* WILLIAMS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 644 Fed. Appx. 117.

No. 16–5286. BOLAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–5287. BRADFORD *v.* BOLLES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 645 Fed. Appx. 157.

No. 16–5289. THOMPSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 16–5290. ADETILOYE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 623 Fed. Appx. 825.

No. 16–5291. ALMEIDA *v.* MARCHILLI, SUPERINTENDENT, NORTH CENTRAL CORRECTIONAL INSTITUTION AT GARDNER. C. A. 1st Cir. Certiorari denied.

No. 16–5292. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 176.

No. 16–5293. ANDRE J. *v.* SARAH R. ET AL. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2016 IL App (2d) 150762–U.

No. 16–5297. COLEMAN *v.* CARRIEON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 377.

No. 16–5298. IVERSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 818 F. 3d 1015.

No. 16–5299. GEDDIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 256.

No. 16–5300. GONZALEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 297.

No. 16–5301. GOMEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–5303. HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 715.

No. 16–5305. JESUS F. *v.* WASHOE COUNTY DEPARTMENT OF SOCIAL SERVICES. Sup. Ct. Nev. Certiorari denied. Reported below: 132 Nev. 209, 371 P. 3d 995.

No. 16–5306. MUHAMMAD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 819 F. 3d 1056.

No. 16–5309. MESSER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 16–5310. JORDAN *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 2014–1083 (La. App. 1 Cir. 3/6/15).

No. 16–5311. MATTHEWS *v.* COHEN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 593.

No. 16–5315. CHAUDHRY *v.* TARGET CORP. C. A. 2d Cir. Certiorari denied. Reported below: 632 Fed. Appx. 38.

No. 16–5316. TAYLOR *v.* AMASON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 334.

No. 16–5317. GUADALUPE VARGAS *v.* UNITED STATES (Reported below: 645 Fed. Appx. 332); MALDONADO *v.* UNITED STATES (645 Fed. Appx. 322); HERNANDEZ-LARA *v.* UNITED STATES (653 Fed. Appx. 280); HARGROVE *v.* UNITED STATES (667 Fed. Appx. 111); RODRIGUEZ-GONZALEZ *v.* UNITED STATES (653 Fed. Appx. 284); ALBERTO OLIVARES *v.* UNITED STATES (667 Fed. Appx. 112); GONZALEZ *v.* UNITED STATES (667 Fed. Appx. 117); and STOJENTIN *v.* UNITED STATES (653 Fed. Appx. 284). C. A. 5th Cir. Certiorari denied.

No. 16–5318. JAMES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 810 F. 3d 674.

No. 16–5319. NIERA *v.* CASH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–5320. PANNELL *v.* NEAL, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied.

No. 16–5321. MONJARAS-PICHARDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 259.

No. 16–5322. NWAMAH *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 16–5323. MORALES-COLON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–5324. MOSES *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–5325. DECATUR *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 130231, 45 N. E. 3d 1118.

No. 16–5326. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 279.

No. 16–5327. JUDY *v.* WILSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 391.

No. 16–5328. VOLPENTESTA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 16–5329. WILLIAMS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 16–5330. WARREN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 820 F. 3d 406.

No. 16–5331. WILLIAMS *v.* BAKER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–5332. PATTEE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 820 F. 3d 496.

No. 16–5333. PATTERSON *v.* KERNAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 16–5334. NORINGTON *v.* SEVIER, SUPERINTENDENT, WESTVILLE CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 16–5335. CROCKETT *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2015 IL App (3d) 130761–U.

No. 16–5336. SMITH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 629 Fed. Appx. 135.

No. 16–5338. CARTMAN, AKA VINCENT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 607 Fed. Appx. 888.

No. 16–5340. DAVIS *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–5341. ANDREWS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 8. Certiorari denied.

No. 16–5343. DAVIES *v.* ALLEN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 626 Fed. Appx. 728.

No. 16–5344. GOUDEAU *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 239 Ariz. 421, 372 P. 3d 945.

No. 16–5345. GARRY *v.* AMERICAN STANDARD TRANE, INC., ET AL. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied.

No. 16–5346. GUMMO BEAR *v.* WASHINGTON ET AL. Ct. App. Wash. Certiorari denied. Reported below: 187 Wash. App. 1035.

No. 16–5347. GEORGE *v.* SOTO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–5348. HARE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 820 F. 3d 93.

No. 16–5349. GODFREY *v.* LYNCH, ATTORNEY GENERAL. C. A. 8th Cir. Certiorari denied. Reported below: 811 F. 3d 1013.

No. 16–5352. JIAU *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 16–5353. LAGRONE *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 2016 WI 26, 368 Wis. 2d 1, 878 N. W. 2d 636.

No. 16–5354. MEAUX *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 648 Fed. Appx. 409.

No. 16–5355. PUJOLS *v.* PASH, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 16–5356. BARRAZA-MENA, AKA MENA-BARRAZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 319.

No. 16–5357. MUNT *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 880 N. W. 2d 379.

No. 16–5358. KENDRICK *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 16–5359. JOHNSON *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist., Div. 3. Certiorari denied.

No. 16–5360. JACKSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 16–5361. ESCOBAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 425.

No. 16–5362. ESTRADA *v.* HEALEY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 335.

No. 16–5363. DUBON-VALENZUELA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 247.

No. 16–5365. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 642 Fed. Appx. 655.

No. 16–5366. RIGAL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 608.

No. 16–5367. PETERSEN-BEARD *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 304 Kan. 192, 377 P. 3d 1127.

No. 16–5368. ASGHEDOM *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 830.

No. 16–5369. AUSTIN *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 190 So. 3d 643.

No. 16–5372. PULIDO SANCHEZ *v.* FRAUENHEIM, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–5374. LLOYD *v.* LOUISIANA. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 48,914 (La. App. 2 Cir. 1/14/15), 161 So. 3d 879.

No. 16–5375. PETRUCELLI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 16–5376. LEWIS *v.* CITY OF ROMULUS, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–5377. JACKSON *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 2015 IL App (4th) 140036–U.

No. 16–5378. PRITCHETT *v.* MYRICK, SUPERINTENDENT, TWO RIVERS CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 489.

No. 16–5380. GRIFFITH *v.* NEW YORK. App Div., Sup Ct. N. Y., 4th Jud. Dept. Certiorari denied.

No. 16–5381. HENDRICKS *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–5382. RIOS SANDOVAL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 16–5383. SMITH *v.* STEWARD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–5384. BRECHEEN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 16–5385. ALLMON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–5386. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 636 Fed. Appx. 514.

No. 16–5387. AQUIL *v.* BUTLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–5388. BRUCE *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 16–5391. HENTZ *v.* OREGON ET AL. Sup. Ct. Ore. Certiorari denied.

No. 16–5392. FOUTS *v.* COLORADO. Dist. Ct. Colo., Weld County. Certiorari denied.

No. 16–5395. ROCHELA *v.* UNITED STATES; and
No. 16–5563. VALDES DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 636 Fed. Appx. 1000.

No. 16–5396. RAINEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–5397. SIMS *v.* KEMP, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–5398. SANCHEZ *v.* BRYANT, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 599.

No. 16–5399. BEY, AKA SEALEY *v.* KYPLINSKI, SUPERINTENDENT, VIRGINIA PENINSULA REGIONAL JAIL. C. A. 4th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 301.

No. 16–5401. CARLOSS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 818 F. 3d 988.

No. 16–5402. HAIRSTON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 133 A. 3d 74.

No. 16–5403. ALONSO RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 435.

No. 16–5404. ROBINSON *v.* PURCELL CONSTRUCTION CORP. C. A. 2d Cir. Certiorari denied. Reported below: 647 Fed. Appx. 29.

No. 16–5406. SLOCUM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 294.

No. 16–5411. TAYLOR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 16–5413. WILSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–5414. HUY CHI LUONG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 642 Fed. Appx. 694.

No. 16–5415. NASTRI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 647 Fed. Appx. 51.

No. 16–5416. OLARTE-ROJAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 820 F. 3d 798.

No. 16–5417. MITCHELL ET AL. *v.* MASSACHUSETTS; and
No. 16–5435. ORTIZ *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 89 Mass. App. 13, 45 N. E. 3d 111.

No. 16–5421. BASALDUA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–5424. CARLOS RIVAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 761.

No. 16–5426. WEST *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 626 Fed. Appx. 49.

No. 16–5430. CABRERA *v.* SANTA CLARA COUNTY, CALIFORNIA. App. Div., Super. Ct. Cal., County of Santa Clara. Certiorari denied.

No. 16–5431. WESSELS *v.* PEERY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 635 Fed. Appx. 367.

No. 16–5432. ASHE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 397.

No. 16–5434. BELL *v.* FLORIDA HIGHWAY PATROL ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 589 Fed. Appx. 473.

No. 16–5436. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 954.

No. 16–5437. EVANGELOU *v.* DISTRICT OF COLUMBIA ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 639 Fed. Appx. 1.

No. 16–5438. LISTER *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 189 Wash. App. 1040.

No. 16–5439. CAMARA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–5440. DALALLI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 389.

No. 16–5443. SPECK-EDGMON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 380.

No. 16–5445. JENKINS *v.* ATKINSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 229.

No. 16–5447. WARD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 648 Fed. Appx. 238.

No. 16–5448. WORKMAN *v.* BLADES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 542.

No. 16–5449. JOYNER *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 16–5450. WOLF *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 556.

No. 16–5451. VANN *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 190 So. 3d 73.

No. 16–5452. CLIFTON *v.* WENEROWICZ, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–5453. BROWN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 896.

No. 16–5456. BRANTHAFER *v.* GARMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–5457. CARPENTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 397.

No. 16–5460. LAFLIN *v.* NEBRASKA. Ct. App. Neb. Certiorari denied. Reported below: 23 Neb. App. 839, 875 N. W. 2d 919.

No. 16–5462. CLIMMONS-JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 406.

No. 16–5463. COURTNEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 816 F. 3d 681.

No. 16–5464. ALANA *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 16–5467. FIGUEREO-MEJIA *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 16–5472. BARTZ *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 16–5473. HALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 504.

No. 16–5476. BONILLA *v.* LOUISIANA. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 15–529 (La. App. 5 Cir. 2/24/16), 186 So. 3d 1242.

No. 16–5478. KING *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 642 Fed. Appx. 172.

No. 16–5480. YURIAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below 650 Fed. Appx. 411.

No. 16–5481. JIMENEZ-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–5485. DUENAS ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 817 F. 3d 339.

No. 16–5487. CONTRERAS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 16–5490. STOVER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 808 F. 3d 991.

No. 16–5491. LEWIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–5492. MAIER *v.* PALL ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–5493. MITCHAM *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 16–5494. VASQUEZ PEREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 428.

No. 16–5495. PARKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–5496. MCCAULEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 205.

No. 16–5499. CRUZ-MARTINEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 828 F. 3d 451.

No. 16–5500. COLON DEJESUS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 831 F. 3d 39.

No. 16–5502. BROWN *v.* TOP GUARD. C. A. 4th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 201.

No. 16–5506. MURRAY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 821 F. 3d 386.

No. 16–5508. NAVE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 16–5510. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 636 Fed. Appx. 882.

No. 16–5516. ROSARIO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 640 Fed. Appx. 18.

No. 16–5517. AFOLABI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 16–5519. BROWN *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 16–5521. BUTCHER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–5524. DIEGUEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 106.

No. 16–5525. PETROVIC *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–5526. OSBORNE *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 16–5532. CRAWFORD *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 132 A. 3d 172.

No. 16–5537. COLBERT *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 125 A. 3d 326.

No. 16–5541. SIXING LIU *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 16–5542. MODRALL *v.* BIGGS. C. A. D. C. Cir. Certiorari denied. Reported below: 653 Fed. Appx. 766.

No. 16–5543. JOSEPH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 626 Fed. Appx. 893.

No. 16–5544. MITCHELL *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 16–5545. MASON *v.* ECKSTEIN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 16–5546. RAE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 376.

No. 16–5549. COLEMAN *v.* UNITED STATES; and
No. 16–5557. BROWN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 822 F. 3d 966.

No. 16–5552. BULGER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 816 F. 3d 137.

No. 16–5559. GOODWIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–5562. EANNARINO *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 16–5564. FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 280.

No. 16–5565. GREEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 507.

No. 16–5567. HERNANDEZ-BECERRA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 636 Fed. Appx. 943.

No. 16–5572. JIMENEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 602.

No. 16–5576. SAYERS *v.* POWELL. C. A. 4th Cir. Certiorari denied.

No. 16–5577. SMOTHERMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–5582. DEGEARE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied.

No. 16–5584. VILLANUEVA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 821 F. 3d 1226.

No. 16–5585. EVANS *v.* PIERCE, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–5586. PETROVIC *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 140 A. 3d 1225.

No. 16–5587. JENKINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 837.

No. 16–5588. OLUIGBO-BERNARDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 868.

No. 16–5591. MOROSCO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 822 F. 3d 1.

No. 16–5593. MCGEE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 821 F. 3d 644.

No. 16–5594. EFTHIMIATOS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–5597. LAWRENCE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 599.

No. 16–5601. CHOEURN *v.* MASSACHUSETTS. Super. Ct. Mass., Middlesex County. Certiorari denied.

No. 16–5602. ESPINOZA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 898.

No. 16–5603. THOMAS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 16–5605. PUENTE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 132.

No. 16–5606. DUBRULE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 822 F. 3d 866.

No. 16–5607. WARE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–5610. RANDOLPH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–5612. COLLUM *v.* UTAH. Ct. App. Utah. Certiorari denied. Reported below: 2015 UT App 229, 360 P. 3d 13.

No. 16–5613. STEWART *v.* COLORADO ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 593.

No. 16–5615. CORDERO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 121.

No. 16–5616. CHRISTIAN *v.* MAHAN, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA, LAS VEGAS. C. A. 9th Cir. Certiorari denied.

No. 16–5618. CURRIE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 765.

No. 16–5620. COPPOLA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 16–5623. WALLACE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 842.

No. 16–5624. CROTEAU *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 819 F. 3d 1293.

No. 16–5625. SANCHEZ-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 648 Fed. Appx. 445.

No. 16–5630. ARTHURS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 846.

No. 16–5637. LOPEZ RAMIREZ *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–5638. TARRATS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 950.

No. 16–5641. NORWOOD *v.* COLVIN, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 7th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 468.

No. 16–5642. MEDINA *v.* ARCHULETA, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 782.

No. 16–5645. JACKSON *v.* SHARTLE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–5648. CHURCH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 823 F. 3d 351.

No. 16–5649. ADENUGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 803.

No. 16–5650. BARBEE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 671.

No. 16–5651. CERF *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 621 Fed. Appx. 651.

No. 16–5654. DEES, AKA LEE *v* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 16–5661. REEDY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–5663. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 355.

No. 16–5666. RUIZ *v.* HARRY, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CAMP HILL, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–5670. UNDERWOOD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 403.

No. 16–5671. SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 289.

No. 16–5672. RILEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 291.

No. 16–5675. SESSION *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 821.

No. 16–5677. WALLER *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. Sup. Ct. Ark. Certiorari denied. Reported below: 2016 Ark. 252, 493 S. W. 3d 757.

No. 16–5679. VANDERARK *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2015 IL App (2d) 130790, 58 N. E. 3d 1.

No. 16–5683. DAVIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–5684. LAMOTT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 831 F. 3d 1153.

No. 16–5686. PLEDGE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 821 F. 3d 1035.

No. 16–5698. MARTINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–5705. MCCLEES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 186.

No. 16–5708. TRIFU *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–5711. TWITTY *v.* GILBERT, SUPERINTENDENT, STAFFORD CREEK CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 828.

No. 16–5712. PATTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 423.

No. 16–5716. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 295.

No. 16–5720. SANFORD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 813 F. 3d 708.

No. 16–5721. OWENS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–5722. MCCOY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 815 F. 3d 292.

No. 16–5745. DATTILIO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–5757. YOUNG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 15–1121. NEUSOFT MEDICAL SYSTEM CO., LTD., ET AL. *v.* NEUISYS, LLC. Ct. App. N. C. Motion of North Carolina Association of Defense Attorneys for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 242 N. C. App. 102, 774 S. E. 2d 851.

No. 15–1218. HUSQVARNA PROFESSIONAL PRODUCTS, INC. *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Motion of Outdoor Power Equipment Institute for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 168 N. H. 460, 130 A. 3d 1197.

No. 15–1222. RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS *v.* MCKINNEY. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 813 F. 3d 798.

No. 15–1311. PRO-FOOTBALL, INC. *v.* BLACKHORSE ET AL. C. A. 4th Cir. Certiorari before judgment denied.

No. 15–1344. MARTIN *v.* NATIONAL GENERAL ASSURANCE CO. Sup. Ct. Del. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 128 A. 3d 991.

No. 15–1379. JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* HARDWICK. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 803 F. 3d 541.

No. 15–1408. MASIMO CORP. *v.* RUHE ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 640 Fed. Appx. 685.

No. 15–1411. WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* MOORE. C. A. 3d Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 640 Fed. Appx. 159.

No. 15–1416. CHISHOLM ET AL. *v.* TWO UNNAMED PETITIONERS ET AL. Sup. Ct. Wis. Motion of Center for Media and De-

mocracy et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 2015 WI 85, 363 Wis. 2d 1, 866 N. W. 2d 165.

No. 15–1421. WALSH *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 639 Fed. Appx. 108.

No. 15–1425. RIOS *v.* PNC MORTGAGE, AKA PNC FINANCIAL SERVICES GROUP, INC., ET AL. Ct. App. Mich. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 15–1429. WIEST ET UX. *v.* TYCO ELECTRONICS CORP. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 812 F. 3d 319.

No. 15–1446. COMMIL USA, LLC *v.* CISCO SYSTEMS, INC. C. A. Fed. Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 813 F. 3d 994.

No. 15–1499. MACDERMID PRINTING SOLUTIONS, LLC *v.* E. I. DU PONT DE NEMOURS & CO. C. A. Fed. Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 640 Fed. Appx. 982.

No. 15–1505. FLORIDA *v.* RODRIGUEZ. Sup. Ct. Fla. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 187 So. 3d 841.

No. 15–9158. LOACH *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 135 A. 3d 655.

No. 15–9419. BEVERLY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 15–9582. BROWN *v.* NASH, WARDEN, ET AL. C. A. 5th Cir. Certiorari before judgment denied.

No. 15–9738. ERBO, AKA GARCIA-VELEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 15–9770. RINALDI *v.* ODDO, WARDEN. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 646 Fed. Appx. 202.

No. 15–9798. THOMPSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 15–9872. FOWLKES *v.* ADAMEC ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 622 Fed. Appx. 76.

No. 15–9925. BATISTA *v.* COUNTRYWIDE HOME LOANS, INC., ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 627 Fed. Appx. 178.

No. 16–157. IOWA *v.* JACKSON. Sup. Ct. Iowa. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 878 N. W. 2d 422.

No. 16–5054 SHEKHEM EL BEY *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 16–5350. CHIRINO RIVERA *v.* MOSLEY, WARDEN. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 624 Fed. Appx. 221.

No. 16–5458. AKEL *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 16–5735. WHITE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

Rehearing Denied

No. 15–674. UNITED STATES ET AL. *v.* TEXAS ET AL., 577 U. S. 1101;

No. 15–7005. AZIZ *v.* NEW JERSEY, 579 U. S. 919;

No. 15–7878. Ossana *v.* United States, 579 U. S. 931;

No. 15–8095. Fry *v.* United States, 577 U. S. 1226;

No. 15–8954. Buycks *v.* LBS Financial Credit Union et al., 579 U. S. 920;

No. 15–8964. Turner *v.* Wright et al., 579 U. S. 921;

No. 15–9073. Two Bulls, aka Reyna *v.* Ries et al., 579 U. S. 932; and

No. 15–9479. Burchette *v.* McDonald, Secretary of Veterans Affairs, 579 U. S. 936. Petitions for rehearing denied.

No. 15–7350. Butler *v.* Stephens, Director, Texas Department of Criminal Justice, Correctional Institutions Division, 578 U. S. 925; and

No. 15–7988. Hamilton *v.* Jones, Secretary, Florida Department of Corrections, et al., 578 U. S. 926. Motions for leave to file petitions for rehearing denied.

October 11, 2016

Certiorari Granted—Vacated and Remanded. (See also No. 15–9173, *ante*, p. 1.)

No. 15 9838. Alexander *v.* United States. C. A. 6th Cir. Reported below: 642 Fed. Appx. 506;

No. 16–5075. Olalde-Gonzalez *v.* United States. C. A. 5th Cir. Reported below: 642 Fed. Appx. 426; and

No. 16–5566. Herrold *v.* United States. C. A. 5th Cir. Reported below: 813 F. 3d 595. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Mathis* v. *United States*, 579 U. S. 500 (2016).

Certiorari Dismissed

No. 16–5410. Wright El *v.* Court of General Sessions of South Carolina, Charleston County, et al. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 624 Fed. Appx. 90.

No. 16–5433. Acker *v.* Jeanes, Clerk, 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. 16–5560. SEWELL *v.* HOWARD. 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: 645 Fed. Appx. 251.

Miscellaneous Orders

No. D–2922. IN RE DISCIPLINE OF CULBREATH. Stanlee Earl Culbreath, of Columbus, Ohio, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2923. IN RE DISCIPLINE OF HUBBARD. D. Seeley Hubbard, of Darien, Conn., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2924. IN RE DISCIPLINE OF OWENS. Dennis J. Campbell Owens, of Kansas City, Mo., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2925. IN RE DISCIPLINE OF LAMBAJIAN. Nicholas Hrant Lambajian, of Monrovia, 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–2926. IN RE DISCIPLINE OF LUCID. Daniel Peri Lucid, 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–2927. IN RE DISCIPLINE OF RHOADS. Douglas Carrol Rhoads, of Phoenix, Ariz., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2928. IN RE DISCIPLINE OF LERCH. Stanford E. Lerch, of Phoenix, Ariz., is suspended from the practice of law in

this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2929. IN RE DISCIPLINE OF CARAMADRE. Joseph A. Caramadre, of Cranston, R. I., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2930. IN RE DISCIPLINE OF GOLDMAN. Richard I. Goldman, of Springfield, Mass., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2931. IN RE DISCIPLINE OF NACHAMIE. Barton Nachamie, of New York, N. Y., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2932. IN RE DISCIPLINE OF VESNAVER. Paul G. Vesnaver, of Rockville Centre, 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–2933. IN RE DISCIPLINE OF DIGGS. William I. Diggs, of Myrtle Beach, S. C., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2934. IN RE DISCIPLINE OF FUSILIER. Julie Ann Fusilier, of Baton Rouge, La., 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. 16M29. DAVENPORT *v.* RODGERS;

No. 16M30. STEWART *v.* COLLIER, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL.;

No. 16M32. GIFFEN *v.* UNITED STATES ET AL.;

No. 16M34. ATKINS *v.* O'BRIEN, WARDEN;

No. 16M35. LEWIS *v.* MARYLAND TRANSIT ADMINISTRATION; and

No. 16M36. MARIAN *v.* SEBELIUS ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 16M31. FJORD ET AL. *v.* KELLEHER. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal granted.

No. 16M33. HEATH *v.* TSUJIHARA ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied. THE CHIEF JUSTICE took no part in the consideration or decision of this motion.

No. 15–513. STATE FARM FIRE & CASUALTY CO. *v.* UNITED STATES EX REL. RIGSBY ET AL. C. A. 5th Cir. [Certiorari granted, 578 U. S. 1011.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 15–866. STAR ATHLETICA, L. L. C. *v.* VARSITY BRANDS, INC., ET AL. C. A. 6th Cir. [Certiorari granted, 578 U. S. 959.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 16–6021. IN RE WILLIAMS. Petition for writ of habeas corpus denied.

No. 16–5774. IN RE PAYNE. Petition for writ of mandamus denied.

No. 16–5504. IN RE ADKINS. 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. 16–5762. IN RE ROBINSON. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8.

Certiorari Granted

No. 16–348. MIDLAND FUNDING, LLC *v.* JOHNSON. C. A. 11th Cir. Certiorari granted. Reported below: 823 F. 3d 1334.

No. 15–118. HERNANDEZ ET AL. *v.* MESA ET AL. C. A. 5th Cir. Certiorari granted. In addition to the questions presented by the petition, the parties are directed to brief and argue the following question: "Whether the claim in this case may be asserted under *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971)." Reported below: 785 F. 3d 117.

No. 15–1358. ZIGLAR *v.* TURKMEN ET AL.;

No. 15–1359. ASHCROFT, FORMER ATTORNEY GENERAL, ET AL. *v.* TURKMEN ET AL.; and

No. 15–1363. HASTY ET AL. *v.* TURKMEN ET AL. C. A. 2d Cir. Certiorari granted, cases consolidated, and a total of one hour is allotted for oral argument. JUSTICE SOTOMAYOR and JUSTICE KAGAN took no part in the consideration or decision of these petitions. Reported below: 789 F. 3d 218.

Certiorari Denied

No. 15–955. COOPER ET AL. *v.* LEE, DIRECTOR, UNITED STATES PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied.

No. 15–1136. CARLSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 810 F. 3d 544.

No. 15–1142. WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES *v.* E. H. ET AL. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 236 W. Va. 279, 778 S. E. 2d 728.

No. 15–1294. HAUGEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 810 F. 3d 544.

No. 15–1299. R. J. REYNOLDS TOBACCO CO. ET AL. *v.* KANE, ATTORNEY GENERAL OF PENNSYLVANIA. Commw. Ct. Pa. Certiorari denied. Reported below: 114 A. 3d 37.

No. 15–1330. MCM PORTFOLIO LLC *v.* HEWLETT-PACKARD CO. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 812 F. 3d 1284.

No. 15–1350. BUILDING INDUSTRY ASSOCIATION OF THE BAY AREA ET AL. *v.* DEPARTMENT OF COMMERCE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 792 F. 3d 1027.

No. 15–1387. UNITED STATES FOREST SERVICE ET AL. *v.* COTTONWOOD ENVIRONMENTAL LAW CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 789 F. 3d 1075.

No. 15–1413. KENNEDY *v.* SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP. C. A. 3d Cir. Certiorari denied. Reported below: 629 Fed. Appx. 277.

No. 15–1460. MISSOURI *v.* CARRAWELL. Sup. Ct. Mo. Certiorari denied. Reported below: 481 S. W. 3d 833.

No. 15–1462. CENTER FOR ART & MINDFULNESS, INC. *v.* POSTAL REGULATORY COMMISSION. C. A. D. C. Cir. Certiorari denied.

No. 15–1507. HUANG, GENERAL PARTNER, ON BEHALF OF HYW L. P. *v.* CITY OF LOS ANGELES, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 363.

No. 15–1530. ROSILLO *v.* HOLTEN ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 817 F. 3d 595.

No. 15–1537. R. J. REYNOLDS TOBACCO CO. ET AL. *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 225 Md. App. 214, 123 A. 3d 660.

No. 15–1545. CITY OF YUMA, ARIZONA *v.* AVENUE 6E INVESTMENTS, LLC, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 818 F. 3d 493.

No. 15–8950. HOLMES *v.* EAST COOPER COMMUNITY HOSPITAL, INC., ET AL. Sup. Ct. S. C. Certiorari denied.

No. 15–9042. ANDERSON *v.* HARRISON COUNTY, MISSISSIPPI. C. A. 5th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 1010.

No. 15–9225. DAVIDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 171.

No. 15–9327. MURRILLO MONTEMAYOR *v.* UNITED STATES (Reported below: 636 Fed. Appx. 620); ROMERO-CORDERO *v.* UNITED STATES (634 Fed. Appx. 457); VILLANUEVA-TORRES *v.* UNITED STATES (635 Fed. Appx. 146); RODRIGUEZ-MADRID *v.* UNITED

STATES (646 Fed. Appx. 352); and VAZQUEZ-MORALES *v.* UNITED STATES (646 Fed. Appx. 358). C. A. 5th Cir. Certiorari denied.

No. 15–9388. FAGER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 811 F. 3d 381.

No. 15–9544. BIBLE *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 640 Fed. Appx. 350.

No. 15–9571. HOLMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 814 F. 3d 1246.

No. 15–9823. SNEED *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 195 So. 3d 1077.

No. 16–9. WOLFSON *v.* CONCANNON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 811 F. 3d 1176.

No. 16–17. FARREN *v.* FARREN. App. Ct. Conn. Certiorari denied. Reported below: 162 Conn. App. 51, 131 A. 3d 253.

No. 16–34. MATALONIS *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 2016 WI 7, 366 Wis. 2d 443, 875 N. W. 2d 567.

No. 16–35. ARMSTRONG *v.* THOMPSON. Ct. App. D. C. Certiorari denied. Reported below: 134 A. 3d 305.

No. 16–64. GABLES INSURANCE RECOVERY, INC., AS ASSIGNEE OF SOUTH MIAMI CHIROPRACTIC LLC *v.* BLUE CROSS & BLUE SHIELD OF FLORIDA, INC. C. A. 11th Cir. Certiorari denied. Reported below: 813 F. 3d 1333.

No. 16–116. NORTH AMERICAN PROPERTIES *v.* MCCARRAN INTERNATIONAL AIRPORT ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 132 Nev. 1011.

No. 16–121. ADVANCED TECHNOLOGY BUILDING SOLUTIONS, LLC, ET AL. *v.* CITY OF JACKSON, MISSISSIPPI. C. A. 5th Cir. Certiorari denied. Reported below: 817 F. 3d 163.

No. 16–133. JINHEE PARK *v.* CITY OF CLAWSON, MICHIGAN. Cir. Ct. Oakland County, Mich. Certiorari denied.

No. 16–134. PATTERSON *v.* SHELTON. Commw. Ct. Pa. Certiorari denied. Reported below: 127 A. 3d 894.

No. 16–138. C. C., INDIVIDUALLY AND BY AND THROUGH HIS PARENTS AND NEXT FRIENDS, CRIPPS ET UX., ET AL. *v.* HURST-EULESS BEDFORD INDEPENDENT SCHOOL DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 423.

No. 16–147. LANHAM *v.* HAZLETT ET AL. Ct. App. Ky. Certiorari denied.

No. 16–148. BANDARIES *v.* LAWYER DISCIPLINARY COMMITTEE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA. C. A. 5th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 258.

No. 16–150. VARTANIAN *v.* SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 418.

No. 16–155. VELA-ESTRADA *v.* LYNCH, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 817 F. 3d 69.

No. 16–165. ARK INITIATIVE ET AL. *v.* TIDWELL, CHIEF, UNITED STATES FOREST SERVICE, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 816 F. 3d 119.

No. 16–167. HENRY *v.* REGENTS OF THE UNIVERSITY OF CALIFORNIA, SAN FRANCISCO. C. A. 9th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 787.

No. 16–169. WISE ET UX. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 193.

No. 16–172. ARNALDO BAEZ *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 486 S. W. 3d 592.

No. 16–173. LOWRY *v.* ANDERSON. Ct. App. Tenn. Certiorari denied.

No. 16–178. SHEIKH *v.* KELLY, SECRETARY, CALIFORNIA STATE TRANSPORTATION AGENCY, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 629.

No. 16–180. MOODY'S CORP. ET AL. *v.* FEDERAL HOME LOAN BANK OF BOSTON. C. A. 1st Cir. Certiorari denied. Reported below: 821 F. 3d 102.

No. 16–182. Garza-Medina *v.* Lynch, Attorney General. C. A. 5th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 282.

No. 16–183. Flint *v.* McKinley, Chief Judge, United States District Court for the Western District of Kentucky. C. A. 6th Cir. Certiorari denied.

No. 16–184. Cripps et al. *v.* Louisiana Department of Agriculture and Forestry et al. C. A. 5th Cir. Certiorari denied. Reported below: 819 F. 3d 221.

No. 16–198. Chhetri et al. *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 823 F. 3d 577.

No. 16–208. Robinson et al. *v.* WMC Mortgage Corp. et al. C. A. 9th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 636.

No. 16–216. Michael *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 642 Fed. Appx. 987.

No. 16–219. Citizens for Appropriate Rural Roads, Inc., et al *v.* Foxx, Secretary of Transportation, et al C. A. 7th Cir. Certiorari denied. Reported below: 815 F. 3d 1068.

No. 16–221. Holmes *v.* Northrop Grumman Corp. et al. C. A. 5th Cir. Certiorari denied. Reported below: 642 Fed. Appx. 373.

No. 16–223. Stefanick *v.* Merit Systems Protection Board et al. C. A. 4th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 251.

No. 16–241. Burst, Individually and as Legal Representative of Burst *v.* Shell Oil Co. et al. C. A. 5th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 170.

No. 16–249. Pool-Knight *v.* Michigan. Ct. App. Mich. Certiorari denied.

No. 16–256. Flight Attendants in Reunion et al. *v.* American Airlines, Inc., et al. C. A. 2d Cir. Certiorari denied. Reported below: 813 F. 3d 468.

No. 16–272. Vilchiz *v.* Florida. Sup. Ct. Fla. Certiorari denied.

No. 16–291. WHITFIELD *v.* COLVIN, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 6th Cir. Certiorari denied.

No. 16–305. ENCYCLOPAEDIA BRITANNICA, INC. *v.* DICKSTEIN SHAPIRO, LLP. C. A. D. C. Cir. Certiorari denied. Reported below: 653 Fed. Appx. 764.

No. 16–5241. CARDONA-CASTILLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 648 Fed. Appx. 782.

No. 16–5389. SPIRLES *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 136 App. Div. 3d 1315, 25 N. Y. S. 3d 462.

No. 16–5405. SEPEHRY-FARD *v.* AURORA BANK, FSB, ET AL. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 16–5407. ROBERSON *v.* PADULA, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 635 Fed. Appx. 141.

No. 16–5408. SANDERS *v.* WOODS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–5412. VURIMINDI *v.* SUPERIOR COURT OF PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 634 Pa. 721, 131 A. 3d 43.

No. 16–5418. LOWE *v.* KARRIKER ET AL. C. A. 5th Cir. Certiorari denied.

No. 16–5420. BURTON *v.* GIDLEY ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–5422. ANTOINE *v.* RIVARD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–5425. SEPEHRY-FARD *v.* BANK OF NEW YORK MELLON ET AL. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 16–5427. RIMER *v.* DISTRICT COURT OF NEVADA, CLARK COUNTY. Sup. Ct. Nev. Certiorari denied. Reported below: 132 Nev. 1023.

No. 16–5428. SLAUGHTER *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–5429. SMITH *v.* WADDINGTON ET AL. C. A. 10th Cir. Certiorari denied.

No. 16–5444. JOHNSON *v.* WINN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–5446. LOVE *v.* HILL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–5455. BROWN *v.* WILSON ET AL. C. A. 10th Cir. Certiorari denied.

No. 16–5459. BREWER *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–5465. COOK *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 16–5466. HAMMER *v.* HAMMER ET AL. Sup. Ct. App. W. Va. Certiorari denied.

No. 16–5470. MANNING *v.* HUDSON COUNTY, NEW JERSEY. Super Ct N. J., App Div. Certiorari denied.

No. 16–5471. LEWIS *v.* HARRIS ET AL. C. A. 8th Cir. Certiorari denied.

No. 16–5474. FLOWERS *v.* TRAVIS COUNTY, TEXAS, CIVIL COURT DIVISION ET AL. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 16–5475. GOMILLION *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 298 Ga. 505, 783 S. E. 2d 103.

No. 16–5477. BROWN *v.* BROWN. Ct. App. Cal., 2d App. Dist., Div. 2. Certiorari denied.

No. 16–5482. WOODS *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied. Reported below: 488 S. W. 3d 809.

No. 16–5483. R. C. *v.* E. M. ET AL. Sup. Ct. Ala. Certiorari denied.

No. 16–5484. ROBINSON *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2016–0506 (La. 5/2/16), 206 So. 3d 879.

No. 16–5486. RODGERS *v.* LANCASTER POLICE DEPARTMENT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 819 F. 3d 205.

No. 16–5488. ROBINSON *v.* CADLE CO. Ct. App. Mich. Certiorari denied.

No. 16–5489. WEI ZHOU *v.* MARQUETTE UNIVERSITY. C. A. 7th Cir. Certiorari denied.

No. 16–5497. MUA ET UX. *v.* CALIFORNIA CASUALTY INDEMNITY EXCHANGE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 836.

No. 16–5498. PARINEH *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 16–5501. DRIVER *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 353.

No. 16–5503. BALLARD *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 368 N. C. 918, 787 S. E. 2d 33.

No. 16–5509. MONTGOMERY *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–5513. BREWSTER *v.* HART, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–5514. REID *v.* HURLEY MEDICAL CENTER. Ct. App. Mich. Certiorari denied.

No. 16–5518. BARTLETT *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–5520. BALDWIN *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 193 So. 3d 892.

No. 16–5523. BAXTER *v.* TENNESSEE ET AL. Ct. App. Tenn. Certiorari denied.

No. 16–5527. JOHNSON *v.* HOOKS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 16–5529. NICKERSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 16–5531. PETRUCELLI *v.* RUSIN. C. A. 3d Cir. Certiorari denied. Reported below: 642 Fed. Appx. 108.

No. 16–5533. CALDWELL ET AL. *v.* PESCE, PRESIDING JUSTICE, APPELLATE TERM OF THE NEW YORK SUPREME COURT, SECOND JUDICIAL DISTRICT, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 639 Fed. Appx. 38.

No. 16–5534. JOHNSON *v.* ECKERT, SUPERINTENDENT, WENDE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 16–5535. RODARTE *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–5536. SHABAZZ *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 16–5538. CHRISTIAN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 16–5539. RODARTE *v.* BENEFICIAL TEXAS, INC. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 482 S. W. 3d 246.

No. 16–5540. JONES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 16–5547. MCDONALD *v.* TEXAS. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 16–5548. SEVILLA *v.* O'BRIEN ET AL.; and SEVILLA *v.* JENKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–5550. WILLIAMS *v.* TILDEN ET AL. C. A. 7th Cir. Certiorari denied.

No. 16–5553. VURIMINDI *v.* FEDER, PROTHONOTARY, COURT OF COMMON PLEAS, PHILADELPHIA COUNTY. Sup. Ct. Pa. Certiorari denied.

No. 16–5554. WILLIAMS *v.* WOODS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–5561. DUPREE *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 304 Kan. 43, 371 P. 3d 862.

No. 16–5569. RIVERA-ARVELO *v.* SUPREME COURT OF PUERTO RICO. Sup. Ct. P. R. Certiorari denied.

No. 16–5575. REQUENA *v.* NORWOOD, SECRETARY, KANSAS DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 939.

No. 16–5595. JACKSON *v.* ROYAL, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 805 F. 3d 940.

No. 16–5608. PIANKA *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–5634. CINTRON *v.* WENEROWICZ, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–5635. DALE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 613 Fed. Appx. 912.

No. 16–5640. SAXON *v.* SMITH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MUNCY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–5656. CARRILLO-ALEJO *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 190 Wash. App. 1002.

No. 16–5658. TURNER *v.* HOLLAND, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–5662. MACK *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 2012–0625 (La. App. 4 Cir. 5/6/15), 162 So. 3d 1284.

No. 16–5689. JAYNES *v.* MURPHY. C. A. 1st Cir. Certiorari denied. Reported below: 824 F. 3d 187.

No. 16–5690. ROBERTS *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 876 N. W. 2d 863.

No. 16–5691. BERGER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 823 F. 3d 1174.

No. 16–5700. MEYERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–5701. REYNOLDS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–5703. KRUEGER *v.* TORRES. C. A. 5th Cir. Certiorari denied. Reported below: 812 F. 3d 365.

No. 16–5706. MOON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–5713. CHAMBERS *v.* CREWS, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 400.

No. 16–5717. WALLAESA *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 16–5718. TATE *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 16–5732. BURTON *v.* TICE, ACTING SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–5734. ALBERTO GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 472.

No. 16–5740. LOMAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 826 F. 3d 1097.

No. 16–5741. EASLEY *v.* AQUILINA, JUDGE, CIRCUIT COURT OF MICHIGAN, INGHAM COUNTY. Ct. App. Mich. Certiorari denied.

No. 16–5744. DAVIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–5747. CRANFORD *v.* OKPALA. C. A. 9th Cir. Certiorari denied.

No. 16–5748. STACEY *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 279.

No. 16–5751. DERRY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 824 F. 3d 299.

No. 16–5752. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 974.

No. 16–5756. WHITSELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–5764. DIEHL-ARMSTRONG *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 16–5765. COX *v.* RACKLEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–5772. ACEVEDO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 824 F. 3d 179.

No. 16–5773. ADEBIMPE ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 819 F. 3d 1212.

No. 16–5778. SCOTT *v.* SHARTLE, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied.

No. 16–5781. GUERRERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 499.

No. 16–5782. HUGHES *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 16–5784. FRALEY *v.* PERRY. C. A. 4th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 320.

No. 16–5785. SAMPSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 290.

No. 16–5786. SIMPSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 850.

No. 16–5787. HUMPHREY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 91.

No. 16–5790. SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 346.

No. 16–5795. MARTINEZ-LOPEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 16–5796. BENNETT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 823 F. 3d 1316.

No. 16–5797. ROOD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 394.

No. 16–5798. MSHIHIRI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 816 F. 3d 997.

No. 16–5799. GREEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 648 Fed. Appx. 663.

No. 16–5800. BURRIS *v.* SMITH, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 819 F. 3d 1037.

No. 16–5801. JACKSON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 745.

No. 16–5805. DISHMON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 660.

No. 16–5808. MCCOY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 804 F. 3d 349.

No. 16–5813. WILLIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 291.

No. 16–5814. ELLIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–5817. COOKE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 126.

No. 16–5818. DENNIN, AKA DESCAMPS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 812.

No. 16–5819. DRAKES *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 321 Conn. 857, 146 A. 3d 21.

No. 16–5821. MARTINEZ-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 456.

No. 16–5822. DURHAM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 634.

No. 16–5824. GRAHAM *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 639 Fed. Appx. 152.

No. 16–5831. YOUNG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 202.

No. 16–5832. YOVANI-CARRERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 145.

No. 16–5833. SEGOVIA-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 116.

No. 16–5835. EZZARD *v.* BRYSON, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–5838. JOSEPH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 648 Fed. Appx. 244.

No. 16–5841. MILLER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 645 Fed. Appx. 211.

No. 16–5845. GARCIA-BALDERAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 486.

No. 16–5847. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 70.

No. 16–5850. COMMON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 818 F. 3d 323.

No. 16–5852. WASHINGTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 16–5855. BORJA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 528.

No. 16–5856. BAMDAD *v.* POWERS, ACTING WARDEN. C. A. 7th Cir. Certiorari denied.

No. 16–5858. WARE *v.* UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF GEORGIA. C. A. 11th Cir. Certiorari denied.

No. 16–5862. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 791.

No. 16–5866. RILEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 886.

No. 16–5867. REAVES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 942.

No. 16–5868. AGUSTIN RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 679.

No. 16–5872. WHITE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 956.

No. 16–5875. PHILLIPS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 917.

No. 16–5878. MERIDA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 828 F. 3d 1203.

No. 16–5888. MCKENZIE *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–5893. TUBBS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 750.

No. 16–5898. THOMPSON ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 825 F. 3d 198.

No. 16–5901. NEKVASIL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–5903. WRIGHT *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 15–1442. GILLETTE CO. ET AL. *v.* FRANCHISE TAX BOARD OF CALIFORNIA ET AL. Sup. Ct. Cal. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 62 Cal. 4th 468, 363 P. 3d 94.

No. 16–125. MERCK & CIE *v.* GNOSIS S. P. A. ET AL. (Reported below: 808 F. 3d 829); and SOUTH ALABAMA MEDICAL SCIENCE FOUNDATION *v.* GNOSIS S. P. A. ET AL. (808 F. 3d 823). C. A. Fed. Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 16–261. HUSAIN ET AL. *v.* SPRINGER. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 622 Fed. Appx. 13.

No. 16–268. GEOTAG, INC. *v.* GOOGLE INC. C. A. Fed. Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 817 F. 3d 1305.

No. 16–278. Nassau County Sheriff's Department, Division of Correction, et al. *v.* Augustin et al. C. A. 2d Cir. Certiorari denied. Justice Sotomayor took no part in the consideration or decision of this petition. Reported below: 639 Fed. Appx. 746.

No. 16–5794. Kirtman *v.* United States. C. A. 10th Cir. Certiorari denied. Justice Kagan took no part in the consideration or decision of this petition. Reported below: 650 Fed. Appx. 954.

Rehearing Denied

No. 15–1166. Olive *v.* United States, 579 U. S. 928; and

No. 15–6202. Widi *v.* United States, 578 U. S. 946. Petitions for rehearing denied.

October 17, 2016

Miscellaneous Orders

No. 16A244. Zhenli Ye Gon *v.* Dyer, Superintendent, Central Virginia Regional Jail, et al. D. C. W. D Va. Application for stay, addressed to Justice Sotomayor and referred to the Court, denied.

No. D–2887. In re Disbarment of Michael. Disbarment entered. [For earlier order herein, see 578 U. S. 970.]

No. D–2889. In re Disbarment of Adler. Disbarment entered. [For earlier order herein, see 578 U. S. 971.]

No. D–2890. In re Disbarment of Warner. Disbarment entered. [For earlier order herein, see 578 U. S. 971.]

No. D–2891. In re Disbarment of Alari. Disbarment entered. [For earlier order herein, see 578 U. S. 971.]

No. D–2893. In re Disbarment of Clair. Disbarment entered. [For earlier order herein, see 578 U. S. 971.]

No. D–2894. In re Disbarment of Seeger. Disbarment entered. [For earlier order herein, see 578 U. S. 971.]

No. D–2895. In re Disbarment of Huff. Disbarment entered. [For earlier order herein, see 578 U. S. 971.]

No. D–2896. In re Disbarment of Moran. Disbarment entered. [For earlier order herein, see 578 U. S. 972.]

No. D–2898. In re Disbarment of Silver. Disbarment entered. [For earlier order herein, see 578 U. S. 972.]

No. D–2899. In re Disbarment of Kerns. Disbarment entered. [For earlier order herein, see 578 U. S. 972.]

No. D–2900. In re Disbarment of Terry. Disbarment entered. [For earlier order herein, see 578 U. S. 972.]

No. D–2901. In re Disbarment of Towery. Disbarment entered. [For earlier order herein, see 578 U. S. 972.]

No. D–2902. In re Disbarment of Harris. Disbarment entered. [For earlier order herein, see 578 U. S. 972.]

No. D–2903. In re Disbarment of Tagupa. Disbarment entered. [For earlier order herein, see 578 U. S. 973.]

No. D–2904. In re Disbarment of Hayes. Disbarment entered. [For earlier order herein, see 578 U. S. 973.]

No. 16M37. Meras *v.* Jones, Secretary, Florida Department of Corrections;

No. 16M38. Makeda-Phillips *v.* White, Illinois Secretary of State, et al.; and

No. 16M39. McGuirk *v.* Chelsea New York Realty Co., L. L. C., et al. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 142, Orig. Florida *v.* Georgia. Motion of the Special Master for allowance of fees and disbursements granted, and the Special Master is awarded a total of $57,333 for the period February 1 through August 31, 2016, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 577 U. S. 1211.]

No. 14–1055. Lightfoot et al. *v.* Cendant Mortgage Corp., dba PHH Mortgage, et al. C. A. 9th Cir. [Certiorari granted, 579 U. S. 940.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 15–423. Bolivarian Republic of Venezuela et al. *v.* Helmerich & Payne International Drilling Co. et al.

C. A. D. C. Cir. [Certiorari granted, 579 U. S. 940.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 15–497. FRY ET VIR, AS NEXT FRIENDS OF MINOR E. F. *v.* NAPOLEON COMMUNITY SCHOOLS ET AL. C. A. 6th Cir. [Certiorari granted, 579 U. S. 940.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 16–5653. STONE *v.* REYES ET AL. C. A. 5th Cir.;

No. 16–5804. ROBERTSON *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir.; and

No. 16–5826. HASSEBROCK *v.* UNITED STATES. C. A. 7th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 7, 2016, 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. 16–6063. IN RE MINICONE;

No. 16–6064 IN RE HOLLAND;

No. 16–6065. IN RE HOLCOMB; and

No. 16–6204. IN RE WESTE. Petitions for writs of habeas corpus denied.

No. 16–192. IN RE STEELE; and

No. 16–5664. IN RE JACKSON. Petitions for writs of mandamus denied.

Certiorari Denied

No. 15–1295. ESTATE OF HAGE ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 810 F. 3d 712.

No. 15–1361. PATTY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 238.

No. 15–9135. WILLIAMSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 247.

No. 15–9273. MEEKS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 493.

No. 15–9279. WATSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 620 Fed. Appx. 493.

No. 15–9414. TESSIER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 814 F. 3d 432.

No. 15–9835. WARREN *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 368 N. C. 756, 782 S. E. 2d 509.

No. 16–190. GARRETT ET AL. *v.* BRANSON COMMERCE PARK COMMUNITY IMPROVEMENT DISTRICT ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 710.

No. 16–194. HOSCHAR ET UX. *v.* LAYNE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 632.

No. 16–196. ELLSWORTH *v.* RAMOS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–197. COULTER *v.* SUPERIOR COURT OF PENNSYLVANIA (two judgments). Sup. Ct. Pa. Certiorari denied.

No. 16–211. AHUJA *v.* LIGHTSQUARED INC. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 644 Fed. Appx. 24.

No. 16–212. AZAM *v.* U. S. BANK N. A. C. A. 9th Cir. Certiorari denied. Reported below: 642 Fed. Appx. 777.

No. 16–214. WILLIAMS *v.* BROOKS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 809 F. 3d 936.

No. 16–215. HARPER *v.* HART. Ct. App. Ga. Certiorari denied.

No. 16–224. SPANN *v.* CARTER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 648 Fed. Appx. 586.

No. 16–226. SAVOIE ET AL. *v.* HUNTINGTON INGALLS INC. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 817 F. 3d 457.

No. 16–243. WORLD IMPORTS, LTD., ET AL. *v.* OEC GROUP NEW YORK. C. A. 3d Cir. Certiorari denied. Reported below: 820 F. 3d 576.

No. 16–250. READ *v.* HALEY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 492.

No. 16–259. HENDRICKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 822 F. 3d 812.

No. 16–262. FAPPIANO *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 640 Fed. Appx. 115.

No. 16–265. HALVONIK *v.* MARYLAND DEPARTMENT OF SAFETY AND CORRECTIONAL SERVICES. Ct. Sp. App. Md. Certiorari denied. Reported below: 225 Md. App. 703 and 705.

No. 16–271. WILSON *v.* LOUISIANA GOVERNOR'S OFFICE OF DISABILITY AFFAIRS ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 2015–1163 (La. App. 1 Cir. 2/26/16), 191 So. 3d 603.

No. 16–275. WERNER *v.* FLORIDA BAR. Sup. Ct. Fla. Certiorari denied.

No. 16–298. MERCADO *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 189 So. 3d 796.

No. 16–306. DOBLE *v.* INTERSTATE AMUSEMENTS, INC. Sup. Ct. Idaho. Certiorari denied. Reported below: 160 Idaho 307, 372 P. 3d 362.

No. 16–311. LAW ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION. C. A. D. C. Cir. Certiorari denied.

No. 16–321. BACA *v.* GARCIA. C. A. 9th Cir. Certiorari denied. Reported below: 817 F. 3d 635.

No. 16–5142. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 977.

No. 16–5203. LANDRUM *v.* JENKINS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 813 F. 3d 330.

No. 16–5232. BLURTON *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 484 S. W. 3d 758.

No. 16–5304. IZAGUIRRE-SUAZO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 351.

No. 16–5570. EVANS *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–5571. MITCHELL *v.* ENLOE, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 817 F. 3d 532.

No. 16–5573. LYONS *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–5574. STEELE *v.* PASH, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 16–5578. SANDERS *v.* BAPTIST MEMORIAL HOSPITAL. C. A. 6th Cir. Certiorari denied.

No. 16–5589. KIRBY ET AL. *v.* OCWEN LOAN SERVICING, LLC, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 808.

No. 16–5590. JOHNSON *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2016 Ark. 156, 489 S. W. 3d 668.

No. 16–5599. JELLIS *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2016 IL App (3d) 130779, 50 N. E. 3d 321.

No. 16–5600. MULDROW *v.* BATTS ET AL. C. A. 5th Cir. Certiorari denied.

No. 16–5609. RICHARDSON *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Nash County, N. C. Certiorari denied.

No. 16–5611. PAWLEY *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 194 So. 3d 1034.

No. 16–5614. CONEY *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 16–5617. DESPER *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 16–5619. DINICOLA *v.* GARMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–5626. STOKES *v.* BENHAM ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 626 Fed. Appx. 431.

No. 16–5627. THOMPSON *v.* PASH, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 16–5628. CARTER *v.* BISHOP, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 971.

No. 16–5629. STEVENSON *v.* AMAZON.COM, INC., ET AL. C. A. 1st Cir. Certiorari denied.

No. 16–5632. RENCHENSKI *v.* MOONEY, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–5633. COOPER *v.* KENNEDY, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 16–5636. CASTILLO *v.* WILSON, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–5639. ZABALA-GONZALES *v.* MCDOWELL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–5643. LATSON *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 194 So. 3d 1033.

No. 16–5644. PHILLIPS *v.* JOHNSON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–5646. CLARK *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2015 IL App (3d) 140036, 40 N. E. 3d 845.

No. 16–5652. CARTER *v.* RICUMSTRICT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 917.

No. 16–5655. SYKES *v.* UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 16–5668. TALBERT *v.* PLUMLEY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 78.

No. 16–5688. LEE *v.* BALLARD, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 255.

No. 16–5694. JOHNSON *v.* OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–5704. MILLER *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 783.

No. 16–5725. DURHAM *v.* MCGINLEY, ACTING SUPERINTENDENT, COAL TOWNSHIP STATE CORRECTIONAL INSTITUTION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–5743. CEASAR *v.* CITY OF EUNICE, LOUISIANA. C. A. 5th Cir. Certiorari denied. Reported below: 642 Fed. Appx. 387.

No. 16–5775. HARRIS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied.

No. 16–5810. ARTURO MORENO *v.* OREGON. Ct. App. Ore. Certiorari denied. Reported below: 276 Ore. App. 102, 366 P. 3d 839.

No. 16–5820. MALDONADO *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 16–5825. IVY *v.* MINNESOTA. Ct. App. Minn. Certiorari denied. Reported below: 873 N. W. 2d 362.

No. 16–5830. TELLIS *v.* FILSON, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–5865. SLADE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 296.

No. 16–5920. SANTANA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 654 Fed. Appx. 62.

No. 16–5921. ROMO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 534.

No. 16–5928. JOHNSON *v.* EBBERT, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 653 Fed. Appx. 95.

No. 16–5930. PABON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 819 F. 3d 26.

No. 16–5931. JIMENEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–5935. STREADWICK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–5958. BELOV *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 180.

No. 16–5959. BRADLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–5960. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 229.

No. 16–5962. EDWARDS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–5963. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 16–5964. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 836.

No. 16–5971. ELLIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–5975. BUESO-GUTIERREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 375.

No. 16–5976. ROBERTS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–5990. PORRAS-CHAVIRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 192.

No. 15–1444. KENTUCKY *v.* BANKS. Ct. App. Ky. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 15–7848. ELMORE *v.* HOLBROOK, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 799 F. 3d 1238.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, dissenting.

Petitioner Clark Elmore was convicted of murder in 1995 and was sentenced to death. His court-appointed lawyer, who had never tried a capital case before, knew that Elmore had been exposed to toxins as a young adult and that he had a history of impulsive behavior. A more experienced attorney encouraged Elmore's lawyer to investigate whether Elmore had suffered brain

damage as a young man. Instead of doing so—indeed, instead of conducting any meaningful investigation into Elmore's life—Elmore's lawyer chose to present a 1-hour penalty-phase argument to the jury about the remorse that Elmore felt for his crime. As a result, the jury did not hear that Elmore had spent his childhood playing in pesticide-contaminated fields and had spent his service in the Vietnam War repairing Agent Orange pumps. The jury did not hear the testimony of experts who concluded that Elmore was cognitively impaired and unable to control his impulses. The jury heard only from an assortment of local judges that Elmore had looked "dejected" as he pleaded guilty to murder, not from the many independent witnesses who had observed Elmore's searing remorse.

The Constitution demands more. The penalty phase of a capital trial is "a constitutionally indispensable part of the process of inflicting the penalty of death." *Woodson* v. *North Carolina*, 428 U. S. 280, 304 (1976). It ensures that a capital sentencing is "humane and sensible to the uniqueness of the individual." *Eddings* v. *Oklahoma*, 455 U. S. 104, 110 (1982). Elmore's penalty phase fell well below the bare minimum guaranteed by the Constitution. His lawyer acted deficiently in choosing a mitigation strategy without fully exploring the alternatives and in failing to investigate the mitigation strategy that he did choose to present. And had the jury known that Elmore—who had never before been convicted of a crime of violence and felt searing remorse for the heinous act he committed—might be brain damaged, it might have sentenced him to life rather than death.

This Court has not hesitated to summarily reverse in capital cases tainted by egregious constitutional error, particularly where an attorney has rendered constitutionally deficient performance. See, *e. g.*, *Hinton* v. *Alabama*, 571 U. S. 263 (2014) (*per curiam*); *Sears* v. *Upton*, 561 U. S. 945 (2010) (*per curiam*); *Porter* v. *McCollum*, 558 U. S. 30 (2009) (*per curiam*). This case plainly meets that standard. For that reason, I respectfully dissent from the denial of certiorari.

I

A

Elmore was born in 1951 in central Oregon, where he lived until his teens. Social History, 12 Record 5524–5530. He was exposed to powerful neurotoxins from a young age. Elmore's

house in Oregon was located next to an airport from which crop dusters regularly sprayed pesticides. Trial Court Findings of Fact, No. 95–1–00310–1 (Super. Ct. Whatcom Cty., Wash., Sept. 10, 2004), 14 *id.*, at 6519–6520 (FOF). Decades after Elmore moved away, the state environmental agency took soil samples that showed toxin levels over 4,500 times the maximum amounts allowed by state law. Decl. of Raymond Singer, 11 *id.*, at 5394 (Singer Decl.). Later, Elmore worked on cars and oil pipelines where he regularly melted lead batteries and handled solvents without gloves. FOF, 14 *id.*, at 6521–6522. And when Elmore left home at age 17 to serve in the Vietnam War, he was tasked with repairing Agent Orange pumps without protective equipment. *Id.*, at 6522; Singer Decl., 11 *id.*, at 5395.

Experts who testified at Elmore's postconviction hearing agreed that this exposure placed him at serious risk of brain damage. They conducted neuropsychological tests that revealed mild to moderate cognitive impairments, see Reporter's Tr. in No. 95–1–00310–1, 15 *id.*, at 7076 (PRP Tr.), including a marked inability to control his emotions and impulses, see *id.*, at 7079–7080. Elmore tested in the bottom 1 percent on tests measuring that characteristic. *Id.*, at 7080. The experts concluded that damage to Elmore's frontal lobe had made him impulsive and susceptible to emotion. See Decl. of Dale Watson, 11 *id.*, at 5383; Decl. of Raymond Singer, 13 *id.*, at 6389 (2d Singer Decl.); Decl. of George Woods, 11 *id.*, at 5360–5361 (Woods Decl.). And they agreed that the murder Elmore later committed was linked to Elmore's cognitive deficits—for instance, by making him unable to "pu[t] on the brakes" when emotional. FOF, 14 *id.*, at 6495; see also Woods Decl., 11 *id.*, at 5358; 2d Singer Decl., 13 *id.*, at 6389–6390; PRP Tr., 15 *id.*, at 7094.

Elmore was discharged from the Army under honorable conditions in 1972, but found it hard to return to civilian life. 12 *id.*, at 5631. He moved around the United States, taking jobs in hotels, gas stations, farms, and oil fields. Social History, *id.*, at 5532–5538. Elmore was arrested three times—once for stealing checks, once for stealing furniture, and once for stealing appliances from a motel. Reporter's Tr. in No. 95–1–00310–1, 5 *id.*, at 2470–2473 (Trial Tr.); Social History, 12 *id.*, at 5532, 5536. Officers at one prison reported that Elmore was nonviolent and, if anything, was the victim of other inmates' threats. *Id.*, at 5533–5534. After his second conviction, Elmore was incarcerated for

two years in Washington state prison, where he was repeatedly raped by another inmate. *Id.*, at 5536. Until the murder for which he was ultimately sentenced to death, and despite his emotional challenges, Elmore was never convicted of a violent crime.

Elmore's death sentence arises out of a murder that he committed in 1995. The crime was horrific. Elmore raped and murdered his stepdaughter, first strangling her with a belt, then driving a sharp object through her ear, and finally bludgeoning her with a hammer. *In re Elmore*, 162 Wash. 2d 236, 244, 172 P. 3d 335, 340 (2007). Elmore was apparently motivated by fear that the victim would tell the authorities that he had previously sexually abused her. *Ibid.* After several days of misdirecting the authorities, Elmore turned himself in and confessed. FOF, 14 Record 6460. In the wake of the murder, Elmore expressed extreme remorse. A jailhouse minister who visited Elmore in prison later attested that, the day after he arrived, he "was huddled into a ball at the back of the room, shaking uncontrollably." Decl. of Dana Paul Sellars, 11 *id.*, at 5399 (Sellars Decl.). Elmore, he said, "was unlike any prisoner I had counseled before. He was wracked with anguish and dripping with remorse." *Id.*, at 5400. A correctional officer at the prison later testified that Elmore appeared "in a state of disbelief about what he had done" and was "an emotional wreck." Decl. of Donald Pierce, *id.*, at 5404–5405.

B

The jury that sentenced Elmore to death learned about the terrible crime he committed, but heard virtually nothing about his troubling background and cognitive defects. A lawyer named Jon Komorowski was appointed to represent Elmore at trial. Komorowski had never previously worked on a capital case. Decl. of Jon Komorowski, 11 *id.*, at 5325 (Komorowski Decl.). On Komorowski's advice, Elmore pleaded guilty to capital murder without any negotiations with the prosecution. *Id.*, at 5326. Because Elmore pleaded guilty, the trial consisted of only a penalty phase. During that penalty phase, the State presented nine witnesses, all of whom testified regarding the horrific circumstances of the crime. Trial Tr., 5 *id.*, at 2348–2580. The State also presented evidence of Elmore's three criminal convictions, all two decades old. *Id.*, at 2470–2473.

Komorowski's mitigation case for Elmore lasted only an hour. See 162 Wash. 2d, at 250, 172 P. 3d, at 343. The theme was

remorse: "[T]here are no excuses in this case and none are offered. There is acceptance of responsibility and punishment." Trial Tr., 5 Record 2367; see also *id.*, at 2580–2658 (defense case). The only character witnesses were the three judges who had presided over Elmore's pretrial appearances, who testified that he had sought to plead guilty from the outset. *Id.*, at 2581–2586, 2587–2589, 2590–2594. One described Elmore as "somewhat upset" and "overwhelmed," a second as "dejected." *Id.*, at 2586, 2592. The defense investigator read out a "bare bones" summary of Elmore's biography. *Id.*, at 2306, 2599–2601. Finally, an expert witness testified that Elmore's prior convictions were not violent felonies under Washington's three-strikes law. *Id.*, at 2644–2658.

Years later, in postconviction proceedings, Komorowski acknowledged his error, explaining that the decision not to investigate Elmore's medical history was "the product of . . . inexperience" and "not a strategic decision." Komorowski Decl., 11 *id.*, at 5329. He admitted that he and the defense team had reviewed Elmore's prison records and some of his hospital records, and had spoken to Elmore's family, who had told them about Elmore's hardships as a child and as a young adult. PRP Tr., 15 *id.*, at 6907–6911. And he consulted with more experienced counsel, including an attorney named Todd Maybrown, who strongly advised Komorowski to investigate indicia of "organic brain disorder" and cautioned that the testimony of a psychologist with no neurology background would not be sufficient. Decl. of Todd Maybrown, 12 *id.*, at 5540–5541 (Maybrown Decl.). Maybrown advised Komorowski that "he might need to hire a medical doctor to try to determine if his client suffered from brain damage." *Id.*, at 5541–5542.

But Komorowski did not hire a neuropsychiatrist, nor did he conduct any further investigation into the possibility of brain damage. Komorowski consulted with three mental health professionals, but none of them tested for any sort of brain damage. PRP Tr., 15 *id.*, at 6985–6986, 7406–7407. The first administered a personality test and concluded that Elmore was not insane, but recommended that Komorowski consult a second expert about whether Elmore was a psychopath. *Id.*, at 7404–7405, 7412. The second concluded that Elmore was not a psychopath: He demonstrated remorse and empathy, and his crime was impulsive and reactive, indicating heightened emotional arousal rather than psychopathy. *Id.*, at 7230–7231. The third was not a licensed psy-

chologist at all. *Id.*, at 6889, 6911, 6924. The two psychologists later agreed that, had Komorowski told them about Elmore's exposure to toxins, they would have recommended neuropsychological testing. *Id.*, at 7422–7423, 7243–7244.

C

Elmore moved for postconviction relief in state court, arguing that Komorowski's representation deprived him of effective assistance of counsel in violation of the Sixth Amendment. But the Washington Supreme Court denied his claim. *In re Elmore*, 162 Wash. 2d 236, 172 P. 3d 335. "There is no question that the defense team did investigate petitioner's mental health deficiencies," the state court held. *Id.*, at 258, 172 P. 3d, at 347. "Rather, the issue is whether counsel's failure to conduct further evaluations amounted to deficient representation. We believe it did not." *Ibid.* The Washington Supreme Court ruled that Komorowski did not perform below the constitutional standard and had instead made a "strategic" decision to curtail the investigation. *Ibid.* According to the state court, Komorowski's strategy was defensible for four reasons: Presenting more mitigation evidence might have opened the door to damaging rebuttal evidence; additional witnesses would have been "cumulative" of the judges who testified; Komorowski worried that if he did not rush to trial, the prosecution might find witnesses who would testify that Elmore's remorse was waning; and Elmore had objected to the presentation of any mitigation case. *Id.*, at 257–258, 263–265, 172 P. 3d, at 346–347, 348–350.

A Federal District Court denied Elmore's habeas petition, and the Ninth Circuit affirmed. *Elmore* v. *Sinclair*, 799 F. 3d 1238 (2015). Two judges held that the Washington Supreme Court's decision was not unreasonable. *Id.*, at 1243. The third would have found that the Washington Supreme Court's determination that Komorowski was constitutionally effective was unreasonable, but concurred because he did not believe that the question of prejudice was beyond debate. *Id.*, at 1256–1257 (opinion of Hurwitz, J.). Elmore petitioned for certiorari.

II

I would grant the petition and summarily reverse on the ground that Komorowski's performance during the penalty phase of El-

more's trial violated his Sixth Amendment right to effective assistance of counsel.

Under the Antiterrorism and Effective Death Penalty Act of 1996, Elmore is entitled to relief only if the state court's adjudication of his claim "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U. S. C. § 2254(d)(1). In other words, we may not grant relief where reasonable minds could differ over the correct application of legal principles, and we must evaluate that application on the basis of the law that was "clearly established" at the time of the state-court adjudication. See *Williams* v. *Taylor*, 529 U. S. 362, 402–409 (2000).

The legal principles that govern claims of ineffective assistance of counsel (IAC) come from *Strickland* v. *Washington*, 466 U. S. 668 (1984), and were clearly established over a decade before Elmore's trial. An IAC claim has two components: A petitioner must show that counsel's performance was deficient and that the deficiency prejudiced the defense. See *id.*, at 687. To establish deficient representation, a petitioner must demonstrate that counsel's representation "fell below an objective standard of reasonableness." *Id.*, at 688. In order to establish prejudice, a petitioner must show that, but for the constitutionally deficient representation, there is a "reasonable probability" that the outcome of the proceeding would have been different. *Id.*, at 694.

"A standard of reasonableness applied as if one stood in counsel's shoes spawns few hard-edged rules." *Rompilla* v. *Beard*, 545 U. S. 374, 381 (2005). But our cases reveal clearly established principles that, taken together, demonstrate that the state court's decision here was contrary to this Court's precedents and that the state court unreasonably applied the *Strickland* standard in evaluating Elmore's claim.

A

"This is not a case in which defense counsel simply ignored their obligation to find mitigating evidence." *Rompilla*, 545 U. S., at 381. But Komorowski's decision not to search for much of the important mitigating evidence of Elmore's life was objectively unreasonable under *Strickland*. And the Washington Supreme Court's opinion declaring Komorowski's conduct reasonable was contrary to our precedents. Clearly established legal principles make that apparent.

First, it was clearly established that constitutionally effective counsel must thoroughly investigate the defense he chooses to present. In this case, that was the remorse defense, the basket into which Komorowski had put all of Elmore's eggs. See *Wiggins* v. *Smith*, 539 U. S. 510, 526 (2003). Had Elmore's defense team interviewed even the jailhouse minister, for instance, whom they knew was visiting Elmore, the jury would have heard a description of Elmore's remorse that was far more robust than the testimony of judges who had observed Elmore for short periods during his few court appearances. *E. g.*, Sellars Decl., 11 Record 5400.

The Washington Supreme Court dismissed this testimony as "cumulative," but that conclusion was unreasonable in light of this Court's precedent. *In re Elmore*, 162 Wash. 2d, at 265, 172 P. 3d, at 350. The judges testified that Elmore wanted to plead guilty and commented on his appearance; the jailhouse minister, the correctional officer, and others would have discussed Elmore's actual emotional state over the course of months. Cf. *Williams*, 529 U. S., at 396 (faulting counsel for presenting some character witnesses, but not other, stronger character witnesses, such as certified public accountant); *Wiggins*, 539 U. S., at 518, 526 (faulting counsel where counsel stopped investigation before finding evidence about abusive childhood that was more "detailed" and "graphic" than evidence in counsel's possession).

Second, we have said time and again that while "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable[,] . . . strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." *Strickland*, 466 U. S., at 690–691. Before Komorowski decided to focus exclusively on a remorse-based defense, he had an obligation to fully investigate other possible mitigation cases. See *Sears*, 561 U. S., at 953–954; *Wiggins*, 539 U. S., at 521–526. For example, Komorowski had been specifically told by an experienced capital attorney that the testimony of a psychologist was unlikely to be sufficient and that the details of the crime, standing alone, strongly suggested "some sort of organic brain disorder or dysfunction." Maybrown Decl., 12 Record 5541. Yet he did not pursue neuropsychological testing or investigate Elmore's exposure to neurotoxins.

The Washington Supreme Court concluded that because Komorowski had conducted some mental health investigation, any decision he made about which information to present to the jury was strategic. *In re Elmore*, 162 Wash. 2d, at 263–264, 172 P. 3d, at 349–350. This was error. This Court has squarely rejected the notion that "because counsel had *some* information with respect to petitioner's background . . . they were in a position to make a tactical choice." *Wiggins*, 539 U. S., at 527. To the contrary, we have often emphasized that an attorney who learns *some* information about a defendant's background is under an obligation to pursue that information in order to "mak[e] an informed choice among possible defenses." *Id.*, at 525. So too here: The information Komorowski did have about Elmore's background and the advice he received from Maybrown would have prompted a competent attorney to conduct further investigation and consult with experts about brain damage. See Komorowski Decl., 11 Record 5329; Social History, 12 *id.*, at 5526, 5531–5538. While Komorowski consulted with three experts as to Elmore's mental health, he neither provided them with sufficient information to make an informed evaluation nor asked any of them to administer tests designed to measure Elmore's brain functioning. PRP Tr., 15 *id.*, at 6985–6986, 7406–7407.

Third, it was clearly established that, while fear of a prosecutor's rebuttal case may justify a decision not to present certain mitigating evidence, it can rarely justify a failure to investigate in the first place. See *Williams*, 529 U. S., at 396 (counsel should have investigated juvenile records even where records contained evidence he had been previously committed to the juvenile system); *Rompilla*, 545 U. S., at 386, n. 5 (counsel should have investigated prior crime even though defense strategy was predicated on keeping evidence of prior crime out). So even if Komorowski's fear of opening the door to damaging rebuttal evidence could have justified a decision not to introduce mitigating evidence, it could not have justified his failure to investigate whether that evidence existed in the first place.

And it is questionable whether Komorowski's fear could even have justified the decision not to introduce the evidence. Komorowski identified three aggravators that he claimed the prosecution could have presented in rebuttal: the gruesome details of the crime, Elmore's sexual abuse of the victim, and his waning remorse. But the first two aggravators were presented to the jury:

the details of the crime in the State's penalty-phase argument, Trial Tr., 5 Record 2361–2362, 2500, 2502–2503, and the sexual abuse during the taped confession that was played to the jury, PRP Tr., 15 *id.*, at 6952. Nor was there a strong basis for Komorowski to conclude that Elmore's remorse was waning, as his own defense investigator testified that Elmore remained as remorseful through the day of trial as he had ever been. *Id.*, at 7439–7440.

Finally, it was clearly established that counsel has an obligation to pursue reasonable inquiries even where a client is "actively obstructi[ng]" that effort. *Rompilla*, 545 U. S., at 381. Here, evidence introduced at the postconviction hearing indicated that Elmore resisted some of Komorowski's efforts to develop a mitigation case, telling him that he would act out in the courtroom if Komorowski put on testimony about his personal life. PRP Tr., 15 Record 6994–6995. The Washington Supreme Court drew from this that Elmore "objected to the presentation of a mitigation case and threatened to act out in the courtroom if mitigation was put on for the jury." *In re Elmore*, 162 Wash. 2d, at 258, 172 P. 3d, at 347. But Komorowski said no such thing: He testified only that Elmore objected to the presentation of details about his personal life, not to the presentation of any mitigation case at all. PRP Tr., 15 Record 6994–6995. Our precedent makes clear that such an objection does not justify a wholesale failure to investigate readily available mitigating evidence. *Rompilla*, 545 U. S., at 381.

In short, all of the Washington Supreme Court's justifications for Komorowski's performance stand in sharp contrast with principles clearly established by this Court. No reasonable jurist could conclude that Komorowski's performance was not deficient.

B

Our precedents make it equally clear that Elmore was prejudiced by Komorowski's deficient performance.

First, it was clearly established that the key inquiry for prejudice purposes is the difference between what was actually presented at trial and what competent counsel could have presented. See *id.*, at 393. Here, the difference between the two is stark. At trial, Komorowski presented no witnesses who knew Elmore personally; the jury nonetheless deliberated for more than a full day. Trial Tr., 5 Record 2733–2734. By contrast, postconviction counsel put forth a wealth of mitigating information that was

available to trial counsel: well-respected community members who could attest to Elmore's remorse; neuropsychological evidence about Elmore's frontal lobe damage and how it may have directly affected the commission of his crime; and information about Elmore's history of head injuries and exposure to neurotoxins, including his exposure to Agent Orange when he served in the Vietnam War.

Second, it was clearly established that an inquiry to prejudice should not presume that an expert opinion about the magnitude and effect of a defendant's mental health issues is rendered meaningless by the State's introduction of a contrary opinion. In *Porter*, for example, the State's two experts disputed petitioner's postconviction expert's conclusion that he was acting under the influence of an extreme emotional disturbance and that brain damage impaired his ability to obey the law. 558 U. S., at 36. We nonetheless concluded that the absence of an expert witness at trial prejudiced petitioner: "While the State's experts identified perceived problems with the tests that [petitioner's expert] used and the conclusions that he drew from them, it was not reasonable to discount entirely the effect that his testimony might have had on the jury." *Id.*, at 43.

Here, too, it was not reasonable to "discount entirely" the testimony of Elmore's three postconviction experts. Particularly given that this was Elmore's first conviction for a violent crime, a jury might have been convinced that this crime was a direct result of Elmore's cognitive impairments, as Elmore's three experts opined. And even if the jury was not convinced that there was a causal nexus between the crime and Elmore's brain damage, there was a reasonable probability that the jury would have at least credited evidence on which all parties—including the State's expert—agreed, namely, that Elmore's cognitive limitations contributed in at least a "longer term" way to the crime. PRP Tr., 15 Record 7355; see, *e. g.*, *Williams*, 529 U. S., at 398 (considering evidence of borderline mental retardation even though crime was not linked to cognitive impairments); *Sears*, 561 U. S., at 945 (considering frontal lobe damage even though crime was not linked to brain damage).

Finally, it was clearly established that even a defendant who committed a heinous crime can be prejudiced by ineffective counsel. See *Williams*, 529 U. S., at 368 (petitioner "brutally assaulted an elderly woman"); *Rompilla*, 545 U. S., at 397 (KEN-

NEDY, J., dissenting) ("brutal crime"; victim was stabbed 16 times, beaten with a blunt object, gashed in the face with beer bottle shards, and set on fire); *Wiggins*, 539 U. S., at 553, n. 4 (Scalia, J., dissenting) ("bizarre crime" in which 77-year-old woman was found drowned in her bathtub, missing her underwear, and sprayed with insecticide). Elmore's crime was horrific, but there was a dramatic difference between the mitigation that was presented and the mitigation that should have been presented. The evidence presented by postconviction counsel "adds up to a mitigation case that bears no relation to the few naked pleas for mercy actually put before the jury, and although we suppose it is possible that a jury could have heard it all and still have decided on the death penalty, that is not the test." *Rompilla*, 545 U. S., at 393.

* * *

Many observers, on and off this Court, have questioned the reliability and fairness of the imposition of capital punishment in America. See, *e. g.*, *Glossip* v. *Gross*, 576 U. S. 863, 908–909 (2015) (BREYER, J., dissenting); *Baze* v. *Rees*, 553 U. S. 35, 86 (2008) (Stevens, J., concurring in judgment); *Callins* v. *Collins*, 510 U. S. 1141, 1145 (1994) (Blackmun, J., dissenting from denial of certiorari); Fletcher, Our Broken Death Penalty, 89 N. Y. U. L. Rev. 805 (2014); D. Baldus et al., Equal Justice and the Death Penalty: A Legal and Empirical Analysis (1990). Whether our system of capital punishment is inconsistent with the Eighth Amendment, as these critics have charged, is not at issue here. I do believe, however, that whatever flaws do exist in our system can be tolerated only by remaining faithful to our Constitution's procedural safeguards.

All crimes for which defendants are sentenced to death are horrific. See *Glossip*, 576 U. S., at 863 (BREYER, J., dissenting); *id.*, at 899 (THOMAS, J., concurring). But not all defendants who commit horrific crimes are sentenced to death. Some are spared by juries. The Constitution guarantees that possibility: It requires that a sentencing jury be able to fully and fairly evaluate "the characteristics of the person who committed the crime." *Gregg* v. *Georgia*, 428 U. S. 153, 197 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.). That guarantee is a bedrock premise on which our system of capital punishment depends, and it is a guarantee that must be honored—especially for defendants like Elmore, whose lives are marked by extensive mitigating circum-

stances that might convince a jury to choose life over death. Only upon hearing such facts can a jury fairly make the weighty—and final—decision whether such a person is entitled to mercy.

I respectfully dissent from the denial of certiorari.

No. 16–338. STEELE ET AL. *v.* PROCTER & GAMBLE DISTRIBUTING LLC ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 652 Fed. Appx. 848.

No. 16–5665. MASON *v.* TAP PHARMACEUTICAL PRODUCTS, INC., ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 16–5908. WILLIAMS *v.* ODDO, WARDEN. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 647 Fed. Appx. 65.

Rehearing Denied

No. 15–9094. GIBSON *v.* UNITED STATES, 578 U. S. 1017. Petition for rehearing denied.

OCTOBER 19, 2016

Certiorari Denied

No. 16–6485 (16A390). LAWLER *v.* SELLERS, WARDEN. Sup. Ct. Ga. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied.

OCTOBER 25, 2016

Dismissal Under Rule 46

No. 15–1491. MUSNUFF *v.* HAEGER ET AL. C. A. 9th Cir. [Certiorari granted, 579 U. S. 969.] Writ of certiorari dismissed under this Court's Rule 46.1. Reported below: 813 F. 3d 1233.

OCTOBER 28, 2016

Miscellaneous Order

No. 15–1111. BANK OF AMERICA CORP. ET AL. *v.* CITY OF MIAMI, FLORIDA; and

No. 15–1112. WELLS FARGO & CO. ET AL. *v.* CITY OF MIAMI, FLORIDA. C. A. 11th Cir. [Certiorari granted, 579 U. S. 940.]

Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

Certiorari Granted

No. 15–1194. PACKINGHAM *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari granted. Reported below: 368 N. C. 380, 777 S. E. 2d 738.

No. 16–32. KINDRED NURSING CENTERS L. P., DBA WINCHESTER CENTRE FOR HEALTH AND REHABILITATION, NKA FOUNTAIN CIRCLE HEALTH AND REHABILITATION, ET AL. *v.* CLARK ET AL. Sup. Ct. Ky. Certiorari granted. Reported below: 478 S. W. 3d 306.

No. 16–54. ESQUIVEL-QUINTANA *v.* LYNCH, ATTORNEY GENERAL. C. A. 6th Cir. Certiorari granted. Reported below: 810 F. 3d 1019.

No. 15–9260. DEAN *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 2 presented by the petition. Reported below: 810 F. 3d 521.

No. 16–273. GLOUCESTER COUNTY SCHOOL BOARD *v.* G. G., BY HIS NEXT FRIEND AND MOTHER, GRIMM. C. A. 4th Cir. Certiorari granted limited to Questions 2 and 3 presented by the petition. Reported below: 822 F. 3d 709.

OCTOBER 31, 2016

Dismissal Under Rule 46

No. 15–1398. HANCOCK ET AL. *v.* HAEGER ET AL. C. A. 9th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 813 F. 3d 1233.

Certiorari Granted—Vacated and Remanded

No. 15–8842. PURCELL *v.* ARIZONA. Ct. App. Ariz.;*

No. 15–8878. NAJAR *v.* ARIZONA. Ct. App. Ariz.;*

No. 15–9044. ARIAS *v.* ARIZONA. Ct. App. Ariz.;* and

No. 15–9057. DESHAW *v.* ARIZONA. Ct. App. Ariz.* Motions of petitioners for leave to proceed *in forma pauperis* granted.

*[REPORTER'S NOTE: For opinions of JUSTICE SOTOMAYOR, concurring, and JUSTICE ALITO, dissenting, in this case, see No. 15–8850, *Tatum* v. *Arizona*, immediately *infra*.]

Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Montgomery* v. *Louisiana*, 577 U. S. 190 (2016).

No. 15–8850. TATUM *v.* ARIZONA. Ct. App. Ariz. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Montgomery* v. *Louisiana*, 577 U. S. 190 (2016).

JUSTICE SOTOMAYOR, concurring.*

This Court explained in *Miller* v. *Alabama*, 567 U. S. 460 (2012), that a sentencer is "require[d] . . . to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.*, at 480. Children are "constitutionally different from adults for purposes of sentencing" in light of their lack of maturity and underdeveloped sense of responsibility, their susceptibility to negative influences and outside pressure, and their less well-formed character traits. *Id.*, at 471. Failing to consider these constitutionally significant differences, we explained, "poses too great a risk of disproportionate punishment." *Id.*, at 479. In the context of life without parole, we stated that "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." *Ibid.*

Montgomery v. *Louisiana*, 577 U. S. 190 (2016), held that *Miller* "announced a substantive rule of constitutional law." 577 U. S., at 212. That rule draws "a line between children whose crimes reflect transient immaturity and those rare children whose crimes reflect irreparable corruption" and allows for the possibility "that life without parole could be a proportionate sentence [only] for the latter kind of juvenile offender." *Id.*, at 209.

The petitioners in these cases were sentenced to life without the possibility of parole for crimes they committed before they turned 18. A grant, vacate, and remand of these cases in light of *Montgomery* permits the lower courts to consider whether these petitioners' sentences comply with the substantive rule governing the imposition of a sentence of life without parole on a juvenile offender.

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*This opinion also applies to No. 15–8842, *Purcell* v. *Arizona*, *supra*, p. 951; No. 15–8878, *Najar* v. *Arizona*, *supra*, p. 951; No. 15–9044, *Arias* v. *Arizona*, *supra*, p. 951; and No. 15–9057, *DeShaw* v. *Arizona*, *supra*, p. 951.

JUSTICE ALITO questions this course, noting that the judges in these cases considered petitioners' youth during sentencing. As *Montgomery* made clear, however, "[e]ven if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects unfortunate yet transient immaturity." *Id.*, at 208 (internal quotation marks omitted).

On the record before us, none of the sentencing judges addressed the question *Miller* and *Montgomery* require a sentencer to ask: whether the petitioner was among the very "rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." 577 U. S., at 209.

Take *Najar* v. *Arizona*, No. 15–8878. There, the sentencing judge identified as mitigating factors that the defendant was "16 years of age" and "emotionally and physically immature." App. to Pet. for Cert. in No. 15–8878, p. A–51. He said no more on this front. He then discounted the petitioner's efforts to rehabilitate himself as "nothing significant," despite commending him for those efforts and expressing hope that they would continue. *Id.*, at A–52. The sentencing judge did not evaluate whether Najar represented the "rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified." *Montgomery*, 577 U. S., at 208.

Purcell v. *Arizona*, No. 15–8842, is no different. The sentencing judge found that Purcell's age at the time of his offense—16 years old—qualified as a statutory mitigating factor. App. to Pet. for Cert. in No. 15–8842, p. A–80. He then minimized the relevance of Purcell's troubled childhood, concluding that "this case sums up the result of defendant's family environment: he became a double-murderer at age 16. Nothing more need be said." *Id.*, at A–83. So here too, the sentencing judge did not undertake the evaluation that *Montgomery* requires. He imposed a sentence of life without parole despite finding that Purcell was "likely to do well in the structured environment of a prison and that he possesses the capacity to be meaningfully rehabilitated." App. to Pet. for Cert. in No. 15–8842, at A–83.

The other petitions are similar. In *Tatum* v. *Arizona*, No. 15–8850, and *DeShaw* v. *Arizona*, No. 15–9057, the sentencing judge merely noted age as a mitigating circumstance without further discussion. In *Arias* v. *Arizona*, No. 15–9044, the record before

us does not contain a sentencing transcript or order reflecting the factors the sentencing judge considered.

It is clear after *Montgomery* that the Eighth Amendment requires more than mere consideration of a juvenile offender's age before the imposition of a sentence of life without parole. It requires that a sentencer decide whether the juvenile offender before it is a child "whose crimes reflect transient immaturity" or is one of "those rare children whose crimes reflect irreparable corruption" for whom a life without parole sentence may be appropriate. 577 U. S., at 209. There is thus a very meaningful task for the lower courts to carry out on remand.

JUSTICE ALITO, with whom JUSTICE THOMAS joins, dissenting.*

The Court grants review and vacates and remands (GVR) in this and four other cases in which defendants convicted of committing murders while under the age of 18 were sentenced to life without parole. The Court grants this relief so that the Arizona courts can reconsider their decisions in light of *Montgomery* v. *Louisiana*, 577 U. S. 190 (2016), which we decided last Term. I expect that the Arizona courts will be as puzzled by this directive as I am.

In *Montgomery*, the Court held that *Miller* v. *Alabama*, 567 U. S. 460 (2012), is retroactive. 577 U. S., at 206. That holding has no bearing whatsoever on the decisions that the Court now vacates. The Arizona cases at issue here were decided after *Miller*, and in each case the court expressly assumed that *Miller* was applicable to the sentence that had been imposed. Therefore, if the Court is taken at its word—that is, it simply wants the Arizona courts to take *Montgomery* into account—there is nothing for those courts to do.

It is possible that what the majority wants is for the lower courts to reconsider *the application of Miller* to the cases at issue,† but if that is the Court's aim, it is misusing the GVR

*This opinion also applies to four other petitions: No. 15–8842, *Purcell* v. *Arizona*, *supra*, p. 951; No. 15–8878, *Najar* v. *Arizona*, *supra*, p. 951; No. 15–9044, *Arias* v. *Arizona*, *supra*, p. 951; and No. 15–9057, *DeShaw* v. *Arizona*, *supra*, p. 951.

†This is certainly JUSTICE SOTOMAYOR's explanation of the GVR. She faults the lower courts for failing to heed the statement in *Miller* that "appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon." 567 U. S., at 479. If the others in the majority have a

vehicle. We do not GVR so that a lower court can reconsider the application of a precedent that it has already considered.

In any event, the Arizona decisions at issue are fully consistent with *Miller*'s central holding, namely, that mandatory life without parole for juvenile offenders is unconstitutional. 567 U. S., at 465. A sentence of life without parole was imposed in each of these cases, not because Arizona law dictated such a sentence, but because a court, after taking the defendant's youth into account, found that life without parole was appropriate in light of the nature of the offense and the offender.

It is true that the *Miller* Court also opined that "life without parole is excessive for all but 'the rare juvenile offender whose crime reflects irreparable corruption,'" *Montgomery*, *supra*, at 208 (quoting *Miller*, *supra*, at 479–480 (internal quotation marks omitted)), but the record in the cases at issue provides ample support for the conclusion that these "children" fall into that category.

For example, in *Purcell* v. *Arizona*, No. 15–8842, a 16-year-old gang member fired a sawed-off shotgun into a group of teenagers, killing two of them, under the belief that they had flashed a rival gang's sign at him. He was ultimately convicted of two counts of first-degree murder, nine counts of attempted first-degree murder, and one count each of aggravated assault and misconduct involving weapons. The trial court considered his youth, identified his age as a mitigating factor, and still sentenced him to life without parole. The remaining cases are in the same vein. See *Tatum* v. *Arizona*, No. 15–8850 (17-year-old defendant convicted of first-degree murder, conspiracy to commit armed robbery, attempted armed robbery, and aggravated assault); *Najar* v. *Arizona*, No. 15–8878 (juvenile convicted of first-degree murder and theft); *Arias* v. *Arizona*, No. 15–9044 (16-year-old defendant pleaded guilty to two counts of first-degree murder, two counts of second-degree murder, two counts of kidnapping, four counts of armed robbery, and one count each of first-degree burglary, conspiracy to commit first-degree murder, and conspiracy to commit armed robbery); *DeShaw* v. *Arizona*, No. 15–9057 (17-year-old defendant convicted of first-degree murder, armed robbery, and kidnapping).

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similar view, the Court should grant review and decide the cases on the merits.

In short, the Arizona courts have already evaluated these sentences under *Miller*, and their conclusions are eminently reasonable. It is not clear why this Court is insisting on a do-over, or why it expects the results to be any different the second time around. I respectfully dissent.

No. 16–181. TIMM *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Birchfield* v. *North Dakota*, 579 U. S. 438 (2016). Reported below: 2016 ND 92, 881 N. W. 2d 256.

Vacated and Remanded After Certiorari Granted

No. 15–486. IVY ET AL. *v.* MORATH, TEXAS COMMISSIONER OF EDUCATION. C. A. 5th Cir. [Certiorari granted, 579 U. S. 940.] Judgment vacated, and case remanded with instructions to dismiss as moot. See *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950).

Certiorari Dismissed

No. 16–5738. REDDY *v.* NUANCE COMMUNICATIONS, INC., ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 16–6094. WOODWORTH *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.

Miscellaneous Orders

No. 16A38. KINSEY *v.* UNITED STATES. Application for certificate of appealability, addressed to JUSTICE SOTOMAYOR and referred to the Court, denied.

No. 16A405. NORTHEAST OHIO COALITION FOR THE HOMELESS ET AL. *v.* HUSTED, OHIO SECRETARY OF STATE, ET AL. C. A. 6th Cir. Application for stay, presented to JUSTICE KAGAN, and by her referred to the Court, denied.

No. D–2935. IN RE DISCIPLINE OF STONE. Robert Lee Stone, of Chicago, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2936. IN RE DISCIPLINE OF STONE. Michael Bruce Stone, 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–2937. IN RE DISCIPLINE OF ELSTEAD. John Clifton Elstead, of Oakland, 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–2938. IN RE DISCIPLINE OF ACKERMAN. Richard D. Ackerman, of Menifee, 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–2939. IN RE DISCIPLINE OF HOLSTEIN. Robert Allan Holstein, of Chicago, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2940. IN RE DISCIPLINE OF MCPHERON. Ronald L. McPheron, of Chicago, Ill., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2941. IN RE DISCIPLINE OF GREGORY. Keith E. Gregory, of Lompoc, 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–2942. IN RE DISCIPLINE OF WOODRUFF. Stephen Carl Woodruff, of Saipan, N. Mar. I., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 16M40. PEACE *v.* ILLINOIS;

No. 16M41. BWP MEDIA USA, INC., DBA PACIFIC COAST NEWS, ET AL. *v.* CLARITY DIGITAL GROUP, LLC, NKA AXS DIGITAL MEDIA GROUP, LLC;

No. 16M42. MOYE *v.* COLVIN, ACTING COMMISSIONER OF SOCIAL SECURITY;

No. 16M43. WALLACE *v.* IDEAVILLAGE PRODUCTS CORP.;

No. 16M44. VERA *v.* SAN QUENTIN STATE PRISON ET AL.;

No. 16M45. DAVIS *v.* CLIFFORD ET AL.; and

No. 16M46. PHILLIPS *v.* PENNSYLVANIA DEPARTMENT OF CORRECTIONS ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 15–1500. LEWIS ET AL. *v.* CLARKE. Sup. Ct. Conn. [Certiorari granted, 579 U. S. 969.] Motion of petitioners to dispense with printing joint appendix granted.

No. 16–217. LENZ *v.* UNIVERSAL MUSIC CORP. 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. 16–5479. SEWELL *v.* PRINCE GEORGE'S COUNTY DEPARTMENT OF SOCIAL SERVICES. C. A. 4th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 805] denied.

No. 16–5715. IN RE LAMBRIX;

No. 16–6235. IN RE BENNETT;

No. 16–6279. IN RE EVANS; and

No. 16–6322. IN RE RANSOM. Petitions for writs of habeas corpus denied.

No. 16–227. IN RE ROTHING;

No. 16–5678. IN RE WILLIAMS; and

No. 16–5767. IN RE DEATON. Petitions for writs of mandamus denied.

Certiorari Denied

No. 15–1351. HARDY ET AL. *v.* STATE LAND BOARD ET AL. Ct. App. Ore. Certiorari denied. Reported below: 274 Ore. App. 262, 360 P. 3d 647.

No. 15–1384. GILLIAM *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 292 Neb. 770, 874 N. W. 2d 48.

No. 15–1456. ANGHAIE ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 514.

No. 15–1467. Stahl York Avenue Co., LLC *v.* City of New York, New York, et al. C. A. 2d Cir. Certiorari denied. Reported below: 641 Fed. Appx. 68.

No. 15–1489. Bauer *v.* Lynch, Attorney General. C. A. 4th Cir. Certiorari denied. Reported below: 812 F. 3d 340.

No. 15–1492. JSW Steel (USA), Inc. *v.* MM Steel, L. P., et al. C. A. 5th Cir. Certiorari denied. Reported below: 806 F. 3d 835.

No. 15–1538. Merscorp Holdings, Inc., et al. *v.* Malloy et al. Sup. Ct. Conn. Certiorari denied. Reported below: 320 Conn. 448, 131 A. 3d 220.

No. 15–9323. Montoya-Gaxiola *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 612 Fed. Appx. 455.

No. 15–9365. Harcum *v.* Maryland. Ct. Sp. App. Md. Certiorari denied. Reported below: 224 Md. App. 722.

No. 15–9574. Mulay *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 642 Fed. Appx. 853.

No. 16–20. Billings et al. *v.* Propel Financial Services, LLC, et al. C. A. 5th Cir. Certiorari denied. Reported below: 821 F. 3d 608.

No. 16–33. Zola *v.* Withers, Individually and as Administrator of the Estate of Withers, et al. C. A. 6th Cir. Certiorari denied. Reported below: 640 Fed. Appx. 416.

No. 16–92. Vinh Hoan Corp. *v.* Catfish Farmers of America et al. C. A. Fed. Cir. Certiorari denied. Reported below: 645 Fed. Appx. 1001.

No. 16–94. Farmer *v.* D & O Contractors, Inc., et al. C. A. 5th Cir. Certiorari denied. Reported below: 640 Fed. Appx. 302.

No. 16–95. J & K Administrative Management Services, Inc., et al. *v.* Robinson et al. C. A. 5th Cir. Certiorari denied. Reported below: 817 F. 3d 193.

No. 16–98. Stahl *v.* Hialeah Hospital et al. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 160 So. 3d 519.

No. 16–104. NORRIS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 16–108. AUTOMATED CREEL SYSTEMS, INC. *v.* SHAW INDUSTRIES GROUP, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 817 F. 3d 1293.

No. 16–109. STOP RECKLESS ECONOMIC INSTABILITY CAUSED BY DEMOCRATS ET AL. *v.* FEDERAL ELECTION COMMISSION. C. A. 4th Cir. Certiorari denied. Reported below: 814 F. 3d 221.

No. 16–213. KUENZEL *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 204 So. 3d 910.

No. 16–218. UNIVERSAL MUSIC CORP. ET AL. *v.* LENZ. C. A. 9th Cir. Certiorari denied. Reported below: 815 F. 3d 1145.

No. 16–222. GALLO ET AL. *v.* MOEN, INC. C. A. 6th Cir. Certiorari denied. Reported below: 813 F. 3d 265.

No. 16–228. FORRAS ET AL. *v.* RAUF ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 812 F. 3d 1102.

No. 16–230. CAIN *v.* FIDELITY NATIONAL TITLE INSURANCE CO. ET AL. Ct. App. Ariz. Certiorari denied.

No. 16–232. SANG CHUL LEE *v.* ANC CAR RENTAL CORP. ET AL. Ct. App. Ariz. Certiorari denied.

No. 16–238. CSP TECHNOLOGIES, INC. *v.* SUD-CHEMIE AG ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 643 Fed. Appx. 953.

No. 16–244. SCHELL ET AL., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED *v.* OXY USA INC. C. A. 10th Cir. Certiorari denied. Reported below: 814 F. 3d 1107.

No. 16–245. MELHORN *v.* BALTIMORE WASHINGTON CONFERENCE OF UNITED METHODIST CHURCH ET AL. Ct. Sp. App. Md. Certiorari denied. Reported below: 227 Md. App. 765 and 771.

No. 16–246. W. R., A MINOR CHILD, ET AL. *v.* OHIO DEPARTMENT OF HEALTH ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 514.

No. 16–248. DANIELS *v.* HOLTZ ET AL. Ct. App. Iowa. Certiorari denied. Reported below: 883 N. W. 2d 538.

No. 16–252. KINNEY *v.* STATE BAR OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–260. FOLEY ET UX. *v.* ORANGE COUNTY, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 941.

No. 16–264. GRAMAR, LLC-SERIES OAK *v.* MP 200 WEST RANDOLPH, LLC. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 152294–U.

No. 16–266. MUMME ET AL. *v.* SOUTHPORT SPRINGS PARK, LLC, DBA SOUTHPORT SPRINGS. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 210 So. 3d 1283.

No. 16–269. HORHN *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 481 S. W. 3d 363.

No. 16–277. PETTUS-BROWN *v.* LISATH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–280. STEVENS *v.* CALIFORNIA WORKERS' COMPENSATION APPEALS BOARD ET AL. Ct. App. Cal., 1st App. Dist., Div. 1. Certiorari denied. Reported below: 241 Cal. App 4th 1074, 194 Cal. Rptr. 3d 469.

No. 16–281. CASTILLO *v.* LYNCH, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 800.

No. 16–292. MILLER *v.* FEDERAL DEPOSIT INSURANCE CORPORATION (two judgments). C. A. Fed. Cir. Certiorari denied. Reported below: 818 F. 3d 1361 (first judgment); 818 F. 3d 1357 (second judgment).

No. 16–303. FRIENDS OF ANIMALS *v.* JEWELL, SECRETARY OF THE INTERIOR, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 824 F. 3d 1033.

No. 16–304. ESTRADA-RODRIGUEZ *v.* LYNCH, ATTORNEY GENERAL. C. A. 8th Cir. Certiorari denied. Reported below: 825 F. 3d 397.

No. 16–316. BIERY ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 818 F. 3d 704.

No. 16–318. COZZARELLI *v.* SUPREME COURT OF NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 225 N. J. 16, 137 A. 3d 412.

No. 16–319. ROJAS *v.* KIRKPATRICK ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 451.

No. 16–320. ACEVEDO ET AL. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 824 F. 3d 1365.

No. 16–322. AZKOUR *v.* LITTLE REST TWELVE, INC. C. A. 2d Cir. Certiorari denied. Reported below: 645 Fed. Appx. 98.

No. 16–336. BOYER ET AL. *v.* BNSF RAILWAY CO., DBA BURLINGTON NORTHERN & SANTA FE RAILWAY CO. C. A. 7th Cir. Certiorari denied. Reported below: 824 F. 3d 694 and 832 F. 3d 699.

No. 16–337. BROWN *v.* PENNSYLVANIA DEPARTMENT OF REVENUE, BUREAU OF INDIVIDUAL TAXES, ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 127 A. 3d 894.

No. 16–339. TAYLOR *v.* MARGO ET AL. Ct. App. Tex., 8th Dist. Certiorari denied. Reported below: 508 S. W. 3d 12.

No. 16–342. ZIEGLER *v.* JEWELL, SECRETARY OF THE INTERIOR. C. A. 8th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 246.

No. 16–356. REDDY, AS GUARDIAN OF THE PERSON AND ESTATE OF CHRISTOPHER AND AS REPRESENTATIVE OF THE ESTATE OF CHRISTOPHER, DECEASED *v.* DOMINO'S PIZZA, LLC. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 16–357. SALADO-ALVA *v.* LYNCH, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 16–362. FIRST RESOLUTION INVESTMENT CORP. ET AL. *v.* TAYLOR-JARVIS. Sup. Ct. Ohio. Certiorari denied. Reported below: 148 Ohio St. 3d 627, 2016-Ohio-3444, 72 N. E. 3d 573.

No. 16–365. TOWN OF FARMINGTON, NEW YORK *v.* AUSTIN ET VIR. C. A. 2d Cir. Certiorari denied. Reported below: 826 F. 3d 622.

No. 16–370. KUTTNER *v.* ZARUBA ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 819 F. 3d 970.

No. 16–371. STOVIC *v.* RAILROAD RETIREMENT BOARD ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 826 F. 3d 500.

No. 16–390. ADAME *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 827 F. 3d 637.

No. 16–394. MENDEL, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF MENDEL *v.* MORGAN KEEGAN & CO., INC. C. A. 11th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 1001.

No. 16–401. SPRUILL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 808 F. 3d 585.

No. 16–414. WALTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 827 F. 3d 682.

No. 16–439. JONES *v.* BUTT ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 926.

No. 16–457. BULK TRANSPORT CORP. *v.* CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 820 F. 3d 884.

No. 16–5225. SON THANH TRAN *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 16–5295. RAY *v.* ALABAMA DEPARTMENT OF CORRECTIONS ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 809 F. 3d 1202.

No. 16–5312. JIMENEZ-ROJAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 317.

No. 16–5379. HENRY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 827 F. 3d 16.

No. 16–5657. RUSSELL *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 16–5667. YADETA *v.* BEZA CONSULTING, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 210.

No. 16–5673. RAMOS *v.* LEGRAND, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–5674. CARTER *v.* INDEPENDENCE SEAPORT MUSEUM. C. A. 1st Cir. Certiorari denied.

No. 16–5676. WRIGHT *v.* BROWN. Sup. Ct. Va. Certiorari denied.

No. 16–5681. SALGADO *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2016 IL App (1st) 134056–U.

No. 16–5685. GONZALEZ *v.* VASQUEZ, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 511.

No. 16–5695. MINOR *v.* SHELDON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–5699. CREWS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 183 So. 3d 329.

No. 16–5702. FELIPE VELASCO *v.* SHERMAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 598.

No. 16–5707. PAWLEY *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 185 So. 3d 700.

No. 16–5709. WESTBROOKS *v.* TEXAS. Ct. App. Tex. 14th Dist. Certiorari denied.

No. 16–5710. WALLACE *v.* CARTLEDGE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 955.

No. 16–5719. SELBY *v.* WENEROWICZ, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–5723. MIDDLETON *v.* GEORGIA. Ct. App. Ga. Certiorari denied.

No. 16–5728. CARTER *v.* VIRGINIA EMPLOYMENT COMMISSION ET AL. Sup. Ct. Va. Certiorari denied.

No. 16–5729. TIDWELL *v.* HATTON, ACTING WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–5730. BROOKS *v.* PATAKI, FORMER GOVERNOR OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 823 F. 3d 125.

No. 16–5731. ANDERSON *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 16–5736. VILLA *v.* UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT. C. A. 5th Cir. Certiorari denied.

No. 16–5739. DAVIS *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–5742. SARVESTANEY *v.* SARVESTANEY. Sup. Ct. Iowa. Certiorari denied.

No. 16–5746. COUGHLIN *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 210 So. 3d 1278.

No. 16–5749. PAOLINO *v.* CAMERON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–5750. OLAGUE *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 16–5753. HUMPHREY *v.* SHERMAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 661.

No. 16–5755. WILSON *v.* ILLINOIS. App. Ct Ill., 1st Dist. Certiorari denied. Reported below: 2016 IL App (1st) 133893–U.

No. 16–5758. EBRON *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 213 So. 3d 956.

No. 16–5759. BROWN *v.* WATTLES ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–5761. MARTIN *v.* MACKIE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–5766. ELLIS *v.* KLEE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–5770. VIRGA *v.* LEE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–5771. SMILLIE *v.* MARICOPA COUNTY, ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 570.

No. 16–5776. FRAZIER *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 180 So. 3d 1067.

No. 16–5780. RHODES *v.* ROWE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–5783. FLORENCE *v.* VIKING ASSOCIATES. Super. Ct. N. J., App. Div. Certiorari denied.

No. 16–5788. HARBISON *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 648 Fed. Appx. 371.

No. 16–5791. RAMON RODRIGUEZ *v.* SHERMAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 870.

No. 16–5792. WARD *v.* JORDAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–5793. LEI KE *v.* DREXEL UNIVERSITY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 645 Fed. Appx. 161.

No. 16–5802. CHU VUE *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 16–5809. MUNT *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 16–5815. MANN *v.* KERNAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 392.

No. 16–5816. REBELO *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 137 App. Div. 3d 1315, 27 N. Y. S. 3d 699.

No. 16–5823. DOBBS *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 16–5834. RIGGINS *v.* MILLER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–5836. SMITH *v.* BOROUGH OF MORRISVILLE, PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 656 Fed. Appx. 590.

No. 16–5837. KING ET UX. *v.* MISSISSIPPI ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 287.

No. 16–5839. MARTINEZ *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 2016 OK CR 3, 371 P. 3d 1100.

No. 16–5844. SAWYER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 825 F. 3d 287.

No. 16–5846. ESTELA-GOMEZ *v.* LYNCH, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied.

No. 16–5849. STOCKWELL *v.* KEY, SUPERINTENDENT, AIRWAY HEIGHTS CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 16–5857. BERNARD *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 2014–0580 (La. App. 4 Cir. 6/3/15), 171 So. 3d 1063.

No. 16–5869. CHRISTENSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–5871. TAYLOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 818 F. 3d 671.

No. 16–5873. TAYLOR *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 825 F. 3d 466.

No. 16–5879. DUKE *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 16–5880. DORSEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 816.

No. 16–5883. JOHONOSON *v.* THOMPSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MERCER, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–5884. SMITH *v.* PHILLIPS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 194.

No. 16–5894. WOODARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 640 Fed. Appx. 259.

No. 16–5897. RAMSEY *v.* KATAVICH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–5902. NATHAN *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY. Sup. Ct. Cal. Certiorari denied.

No. 16–5904. WALLAESA *v.* FEDERAL AVIATION ADMINISTRATION. C. A. D. C. Cir. Certiorari denied. Reported below: 824 F. 3d 1071.

No. 16–5905. OKUN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 292.

No. 16–5906. CHAPMAN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 8. Certiorari denied.

No. 16–5911. ROBLEDO *v.* GIPSON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–5918. BRUETTE *v.* JEWELL, SECRETARY OF THE INTERIOR. C. A. 7th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 528.

No. 16–5922. JIMENEZ *v.* MEDEIROS, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT NORFOLK. C. A. 1st Cir. Certiorari denied.

No. 16–5925. PATTERSON *v.* GRAZIANO ET AL. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 137 App. Div. 3d 1617, 26 N. Y. S. 3d 908.

No. 16–5933. SAENZ *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 479 S. W. 3d 939.

No. 16–5938. WILLIAMS *v.* WASHINGTON DEPARTMENT OF SOCIAL AND HEALTH SERVICES. Ct. App. Wash. Certiorari denied. Reported below: 191 Wash. App. 1019.

No. 16–5942. REID *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 827 F. 3d 797.

No. 16–5944. MILLER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 839.

No. 16–5945. PARNELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 652 Fed. Appx. 117.

No. 16–5946. REDFORD *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 335 Ga. App. 682, 782 S. E. 2d 791.

No. 16–5948. REINARD *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 134 App. Div. 3d 1407, 22 N. Y. S. 3d 270.

No. 16–5949. CZEKUS *v.* KNIPP, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–5950. JACKSON *v.* LINK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–5952. MARCOTTE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 835 F. 3d 652.

No. 16–5953. THORNBRUGH *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 669.

No. 16–5954. ZIMMERMAN *v.* SWARTHOUT, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–5965. CONTRERAS ALCALA *v.* GARCIA HERNANDEZ. C. A. 4th Cir. Certiorari denied. Reported below: 826 F. 3d 161.

No. 16–5966. COLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–5967. LUMSDEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 174.

No. 16–5973. MARQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 333.

No. 16–5974. JONES *v.* MCGINLEY, ACTING SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–5979. SANCHEZ-ALMARAZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 71.

No. 16–5981. MEDFORD *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 16–5983. PINA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 241.

No. 16–5986. SULLIVAN *v.* OHIO. Ct. App. Ohio, 10th App. Dist., Franklin County. Certiorari denied. Reported below: 2016-Ohio-218.

No. 16–5988. GOROSTIETA-CASAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 253.

No. 16–5994. ANGEL CABADA, AKA BARRAZA, AKA CABADA-BARRAZA, AKA LEON HERNANDEZ, AKA RIVAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–5995. TRAPPIER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 199.

No. 16–5996. ZAVALA-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 792.

No. 16–6002. BURGESS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 203.

No. 16–6007. CUA *v.* MCDOWELL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6008. DJENASEVIC *v.* IVES, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 626 Fed. Appx. 429.

No. 16–6010. CORREA HERNANDEZ *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 212 So. 3d 371.

No. 16–6012. HILL *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 125 A. 3d 445.

No. 16–6013. MOSES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 653 Fed. Appx. 91.

No. 16–6015. CASTEEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 315.

No. 16–6017. RUIZ-ARAGON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 205.

No. 16–6020. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 302.

No. 16–6022. TAYLOR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 571.

No. 16–6023. JIM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 291.

No. 16–6024. MATELYAN *v.* SUPREME COURT OF THE UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–6026. LUBY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 16–6036. MCLEOD *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 626 Fed. Appx. 25.

No. 16–6038. PARKE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–6039. RUSSELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 104.

No. 16–6042. HERNANDEZ-VILLEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 252.

No. 16–6043. GOMEZ-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 314.

No. 16–6044. FRISON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 16–6045. GARDNER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 150 A. 3d 1283.

No. 16–6046. QUINTERO, AKA CUELLAR-SUAZO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 431.

No. 16–6050. GARNER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–6051. GRIMES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 825 F. 3d 899.

No. 16–6053. GONZALEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 667 Fed. Appx. 307.

No. 16–6058. FORD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 642 Fed. Appx. 637.

No. 16–6066. HIGGINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–6070. GATLING *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 16–6071. GASCA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 470.

No. 16–6072. MAXWELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 823 F. 3d 1057.

No. 16–6073. LAWS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 240.

No. 16–6074. HAYES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–6075. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–6078. DOBSON *v.* MILLION, WARDEN. C. A. 3d Cir. Certiorari denied.

No. 16–6082. HERNANDEZ-VEGA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 16–6083. GRANDA *v.* IVES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6090. FITZPATRICK *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 822 F. 3d 1.

No. 16–6091. EVANS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 391.

No. 16–6092. COVINGTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 590.

No. 16–6096. HARRIS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 16–6097. ANDERSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–6098. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 16–6099. SHIPTON *v.* DANIELS, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 16–6100. FLOWERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 616 Fed. Appx. 108.

No. 16–6101. HERNANDEZ-DE-LA-ROSA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 16–6108. GUTIERREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–6109. HANNIGAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 234.

No. 16–6111. SALINAS GARCIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 213.

No. 16–6112. GUZMAN-FERNANDEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 824 F. 3d 173.

No. 16–6114. WENJING LIU *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 149.

No. 16–6116. JENKINS *v.* MURPHY, SUPERINTENDENT, OLD COLONY CORRECTIONAL CENTER. C. A. 1st Cir. Certiorari denied. Reported below: 824 F. 3d 148.

No. 16–6119. WARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 539.

No. 16–6120. WILLIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 826 F. 3d 1265.

No. 16–6124. BRITT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 288.

No. 16–6126. GIBSON *v.* POLLARD ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 610 Fed. Appx. 571.

No. 16–6130. SCALIA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 654 Fed. Appx. 73.

No. 16–6134. MINJAREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 144.

No. 16–6140. ATWOOD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–6146. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 16–6154. DURY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 219.

No. 16–6155. LITTLE COYOTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–6157. CAMACHO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 285.

No. 16–6158. DRAIN *v.* LANE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE. C. A. 3d Cir. Certiorari denied.

No. 16–6161. BURNS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–6163. HOLMES *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 655 Fed. Appx. 816.

No. 16–6165. HOPE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 961.

No. 16–6167. MARTINEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 640 Fed. Appx. 18.

No. 16–6170. WHITE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 16–6173. MAYER *v.* BEEMER, ATTORNEY GENERAL OF PENNSYLVANIA. C. A. 3d Cir. Certiorari denied.

No. 16–6178. EVANS *v.* MILLION, WARDEN. C. A. 3d Cir. Certiorari denied.

No. 16–6183. CREWS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 645 Fed. Appx. 211.

No. 16–6197. OGUNNIYI *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 655 Fed. Appx. 842.

No. 16–6201. SCHAFFER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 818 F. 3d 796.

No. 16–6202. WENFO SONG *v.* OBAMA, PRESIDENT OF THE UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 367.

No. 16–6206. CAPSHAW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 618 Fed. Appx. 618.

No. 16–6207. GEMMA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 818 F. 3d 23.

No. 16–6209. CORTES-MEDINA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 819 F. 3d 566.

No. 16–6211. CHRISTIAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–6214. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 16–6217. AYALA-YUPIT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 233.

No. 16–6218. DOUGLAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 508.

No. 16–6231. DUNSTON *v.* COLVIN, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 2d Cir. Certiorari denied.

No. 16–6238. MURRAY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 436.

No. 16–6241. DONALDSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 686.

No. 16–6246. ROBERTS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–6254. BRYANT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 807.

No. 16–6255. PFEIFER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 661 Fed. Appx. 618.

No. 16–6263. CHICHAKLI, AKA CUNNING, AKA CEDOROV *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 651 Fed. Appx. 62.

No. 16–6266. LINDSEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 827 F. 3d 733.

No. 16–6267. LOGAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 642 Fed. Appx. 203.

No. 16–6274. DILLARD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 648 Fed. Appx. 564.

No. 16–6284. TREJO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 877.

No. 16–6290. SMOTHERMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–6296. RIVERA-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 442.

No. 16–6298. DECRUZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 644 Fed. Appx. 189.

No. 16–6299. DIDIER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 775.

No. 16–6301. CORNETT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–6304. REZA-RAMOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 816 F. 3d 1110.

No. 15–1438. TINA M. ET AL. *v.* SAINT TAMMANY PARISH SCHOOL BOARD. C. A. 5th Cir. Motion of Southern Poverty Law Center et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 816 F. 3d 57.

No. 16–189. WASHINGTON ET AL. *v.* DENDEL. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 647 Fed. Appx. 612.

No. 16–6069. HINSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 637 Fed. Appx. 526.

No. 16–6249. RUSSELL *v.* HOLT, WARDEN. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 639 Fed. Appx. 891.

Rehearing Denied

No. 15–7608. OKUN *v.* UNITED STATES, 577 U. S. 1162;

No. 15–9363. HAMMOND *v.* UNITED STATES, 579 U. S. 935; and

No. 15–9906. HARRIS *v.* MESSITTE, JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, ET AL., *ante*, p. 865. Petitions for rehearing denied.

NOVEMBER 3, 2016

Miscellaneous Order

No. 16A451 (16–602). ARTHUR *v.* DUNN, COMMISSIONER, ALABAMA 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, granted pending disposition of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall terminate upon the sending down of the judgment of this Court. JUSTICE THOMAS and JUSTICE ALITO would deny the application.

Statement of THE CHIEF JUSTICE respecting the grant of the application for stay.

I do not believe that this application meets our ordinary criteria for a stay. This case does not merit the Court's review: the claims set out in the application are purely fact-specific, dependent on contested interpretations of state law, insulated from our review by alternative holdings below, or some combination of the three. Four Justices have, however, voted to grant a stay. To afford them the opportunity to more fully consider the suitability of this case for review, including these circumstances, I vote to grant the stay as a courtesy.

NOVEMBER 4, 2016

Certiorari Granted

No. 16–149. COVENTRY HEALTH CARE OF MISSOURI, INC., FKA GROUP HEALTH PLAN, INC. *v.* NEVILS. Sup. Ct. Mo. Certiorari granted. Reported below: 492 S. W. 3d 918.

NOVEMBER 5, 2016

Miscellaneous Order

No. 16A460. ARIZONA SECRETARY OF STATE'S OFFICE ET AL. *v.* FELDMAN ET AL. Application for stay, presented to JUSTICE KENNEDY, and by him referred to the Court, granted. Injunction issued by the United States Court of Appeals for the Ninth Circuit on November 4, 2016, in case No. 16–16698, is stayed pending final disposition of the appeal by that Court.

NOVEMBER 7, 2016

Certiorari Dismissed

No. 16–5848. STROUSE *v.* KIDDY ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 16A461. OHIO DEMOCRATIC PARTY *v.* DONALD J. TRUMP FOR PRESIDENT, INC. C. A. 6th Cir. Application to vacate stay, presented to JUSTICE KAGAN, and by her referred to the Court, denied.

Statement of JUSTICE GINSBURG respecting the denial of the application to vacate stay.

Mindful that Ohio law proscribes voter intimidation, see, *e. g.*, Ohio Rev. Code Ann. § 3501.90(A)(1) (Lexis 2013) ("Harassment in violation of the election law" includes an "improper practice or attempt tending to obstruct, intimidate, or interfere with an elector in registering or voting at a place of registration or election." (internal quotation marks omitted)), I vote to deny the application.

No. D–2943. IN RE DISCIPLINE OF LOCRICCHIO. Anthony Paul Locricchio, of Kailua, Haw., 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. 16M47. ABDUL ALI *v.* CARVAJAL, WARDEN;
No. 16M48. PENKUL *v.* TOWN OF LEBANON, MAINE;
No. 16M49. NOGALES *v.* MCDONALD, WARDEN, ET AL.; and
No. 16M50. LE ET AL. *v.* AZNOE. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 15–649. CZYZEWSKI ET AL. *v.* JEVIC HOLDING CORP. ET AL. C. A. 3d Cir. [Certiorari granted, 579 U. S. 940.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 15–1262. MCCRORY, GOVERNOR OF NORTH CAROLINA, ET AL. *v.* HARRIS ET AL. D. C. M. D. N. C. [Probable jurisdiction noted, 579 U. S. 927.] Motion of the Acting Solicitor General

for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 15–9484. MOORE *v.* KLEIN. Ct. App. Idaho. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 810] denied.

No. 15–9784. ZONG *v.* MERRILL LYNCH, PIERCE, FENNER & SMITH INC. C. A. 3d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 811] denied.

No. 16–5827. HARTMAN *v.* BANK OF NEW YORK MELLON ET AL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 28, 2016, 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. 16–6410. IN RE SIMUEL;
No. 16–6433. IN RE SINCLAIR; and
No. 16–6437. IN RE BRICE. Petitions for writs of habeas corpus denied.

No. 16–6434. IN RE KAPORDELIS. 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. 16–295. IN RE HABINIAK; and
No. 16–5861. IN RE EGGERS. Petitions for writs of mandamus denied.

Certiorari Denied

No. 15–1055. SMITHKLINE BEECHAM CORP., DBA GLAXOSMITHKLINE, ET AL. *v.* KING DRUG COMPANY OF FLORENCE, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 791 F. 3d 388.

No. 16–107. OXY USA INC. *v.* SCHELL ET AL., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED. C. A. 10th Cir. Certiorari denied. Reported below: 814 F. 3d 1107.

No. 16–151. Archangel Diamond Corporation Liquidating Trust *v.* OAO Lukoil. C. A. 10th Cir. Certiorari denied. Reported below: 812 F. 3d 799.

No. 16–274. Sundin *v.* United Airlines, Inc., et al. Ct. App. Colo. Certiorari denied.

No. 16–282. Consumer Health Information Corp. *v.* Amylin Pharmaceuticals, Inc., et al. C. A. 7th Cir. Certiorari denied. Reported below: 819 F. 3d 992.

No. 16–286. Wolfchild et al. *v.* Redwood County, Minnesota, et al. C. A. 8th Cir. Certiorari denied. Reported below: 824 F. 3d 761.

No. 16–288. Alicea Diaz *v.* Alicea Santana et al. Sup. Ct. P. R. Certiorari denied.

No. 16–297. Gardner *v.* District of Columbia Court of Appeals. Ct. App. D. C. Certiorari denied. Reported below: 116 A. 3d 938.

No. 16–343. Tuvell *v.* International Business Machines, Inc. C. A. 1st Cir. Certiorari denied. Reported below: 643 Fed. Appx. 1.

No. 16–387. Grady *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 656 Fed. Appx. 498.

No. 16–396. McKellips *v.* Wisconsin. Sup. Ct. Wis. Certiorari denied. Reported below: 2016 WI 51, 369 Wis. 2d 437, 881 N. W. 2d 258.

No. 16–400. McDuffie *v.* City of Jacksonville, Florida. C. A. 11th Cir. Certiorari denied. Reported below: 625 Fed. Appx. 521.

No. 16–404. National Association for the Advancement of Multijurisdiction Practice et al. *v.* Lynch, Attorney General, et al. C. A. 4th Cir. Certiorari denied. Reported below: 826 F. 3d 191.

No. 16–407. Von Goetzman *v.* Jeff's Transmissions, Inc. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 194 So. 3d 1030.

No. 16–437. KAHN *v.* HELVETIA ASSET RECOVERY, INC. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 475 S. W. 3d 389.

No. 16–446. TRADING TECHNOLOGIES INTERNATIONAL, INC. *v.* LEE, UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR, UNITED STATES PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 815 F. 3d 816.

No. 16–454. STANFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 823 F. 3d 814.

No. 16–5240. NHUONG VAN NGUYEN *v.* SUPERIOR COURT OF CALIFORNIA, RIVERSIDE COUNTY, ET AL. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 16–5806. SPEED *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 16–5812. RUIZ *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2016 IL App (1st) 133806–U.

No. 16–5828. FERNANDERS *v.* WRIGHT ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–5842. SURBAUGH *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 237 W. Va. 242, 786 S. E. 2d 601.

No. 16–5843. JACKSON *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–5854. CHEATHAM *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–5859. VUKICH *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–5860. VURIMINDI *v.* FEDER, CLERK, COURT OF COMMON PLEAS OF PENNSYLVANIA, FIRST JUDICIAL DISTRICT. Sup. Ct. Pa. Certiorari denied.

No. 16–5863. HOUTHOOFD *v.* STATE TREASURER. Ct. App. Mich. Certiorari denied.

No. 16–5864. Moss *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 16–5882. Lin *v.* Neuner et al. C. A. 3d Cir. Certiorari denied. Reported below: 647 Fed. Appx. 107.

No. 16–5889. Omran *v.* Gunnison et al. C. A. 1st Cir. Certiorari denied.

No. 16–5890. Newell *v.* Alden Village Health Facility for Children and Young Adults. C. A. 7th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 556.

No. 16–5929. Montague *v.* Tennessee. Sup. Ct. Tenn. Certiorari denied.

No. 16–5936. Velasquez-Lopez *v.* Clarke, Director, Virginia Department of Corrections. Sup. Ct. Va. Certiorari denied. Reported below: 290 Va. 443, 778 S. E. 2d 504.

No. 16–5939. Woulard *v.* Jones, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 16–5987. Eleson *v.* Lizarraga, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 16–6004. Burrell *v.* Place, Warden. C. A. 6th Cir. Certiorari denied.

No. 16–6016. Ray *v.* Kernan, Secretary, California Department of Corrections and Rehabilitation. C. A. 9th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 865.

No. 16–6025. Lane *v.* Cain, Superintendent, Snake River Correctional Institution. C. A. 9th Cir. Certiorari denied.

No. 16–6035. McDonald *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 654 Fed. Appx. 118.

No. 16–6055. Zakki *v.* Cheapoair, Inc. C. A. 4th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 138.

No. 16–6057. Bryant *v.* New Jersey. Super. Ct. N. J., App. Div. Certiorari denied.

No. 16–6061. BASSETT *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 16–6062. BLACHER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 16–6079. CLARK *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 16–6104. COGSWELL *v.* KERNAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 648 Fed. Appx. 624.

No. 16–6117. SMITH *v.* CAMPBELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–6148. JOHNSON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 16–6151. GORDON *v.* LEDBETTER. C. A. 8th Cir. Certiorari denied. Reported below: 642 Fed. Appx. 637.

No. 16–6198. NKWUO *v.* T-MOBILE ET AL. C. A. 9th Cir. Certiorari denied

No. 16–6213. NELSON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–6227. MARR *v.* HARKNESS. Sup. Ct. Fla. Certiorari denied.

No. 16–6230. ADAMS *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 16–6234. QUEEN *v.* MATEVOUSIAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6258. CLARKE *v.* JONES, DIRECTOR, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–6262. VENNES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–6273. HARRIS *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 16–6294. MARSING *v.* KELLY, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 657 Fed. Appx. 629.

No. 16–6295. JUAN-SOLANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 673.

No. 16–6306. VAN OSTEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 393.

No. 16–6312. YOUNG *v.* UNITED STATES; and
No. 16–6357. BURNETT *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 827 F. 3d 1108.

No. 16–6330. WOODS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 827 F. 3d 712.

No. 16–6336. MORIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 16–6339. ARMENTA-ROMERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 575.

No. 16–6343. LUCAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 526.

No. 16–6346. PONTE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 828 F. 3d 91.

No. 16–154. DELAWARE TRUST CO., FKA CSC TRUST COMPANY DELAWARE *v.* ENERGY FUTURE HOLDINGS CORP. ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 648 Fed. Appx. 277.

No. 16–310. ALFRIEND ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 642 Fed. Appx. 791.

Rehearing Denied

No. 15–8796. GRIGSBY *v.* UNITED STATES, 578 U. S. 985;
No. 15–9473. GRAY *v.* ZOOK, WARDEN, *ante*, p. 841;

No. 15–9549. ROBINSON *v.* TRUSTMARK NATIONAL BANK ET AL., *ante*, p. 844;

No. 15–9821. SUTTON *v.* UNITED STATES, *ante*, p. 860;

No. 15–9918. RUSSELL *v.* ALABAMA, *ante*, p. 802;

No. 16–77. CETNER, AS TRUSTEE OF THE CETNER FAMILY TRUST *v.* CARTER ET AL., AS TRUSTEES OF THE CARTER FAMILY TRUST DATED MARCH 1, 1991, *ante*, p. 871;

No. 16–5348. HARE *v.* UNITED STATES, *ante*, p. 895; and

No. 16–5601. CHOEURN *v.* MASSACHUSETTS, *ante*, p. 904. Petitions for rehearing denied.

NOVEMBER 8, 2016

Miscellaneous Order

No. 15–1248. MCLANE CO., INC. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. C. A. 9th Cir. [Certiorari granted, 579 U. S. 969.] Stephen B. Kinnaird, Esq., of Washington, D. C., is invited to brief and argue this case as *amicus curiae* in support of the position that a district court's decision to quash or enforce an EEOC subpoena is subject to *de novo* review. Briefs for other *amici curiae* in support of judgment below are to be filed within seven days of the filing of the brief for Court-appointed *amicus curiae*.

NOVEMBER 14, 2016

Certiorari Dismissed

No. 16–5941. RIGGINS *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. 16–6222. ST. LOUIS *v.* PIERCE, WARDEN, ET AL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 16M51. MARSH *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 16M52. JOHNSON *v.* BAE SYSTEMS, INC., ET AL. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 16M53. MACK *v.* HUSTON ET AL. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal granted.

No. 15–680. BETHUNE-HILL ET AL. *v.* VIRGINIA STATE BOARD OF ELECTIONS ET AL. D. C. E. D. Va. [Probable jurisdiction noted, 578 U. S. 1021.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 15–961. VISA INC. ET AL. *v.* OSBORN ET AL.; and
No. 15–962. VISA INC. ET AL. *v.* STOUMBOS ET AL. C. A. D. C. Cir. [Certiorari granted, 579 U. S. 940.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 15–8544. BECKLES *v.* UNITED STATES. C. A. 11th Cir. [Certiorari granted, 579 U. S. 927.] Motion of respondent for additional time to argue granted, and the time is divided as follows: 25 minutes for petitioner, 25 minutes for respondent, and 15 minutes for Court-appointed *amicus curiae*. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 16–6566. IN RE CLARK. Petition for writ of habeas corpus denied.

No. 16–6326. IN RE KACHINA. Petition for writ of mandamus denied.

Certiorari Denied

No. 15–1373. SSC MYSTIC OPERATING CO., LLC, DBA PENDLETON HEALTH AND REHABILITATION CENTER *v.* NATIONAL LABOR RELATIONS BOARD. C. A. D. C. Cir. Certiorari denied. Reported below: 801 F. 3d 302.

No. 15–9313. CALKINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 795 F. 3d 896.

No. 15–9353. TOWNSEND *v.* CITY OF BELOIT, WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 2016 WI 2, 365 Wis. 2d 745, 872 N. W. 2d 670.

No. 15–9461. BELCHER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 515.

No. 15–9481. HAJDA *v.* UNIVERSITY OF KANSAS HOSPITAL AUTHORITY ET AL. Ct. App. Kan. Certiorari denied. Reported below: 51 Kan. App. 2d 761, 356 P. 3d 1.

No. 15–9493. CHOY *v.* COMCAST CABLE COMMUNICATIONS, LLC. C. A. 3d Cir. Certiorari denied. Reported below: 629 Fed. Appx. 362.

No. 15–9585. KEMPTON *v.* J. C. PENNEY CORP., INC. C. A. 5th Cir. Certiorari denied.

No. 15–9600. EVANS *v.* CITY OF SEATTLE, WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 184 Wash. 2d 856, 366 P. 3d 906.

No. 15–9794. SLADE *v.* CITY OF MARSHALL, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 814 F. 3d 263.

No. 16–66. MCNEESE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 819 F. 3d 922.

No. 16–76. COOPER *v.* SQUARE, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 645 Fed. Appx. 1014.

No. 16–229. COPE, AKA CITIZENS FOR OBJECTIVE PUBLIC EDUCATION, INC., ET AL. *v.* KANSAS STATE BOARD OF EDUCATION ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 821 F. 3d 1215.

No. 16–289. PURDUE PHARMA L. P. ET AL. *v.* EPIC PHARMA, LLC, ET AL.; and

No. 16–296. GRUNENTHAL GMBH *v.* TEVA PHARMACEUTICALS USA, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 811 F. 3d 1345.

No. 16–290. PAYNE *v.* UNIVERSITY OF SOUTHERN MISSISSIPPI ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 409.

No. 16–314. ARRINGTON *v.* CHAVEZ. C. A. 10th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 590.

No. 16–354. CAULER *v.* LEHIGH VALLEY HOSPITAL, INC., DBA LEHIGH VALLEY HOSPITAL & HEALTH NETWORK. C. A. 3d Cir. Certiorari denied. Reported below: 654 Fed. Appx. 69.

No. 16–375. DAVIDSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 289.

No. 16–380. M. B. N. S. *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 222 So. 3d 383.

No. 16–403. ELKHARWILY *v.* MAYO HOLDING CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 823 F. 3d 462.

No. 16–406. TUKA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 652 Fed. Appx. 99.

No. 16–410. DANI *v.* MILLER, OKLAHOMA STATE TREASURER, ET AL. Sup. Ct. Okla. Certiorari denied. Reported below: 2016 OK 35, 374 P. 3d 779.

No. 16–417. AMIDON ET AL. *v.* CALIFORNIA EX REL. FIRE INSURANCE EXCHANGE ET AL. Ct. App. Cal., 2d App. Dist., Div. 3. Certiorari denied.

No. 16–422. ASSAF *v.* TRINITY MEDICAL CENTER. C. A. 7th Cir. Certiorari denied. Reported below: 821 F. 3d 847.

No. 16–426. FLINT *v.* CHAUVIN, JUDGE, CIRCUIT COURT OF KENTUCKY, JEFFERSON COUNTY. C. A. 6th Cir. Certiorari denied.

No. 16–427. FIGUEROA *v.* LINK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–429. WILLES *v.* LINN COUNTY, OREGON, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 444.

No. 16–447. CALLOWAY *v.* BANK OF AMERICA CORP. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 578.

No. 16–456. ELLIS ET UX. *v.* LEMONS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 697.

No. 16–491. HISLOP *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 383 Mont. 482, 373 P. 3d 834.

No. 16–5009. MACPHEAT *v.* REED. Sup. Ct. Mont. Certiorari denied. Reported below: 383 Mont. 546.

No. 16–5055. PARRILLA-FUENTES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 16–5099. ADKINS *v.* JOCHEM ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 642 Fed. Appx. 270.

No. 16–5551. ACKERMAN *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 51 N. E. 3d 171.

No. 16–5874. WILSON *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–5876. SALLIE *v.* SELLERS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 16–5877. SHARRIEFF *v.* JOHNSON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–5881. MAYS *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–5885. SMITH *v.* CONNECTIONS COMMUNITY SUPPORT PROGRAMS, INC., ET AL. Sup. Ct. Del. Certiorari denied. Reported below: 145 A. 3d 430.

No. 16–5886. TOVAR *v.* BAUGHMAN, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–5887. WALKER *v.* CARTLEDGE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 963.

No. 16–5892. STEVENSON *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–5896. CROSS *v.* PHELPS COUNTY, MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied.

No. 16–5899. WATTS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 16–5900. SINGLETON *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 187 So. 3d 1252.

No. 16–5907. WASHINGTON *v.* O'NEAL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 261.

No. 16–5914. BANDLER *v.* BPCM NYC, LTD., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 631 Fed. Appx. 71.

No. 16–5915. LEGATE *v.* COLLIER, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE. C. A. 5th Cir. Certiorari denied. Reported below: 822 F. 3d 207.

No. 16–5917. BOONE *v.* KENNEDY, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 16–5919. ROTHER *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 648 Fed. Appx. 381.

No. 16–5923. PAN *v.* CITY OF SUNNYVALE, CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 16–5926. VAN BUREN *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist., Div. 5. Certiorari denied.

No. 16–5932. EARLS *v.* DITTMANN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 16–5934. ROBERTSON *v.* BROWN, SUPERINTENDENT, WABASH VALLEY CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 16–5940. TAVARES *v.* UNITED AIRLINES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 108.

No. 16–5943. SALAZAR *v.* PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 16–5968. OWEISS *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 223 Md. App. 790.

No. 16–5999. CARROLL *v.* NICHOLLS. Ct. App. Colo. Certiorari denied.

No. 16–6067. HART ET AL. *v.* BENTON COUNTY, OREGON SHERIFF'S OFFICE, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 270.

No. 16–6093. DAVENPORT *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 189 So. 3d 761.

No. 16–6160. ANDERSON *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–6166. BROOKS *v.* MAIDA ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–6168. HARPER *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 184 So. 3d 521.

No. 16–6177. AMBERT *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 184 So. 3d 518.

No. 16–6181. DYE *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 291 Neb. 989, 870 N. W. 2d 628.

No. 16–6193. HAYNIE *v.* HOLLAND, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6199. NUNEZ *v.* GARMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–6210. COLEY *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 635 Fed. Appx. 126.

No. 16–6247. PERNELL *v.* LEWIS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 167.

No. 16–6261. TRYBOSKI *v.* PENNSYLVANIA STATE UNIVERSITY. Super. Ct. Pa. Certiorari denied. Reported below: 134 A. 3d 484.

No. 16–6269. EDWARDS *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 16–6287. NUNEZ-MIROLA *v.* LYNCH, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 485.

No. 16–6289. SING *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 646.

No. 16–6293. JANAKIEVSKI *v.* GRIFFIN, EXECUTIVE DIRECTOR, ROCHESTER PSYCHIATRIC CENTER. C. A. 2d Cir. Certiorari denied.

No. 16–6323. COLEMAN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 16–6327. DAVISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 179.

No. 16–6344. KOH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–6347. LOCKE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 815.

No. 16–6348. ROSS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 837 F. 3d 85.

No. 16–6359. KRIVI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 16–6360. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–6370. TEGELER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 903.

No. 16–6378. GALINDO SIFUENTES *v.* BRAZELTON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 825 F. 3d 506.

No. 16–6389. BENEVIDES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 723.

No. 16–6391. VARGAS-ORTIZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 699.

No. 16–6396. BARNETT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–6406. REYES-RIVERA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 812 F. 3d 79.

No. 16–6412. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 951.

No. 16–5468. FORD *v.* ROHR ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 642 Fed. Appx. 269.

No. 16–6362. KISSI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 649 Fed. Appx. 318.

Rehearing Denied

No. 15–1374. WILLIAMS *v.* PEREZ, SECRETARY OF LABOR, *ante*, p. 818;

No. 15–1449. WALDO ET UX. *v.* BANK OF NEW YORK MELLON ET AL., *ante*, p. 822;

No. 15–9361. FISHER *v.* UNITED STATES, 579 U. S. 935;

No. 15–9629. BELANUS *v.* CLARK ET AL., *ante*, p. 849;

No. 16–5140. HOPKINS *v.* JPMORGAN CHASE BANK, N. A., ET AL., *ante*, p. 883;

No. 16–5180. JONES *v.* CALIFORNIA, *ante*, p. 886;

No. 16–5309. MESSER *v.* CALIFORNIA, *ante*, p. 893; and

No. 16–5345. GARRY *v.* AMERICAN STANDARD TRANE, INC., ET AL., *ante*, p. 895. Petitions for rehearing denied.

NOVEMBER 17, 2016

Certiorari Dismissed

No. 15–961. VISA INC. ET AL. *v.* OSBORN ET AL.; and

No. 15–962. VISA INC. ET AL. *v.* STOUMBOS ET AL. C. A. D. C. Cir. [Certiorari granted, 579 U. S. 940.] These cases were granted to resolve "[w]hether allegations that members of a business association agreed to adhere to the association's rules and possess governance rights in the association, without more, are sufficient to plead the element of conspiracy in violation of Section 1 of the Sherman Act . . . ." Pets. for Cert. in No. 15–961, p. i, and No. 15–962, p. i. After "[h]aving persuaded us to grant certiorari" on this issue, however, petitioners "chose to rely on a different argument" in their merits briefing. *City and County of San Francisco* v. *Sheehan*, 575 U. S. 600, 608 (2015). The Court, therefore, orders that the writs in these cases be dismissed as improvidently granted.

NOVEMBER 22, 2016

Miscellaneous Order

No. 14–1538. LIFE TECHNOLOGIES CORP. ET AL. *v.* PROMEGA CORP. C. A. Fed. Cir. [Certiorari granted, 579 U. S. 927.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument filed out of time granted.

NOVEMBER 28, 2016

Certiorari Granted—Vacated and Remanded

No. 16–351. HUNTER ET AL. *v.* COLE ET AL. C. A. 5th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Mullenix* v. *Luna*, 577 U. S. 7 (2015) (*per curiam*). Reported below: 802 F. 3d 752.

No. 16–5596. LAMB *v.* UNITED STATES. C. A. 8th Cir. Reported below: 638 Fed. Appx. 575; and

No. 16–5660. STEINER *v.* UNITED STATES. C. A. 3d Cir. Reported below: 815 F. 3d 128. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Mathis* v. *United States*, 579 U. S. 500 (2016).

Certiorari Dismissed

No. 16–6048. HODGE ET UX. *v.* COLLEGE OF SOUTHERN 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: 646 Fed. Appx. 294.

No. 16–6110. FOURSTAR *v.* UNITED STATES. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 16–6188. HILL *v.* TRAXLER, CHIEF JUDGE, UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT, 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: 627 Fed. Appx. 236.

No. 16–6453. WOODWORTH *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.

No. 16–6482. WATSON *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA. C. A. D. C. Cir.; and

No. 16–6483. WATSON *v.* JARVIS, WARDEN. C. A. 11th Cir. Reported below: 644 Fed. Appx. 996. Motions of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

Miscellaneous Orders

No. 16M54. THOMAS *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS;

No. 16M55. WARD *v.* HOWARD;

No. 16M56. STAUNTON *v.* MINNESOTA ET AL.; and

No. 16M57. PATRICK *v.* HUBBARD, WARDEN. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 16M58. SEALED *v.* SEALED. Motion for leave to file petition for writ of certiorari under seal granted.

No. 145, Orig. DELAWARE *v.* PENNSYLVANIA ET AL.; and

No. 146, Orig. ARKANSAS ET AL. *v.* DELAWARE. Motion of Arkansas et al. for leave to amend bill of complaint granted. [For earlier order herein, see *ante*, p. 808.]

No. 147, Orig. NEW MEXICO *v.* COLORADO. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 15–118. HERNANDEZ ET AL. *v.* MESA ET AL. C. A. 5th Cir. [Certiorari granted, *ante*, p. 915.] Motion of petitioners to dispense with printing joint appendix granted.

No. 15–1498. LYNCH, ATTORNEY GENERAL *v.* DIMAYA. C. A. 9th Cir. [Certiorari granted, 579 U. S. 969.] Motion of petitioner to dispense with printing joint appendix granted.

No. 15–9100. DAVID *v.* AMERICAN TELEPHONE & TELEGRAPH CO. ET AL. C. A. 11th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 802] denied.

No. 15–9477. BENITEZ *v.* MISSISSIPPI. Ct. App. Miss. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 810] denied.

No. 15–9803. NYANJOM *v.* HAWKER BEECHCRAFT CORP. C. A. 10th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 811] denied.

No. 15–9843. EVANS *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 811] denied.

No. 16–5135. APGAR *v.* MCDONALD, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 811] denied.

No. 16–5163. ROSS *v.* TODD. C. A. 11th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 805] denied.

No. 16–5370. FOSTER *v.* HOLDER. C. A. 5th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 811] denied.

No. 16–5371. FOSTER *v.* HOLDER. C. A. 5th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 811] denied.

No. 16–6089. WHITE *v.* MATTHEWS ET AL. Ct. App. Mich.;

No. 16–6195. HOIST *v.* NEW JERSEY ET AL. C. A. 3d Cir.;

No. 16–6236. BROOKS *v.* EMPLOYMENT DEPARTMENT ET AL. Ct. App. Ore.;

No. 16–6257. MCGRIFF *v.* STATE CIVIL SERVICE COMMISSION ET AL. C. A. 3d Cir.;

No. 16–6278. IN RE CHRISTENSON;

No. 16–6382. FINLEY *v.* EVANS. C. A. 8th Cir.; and

No. 16–6390. ALVAREZ *v.* UNITED STATES. C. A. 11th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 19, 2016, 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. 16–6608. IN RE FREITAG;
No. 16–6681. IN RE ZONE; and
No. 16–6731. IN RE ANTWINE. Petitions for writs of habeas corpus denied.

No. 16–6632. IN RE FIGUEROA;
No. 16–6675. IN RE HASTINGS; and
No. 16–6748. IN RE SINGLETON. 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. 16–6196. IN RE GRAHAM. Petition for writ of mandamus denied.

No. 16–6223. IN RE PIANKA. 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. 16–6003. IN RE AZIZ. Petition for writ of mandamus and/or prohibition denied.

No. 16–6484. IN RE COCHRAN. 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. 16–6175. IN RE DAVID. Petition for writ of prohibition denied.

Certiorari Denied

No. 15–1479. KUBIAK *v.* CITY OF CHICAGO, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 810 F. 3d 476.

No. 15–1490. STANFORD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 805 F. 3d 557.

No. 15–9428. CARTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 606 Fed. Appx. 94.

No. 15–9489. RAINBOW *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 813 F. 3d 1097.

No. 15–9718. TAMAYO-BAEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 820 F. 3d 308.

No. 15–9776. CHEPAK *v.* NEW YORK CITY HEALTH AND HOSPITALS CORPORATION. C. A. 2d Cir. Certiorari denied. Reported below: 643 Fed. Appx. 62.

No. 15–9815. FLINT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–63. DBN HOLDING, INC., ET AL. *v.* INTERNATIONAL TRADE COMMISSION. C. A. Fed. Cir. Certiorari denied. Reported below: 805 F. 3d 1328.

No. 16–128. CARROLL, INDIVIDUALLY AND AS HEIR OF CARROLL, DECEASED, ET AL. *v.* ELLINGTON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 800 F. 3d 154.

No. 16–153. CAIREL ET AL. *v.* ALDERDEN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 821 F. 3d 823.

No. 16–171. JAMGOTCHIAN *v.* KENTUCKY HORSE RACING COMMISSION ET AL. Sup. Ct. Ky. Certiorari denied. Reported below: 488 S. W. 3d 594.

No. 16–201. SOVEREIGN WEALTH FUND SAMRUK-KAZYNA JSC, AKA NATIONAL WELFARE FUND SAMRUK-KAZYNA *v.* ATLANTIC HOLDINGS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 813 F. 3d 98.

No. 16–210. PFEIL *v.* ST. MATTHEW EVANGELICAL LUTHERAN CHURCH OF THE UNALTERED AUGSBURG CONFESSION OF WORTHINGTON, NOBLES COUNTY, MINNESOTA, ET AL. Sup. Ct. Minn. Certiorari denied. Reported below: 877 N. W. 2d 528.

No. 16–220. SYMONS INTERNATIONAL GROUP, INC., ET AL. *v.* CONTINENTAL CASUALTY CO. C. A. 7th Cir. Certiorari denied. Reported below: 817 F. 3d 979.

No. 16–242. TEXAS PACKAGE STORES ASSN., INC. *v.* FINE WINE & SPIRITS OF NORTH TEXAS, LLC, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 820 F. 3d 730.

No. 16–324. BEZERRA *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied. Reported below: 485 S. W. 3d 133.

No. 16–325. WENKE *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist., Div. 1. Certiorari denied.

No. 16–328. LeFever *v.* Ferguson et al. C. A. 6th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 438.

No. 16–330. Lee *v.* Bevington. C. A. 4th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 275.

No. 16–335. Anderson et al. *v.* Aurora Loan Services, LLC, et al. C. A. 9th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 550.

No. 16–340. Deters *v.* Kentucky Bar Assn. et al. C. A. 6th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 468.

No. 16–344. Havens *v.* Mobex Network Services, LLC, et al. C. A. 3d Cir. Certiorari denied. Reported below: 820 F. 3d 80.

No. 16–350. Ledgerwood *v.* Ocwen Loan Servicing, LLC, et al. C. A. 2d Cir. Certiorari denied.

No. 16–353. Robin Singh Educational Services, Inc., et al. *v.* Testmasters Educational Services, Inc. C. A. 5th Cir. Certiorari denied. Reported below: 799 F. 3d 437.

No. 16–355. J. W., By and Through His Father and Next Friend Wikle *v.* Carrier et al. C. A. 4th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 263.

No. 16–359. DataTreasury Corp. *v.* JPMorgan Chase Bank, N. A. C. A. 5th Cir. Certiorari denied. Reported below: 823 F. 3d 1006.

No. 16–363. Ghogomu *v.* Delta Airlines Global Services, LLC, et al. C. A. 10th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 701.

No. 16–374. Stancu *v.* Pace Realty Corp. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 16–376. Milwaukee Police Assn. et al. *v.* City of Milwaukee, Wisconsin. Sup. Ct. Wis. Certiorari denied. Reported below: 2016 WI 47, 369 Wis. 2d 272, 882 N. W. 2d 333.

No. 16–378. Flint *v.* Jackson et al. Ct. App. Ky. Certiorari denied.

No. 16–379. FLINT *v.* STILGER ET AL. Ct. App. Ky. Certiorari denied.

No. 16–381. KITRAS ET AL. *v.* TOWN OF AQUINNAH, MASSACHUSETTS, ET AL. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 474 Mass. 132, 49 N. E. 3d 198.

No. 16–385. MEDINA ORTIZ *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 16–386. RUSHDAN *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 226 Md. App. 724.

No. 16–411. COOK *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 16–418. OKLEVUEHA NATIVE AMERICAN CHURCH OF HAWAII, INC., ET AL. *v.* LYNCH, ATTORNEY GENERAL, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 828 F. 3d 1012.

No. 16–419. BENDER *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 653 Fed. Appx. 31.

No. 16–434. COLLETT, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF GOODE *v.* BERLANGA. C. A. 6th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 427.

No. 16–442. SHOTT *v.* KATZ. C. A. 7th Cir. Certiorari denied. Reported below: 829 F. 3d 494.

No. 16–451. JAYE *v.* OAK KNOLL VILLAGE CONDOMINIUM OWNERS ASSN., INC., ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–465. FJORD ET AL. *v.* KELLEHER. C. A. 5th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 169.

No. 16–468. GREAT STUFF, INC., ET AL. *v.* COTTER. Sup. Ct. Del. Certiorari denied. Reported below: 141 A. 3d 1018.

No. 16–485. MID-CITY NATIONAL BANK OF CHICAGO ET AL. *v.* CITY OF JOLIET, ILLINOIS. C. A. 7th Cir. Certiorari denied. Reported below: 825 F. 3d 827.

No. 16–501. BOUNDS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 826 F. 3d 363.

No. 16–502. COTTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 823 F. 3d 430.

No. 16–506. FRISON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 825 F. 3d 437.

No. 16–524. PETRIE *v.* VIRGINIA BOARD OF MEDICINE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 648 Fed. Appx. 352.

No. 16–526. RAND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 835 F. 3d 451.

No. 16–537. NAKELL *v.* BARTH. C. A. 4th Cir. Certiorari denied. Reported below: 648 Fed. Appx. 324.

No. 16–540. GREEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 828 F. 3d 331.

No. 16–547. WHITE *v.* CITY OF CHICAGO, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 829 F. 3d 837.

No. 16–571. SCHLEICHER *v.* PREFERRED SOLUTIONS, INC. C. A. 6th Cir. Certiorari denied. Reported below: 831 F. 3d 746.

No. 16–5124. ALVARADO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 816 F. 3d 242.

No. 16–5278. RICKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 894.

No. 16–5314. FELDMAN ET VIR *v.* H. A. BERKHEIMER, INC., DBA BERKHEIMER TAX ADMINISTRATOR, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 637 Fed. Appx. 63.

No. 16–5393. HOLLAND *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. 8th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 263.

No. 16–5592. MONTES-NUNEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 350.

No. 16–5669. ANDREWS *v.* CREWS, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 16–5697. TAYLOR *v.* CULLIVER, SUPERINTENDENT, HOLMAN CORRECTIONAL FACILITY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 809.

No. 16–5714. ALLEN *v.* WILLIAMS ET AL. Ct. App. Cal., 2d App. Dist., Div. 8. Certiorari denied.

No. 16–5754. MIKE *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 195 So. 3d 378.

No. 16–5829. THORNBERG *v.* STATE FARM FIRE & CASUALTY CO. ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 578.

No. 16–5947. SEPTOWSKI *v.* COMMISSION FOR LAWYER DISCIPLINE OF THE STATE BAR OF TEXAS. Sup. Ct. Tex. Certiorari denied.

No. 16–5951. MADRID *v.* GRIFFIN, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 16–5955. WILLIAMS *v.* CARTLEDGE, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 190.

No. 16–5957. JOHNSON *v.* BEACH PARK SCHOOL DISTRICT. C. A. 7th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 501.

No. 16–5970. RYDER *v.* ROYAL, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 810 F. 3d 724.

No. 16–5972. LIGGAN *v.* KIRKPATRICK, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 652 Fed. Appx. 41.

No. 16–5978. SALADO *v.* MOHAM, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 562.

No. 16–5982. DULCIO *v.* HALL, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–5985. SMALLS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 128 App. Div. 3d 1229, 9 N. Y. S. 3d 700.

No. 16–5989. WIGGINS *v.* ROCKFORD HOUSING AUTHORITY ET AL. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 16–5991. JONES *v.* BUTLER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 137.

No. 16–5992. KOH *v.* DOE ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–5993. MANNING *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 16–5997. CRUITT *v.* ALABAMA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 909.

No. 16–5998. BRITT *v.* CONWAY, SHERIFF, GWINNETT COUNTY, GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 16–6000. NIVENS *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied.

No. 16–6001. COX *v.* FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 187 So. 3d 1236.

No. 16–6005. BOHANNAN *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–6006. SINGER *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 57 N. E. 3d 900.

No. 16–6009. DELGADO *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–6011. SMITH *v.* DALLAS COUNTY HOSPITAL DISTRICT, DBA PARKLAND HEALTH AND HOSPITAL SYSTEM. C. A. 5th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 279.

No. 16–6019. ECKLES *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 222 So. 3d 390.

No. 16–6027. CAROLINA *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 16–6028. COOK *v.* PFEIFFER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6029. COLEMAN *v.* CIRCUIT COURT OF WISCONSIN, MILWAUKEE COUNTY. Sup. Ct. Wis. Certiorari denied.

No. 16–6030. CONNER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 16–6031. HARRIOTT *v.* SHEAHAN, SUPERINTENDENT, FIVE POINTS CORRECTIONAL FACILITY. Ct. App. N. Y. Certiorari denied. Reported below: 27 N. Y. 3d 1028, 53 N. E. 3d 740.

No. 16–6033. BEAN *v.* TRIBLEY ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–6034. MITCHELL *v.* ELDRIDGE ET AL. C. A. 8th Cir. Certiorari denied.

No. 16–6037. MIXON *v.* MISSISSIPPI PAROLE BOARD ET AL. Sup. Ct. Miss. Certiorari denied.

No. 16–6040. FARRAR *v.* MCNESBY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 639 Fed. Appx. 903.

No. 16–6041. GIMENEZ *v.* OCHOA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 821 F. 3d 1136.

No. 16–6047. RIETHMILLER *v.* FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION. Sup. Ct. Fla. Certiorari denied.

No. 16–6052. HOLLAND *v.* ALLBAUGH, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 824 F. 3d 1222.

No. 16–6056. TAYLOR *v.* BERRY, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 16–6060. KNIEST ET AL. *v.* MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 16–6068. HANSON-HODGE *v.* COLVIN, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 176.

No. 16–6077. DUNBAR *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 1. Certiorari denied.

No. 16–6084. RAMBARAN *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 821 F. 3d 1325.

No. 16–6086. REMENAR *v.* EMPLOYMENT DEPARTMENT ET AL. Ct. App. Ore. Certiorari denied.

No. 16–6087. YANEY *v.* SUPERIOR COURT OF CALIFORNIA, RIVERSIDE COUNTY, ET AL. Sup. Ct. Cal. Certiorari denied.

No. 16–6095. WELLS *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 16–6102. CHAPALET *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 16–6103. COLEMAN *v.* JONES, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–6105. CONNELLY *v.* SEMPLE, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTION. C. A. 2d Cir. Certiorari denied.

No. 16–6106. HIGGINBOTHAM *v.* LOUISIANA. C. A. 5th Cir. Certiorari denied. Reported below: 817 F. 3d 217.

No. 16–6118. YANEY *v.* SUPERIOR COURT OF CALIFORNIA, RIVERSIDE COUNTY, ET AL. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 16–6121. TURNER *v.* PORRINO, ATTORNEY GENERAL OF NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–6122. WINDSOR *v.* SNAP ET AL. C. A. 8th Cir. Certiorari denied.

No. 16–6123. HOWELL *v.* BASINGER. C. A. 7th Cir. Certiorari denied.

No. 16–6125. HOWELL *v.* COLLIN COUNTY, TEXAS DETENTION FACILITY, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 600 Fed. Appx. 298.

No. 16–6127. CORRAL HERNANDEZ *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 16–6128. GARDNER *v.* ARTUS, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 16–6129. FIELDS *v.* SPRADER, DEPUTY WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–6131. FALANA *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 16–6136. OWENS *v.* PRINGLE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 16–6137. SAM *v.* GOODWIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 329.

No. 16–6139. BECKETT *v.* TICE, ACTING SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–6141. SULTAANA *v.* CORRIGAN, JUDGE, COURT OF COMMON PLEAS, CUYAHOGA COUNTY, OHIO, ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–6142. CASEY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 123241–U.

No. 16–6143. GAFFNEY *v.* BECKSTROM, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–6144. HERRINGTON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 291 Va. 181, 781 S. E. 2d 561.

No. 16–6145. GIPSON *v.* TAMPKINS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6147. JONES *v.* EGELHOF ET AL. C. A. 8th Cir. Certiorari denied.

No. 16–6149. HUNTER *v.* MONTGOMERY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6150. HARDY *v.* DAVEY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–6152. GULLEY *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2015 IL App (2d) 131305–U.

No. 16–6153. GRAY *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 16–6156. CORBETT *v.* BRANKER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 185.

No. 16–6159. BARNES *v.* CORPENING, ADMINISTRATOR, MARION CORRECTIONAL CENTER. C. A. 4th Cir. Certiorari denied. Reported below: 648 Fed. Appx. 365.

No. 16–6162. THOMAS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 16–6164. GODFREY *v.* RUSSELL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 68.

No. 16–6169. FLINT *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 16–6171. JENNETTE *v.* THOMPSON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MERCER, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–6172. MALDONADO *v.* JEFFERSON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 648 Fed. Appx. 939.

No. 16–6176. CURRY *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 16–6184. HERRING *v.* MCEWEN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6200. MCKINLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 957.

No. 16–6226. BRADLEY *v.* KUNTZ ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 655 Fed. Appx. 56.

No. 16–6228. CLEMONS *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 16–6243. DEHLER *v.* MOHR, DIRECTOR, OHIO DEPARTMENT OF REHABILITATION AND CORRECTION. C. A. 6th Cir. Certiorari denied.

No. 16–6252. CLARK *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied.

No. 16–6272. CROWE *v.* LEWIS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 193.

No. 16–6275. CARTER *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 16–6276. COLEMAN *v.* HOFFNER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 804 F. 3d 816.

No. 16–6283. WRIGHT *v.* BAKER ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–6302. PAWELSKI *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 750.

No. 16–6305. SMITH *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 16–6310. TURNER *v.* MONTGOMERY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 819 F. 3d 1171.

No. 16–6317. CREASON *v.* SINGH ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 462.

No. 16–6319. JORDAN *v.* ORMOND. C. A. D. C. Cir. Certiorari denied.

No. 16–6321. MUHAMMAD *v.* JACKSON. C. A. 4th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 180.

No. 16–6328. WILSON *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied.

No. 16–6333. LEPRE *v.* NEW YORK STATE INSURANCE FUND ET AL. C. A. 2d Cir. Certiorari denied.

No. 16–6334. PEEL *v.* KERNAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 440.

No. 16–6349. DEAN *v.* SPEARMAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 555.

No. 16–6351. DAVIS *v.* MCCABE, INTERIM SUPERINTENDENT, HAMPTON ROADS REGIONAL JAIL, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 50.

No. 16–6361. MELLEN *v.* UNITED STATES PARK POLICE ET AL. C. A. D. C. Cir. Certiorari denied.

No. 16–6363. BRITFORD *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied.

No. 16–6364. SPENCE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 446.

No. 16–6365. BELL *v.* BOOKER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 58.

No. 16–6373. SANDLAIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–6374. LY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 503.

No. 16–6375. MANNING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 71.

No. 16–6376. LEE *v.* MAYE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 297.

No. 16–6379. SINGH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–6380. HALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 653.

No. 16–6383. HARRISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 376.

No. 16–6384. BUSWELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 661 Fed. Appx. 802.

No. 16–6385. DONEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 561.

No. 16–6386. DE JESUS-CONCEPCION *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 652 Fed. Appx. 134.

No. 16–6395. BORGES *v.* DAVEY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 303.

No. 16–6400. FINCH *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 848.

No. 16–6402. HAMILTON *v.* DAVILA. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 16–6404. MILLER *v.* CAMERON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–6409. SMITH *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 2016 WI 23, 367 Wis. 2d 483, 878 N. W. 2d 135.

No. 16–6411. WOMACK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 646 Fed. Appx. 258.

No. 16–6413. TUYTJENS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 16–6418. CADET *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 904.

No. 16–6421. WALKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 851.

No. 16–6422. LUIS VILLASENOR *v.* DRUG ENFORCEMENT ADMINISTRATION. C. A. 9th Cir. Certiorari denied.

No. 16–6424. DUBOSE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–6425. SCOTT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 475.

No. 16–6426. RIVERA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 825 F. 3d 59.

No. 16–6427. ORNELAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 828 F. 3d 1018.

No. 16–6428. HOPKINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 824 F. 3d 726.

No. 16–6429. RUIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–6431. EVANS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 59.

No. 16–6432. SALTZER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–6438. A. C. *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2016 IL App (1st) 153047, 54 N. E. 3d 952.

No. 16–6439. SINHA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 1015.

No. 16–6443. MANNING *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 397.

No. 16–6448. ARCHIE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 16–6450. BLOUNT *v.* WHITMAN WALKER CLINIC ET AL. Ct. App. D. C. Certiorari denied. Reported below: 139 A. 3d 903.

No. 16–6452. WONSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 144 A. 3d 1.

No. 16–6463. ABNEY *v.* LEWIS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 145.

No. 16–6465. BIYIKLIOGLU, AKA BRYAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 274.

No. 16–6470. LE SCHACK *v.* LE SCHACK. Super. Ct. Pa. Certiorari denied. Reported below: 136 A. 3d 1036.

No. 16–6477. AYODELE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 296.

No. 16–6486. RODRIGUEZ-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 657 Fed. Appx. 252.

No. 16–6487. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 579.

No. 16–6488. MAYES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 650 Fed. Appx. 787.

No. 16–6491. AGUILERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 213.

No. 16–6492. VAZQUEZ-MENDEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 655 Fed. Appx. 1.

No. 16–6493. ELLIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–6500. MCGOWAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 531.

No. 16–6501. MIDDLEMASS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 16–6502. MCDONALD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 660 Fed. Appx. 648.

No. 16–6505. BENNETT *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 139 A. 3d 903.

No. 16–6506. RAINNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 143.

No. 16–6507. RODRIGUEZ-ISAAC *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 16–6508. HERRERA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 829 F. 3d 689.

No. 16–6509. GOMEZ, AKA GUZMAN *v.* UNITED STATES PAROLE COMMISSION. C. A. 5th Cir. Certiorari denied. Reported below: 829 F. 3d 398.

No. 16–6512. GUTIERREZ-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 871.

No. 16–6526. LIOUNIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 639 Fed. Appx. 731.

No. 16–6531. BETHEA *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 16–6533. RIVERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 444.

No. 16–6534. STEPPES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 697.

No. 16–6536. PATTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 324.

No. 16–6538. GADSDEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 192.

No. 16–6544. GUARASCIO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 194.

No. 16–6547. HOGAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–6549. RICO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–6555. WOMACK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 646 Fed. Appx. 258.

No. 16–6558. PLOUFFE *v.* CECALLOS ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–6559. VAUGHAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 726.

No. 16–6570. JIAU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 644 Fed. Appx. 92.

No. 16–6571. LUGO-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 833 F. 3d 453.

No. 16–6577. SILICANI *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 633.

No. 16–6578. ZUAREZ-MALDONADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 745.

No. 16–6579. LATHAM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 857.

No. 16–6583. CLARK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 569.

No. 16–6586. MITCHELL *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 816 F. 3d 865.

No. 16–6588. PALMER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 16–6595. CORNEJO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 379.

No. 16–6597. RIGGS *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA. C. A. 11th Cir. Certiorari denied.

No. 16–6599. RICHARDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 156.

No. 16–6610. FULTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–6614. HEMPHILL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 642 Fed. Appx. 448.

No. 16–6615. VALDEZ-CORRAL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 506.

No. 16–6616. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 427.

No. 16–6617. PIERRE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 861.

No. 16–6621. IBARRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 290.

No. 16–323. AVCO CORP. *v.* SIKKELEE, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF SIKKELEE, DECEASED. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 822 F. 3d 680.

No. 16–329. ASSA'AD-FALTAS *v.* CARTER ET AL. C. A. 4th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 610 Fed. Appx. 245.

No. 16–5977. REYNOLDS *v.* JOHNSON, SHERIFF, WILLIAMSBURG COUNTY, SOUTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari before judgment denied.

No. 16–6459. PATTERSON *v.* BEEMER, ATTORNEY GENERAL OF PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. JUS-

TICE ALITO took no part in the consideration or decision of this petition.

No. 16–6464. ALEXANDER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 651 Fed. Appx. 191.

Rehearing Denied

No. 15–1334. VUKSICH *v.* IMAGING3, INC., *ante*, p. 817;

No. 15–1395. ISRAEL SANCHEZ *v.* KERRY, SECRETARY OF STATE, ET AL., *ante*, p. 819;

No. 15–1418. LAGIOS *v.* GOLDMAN ET AL., *ante*, p. 820;

No. 15–1441. SERRA *v.* BANK OF NEW YORK MELLON, *ante*, p. 821;

No. 15–1520. MOORE *v.* LIGHTSTORM ENTERTAINMENT, INC., ET AL., *ante*, p. 825;

No. 15–7820. MOREIRA DA SILVA *v.* FLORIDA, 577 U. S. 1237;

No. 15–9002. MORRIS *v.* WESTBROOKS, WARDEN, *ante*, p. 829;

No. 15–9040. STOGSDILL *v.* SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES *ante*, p. 829;

No. 15–9136. TORRES *v.* UNKNOWN PARTY, *ante*, p. 830;

No. 15–9207. PRATER *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 832;

No. 15–9316. CIOTTA *v.* BRAZELTON, WARDEN, *ante*, p. 835;

No. 15–9346. ROBINSON *v.* CHESAPEAKE BANK OF MARYLAND ET AL., *ante*, p. 836;

No. 15–9456. BRAVATA *v.* UNITED STATES, *ante*, p. 841;

No. 15–9465. APONTE *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 841;

No. 15–9619. IN RE SANTOS-PINEDA, *ante*, p. 813;

No. 15–9656. STANCIK *v.* DEUTSCHE NATIONAL BANK, *ante*, p. 851;

No. 15–9661. WILLIAMS *v.* MCDONALD, SECRETARY OF VETERANS AFFAIRS, *ante*, p. 851;

No. 15–9668. RAHMANI *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 851;

No. 15–9755. MURRAY *v.* UNITED STATES, *ante*, p. 856;

No. 15–9779. ROMERO *v.* SAUSCEDA ET AL., *ante*, p. 858;

No. 15–9786. MCDONALD *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 858;

No. 15–9801. SUMMERS *v.* COLVIN, ACTING COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 859;

No. 15–9844. FERNANDEZ *v.* ROMERO, WARDEN, *ante*, p. 861;

No. 15–9846. HENDERSON *v.* ROBINSON, WARDEN, *ante*, p. 861;

No. 16–40. HOUSTON ET AL. *v.* QUEEN ET AL., *ante*, p. 868;

No. 16–170. BLEVINS *v.* HUDSON ET AL., *ante*, p. 874;

No. 16–5039. MILLER *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 878;

No. 16–5047. CARLIN *v.* BEZOS ET AL., *ante*, p. 878;

No. 16–5067. ENDACOTT *v.* UNITED STATES, *ante*, p. 879;

No. 16–5071. COX *v.* HALL, WARDEN, *ante*, p. 879;

No. 16–5088. JOHNSON *v.* APPLE, INC., ET AL., *ante*, p. 880;

No. 16–5100. ABE *v.* MICHIGAN STATE UNIVERSITY BOARD OF TRUSTEES, *ante*, p. 881;

No. 16–5145. WILLIAMS, AKA STEWART *v.* PENNSYLVANIA DEPARTMENT OF CORRECTIONS ET AL., *ante*, p. 884;

No. 16–5166. THOMAS *v.* OLENS, ATTORNEY GENERAL OF GEORGIA, ET AL., *ante*, p. 885;

No. 16–5176. SMITH *v.* KING'S DAUGHTERS AND SONS HOME, *ante*, p. 886;

No. 16–5213. IN RE BRACKEN, *ante*, p. 812;

No. 16–5255. MCDONALD *v.* CALIFORNIA, *ante*, p. 890;

No. 16–5279. APHAYAVONG *v.* CALIFORNIA, *ante*, p. 891;

No. 16–5336. SMITH *v.* UNITED STATES, *ante*, p. 895;

No. 16–5369. AUSTIN *v.* FLORIDA, *ante*, p. 897;

No. 16–5404. ROBINSON *v.* PURCELL CONSTRUCTION CORP., *ante*, p. 898;

No. 16–5438. LISTER *v.* WASHINGTON, *ante*, p. 899;

No. 16–5486. RODGERS *v.* LANCASTER POLICE DEPARTMENT ET AL., *ante*, p. 922;

No. 16–5556. IN RE CRAWFORD, *ante*, p. 813;

No. 16–5581. IN RE WELLS-ALI, *ante*, p. 812;

No. 16–5614. CONEY *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 935;

No. 16–5694. JOHNSON *v.* OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION ET AL., *ante*, p. 936;

No. 16–5757. YOUNG *v.* UNITED STATES, *ante*, p. 908; and

No. 16–5785. SAMPSON *v.* UNITED STATES, *ante*, p. 926. Petitions for rehearing denied.

No. 15–1446. COMMIL USA, LLC *v.* CISCO SYSTEMS, INC., *ante*, p. 909. Petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 16–5054. SHEKHEM EL BEY *v.* CITY OF NEW YORK, NEW YORK, ET AL., *ante*, p. 910. Petition for rehearing denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

DECEMBER 2, 2016

Certiorari Granted

No. 15–1031. HOWELL *v.* HOWELL. Sup. Ct. Ariz. Certiorari granted. Reported below: 238 Ariz. 407, 361 P. 3d 936.

No. 15–1189. IMPRESSION PRODUCTS, INC. *v.* LEXMARK INTERNATIONAL, INC. C. A. Fed. Cir. Certiorari granted. Reported below: 816 F. 3d 721.

No. 16–254. WATER SPLASH, INC. *v.* MENON. Ct. App. Tex., 14th Dist. Certiorari granted. Reported below: 472 S. W. 3d 28.

No. 16–74. ADVOCATE HEALTH CARE NETWORK ET AL. *v.* STAPLETON ET AL. C. A. 7th Cir.;

No. 16–86. SAINT PETER'S HEALTHCARE SYSTEM ET AL. *v.* KAPLAN. C. A. 3d Cir.; and

No. 16–258. DIGNITY HEALTH ET AL. *v.* ROLLINS. C. A. 9th Cir. Certiorari granted, cases consolidated, and a total of one hour is allotted for oral argument. Reported below: No. 16–74, 817 F. 3d 517; No. 16–86, 810 F. 3d 175; No. 16–258, 830 F. 3d 900.

No. 16–369. COUNTY OF LOS ANGELES, CALIFORNIA, ET AL. *v.* MENDEZ ET AL. C. A. 9th Cir. Certiorari granted limited to Questions 1 and 3 presented by the petition. Reported below: 815 F. 3d 1178.

DECEMBER 5, 2016

Certiorari Dismissed

No. 16–6268. CARBAJAL *v.* WELLS FARGO BANK ET AL. Ct. App. Colo. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 16–6350. THORNTON *v.* BROWN, GOVERNOR OF CALIFORNIA, ET AL. C. A. 9th Cir. Motion of petitioner for leave to

proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. 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. 16–6619. HILL *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.

Miscellaneous Orders

No. 16M59. WADE *v.* ALAMANCE COUNTY DEPARTMENT OF SOCIAL SERVICES ET AL.;

No. 16M60. KAPLA *v.* FREED; and

No. 16M61. THIBES *v.* CALIFORNIA. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 16–6220. COOPER ET AL. *v.* UNITED STATES ET AL. C. A. 5th Cir.;

No. 16–6345. IN RE CHRISTENSON; and

No. 16–6456. NURITDINOVA *v.* CHILDREN'S HOSPITAL MEDICAL CENTER. C. A. 6th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 27, 2016, 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. 16–6818. IN RE WIMBUSH; and

No. 16–6868. IN RE BENNETT. Petitions for writs of habeas corpus denied.

No. 16–6270. IN RE DIXON; and

No. 16–6331. IN RE CHAVIS. Petitions for writs of mandamus denied.

No. 16–6303. IN RE SNIPES. 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. 15–1512. SMITH *v.* HOGAN, PRESIDENT OF THE UNIVERSITY OF CONNECTICUT, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 794 F. 3d 249.

No. 15–9256. MARDIS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 15–9508. EVANS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 15–9733. MCMILLAN *v.* MICHIGAN. Cir. Ct. Oakland County, Mich. Certiorari denied.

No. 16–37. TRUDEAU *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 812 F. 3d 578.

No. 16–137. CARLSON ET UX. *v.* DEL WEBB COMMUNITIES, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 817 F. 3d 867.

No. 16–146. RAJASEKARAN ET AL. *v.* HAZUDA, DIRECTOR, NEBRASKA SERVICE CENTER, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 3d 1095.

No. 16–193. HARRIS *v.* DUNN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–234. CONDA *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 16–235. SAMPSON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 832 F. 3d 37.

No. 16–251. MUEHLGAY ET AL. *v.* CITIGROUP INC. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 649 Fed. Appx. 110.

No. 16–263. GANIAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 824 F. 3d 199.

No. 16–391. BENNALLACK *v.* C. V. ET AL., MINORS, BY AND THROUGH THEIR GUARDIAN AD LITEM, VILLEGAS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 823 F. 3d 1252.

No. 16–409. JOHNSON *v.* CITY OF CANTON, MISSISSIPPI, ET AL. Ct. App. Miss. Certiorari denied. Reported below: 194 So. 3d 161.

No. 16–412. DAY-CARTEE ET AL. *v.* REGIONS BANK ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 817 F. 3d 299.

No. 16–416. VON HUGO *v.* FORMAS, SWEDISH RESEARCH COUNCIL FOR ENVIRONMENT, AGRICULTURAL SCIENCES AND SPATIAL PLANNING. C. A. 1st Cir. Certiorari denied.

No. 16–420. KIBE *v.* LYNCH, ATTORNEY GENERAL. C. A. 8th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 681.

No. 16–421. MARTIN *v.* BRAVENEC ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 838 F. 3d 442.

No. 16–425. FLINT *v.* BESHEAR, GOVERNOR OF KENTUCKY. C A 6th Cir. Certiorari denied

No. 16–430. CORRALES, PERSONAL REPRESENTATIVE OF THE ESTATE OF CORRALES, ET AL. *v.* IMPASTATO. C. A. 9th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 540.

No. 16–441. MOURAD ET AL. *v.* MARATHON PETROLEUM CO. LP. C. A. 6th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 792.

No. 16–459. SUNTRUST BANK *v.* BICKERSTAFF. Sup. Ct. Ga. Certiorari denied. Reported below: 299 Ga. 459, 788 S. E. 2d 787.

No. 16–486. FRANCIS *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 2016 ND 154, 882 N. W. 2d 270.

No. 16–520. KOVARIKOVA *v.* SOUTH ANNVILLE TOWNSHIP, LEBANON COUNTY AUTHORITY. C. A. 3d Cir. Certiorari denied. Reported below: 651 Fed. Appx. 127.

No. 16–549. ZIA SHADOWS, L. L. C. *v.* CITY OF LAS CRUCES, NEW MEXICO. C. A. 10th Cir. Certiorari denied. Reported below: 829 F. 3d 1232.

No. 16–554. ALTOBELLI *v.* HARTMANN ET AL. Sup. Ct. Mich. Certiorari denied. Reported below: 499 Mich. 284, 884 N. W. 2d 537.

No. 16–569. DOYLE *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 16–576. JEFFERSON *v.* NEBRASKA UNICAMERAL LEGISLATURE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 243.

No. 16–5259. HOLDEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 806 F. 3d 1227 and 625 Fed. Appx. 316.

No. 16–5261. HOUSTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 813 Fed. Appx. 282.

No. 16–5284. CONWAY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 638 Fed. Appx. 550.

No. 16–5351. FUQUA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 636 Fed. Appx. 303.

No. 16–5390. SOTO-MENDOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 691.

No. 16–5579. VASQUEZ ET AL. *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 291 Va. 232, 781 S. E. 2d 920.

No. 16–5653. STONE *v.* REYES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 256.

No. 16–5680. SAUCEDO-CANALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 648 Fed. Appx. 458.

No. 16–5727. WATERS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 823 F. 3d 1062.

No. 16–5811. TURNIDGE *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 359 Ore. 507, 373 P. 3d 138.

No. 16–5826. HASSEBROCK *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 16–5956. ANGELES-TREJO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 191.

No. 16–6174. MARTIN *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–6180. DYE *v.* FRAKES, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES. Sup. Ct. Neb. Certiorari denied. Reported below: 291 Neb. xxi.

No. 16–6185. GREEN *v.* KERNAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 16–6186. HALL *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–6187. HARDY *v.* SCUTT, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–6189. BURTON *v.* COOLEY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 16–6190. SCHUH *v.* WASHTENAW COUNTY, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–6191. GILYARD *v.* CHRISMAN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 863.

No. 16–6192. HARRIS *v.* MCLEOD ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–6194. FLORES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 132661–U.

No. 16–6205. ROBINSON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 7. Certiorari denied.

No. 16–6208. FRANKLIN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 63 Cal. 4th 261, 370 P. 3d 1053.

No. 16–6212. EMERSON *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 16–6215. KITCHEN *v.* ICKES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 243.

No. 16–6216. BROOKS *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 299 Ga. 474, 788 S. E. 2d 766.

No. 16–6221. DICKINSON *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 138 A. 3d 475.

No. 16–6225. SIRIAS *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–6229. DILL *v.* MUNIZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6232. COLES *v.* RUNNELS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–6233. DEBARDELABEN *v.* BOLLING, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–6237. ANTHONY N. *v.* NEW YORK; and
No. 16–6355. DENNIS K. *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 27 N. Y. 3d 718, 59 N. E. 3d 500.

No. 16–6239. CARRASQUILLO *v.* VARGA, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 16–6240. DURHAM *v.* SUNY ROCKLAND COMMUNITY COLLEGE ET AL. C. A. 2d Cir. Certiorari denied.

No. 16–6242. DUNAHUE *v.* WATSON, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 16–6244. CHAIRS *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 2015 IL App (5th) 130415–U.

No. 16–6245. CREEK *v.* SOUTH DAKOTA BOARD OF PARDONS AND PAROLES ET AL. C. A. 8th Cir. Certiorari denied.

No. 16–6248. SELDEN *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–6253. MASTERS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 62 Cal. 4th 1019, 365 P. 3d 861.

No. 16–6256. MEARIN *v.* FOLINO ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 654 Fed. Appx. 58.

No. 16–6265. RAYFORD *v.* KERNAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 16–6271. DANIELS *v.* CALDWELL. C. A. 4th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 293.

No. 16–6277. CALVIN *v.* DAVIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 458.

No. 16–6281. BONNER *v.* BONNER. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 16–6282. WRIGHT *v.* CIRCUIT COURT OF MISSISSIPPI, HINDS COUNTY. Sup. Ct. Miss. Certiorari denied.

No. 16–6285. MATOS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 138 App. Div. 3d 426, 27 N. Y. S. 3d 571.

No. 16–6286. KWANG CHOL JOY *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 16–6291. SCOTT *v.* PERRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–6292. SOLANO *v.* DAVEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6297. PLANCARTE-FRUTIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 438.

No. 16–6300. DAVIS *v.* WATSON, SHERIFF, CITY OF PORTSMOUTH, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 842.

No. 16–6311. WEIDENBURNER *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 42 N. E. 3d 176.

No. 16–6314. CLARK *v.* LEBO, WARDEN. Ct. Crim. App. Tenn. Certiorari denied.

No. 16–6341. JOHNSON *v.* CITY OF PHILADELPHIA, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 644 Fed. Appx. 130.

No. 16–6377. BAYOT *v.* BACA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–6398. HERNANDEZ *v.* TEXAS BOARD OF PARDONS AND PAROLES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 217.

No. 16–6417. FORD *v.* BRADT. C. A. 2d Cir. Certiorari denied.

No. 16–6451. WILCOXON *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 185 Wash. 2d 324, 373 P. 3d 224.

No. 16–6546. GASSEW *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 16–6600. HARPER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 635 Fed. Appx. 74.

No. 16–6612. HAYWOOD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 16–6613. FORTSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 133 A. 3d 205.

No. 16–6640. CHAVEZ-NAVA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 560.

No. 15–951. WASHINGTON *v.* MOI. Sup. Ct. Wash. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 184 Wash. 2d 575, 360 P. 3d 811.

Rehearing Denied

No. 15–7848. ELMORE *v.* HOLBROOK, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY, *ante*, p. 938;

No. 15–8753. HAMM *v.* ALLEN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 828;

No. 15–8775. DEUERLEIN *v.* NEBRASKA ET AL., *ante*, p. 828;

No. 15–9042. ANDERSON *v.* HARRISON COUNTY, MISSISSIPPI, *ante*, p. 916;

No. 15–9097. HARRIS *v.* UNITED STATES, 578 U. S. 1017;

No. 15–9289. PLANCARTE *v.* FALK, WARDEN, ET AL., *ante*, p. 835;

No. 15–9401. JONES *v.* FINESILVER, *ante*, p. 838;

No. 15–9470. IN RE PENNINGTON-THURMAN, *ante*, p. 813;

No. 15–9531. QUINN *v.* FORSHEY, WARDEN, *ante*, p. 843;

No. 15–9568. SMALLWOOD *v.* HAWAII, *ante*, p. 845;

No. 15–9731. MARSHALL *v.* EDMONDS, WARDEN, *ante*, p. 855;

No. 15–9780. RODRIGUEZ REYNA *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 858;

No. 15–9789. ROUNDTREE *v.* MAINE MEDICAL CENTER ET AL., *ante*, p. 858;

No. 15–9834. DESPER *v.* WOODSON, WARDEN, *ante*, p. 861;

No. 16–223. STEFANICK *v.* MERIT SYSTEMS PROTECTION BOARD ET AL., *ante*, p. 919;

No. 16–5010. MARSHALL *v.* WALLER ET AL., *ante*, p. 876;

No. 16–5019. MCCLAM *v.* LAKE CITY FITNESS CENTER, FKA IH3 WELLNESS CENTER, ET AL., *ante*, p. 876;

No. 16–5032. WIDI *v.* DOLBIER ET AL., *ante*, p. 877;

No. 16–5118. TEJADA *v.* NEW YORK, *ante*, p. 882;

No. 16–5172. LURZ *v.* ILLINOIS; and TINEYBEY *v.* ILLINOIS, *ante*, p. 885;

No. 16–5346. GUMMO BEAR *v.* WASHINGTON ET AL., *ante*, p. 895;

No. 16–5420. BURTON *v.* GIDLEY ET AL., *ante*, p. 920;

No. 16–5451. VANN *v.* FLORIDA, *ante*, p. 900;

No. 16–5509. MONTGOMERY *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 922;

No. 16–5527 JOHNSON *v.* HOOKS, WARDEN, *ante*, p. 922;

No. 16–5533. CALDWELL ET AL. *v.* PESCE, PRESIDING JUSTICE, APPELLATE TERM OF THE NEW YORK SUPREME COURT, SECOND JUDICIAL DISTRICT, ET AL., *ante*, p. 923;

No. 16–5765. COX *v.* RACKLEY, WARDEN, *ante*, p. 926;

No. 16–5768. IN RE DIXON, *ante*, p. 812;

No. 16–5824. GRAHAM *v.* UNITED STATES, *ante*, p. 927;

No. 16–5869. CHRISTENSON *v.* UNITED STATES, *ante*, p. 967; and

No. 16–6290. SMOTHERMAN *v.* UNITED STATES, *ante*, p. 976. Petitions for rehearing denied.

No. 16–5350. CHIRINO RIVERA *v.* MOSLEY, WARDEN, *ante*, p. 910. Petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 16–5665. MASON *v.* TAP PHARMACEUTICAL PRODUCTS, INC., ET AL., *ante*, p. 950. Petition for rehearing denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

DECEMBER 6, 2016

Miscellaneous Order

No. 145, Orig. DELAWARE *v.* PENNSYLVANIA ET AL.; and

No. 146, Orig. ARKANSAS ET AL. *v.* DELAWARE. It has been suggested that the parties are in agreement on the facts relevant to a decision in this action. If this is the case, the parties are invited to file a stipulation of facts in this Court on or before 60 days from the date of this order. If such a stipulation is filed, the Court will set a schedule for briefing the legal issues. If such a stipulation is not timely filed, a Special Master will be appointed to conduct any necessary discovery and to make proposed findings of fact, and the case will proceed in the usual manner. [For earlier order herein, see, *e. g.*, *ante*, p. 995.]

Certiorari Denied

No. 16–7067 (16A548). SALLIE *v.* SELLERS, WARDEN. 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

No. 16–7096 (16A559). SALLIE *v.* SELLERS, WARDEN. Sup. Ct. Ga. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied.

DECEMBER 8, 2016

Miscellaneous Order

No. 16A545 (16–7070). SMITH *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. The order heretofore entered by JUSTICE THOMAS is vacated. JUSTICE GINSBURG, JUSTICE BREYER, JUSTICE SOTOMAYOR, and JUSTICE KAGAN would grant the application for stay of execution.

No. 16A569. SMITH *v.* ALABAMA. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. The order heretofore entered by JUSTICE THOMAS is vacated.

DECEMBER 9, 2016

Certiorari Granted

No. 16–142. HONEYCUTT *v.* UNITED STATES. C. A. 6th Cir. Certiorari granted. Reported below: 816 F. 3d 362.

DECEMBER 12, 2016

Certiorari Granted—Vacated and Remanded

No. 15–978. SYSTEMS, INC. *v.* NORDOCK, INC. C. A. Fed. Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Samsung Electronics Co.* v. *Apple Inc.*, *ante*, p. 53. Reported below: 803 F. 3d 1344.

No. 16–204. FTS USA, LLC, ET AL. *v.* MONROE ET AL., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED. C. A. 6th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Tyson Foods, Inc.* v. *Bouaphakeo*, 577 U. S. 442 (2016). Reported below: 815 F. 3d 1000.

Certiorari Dismissed

No. 16–6179. CORRION *v.* BERGH, WARDEN. Ct. App. Mich. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 16–6340. CARBAJAL *v.* FALK, 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. Reported below: 640 Fed. Appx. 811.

No. 16–6461. PIANKA *v.* ARIZONA. Ct. App. Ariz. 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–2944. IN RE DISCIPLINE OF SUMMERS. William Lawrence Summers, of Cleveland, Ohio, is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2945. IN RE DISCIPLINE OF LEGOME. Harris C. Legome, of Haddonfield, N. J., is suspended from the practice of law

in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 16M62. VILLARREAL-SOLIS *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. 16M63. JOSEPH *v.* PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE ET AL.; and

No. 16M64. SANDERS *v.* RAWSKI, WARDEN. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 15–9260. DEAN *v.* UNITED STATES. C. A. 8th Cir. [Certiorari granted, *ante*, p. 951.] Motion of petitioner for appointment of counsel granted, and Alan G. Stoler, Esq., of Omaha, Neb., is appointed to serve as counsel for petitioner in this case.

No. 16–54. ESQUIVEL-QUINTANA *v.* LYNCH, ATTORNEY GENERAL. C. A. 6th Cir. [Certiorari granted, *ante*, p. 951.] Motion of petitioner to dispense with printing joint appendix granted.

No. 16–504. BELL *v.* BLUE CROSS AND BLUE SHIELD OF OKLAHOMA ET AL. C. A. 8th Cir. Motion of respondents to expedite consideration of petition for writ of certiorari denied.

No. 16–6562. SHAH *v.* SOLARC ARCHITECTURAL & ENGINEERING, INC., ET AL. Sup. Ct. Ore.; and

No. 16–6730. JAFARI *v.* UNITED STATES. C. A. 3d Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until January 3, 2017, 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. 16–6638. IN RE JORDAN. Petition for writ of mandamus denied.

Certiorari Denied

No. 15–1474. BARAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 560.

No. 15–1511. RILEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 638 Fed. Appx. 56.

No. 15–8114. TYLER *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2013–0913 (La. 11/6/15), 181 So. 3d 678.

No. 15–9329. STOKES *v.* SOUTH CAROLINA. Ct. Common Pleas of Orangeburg County, S. C. Certiorari denied.

No. 15–9907. CAMPBELL *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 131196, 37 N. E. 3d 891.

No. 16–267. DIRECT MARKETING ASSN. *v.* BROHL, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF REVENUE; and

No. 16–458. BROHL, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF REVENUE *v.* DIRECT MARKETING ASSN. C. A. 10th Cir. Certiorari denied. Reported below: 814 F. 3d 1129.

No. 16–283. GILCHRIST, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF GILCHRIST *v.* NATIONAL FOOTBALL LEAGUE ET AL.; and

No. 16–413. ARMSTRONG ET AL. *v.* NATIONAL FOOTBALL LEAGUE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 821 F. 3d 410.

No. 16–284. GREENBERG ET AL. *v.* NEW YORK ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 27 N. Y. 3d 490, 54 N. E. 3d 74.

No. 16–301. RAINEY *v.* MERIT SYSTEMS PROTECTION BOARD ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 824 F. 3d 1359.

No. 16–332. APOTEX INC. ET AL. *v.* AMGEN INC. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 827 F. 3d 1052.

No. 16–432. NERO *v.* MAYAN MAINSTREET INVESTORS 1, LLC, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 864.

No. 16–433. FREIDZON *v.* OAO LUKOIL ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 644 Fed. Appx. 52.

No. 16–436. FRAZIER-WHITE *v.* GEE, SHERIFF, HILLSBOROUGH COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 818 F. 3d 1249.

No. 16–438. Sanchez Lopez *v.* City of Phoenix, Arizona, et al. C. A. 9th Cir. Certiorari denied. Reported below: 618 Fed. Appx. 326.

No. 16–440. Tri-Corp Housing Inc. *v.* Bauman. C. A. 7th Cir. Certiorari denied. Reported below: 826 F. 3d 446.

No. 16–443. Shott *v.* Rush University Medical Center. C. A. 7th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 455.

No. 16–444. Simon *v.* Department of Justice et al. C. A. D. C. Cir. Certiorari denied.

No. 16–448. Cornish *v.* Town of Brookline, Vermont. Sup. Ct. Vt. Certiorari denied. Reported below: 202 Vt. 656, 151 A. 3d 343.

No. 16–453. Kupersmit *v.* Commissioner of Internal Revenue. C. A. 3d Cir. Certiorari denied. Reported below: 622 Fed. Appx. 144.

No. 16–462. Flint *v.* Willett, Judge, Circuit Court of Kentucky, Jefferson County, et al. C. A. 6th Cir. Certiorari denied.

No. 16–469. Kimball, Individually and as Next Friend of A. S. et al., Minors, et al. *v.* Orlans Associates P. C. et al. C. A. 6th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 477.

No. 16–480. Afzal *v.* Lynch, Attorney General. C. A. 5th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 505.

No. 16–503. San Diego Navy Broadway Complex Coalition *v.* Department of Defense et al. C. A. 9th Cir. Certiorari denied. Reported below: 817 F. 3d 653.

No. 16–505. Compart's Boar Store, Inc. *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 829 F. 3d 600.

No. 16–514. Romanoff Equities, Inc. *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 815 F. 3d 809.

No. 16–565. Kimberly-Clark Corp. and Subsidiaries *v.* Minnesota Commissioner of Revenue. Sup. Ct. Minn. Certiorari denied. Reported below: 880 N. W. 2d 844.

No. 16–574. FLINT *v.* MARX. Ct. App. Ky. Certiorari denied.

No. 16–586. VAN HOUTEN ET AL. *v.* CITY OF FORT WORTH, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 827 F. 3d 530.

No. 16–599. TAYLOR *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 138 A. 3d 1171.

No. 16–609. SEXTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 831 F. 3d 1207 and 659 Fed. Appx. 908.

No. 16–5074. PETERMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 829.

No. 16–5337. RANDOLPH ET UX. *v.* SOLUTIA, INC. Sup. Ct. Fla. Certiorari denied.

No. 16–5583. VELASQUEZ-HUIPE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 461.

No. 16–5840. MOLESKI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 641 Fed. Appx. 172.

No. 16–6315. CAMP *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–6318. SEIBERT *v.* CRICKMAR, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 16–6320. MORRIS *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–6324. CASTILLO-ALVAREZ *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 836 N. W. 2d 527.

No. 16–6325. PALAFOX-DOMINGUES *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 41 N. E. 3d 309.

No. 16–6329. WILLIAMS *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 16–6332. KING *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 16–6337. CRUZ *v.* JURDEN, PRESIDENT JUDGE, SUPERIOR COURT OF DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 133 A. 3d 204.

No. 16–6338. ECKERT *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 491 S. W. 3d 228.

No. 16–6352. MOSES *v.* FALKNER ET AL. Ct. App. Tenn. Certiorari denied.

No. 16–6353. O'KEEFE *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 132 Nev. 1013.

No. 16–6354. MORRISON *v.* KOSTER. C. A. 8th Cir. Certiorari denied.

No. 16–6356. PAIGE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 16–6358. MAYFIELD *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 16–6393. BUHL *v* DEPARTMENT OF JUSTICE ET AL. C. A. D. C. Cir. Certiorari denied.

No. 16–6394. CRUMP *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 132 Nev. 959.

No. 16–6458. PATTON *v.* NEVADA ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–6468. WILKERSON *v.* CHESTERFIELD COUNTY, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 37.

No. 16–6516. LAMONT *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 16–6521. TRICOME *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 141 A. 3d 588.

No. 16–6548. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 184.

No. 16–6591. JUAREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 648 Fed. Appx. 857.

No. 16–6593. MORALES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 663 Fed. Appx. 166.

No. 16–6596. MOHAMMED *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 308.

No. 16–6601. GILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 789.

No. 16–6602. GALEANA-SALMERON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 742.

No. 16–6605. GAFFNEY, AKA MUJAHID *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 610 Fed. Appx. 313.

No. 16–6606. HILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 16–6609. GREEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 16–6611. GARCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 648 Fed. Appx. 746.

No. 16–6643. STRECKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 652.

No. 16–6647. SHELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–6648. SAUNDERS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 826 F. 3d 363.

No. 16–6657. HERNANDEZ *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6661. NAVA-ARELLANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 512.

No. 16–6665. SCAGGS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–6668. ROBERTS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 824 F. 3d 1145.

No. 16–6670. PUZEY *v.* WARDEN, FEDERAL CORRECTIONAL COMPLEX ALLENWOOD. C. A. 4th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 56.

No. 16–6674. GARRISON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–6677. THOMAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 660 Fed. Appx. 497.

No. 16–6680. DILLARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 825 F. 3d 472.

No. 16–6685. NOEL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 659 Fed. Appx. 284.

No. 16–6692. MARIA MATIAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–6693. JACKSON *v.* SEMPLE, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTION. App. Ct. Conn. Certiorari denied. Reported below: 149 Conn. App. 681, 89 A. 3d 426.

No. 16–6703. TUBBS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 986.

No. 16–6707. SINGH *v.* WISCONSIN. Ct. App. Wis. Certiorari denied.

No. 16–6709. OCASIO-RUIZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 16–6712. ABAD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 449.

No. 16–6713. BEY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 825 F. 3d 75.

No. 16–6729. MAYES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 650 Fed. Appx. 787.

No. 16–6732. ALLEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 568.

No. 16–6733. MCDONALD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 641.

No. 16–6734. MORGAN *v.* BRADT, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied.

No. 16–6739. WYNN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 827 F. 3d 778.

No. 16–6749. SCOTTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 947.

No. 16–6750. SANDUSKY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–6760. WRIGHT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 657 Fed. Appx. 399.

No. 16–6762. MCKENZIE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 15–9708. DAKER *v.* GEORGIA. Sup. Ct. Ga. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 803] granted. Certiorari denied.

No. 16–431. WALSH *v.* GEORGE ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 650 Fed. Appx. 130.

No. 16–5247. SIRECI *v* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 192 So. 3d 42.

JUSTICE BREYER, dissenting.

Henry Sireci, the petitioner, was tried, convicted of murder, and first sentenced to death in 1976. He has lived in prison under threat of execution for 40 years. When he was first sentenced to death, the Berlin Wall stood firmly in place. Saigon had just fallen. Few Americans knew of the personal computer or the Internet. And over half of all Americans now alive had not yet been born. See Dept. of Commerce, Bureau of Census, Annual Estimates of the Resident Population for Selected Age Groups by Sex: April 1, 2010 to July 1, 2015 (June 2016), online at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP_2015_PEPAGESEX&prodType=table (all Internet materials as last visited Dec. 9, 2016).

Forty years is more time than an average person could expect to live his entire life when America constitutionally forbade the "inflict[ion]" of "cruel and unusual punishments." Amdt. 8; see 5 Dictionary of American History 104 (S. Kutler ed., 3d ed. 2003). This Court, speaking of a period of *four weeks*, not 40 years, once said that a prisoner's uncertainty before execution is "one of the

most horrible feelings to which he can be subjected." *In re Medley*, 134 U. S. 160, 172 (1890). I should hope that this kind of delay would arise only on the rarest of occasions. But in the ever diminishing universe of actual executions, I fear that delays of this kind have become more common. The number of yearly executions has fallen from its peak of 98 in 1999 to 19 so far this year, while the average period of imprisonment between death sentence and execution has risen from 12 years to over 18 years in that same period. See Death Penalty Information Center (DPIC), Facts About the Death Penalty, online at http://www.deathpenaltyinfo.org/documents/FactSheet.pdf (updated Dec. 7, 2016); Dept. of Justice, Bureau of Justice Statistics, T. Snell, Capital Punishment, 2013—Statistical Tables, p. 14 (rev. Dec. 19, 2014) (Table 10); DPIC Execution List 2016, online at http://www.deathpenaltyinfo.org/execution-list-2016.

Nor is this case the only case during the last few months in which the Court has received, but then rejected, a petition to review an execution taking place in what I would consider especially cruel and unusual circumstances. On September 15, 2009, the State of Ohio attempted to execute Romell Broom by lethal injection. *State* v. *Broom*, 146 Ohio St. 3d 60, 61–62, 2016-Ohio-1028, 51 N. E. 3d 620, 623. Medical team members tried for over two hours to find a useable vein, repeatedly injecting him with needles and striking bone in the process, all causing "a great deal of pain." *Id.*, at 62, 51 N. E. 3d, at 624. The State now wishes to try to execute Broom once again. Given its first failure, does its second attempt amount to a "cruel and unusual" punishment? See *In re Kemmler*, 136 U. S. 436, 447 (1890) ("Punishments are cruel when they involve . . . a lingering death"). I would have heard Broom's claim.

As I and other Justices have previously pointed out, individuals who are executed are not the "worst of the worst," but, rather, are individuals chosen at random, on the basis, perhaps of geography, perhaps of the views of individual prosecutors, or still worse on the basis of race. See *Glossip* v. *Gross*, 576 U. S. 863, 915–923 (2015) (BREYER, J., joined by GINSBURG, J., dissenting); *Furman* v. *Georgia*, 408 U. S. 238, 309–310 (1972) (Stewart, J., concurring) ("These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual. For, of all the people convicted of [death-eligible crimes], many just as reprehensible as these, the[se] petitioners are among a

capriciously selected random handful upon whom the sentence of death has in fact been imposed" (footnote omitted)). Cf. *Smith* v. *Alabama*, *ante*, p. 1027 (judge overrode jury's recommendation of a life sentence; this Court, by an equally divided vote, denied a stay of execution).

I have elsewhere described these matters at greater length, and I have explained why the time has come for this Court to reconsider the constitutionality of the death penalty. *Glossip*, *supra*, at 946 (dissenting opinion); see also *Knight* v. *Florida*, 528 U. S. 990, 993 (1999) (opinion dissenting from denial of certiorari); *Valle* v. *Florida*, 564 U. S. 1067 (2011) (opinion dissenting from denial of stay); *Boyer* v. *Davis*, 578 U. S. 965, 966 (2016) (opinion dissenting from denial of certiorari); *Conner* v. *Sellers*, 579 U. S. 957, 958 (2016) (opinion dissenting from denial of certiorari and denial of stay). Cases such as the ones discussed here provide additional evidence that it is important for us to do so. See *Lackey* v. *Texas*, 514 U. S. 1045 (1995) (Stevens, J., memorandum respecting denial of certiorari). I would grant this petition for certiorari, as I would in No. 16–5580, *Broom* v. *Ohio*, immediately *infra*, and *Smith*, and include this question

No. 16–5580. Broom *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Justice Breyer and Justice Kagan would grant the petition for writ of certiorari. Reported below: 146 Ohio St. 3d 60, 2016-Ohio-1028, 51 N. E. 3d 620.

No. 16–6691. Cuong Mach Binh Tieu *v.* United States. C. A. 9th Cir. Certiorari denied. Justice Breyer took no part in the consideration or decision of this petition.

Rehearing Denied

No. 15–9319. Daniel *v.* Lynch, Attorney General, *ante*, p. 836;

No. 15–9523. Golf *v.* New York City Department of Finance et al., *ante*, p. 843;

No. 15–9611. Soro *v.* Lopez, *ante*, p. 848;

No. 15–9652. Beckham *v.* Virginia, *ante*, p. 850;

No. 15–9655. Spear *v.* Jones, Secretary, Florida Department of Corrections, et al., *ante*, p. 851;

No. 15–9853. Foster *v.* Holder, *ante*, p. 862;

No. 15–9916. LoPinto *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division, *ante*, p. 866;

No. 16–120. Avoki et ux. *v.* Ferebee et al., *ante*, p. 873;

No. 16–197. Coulter *v.* Superior Court of Pennsylvania (two judgments), *ante*, p. 933;

No. 16–5104. Ivey *v.* New York State Higher Education Services Corporation et al., *ante*, p. 881;

No. 16–5177. Johnson *v.* Palmetto Citizens Federal Credit Union, *ante*, p. 886;

No. 16–5217. Reynolds *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division, *ante*, p. 888;

No. 16–5288. In re Williamson, *ante*, p. 813;

No. 16–5326. Johnson *v.* United States, *ante*, p. 894;

No. 16–5466. Hammer *v.* Hammer et al., *ante*, p. 921;

No. 16–5489. Wei Zhou *v.* Marquette University, *ante*, p. 922;

No. 16–5525. Petrovic *v.* United States, *ante*, p. 902;

No. 16–5541. Sixing Liu *v.* United States, *ante*, p. 903;

No. 16–5576. Sayers *v.* Powell *ante*, p. 904;

No. 16–5661. Reedy *v.* United States, *ante*, p. 906;

No. 16–5666. Ruiz *v.* Harry, Superintendent, State Correctional Institution at Camp Hill, et al., *ante*, p. 906;

No. 16–5783. Florence *v.* Viking Associates, *ante*, p. 966;

No. 16–6202. Wenfo Song *v.* Obama, President of the United States, *ante*, p. 974; and

No. 16–6241. Donaldson *v.* United States, *ante*, p. 975. Petitions for rehearing denied.

No. 16–5137. In re Akel, *ante*, p. 813. Petition for rehearing denied. Justice Kagan took no part in the consideration or decision of this petition.

December 14, 2016

Certiorari Granted

No. 16–327. Jae Lee *v.* United States. C. A. 6th Cir. Certiorari granted. Reported below: 825 F. 3d 311.

No. 16–341. TC Heartland LLC *v.* Kraft Foods Group Brands LLC. C. A. Fed. Cir. Certiorari granted. Reported below: 821 F. 3d 1338.

No. 15–1503. TURNER ET AL. *v.* UNITED STATES; and

No. 15–1504. OVERTON *v.* UNITED STATES. Ct. App. D. C. Certiorari granted limited to the following question: "Whether the petitioners' convictions must be set aside under *Brady* v. *Maryland*, 373 U. S. 83 (1963)." Cases consolidated, and a total of one hour is allotted for oral argument. Reported below: 116 A. 3d 894.

DECEMBER 15, 2016

Miscellaneous Order

No. 15–1204. JENNINGS ET AL. *v.* RODRIGUEZ ET AL., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED. C. A. 9th Cir. [Certiorari granted, 579 U. S. 917.] The parties are directed to file supplemental briefs addressing the following questions: "(1) Whether the Constitution requires that aliens seeking admission to the United States who are subject to mandatory detention under 8 U. S. C. § 1225(b) must be afforded bond hearings, with the possibility of release into the United States, if detention lasts six months. (2) Whether the Constitution requires that criminal or terrorist aliens who are subject to mandatory detention under § 1226(c) must be afforded bond hearings, with the possibility of release, if detention lasts six months. (3) Whether the Constitution requires that, in bond hearings for aliens detained for six months under § 1225(b), § 1226(c), or § 1226(a), the alien is entitled to release unless the Government demonstrates by clear and convincing evidence that the alien is a flight risk or a danger to the community, whether the length of the alien's detention must be weighed in favor of release, and whether new bond hearings must be afforded automatically every six months."

Briefs are to be filed simultaneously with the Clerk and served upon opposing counsel on or before 2 p.m., Tuesday, January 17, 2017. *Amicus* briefs may be filed with the Clerk and served upon counsel on or before 2 p.m., Friday, January 27, 2017. Reply briefs are to be filed simultaneously with the Clerk and served upon opposing counsel on or before 2 p.m., Monday, February 6, 2017. Word limits and cover colors for briefs should correspond to the provisions of this Court's Rule 33.1(g) pertaining to briefs on the merits rather than to the provision pertaining to supplemental briefs.

DECEMBER 20, 2016

Dismissal Under Rule 46

No. 16–6369. IN RE WINDSOR. Petition for writ of mandamus and motion for leave to proceed *in forma pauperis* dismissed under this Court's Rule 46.2.

DECEMBER 28, 2016

Miscellaneous Orders

No. 15–827. ENDREW F., A MINOR, BY AND THROUGH HIS PARENTS AND NEXT FRIENDS, JOSEPH F. ET AL. *v.* DOUGLAS COUNTY SCHOOL DISTRICT RE–1. C. A. 10th Cir. [Certiorari granted, 579 U. S. 969.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 15–1391. EXPRESSIONS HAIR DESIGN ET AL. *v.* SCHNEIDERMAN, ATTORNEY GENERAL OF NEW YORK, ET AL. C. A. 2d Cir. [Certiorari granted, 579 U. S. 969.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 15–1500. LEWIS ET AL. *v.* CLARKE. Sup. Ct. Conn. [Certiorari granted, 579 U. S. 969.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

DECEMBER 29, 2016

Dismissal Under Rule 46

No. 16–522. NAUTIC MANAGEMENT VI, L. P., ET AL. *v.* CORNERSTONE HEALTHCARE GROUP HOLDING, INC. Sup. Ct. Tex. Certiorari dismissed under this Court's Rule 46.2. Reported below: 493 S. W. 3d 65.

JANUARY 6, 2017

Miscellaneous Orders

No. 15–1358. ZIGLAR *v.* ABBASI ET AL.;

No. 15–1359. ASHCROFT, FORMER ATTORNEY GENERAL, ET AL. *v.* ABBASI ET AL.; and

No. 15–1363. HASTY ET AL. *v.* ABBASI ET AL. C. A. 2d Cir. [Certiorari granted *sub nom.* in No. 15–1358, *Ziglar* v. *Turkmen*;

in No. 15–1359, *Ashcroft* v. *Turkmen*; in No. 15–1363, *Hasty* v. *Turkmen*, *ante*, p. 915.] Motion of petitioners for enlargement of time for oral argument and for divided argument granted in part and denied in part, and the time is divided as follows: 20 minutes for the Acting Solicitor General on behalf of petitioners in Nos. 15–1358 and 15–1359, 10 minutes for petitioners in No. 13–1363, and 30 minutes for respondents. JUSTICE SOTOMAYOR and JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 16–348. MIDLAND FUNDING, LLC *v.* JOHNSON. C. A. 11th Cir. [Certiorari granted, *ante*, p. 915.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

JANUARY 9, 2017

Appeal Dismissed

No. 16–588. PARROTT ET AL. *v.* LAMONE ET AL. Appeal from D. C. Md. Motion of Campaign Legal Center et al. for leave to file brief as *amici curiae* granted. Appeal dismissed for want of jurisdiction.

Certiorari Granted—Vacated and Remanded. (See also No. 16–67, *ante*, p. 73.)

No. 16–6430. PHILLIPS *v.* UNITED STATES. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Mathis* v. *United States*, 579 U. S. 500 (2016). Reported below: 817 F. 3d 567.

Certiorari Dismissed

No. 16–6454. ULLRICH *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 16–6495. CLARK *v.* DEPARTMENT OF EDUCATION ET AL. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in non-

criminal 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. 16–6543. FORNEY *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.

No. 16–6581. WILLIAMS *v.* OKLAHOMA ET AL. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. 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: 667 Fed. Appx. 733.

No. 16–6628. THOMPSON *v.* KERNAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 16–6741. ASPELMEIER *v.* ILLINOIS. Sup. Ct. Ill. 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. 16–6829. HAQUE *v.* UNITED STATES. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition.

No. 16–7070. SMITH *v.* ALABAMA. Sup. Ct. Ala. Certiorari dismissed as moot.

Miscellaneous Orders

No. D–2905. In re Disbarment of Fisher. Disbarment entered. [For earlier order herein, see 579 U. S. 958.]

No. D–2906. In re Disbarment of Gracey. Disbarment entered. [For earlier order herein, see 579 U. S. 958.]

No. D–2907. In re Disbarment of Simon. Disbarment entered. [For earlier order herein, see 579 U. S. 959.]

No. D–2908. In re Disbarment of Johnson. Disbarment entered. [For earlier order herein, see 579 U. S. 959.]

No. D–2910. In re Disbarment of Kent. Disbarment entered. [For earlier order herein, see 579 U. S. 959.]

No. D–2911. In re Disbarment of Miller. Disbarment entered. [For earlier order herein, see 579 U. S. 959.]

No. D–2912. In re Disbarment of Tabone. Disbarment entered. [For earlier order herein, see 579 U. S. 959.]

No. D–2913. In re Ballner. Patricia Ballner, of New York, N. Y., having requested to resign as a member of the Bar of this Court, it is ordered that her name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on July 18, 2016, [579 U. S. 959] is discharged.

No. D–2916. In re Disbarment of Moore. Disbarment entered. [For earlier order herein, see 579 U. S. 960.]

No. 16M65. Heagney-O'Hara *v.* Colvin, Acting Commissioner of Social Security;

No. 16M66. Schaefer *v.* Athens-Clarke County, Georgia, et al.;

No. 16M67. Fries *v.* United States;

No. 16M71. Hooks *v.* United States; and

No. 16M72. Perry *v.* Railroad Commission of Texas et al. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 16M69. Taubman *v.* Hedgpeth, Warden. Motion for leave to proceed as a veteran denied.

No. 16M70. BOYAJIAN *v.* OM YENTIENG ET AL. Motion for leave to file bill of complaint denied.

No. 15–1031. HOWELL *v.* HOWELL. Sup. Ct. Ariz. [Certiorari granted, *ante*, p. 1017.] Motion of petitioner to dispense with printing joint appendix granted.

No. 16–26. BULK JULIANA, LTD., ET AL. *v.* WORLD FUEL SERVICES (SINGAPORE) PTE, LTD. C. A. 5th Cir. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 16–334. BANK MELLI *v.* BENNETT ET AL. C. A. 9th Cir. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 16–473. FENKELL *v.* ALLIANCE HOLDINGS, INC., ET AL. C. A. 7th Cir. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 16–534. RUBIN ET AL. *v.* ISLAMIC REPUBLIC OF IRAN ET AL. C. A. 7th Cir. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 16–6094. WOODWORTH *v.* SHARTLE, WARDEN. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 956] denied.

No. 16–6278. IN RE CHRISTENSON. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 996] denied.

No. 16–6345. IN RE CHRISTENSON. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1018] denied.

No. 16–6446. LEASCHAUER *v.* HUERTA, ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION. C. A. 9th Cir.;

No. 16–6447. LEASCHAUER *v.* NATIONAL TRANSPORTATION SAFETY BOARD ET AL. C. A. 9th Cir.;

No. 16–6469. LEASCHAUER *v.* FEDERAL AVIATION ADMINISTRATION ET AL. C. A. 9th Cir.;

No. 16–6513. KNOX *v.* COLVIN, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 8th Cir.;

No. 16–6580. PUGH *v.* MONTGOMERY COUNTY BOARD OF EDUCATION. C. A. 4th Cir.;

No. 16–6676. A. C. S. *v.* FLORIDA BOARD OF BAR EXAMINERS. Sup. Ct. Fla.;

No. 16–6806. WEST *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 1st Cir.;

No. 16–6813. MOSTAGHIM *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal.;

No. 16–6843. JOHNSON *v.* BAE SYSTEMS, INC., ET AL. C. A. D. C. Cir.;

No. 16–6845. ADAMS *v.* MERIT SYSTEMS PROTECTION BOARD ET AL. C. A. Fed. Cir.;

No. 16–6846. WALKER *v.* COLVIN, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir.; and

No. 16–6909. GILES *v.* BECKSTROM, WARDEN. C. A. 6th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until January 30, 2017, 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. 16–6969. IN RE FAHNBULLEH;

No. 16–7013. IN RE LEFFEBRE;

No. 16–7050. IN RE SHENEMAN;

No. 16–7081. IN RE SCOTT; and

No. 16–7248. IN RE REYNOLDS. Petitions for writs of habeas corpus denied.

No. 16–6471. IN RE ROSE;

No. 16–6572. IN RE ROBINSON;

No. 16–6695. IN RE TILLMAN; and

No. 16–6753. IN RE KELLEY. Petitions for writs of mandamus denied.

Certiorari Denied

No. 15–830. GOVERNMENT OF BELIZE *v.* BELIZE SOCIAL DEVELOPMENT LTD. C. A. D. C. Cir. Certiorari denied. Reported below: 794 F. 3d 99.

No. 15–1044. Pennsylvania Higher Education Assistance Agency *v.* Pele. C. A. 4th Cir. Certiorari denied. Reported below: 628 Fed. Appx. 870.

No. 15–1045. Pennsylvania Higher Education Assistance Agency *v.* United States ex rel. Oberg. C. A. 4th Cir. Certiorari denied. Reported below: 804 F. 3d 646.

No. 15–1419. Kreipke *v.* Wayne State University. C. A. 6th Cir. Certiorari denied. Reported below: 807 F. 3d 768.

No. 15–1437. United States et al. ex rel. Willette *v.* University of Massachusetts, Worcester, aka University of Massachusetts Medical School. C. A. 1st Cir. Certiorari denied. Reported below: 812 F. 3d 35.

No. 15–9685. Briggs *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 820 F. 3d 917.

No. 15–9695. Roberts *v.* Workers' Compensation Appeal Board of Pennsylvania. Commw. Ct. Pa. Certiorari denied.

No. 15–9700. Bell *v.* Matthews. C. A. 4th Cir. Certiorari denied.

No. 16–14. Flytenow, Inc. *v.* Federal Aviation Administration. C. A. D. C. Cir. Certiorari denied. Reported below: 808 F. 3d 882.

No. 16–50. Brumant *v.* Texas. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 16–89. Benzemann *v.* Citibank N. A. et al. C. A. 2d Cir. Certiorari denied. Reported below: 622 Fed. Appx. 16.

No. 16–135. Government of Belize *v.* Newco Ltd. C. A. D. C. Cir. Certiorari denied. Reported below: 650 Fed. Appx. 14.

No. 16–136. Government of Belize *v.* BCB Holdings Ltd. et al. C. A. D. C. Cir. Certiorari denied. Reported below: 650 Fed. Appx. 17.

No. 16–160. Harper *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 815 F. 3d 1032.

No. 16–175. Radcliffe et al. *v.* Hernandez et al. C. A. 9th Cir. Certiorari denied. Reported below: 818 F. 3d 537.

No. 16–186. FOSTER ET UX. *v.* VILSACK, SECRETARY OF AGRICULTURE. C. A. 8th Cir. Certiorari denied. Reported below: 820 F. 3d 330.

No. 16–203. FAUST ET AL. *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 491 S. W. 3d 733.

No. 16–236. MILBAUER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 636 Fed. Appx. 556.

No. 16–253. BINFORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 818 F. 3d 261.

No. 16–287. SAI *v.* TRANSPORTATION SECURITY ADMINISTRATION. C. A. D. C. Cir. Certiorari denied.

No. 16–302. GEO GROUP, INC. *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 816 F. 3d 1189.

No. 16–313. ARKANSAS STATE POLICE ET AL. *v.* WREN. Sup. Ct. Ark. Certiorari denied. Reported below: 2016 Ark. 188, 491 S. W. 3d 124.

No. 16–331. MCNB BANK & TRUST CO. *v.* WEST VIRGINIA EX REL. DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 237 W. Va. 655, 790 S. E. 2d 265.

No. 16–345. GUGLIUZZA *v.* FEDERAL TRADE COMMISSION. C. A. 9th Cir. Certiorari denied. Reported below: 815 F. 3d 593.

No. 16–346. C. A. F. ET AL. *v.* VIACOM INC. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 827 F. 3d 262.

No. 16–347. CHEMTECH ROYALTY ASSOCIATES, L. P., BY DOW EUROPE, S. A., AS TAX MATTERS PARTNER, ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 823 F. 3d 282.

No. 16–352. SECURITY UNIVERSITY, LLC, ET AL. *v.* INTERNATIONAL INFORMATION SYSTEMS SECURITY CERTIFICATION CONSORTIUM, INC. C. A. 2d Cir. Certiorari denied. Reported below: 823 F. 3d 153.

No. 16–358. DYNAMO HOLDINGS L. P. ET AL. *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 816 F. 3d 1310.

No. 16–361. UNITED STATES EX REL. PURCELL *v.* MWI CORP. C. A. D. C. Cir. Certiorari denied. Reported below: 807 F. 3d 281.

No. 16–367. WATSON *v.* SIMS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 648 Fed. Appx. 49.

No. 16–382. THOMAS, INDIVIDUALLY AND AS THE ADMINISTRATOR OF THE ESTATE OF THOMAS *v.* MOODY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 667.

No. 16–397. FANNING *v.* FEDERAL TRADE COMMISSION. C. A. 1st Cir. Certiorari denied. Reported below: 821 F. 3d 164.

No. 16–408. KMART CORP. *v.* UNITED STATES EX REL. GARBE. C. A. 7th Cir. Certiorari denied. Reported below: 824 F. 3d 632.

No. 16–415. RICH *v.* SHRADER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 823 F. 3d 1205.

No. 16–428. SINO LEGEND (ZHANGJIAGANG) CHEMICAL CO. LTD. ET AL. *v.* INTERNATIONAL TRADE COMMISSION ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 623 Fed. Appx. 1016.

No. 16–449. BOHANNON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 824 F. 3d 242.

No. 16–450. MING TUNG ET AL. *v.* CHINA BUDDHIST ASSN. ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 26 N. Y. 3d 1152, 48 N. E. 3d 497.

No. 16–461. CHRISTENSEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 828 F. 3d 763 and 624 Fed. Appx. 466.

No. 16–463. FIRST HORIZON ASSET SECURITIES, INC., ET AL. *v.* FEDERAL DEPOSIT INSURANCE CORPORATION. C. A. 2d Cir. Certiorari denied. Reported below: 821 F. 3d 372.

No. 16–472. KARANGWA *v.* LYNCH, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 649 Fed. Appx. 149.

No. 16–474. GREEN *v.* GREEN ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–475. Wheeling & Lake Erie Railway Co. *v.* Brotherhood of Locomotive Engineers and Trainmen et al. C. A. 6th Cir. Certiorari denied.

No. 16–478. Aslam *v.* California. Ct. App. Cal., 1st App. Dist., Div. 3. Certiorari denied.

No. 16–484. Serna et al. *v.* Transport Workers Union of America, AFL–CIO, et al. C. A. 5th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 665.

No. 16–487. Gateway Estates, Inc. *v.* New Castle County, Delaware, et al. Sup. Ct. Del. Certiorari denied. Reported below: 140 A. 3d 1142.

No. 16–488. Fields *v.* Vannoy, Warden. C. A. 5th Cir. Certiorari denied.

No. 16–490. Flint *v.* Hewlett Packard Co. Ct. App. Ky. Certiorari denied.

No. 16–494. Biolitec AG et al. *v.* AngioDynamics, Inc. C. A. 1st Cir. Certiorari denied. Reported below: 823 F. 3d 1.

No. 16–507. Taylor *v.* Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 132 Nev. 309, 371 P. 3d 1036.

No. 16–509. Angel Herrera *v.* Texas. Sup. Ct. Tex. Certiorari denied. Reported below: 494 S. W. 3d 690.

No. 16–510. Devaney *v.* Town of Narragansett, Rhode Island, et al. C. A. 1st Cir. Certiorari denied.

No. 16–512. Koziol, Individually and as Natural Parent of Child A et al. *v.* King et al. C. A. 2d Cir. Certiorari denied. Reported below: 667 Fed. Appx. 331.

No. 16–516. Diaz *v.* Lynch, Attorney General. C. A. 8th Cir. Certiorari denied. Reported below: 824 F. 3d 758.

No. 16–517. Malasky *v.* Malasky et al. Ct. App. Cal., 1st App. Dist., Div. 3. Certiorari denied.

No. 16–518. Farmer *v.* Eagle Systems & Services, Inc., et al. C. A. 4th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 157.

No. 16–519. GIL-DE LA MADRID *v.* BOWLES CUSTOM POOLS & SPA, INC. C. A. 1st Cir. Certiorari denied. Reported below: 817 F. 3d 371.

No. 16–525. NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF MULTIJURISDICTION PRACTICE ET AL. *v.* LYNCH, ATTORNEY GENERAL, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 658 Fed. Appx. 127.

No. 16–527. ORELLANA *v.* COUNTY OF LOS ANGELES, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 630 Fed. Appx. 730.

No. 16–528. PALDO SIGN & DISPLAY CO., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED *v.* WAGENER EQUITIES, INC., ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 825 F. 3d 793.

No. 16–530. KIDD ET AL. *v.* DOE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 643.

No. 16–532. AGUIAR DE SOUZA *v.* LYNCH, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 292.

No. 16–539. MACKINAC TRIBE *v.* JEWELL, SECRETARY OF THE INTERIOR. C. A. D. C. Cir. Certiorari denied. Reported below: 829 F. 3d 754.

No. 16–541. EDWARDS *v.* BURWELL, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 657 Fed. Appx. 242.

No. 16–542. ERGUR PRIVATE EQUITY GROUP, LLC *v.* CATRON. Ct. App. Ohio, 6th App. Dist., Lucas County. Certiorari denied.

No. 16–546. WICKY *v.* OXONIAN ET AL. Cir. Ct. Pinellas County, Fla. Certiorari denied.

No. 16–550. THOMAS ET AL. *v.* COUNTY OF SACRAMENTO, CALIFORNIA, ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 16–551. EON CORP. IP HOLDINGS LLC *v.* SILVER SPRING NETWORKS, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 815 F. 3d 1314.

No. 16–552. McLaughlin, Warden *v.* Lejeune. Sup. Ct. Ga. Certiorari denied. Reported below: 299 Ga. 546, 789 S. E. 2d 191.

No. 16–553. Bolus, Individually and dba Bolus Truck Sales Center *v.* Fleetwood RV, Inc., et al. C. A. 4th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 316.

No. 16–555. Durham *v.* Haslam, Governor of Tennessee, et al. Ct. App. Tenn. Certiorari denied.

No. 16–556. Keller et al. *v.* Herder Spring Hunting Club (Reported below: 636 Pa. 344, 143 A. 3d 358); and Hoyt Royalty, LLC *v.* Bailey et al. (636 Pa. 669, 145 A. 3d 722). Sup. Ct. Pa. Certiorari denied.

No. 16–557. Yan Ping Xu *v.* New York City Department of Health and Mental Hygiene. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 121 App. Div. 3d 559, 995 N. Y. S. 2d 23.

No. 16–559. Koninklijke Philips N. V., aka Royal Philips, et al. *v.* Washington. Sup. Ct. Wash. Certiorari denied. Reported below: 186 Wash. 2d 169, 375 P. 3d 1035.

No. 16–560. Ascira Partners, LLC, et al. *v.* Daniel et al. C. A. 6th Cir. Certiorari denied.

No. 16–561. Jian Wang *v.* International Business Machines Corp. C. A. 2d Cir. Certiorari denied. Reported below: 634 Fed. Appx. 326.

No. 16–563. Stallings *v.* Detroit Public Schools. C. A. 6th Cir. Certiorari denied. Reported below: 658 Fed. Appx. 221.

No. 16–566. Jones, Individually and as Executrix of the Estates of Jones et al., Deceased *v.* Sandusky County, Ohio, et al. C. A. 6th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 348.

No. 16–568. Patterson *v.* United States Senate et al. C. A. 9th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 962.

No. 16–570. Cottrell *v.* Smith et al. Sup. Ct. Ga. Certiorari denied. Reported below: 299 Ga. 517, 788 S. E. 2d 772.

No. 16–573. FOUDY ET VIR *v.* MIAMI-DADE COUNTY, FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 823 F. 3d 590.

No. 16–575. HARRIS *v.* HAHN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 827 F. 3d 359.

No. 16–580. LIBERTARIAN PARTY OF OHIO ET AL. *v.* HUSTED, OHIO SECRETARY OF STATE, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 831 F. 3d 382.

No. 16–583. FLINT *v.* COACH HOUSE, INC. Ct. App. Ky. Certiorari denied.

No. 16–584. HAWKINS *v.* SUNTRUST BANK. Ct. App. Cal., 2d App. Dist., Div. 6. Certiorari denied. Reported below: 246 Cal. App. 4th 1387, 206 Cal. Rptr. 3d 681.

No. 16–585. FLINT *v.* KENTUCKY LEGISLATIVE ETHICS COMMISSION. Ct. App. Ky. Certiorari denied.

No. 16–587. UNARA *v.* MERIT SYSTEMS PROTECTION BOARD ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 656 Fed. Appx. 1002.

No. 16–590. MOORE *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied.

No. 16–591. MCKEEVER ET VIR *v.* GMAC MORTGAGE, LLC, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 332.

No. 16–592. SPIEGEL *v.* NOVACK, JUDGE, CIRCUIT COURT OF ILLINOIS, COOK COUNTY. Sup. Ct. Ill. Certiorari denied.

No. 16–593. SELF-INSURANCE INSTITUTE OF AMERICA, INC. *v.* SNYDER, GOVERNOR OF MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 827 F. 3d 549.

No. 16–594. MALOFIY *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 653 Fed. Appx. 148.

No. 16–597. BECKER *v.* WELLS FARGO BANK, N. A., ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–598. PUBLIC INTEREST LAW FIRM, INC., ET AL. *v.* STATE BAR OF NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 132 Nev. 1020.

No. 16–600. VENTURA, AKA JANOS *v.* KYLE, EXECUTOR OF THE ESTATE OF KYLE. C. A. 8th Cir. Certiorari denied. Reported below: 825 F. 3d 876.

No. 16–604. CANUTO *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 651 Fed. Appx. 996.

No. 16–606. KINNEY *v.* SUPREME COURT OF CALIFORNIA ET AL. Sup. Ct. Cal. Certiorari denied.

No. 16–607. WELCOME *v.* MABUS, SECRETARY OF THE NAVY. C. A. 11th Cir. Certiorari denied. Reported below: 634 Fed. Appx. 256.

No. 16–608. CHAVEZ-OCHOA, AKA OCHOA CHAVEZ *v.* LYNCH, ATTORNEY GENERAL. C. A. 10th Cir. Certiorari denied. Reported below: 657 Fed. Appx. 797.

No. 16–611. ATTALLAH *v.* NEW YORK COLLEGE OF OSTEOPATHIC MEDICINE ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 643 Fed. Appx. 7.

No. 16–614. CARTER *v.* SLATERY, ATTORNEY GENERAL OF TENNESSEE. Ct. App. Tenn. Certiorari denied.

No. 16–615. BLAKE *v.* JOSSART ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 2016 WI 57, 370 Wis. 2d 1, 884 N. W. 2d 484.

No. 16–616. NISENAN TRIBE OF THE NEVADA CITY RANCHERIA ET AL. *v.* JEWELL, SECRETARY OF THE INTERIOR, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 497.

No. 16–618. FLANDER *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied.

No. 16–621. SOLARI *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 16–622. PAUNESCU ET UX. *v.* ECKERT ET AL. Ct. App. Wash. Certiorari denied. Reported below: 193 Wash. App. 1050.

No. 16–624. SNELLING *v.* KENNY ET AL. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 491 S. W. 3d 606.

No. 16–625. RODRIGUEZ, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF VENTURA, ET AL. *v.* CITY OF HOUSTON, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 282.

No. 16–627. MCNICOL, AKA REITANO, INDIVIDUALLY AND AS EXECUTRIX OF THE ESTATE OF REITANO, DECEASED *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 829 F. 3d 77.

No. 16–630. CHHABRA *v.* LYNCH, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied.

No. 16–633. HOLKESVIG *v.* SUPREME COURT OF NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied.

No. 16–640. ASBACH *v.* NORTH DAKOTA. Sup. Ct. N. D. Certiorari denied. Reported below: 2016 ND 152, 882 N. W. 2d 251.

No. 16–644. CRANTS *v.* GOTTLIEB & GOTTLIEB, P. A. C. A. 11th Cir. Certiorari denied. Reported below: 657 Fed. Appx. 920.

No. 16–645. LINGFEI SUN *v.* CITY OF NEW YORK, NEW YORK, ET AL. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 131 App. Div. 3d 1015, 16 N. Y. S. 3d 319.

No. 16–647. FINAL CALL, INC. *v.* MUHAMMAD-ALI. C. A. 7th Cir. Certiorari denied. Reported below: 832 F. 3d 755.

No. 16–651. FARSTONE TECHNOLOGY, INC. *v.* APPLE INC. C. A. Fed. Cir. Certiorari denied. Reported below: 668 Fed. Appx. 366.

No. 16–654. MARTIN ET AL. *v.* LONG & FOSTER REAL ESTATE, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 833.

No. 16–662. JIMENEZ-MORALES *v.* LYNCH, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 821 F. 3d 1307.

No. 16–666. AVILA BARRAZA *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 825 F. 3d 365.

No. 16–667. LILES *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 191 So. 3d 484.

No. 16–675. GWINN *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 499 Mich. 967, 880 N. W. 2d 236.

No. 16–691. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 286.

No. 16–700. ARBANAS *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 16–713. DAVID NETZER CONSULTING ENGINEER LLC *v.* SHELL OIL CO. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 824 F. 3d 989.

No. 16–715. WILSON *v.* JAMES ET AL. C. A. D. C. Cir. Certiorari denied.

No. 16–716. SPECTOR *v.* DIAZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–717. PATEL *v.* GEORGIA DEPARTMENT OF BEHAVIOR HEALTH. Ct. App. Ga. Certiorari denied.

No. 16–719. GONZALEZ *v.* HUERTA. C. A. 5th Cir. Certiorari denied. Reported below: 826 F. 3d 854.

No. 16–727. DAVIS *v.* EVANS ET AL. C. A. 2d Cir. Certiorari denied.

No. 16–740. EZRA *v.* DCC LITIGATION FACILITY, INC. C. A. 6th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 538.

No. 16–5186. GONZALEZ SANTANA *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 16–5268. PRICE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 875.

No. 16–5339. TRANE *v.* NORTHROP GRUMMAN CORP. C. A. 2d Cir. Certiorari denied. Reported below: 639 Fed. Appx. 50.

No. 16–5364. ST. HILL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 16–5568. HUDSON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 823 F. 3d 11.

No. 16–5598. NIEVES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 648 Fed. Appx. 152.

No. 16–5604. HALE *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 645 Fed. Appx. 409.

No. 16–5622. ROLAND *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 16–5647. HOLLINGSHED *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 651 Fed. Appx. 68.

No. 16–5696. DAVIS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 16–5724. RODAS-DE LEON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 463.

No. 16–5763. WARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 296.

No. 16–5789. PALACIOS-GOMEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 614.

No. 16–5827. HARTMAN *v.* BANK OF NEW YORK MELLON ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 650 Fed. Appx. 89.

No. 16–5851. WILSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 649 Fed. Appx. 159.

No. 16–5870. TURNER *v.* NEW YORK. Certiorari denied. Reported below: 137 App. Div. 3d 463, 26 N. Y. S. 3d 281.

No. 16–5912. RANGEL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 62 Cal. 4th 1192, 367 P. 3d 649.

No. 16–5916. BURKHOLDER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 816 F. 3d 607.

No. 16–5937. VELASCO *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–5961. CARDENAS RAMIREZ *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITU-

TIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 820 F. 3d 197.

No. 16–5969. CHAPMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 659 Fed. Appx. 92.

No. 16–6085. SIMON *v.* FISHER, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS. C. A. 5th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 386.

No. 16–6088. WARREN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 614.

No. 16–6089. WHITE *v.* MATTHEWS ET AL. Ct. App. Mich. Certiorari denied.

No. 16–6132. FUENTES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 619 Fed. Appx. 94.

No. 16–6135. MUHLENBERG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 615.

No. 16–6182. CUMMINGS *v.* DAVIS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 796 F. 3d 1135 and 822 F. 3d 1010.

No. 16–6251. LOPEZ-COLLAZO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 824 F. 3d 453.

No. 16–6257. MCGRIFF *v.* STATE CIVIL SERVICE COMMISSION ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 650 Fed. Appx. 95.

No. 16–6260. CLEGG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 686.

No. 16–6307. MITCHELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 651.

No. 16–6366. LATIMER ET AL. *v.* SOCIAL SECURITY ADMINISTRATION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 833.

No. 16–6367. BLACK *v.* NEVADA. Ct. App. Nev. Certiorari denied.

No. 16–6368. JONES *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 246 Cal. App. 4th 92, 200 Cal. Rptr. 3d 671.

No. 16–6371. WILSON *v.* WINN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–6372. WILSON *v.* CARLOS ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–6381. HAYMON *v.* CALIFORNIA. App. Div., Super. Ct. Cal., County of San Joaquin. Certiorari denied.

No. 16–6382. FINLEY *v.* EVANS. C. A. 8th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 252.

No. 16–6399. SEKENDUR *v.* UNITED STATES EX REL. MCCANDLISS. C. A. 7th Cir. Certiorari denied. Reported below: 631 Fed. Appx. 447.

No. 16–6401. FITZGERALD *v.* JOHNSON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–6403. HYNOSKI *v.* ATWOOD, MALONE, TURNER & SABIN, ET AL. Ct. App. N. M. Certiorari denied.

No. 16–6405. COMEAUX *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–6407. LEMAR *v.* AMERICAN TRADING CORPS. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 643 Fed. Appx. 79.

No. 16–6408. JONES *v.* ILLINOIS DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 140399–U.

No. 16–6414. WILKENS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 16–6415. WYCHE *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 170 So. 3d 898.

No. 16–6416. JACOB H. *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 1. Certiorari denied.

No. 16–6419. ZOICA *v.* MACKIE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–6420. WOODARD *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–6423. WALTON *v.* DISTRICT COURT OF OKLAHOMA, TULSA COUNTY. Ct. Crim. App. Okla. Certiorari denied.

No. 16–6435. BROWN *v.* FLORIDA STATE ATTORNEY OFFICE ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–6440. DURHAM *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 16–6441. EVANS-BEY *v.* CASSADY, WARDEN. Sup. Ct. Mo. Certiorari denied.

No. 16–6442. CLERK *v.* CASSADY, WARDEN. Sup. Ct. Mo. Certiorari denied.

No. 16–6449. ALEJANDRO *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–6455. WILLIAMS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 16–6457. MICKEY *v.* SPANAGAL, JUDGE, ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–6462. BRUMFIELD *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 16–6466. MCELROY *v.* CASSADY, WARDEN. Sup. Ct. Mo. Certiorari denied.

No. 16–6467. CARTER *v.* JENKINS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 829 F. 3d 455.

No. 16–6472. STEVENS *v.* BITER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6473. STOKES *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–6474. Brown *v.* Bowersox, Warden. Sup. Ct. Mo. Certiorari denied.

No. 16–6479. Alfred *v.* Bondi, Attorney General of Florida. Sup. Ct. Fla. Certiorari denied.

No. 16–6480. Davis *v.* Griffith, Warden. Sup. Ct. Mo. Certiorari denied.

No. 16–6481. Ralston-Charnley *v.* Town of South Palm Beach, Florida, et al. C. A. 11th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 874.

No. 16–6494. Mingo *v.* Raemisch, Executive Director, Colorado Department of Corrections, et al. C. A. 10th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 646.

No. 16–6499. O'Kroley *v.* Fastcase, Inc., et al. C. A. 6th Cir. Certiorari denied. Reported below: 831 F. 3d 352.

No. 16–6503. Peterson *v.* Brill, Chief Justice, Supreme Court of Arkansas, et al. C. A. 8th Cir. Certiorari denied.

No. 16–6504. Patton *v.* Williams et al. C. A. 9th Cir. Certiorari denied.

No. 16–6510. Barnett *v.* Florida. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 190 So. 3d 643.

No. 16–6511. Hale *v.* Julian, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 829 F. 3d 1162.

No. 16–6514. Jamali *v.* Maricopa County, Arizona, et al. C. A. 9th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 722.

No. 16–6515. Draper *v.* Whorton. C. A. 5th Cir. Certiorari denied.

No. 16–6517. Ramsey *v.* Pash, Warden. Sup. Ct. Mo. Certiorari denied.

No. 16–6518. Brown, nka Ankh El *v.* Indiana et al. C. A. 7th Cir. Certiorari denied.

No. 16–6519. Brown, nka Ankh El *v.* Ray Skillman Westside Imports, Inc., et al. C. A. 7th Cir. Certiorari denied.

No. 16–6520. THARPE *v.* CAPITOL ONE BANK, N. A. Sup. Ct. Fla. Certiorari denied.

No. 16–6522. WHITEHEAD *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 245 Cal. App. 4th 778, 200 Cal. Rptr. 3d 133.

No. 16–6523. CLAUDIO *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–6524. DEE *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 16–6527. MADDREY *v.* CLARK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–6528. LOVINGS *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 16–6529. LONGARIELLO *v.* AURA AT MIDTOWN/ALLIANCE RESIDENTIAL, LLC. Ct. App. Ariz. Certiorari denied.

No. 16–6530. WILLIAMS *v.* STEELE, WARDEN. Sup. Ct. Mo. Certiorari denied.

No. 16–6535. SMITH *v.* PARAMO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6537. COPE *v.* OHIO. Ct. App. Ohio, 12th App. Dist., Butler County. Certiorari denied.

No. 16–6539. HOCKENSMITH *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 175 So. 3d 302.

No. 16–6540. IRISH *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 636 Fed. Appx. 703.

No. 16–6541. GUZMAN-RIVADENEIRA *v.* LYNCH, ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 822 F. 3d 978.

No. 16–6542. FRASER *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 187 So. 3d 1256.

No. 16–6545. Foster *v.* Reynolds, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 640 Fed. Appx. 258.

No. 16–6551. Saterstad *v.* Wingard, Superintendent, State Correctional Institution at Somerset, et al. C. A. 3d Cir. Certiorari denied.

No. 16–6552. Ramirez-Gomez *v.* Lynch, Attorney General. C. A. 9th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 314.

No. 16–6553. VanPelt *v.* Illinois. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 2015 IL App (4th) 140904–U.

No. 16–6554. Williams *v.* White, Warden, et al. C. A. 6th Cir. Certiorari denied.

No. 16–6556. Nettles *v.* Grounds, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 830 F. 3d 922.

No. 16–6557. Propst *v.* Georgia. Sup. Ct. Ga. Certiorari denied. Reported below: 299 Ga. 557, 788 S. E. 2d 484.

No. 16–6560. Brown *v.* Williams. Sup. Ct. Ohio. Certiorari denied. Reported below: 146 Ohio St. 3d 1500, 2016-Ohio-5792, 58 N. E. 3d 1172.

No. 16–6563. DeMola *v.* Lattimore, Warden. C. A. 9th Cir. Certiorari denied.

No. 16–6564. Armistead *v.* Clay, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 490.

No. 16–6565. Carter *v.* Georgia. Sup. Ct. Ga. Certiorari denied. Reported below: 298 Ga. 867, 785 S. E. 2d 274.

No. 16–6567. Brown *v.* Mississippi. Ct. App. Miss. Certiorari denied. Reported below: 198 So. 3d 325.

No. 16–6568. Brightley *v.* Capra, Superintendent, Sing Sing Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 16–6573. Booth *v.* Pringle, Warden. C. A. 8th Cir. Certiorari denied.

No. 16–6575. Staruh *v.* Torma, Superintendent, State Correctional Institution at Cambridge Springs, et al. C. A. 3d Cir. Certiorari denied. Reported below: 827 F. 3d 251.

No. 16–6576. STYERS *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 329.

No. 16–6582. DOCHERTY AKA DOCKHERTY *v.* BUSH, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 621 Fed. Appx. 258.

No. 16–6584. CHEATHAM *v.* BAILEY ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–6585. MCCORMICK *v.* MCFADDEN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 953.

No. 16–6587. PEACOCK *v.* PERRY, SECRETARY, NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY. C. A. 4th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 178.

No. 16–6589. PATTERSON *v.* HOLLOWAY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–6590. JOHNSON *v.* MACKIE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–6592. KIEL *v.* UNITED STATES; and

No. 16–6754. MARSHALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 658 Fed. Appx. 701.

No. 16–6594. YANEY *v.* SUPERIOR COURT OF CALIFORNIA, RIVERSIDE COUNTY, ET AL. (two judgments). Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 16–6598. MADDEN, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED *v.* BROWN, GOVERNOR OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 814 F. 3d 1007.

No. 16–6607. JONAS *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–6618. WILLIAMS *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 830 F. 3d 770.

No. 16–6620. FITZGERALD *v.* JOHNSON, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–6623. STRINGER *v.* GILMORE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–6624. FULTON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied.

No. 16–6625. FARRAY *v.* LYNCH, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied.

No. 16–6626. GAYOL *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 131112–U.

No. 16–6627. YOUNG *v.* LOS ANGELES COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–6629. WEST *v.* KERNAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 16–6630. FREDERICK *v.* CLARK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION. C. A. 3d Cir. Certiorari denied.

No. 16–6631. HUNTER *v.* BALLARD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 612.

No. 16–6633. FREEMAN *v.* BRAZELTON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6634. HOWARD *v.* CLARK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–6635. GOODMAN *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 54 N. E. 3d 453.

No. 16–6636. WILLIAMS *v.* MACLAREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–6637. TAYLOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–6639. PORTER *v.* OHIO. Ct. App. Ohio, 8th App. Dist., Cuyahoga County. Certiorari denied. Reported below: 2016-Ohio-1115, 61 N. E. 3d 589.

No. 16–6641. CARABALLO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 831 F. 3d 95.

No. 16–6644. RICHARDSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 780 F. 3d 812.

No. 16–6645. RASAKI *v.* LYNN. Ct. App. Ind. Certiorari denied. Reported below: 48 N. E. 3d 392.

No. 16–6646. GARCIA *v.* UNITED STATES POSTAL SERVICE. C. A. 7th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 934.

No. 16–6649. RODRIGUEZ *v.* DAVEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6651. HORTON *v.* GARMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–6652. GIVENS *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 16–6653. HUNTER *v.* MISSOURI DEPARTMENT OF CORRECTIONS. Sup. Ct. Mo. Certiorari denied.

No. 16–6654. HATCHER *v.* CLARK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–6655. FERREIRA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 2. Certiorari denied.

No. 16–6656. GARDNER *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 16–6658. GARDNER *v.* RYAN ET AL. C. A. 2d Cir. Certiorari denied.

No. 16–6659. GOODMAN *v.* PEARSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 799.

No. 16–6660. HICKLIN *v.* STEELE, WARDEN. Sup. Ct. Mo. Certiorari denied.

No. 16–6662. JACKSON *v.* CITY OF MEMPHIS, TENNESSEE. C. A. 6th Cir. Certiorari denied.

No. 16–6663. MANSHIP *v.* MCAULIFFE ET AL. Sup. Ct. Va. Certiorari denied.

No. 16–6664. KELLY *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 16–6666. SATTLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 794.

No. 16–6667. SERIO *v.* ROHLFING. App. Ct. Ill., 5th Dist. Certiorari denied.

No. 16–6669. METTS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 122 A. 3d 1124.

No. 16–6671. NENG SAYPAO PHA *v.* SWARTHOUT, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 658 Fed. Appx. 849.

No. 16–6672. GARCIA-TICAS *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–6673. FLORENCE *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 271.

No. 16–6678. WALTEMYER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 145 A. 3d 775.

No. 16–6679. YOUNG *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 16–6682. VELAZCO *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 16–6683. WASHINGTON *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 16–6684. GRIFFIN *v.* KEITH, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 16–6686. GRIMES *v.* TODD. C. A. 11th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 647.

No. 16–6687. HARPER *v.* OHIO. Ct. App. Ohio, 5th App. Dist., Guernsey County. Certiorari denied. Reported below: 2016-Ohio-471.

No. 16–6688. HORTON *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 225 N. C. App. 655, 738 S. E. 2d 453.

No. 16–6689. GODWIN *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 160 So. 3d 497.

No. 16–6690. GOODSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 16–6696. WELLS *v.* MILLER, JUDGE, JUDICIAL CIRCUIT COURT OF FLORIDA, PALM BEACH COUNTY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 874.

No. 16–6697. THOMPSON *v.* KERNAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–6698. CLAY *v.* MCDONALD, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 639 Fed. Appx. 649.

No. 16–6699. MINOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 831 F. 3d 601.

No. 16–6700. PICKETT *v.* NEVADA BOARD OF PAROLE COMMISSIONERS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 244.

No. 16–6701. ONYEGBALA *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 141 A. 3d 1105.

No. 16–6702. TORRES *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 136 App. Div. 3d 1329, 24 N. Y. S. 3d 467.

No. 16–6704. CAMPBELL *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 16–6705. ANDERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 795.

No. 16–6706. BURGIE *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2016 Ark. 144.

No. 16–6708. DOVE *v.* PATE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 188.

No. 16–6710. PRINTUP *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 16–6711. BOSLEY *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 16–6714. HAWKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 16–6715. HICKS *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–6716. GRIMES *v.* MCFADDEN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 217.

No. 16–6717. HOOD *v.* PASH, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 16–6718. HERNANDEZ *v.* GIDLEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–6719. HODGES *v.* JARVIS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 16–6720. FRENCH *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–6721. ANTONIO GARCIA *v.* LYNCH, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 16–6722. HARPER *v.* SUPREME COURT OF OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 146 Ohio St. 3d 1463, 2016-Ohio-4969, 54 N. E. 3d 1263.

No. 16–6723. QUATRINE *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–6724. STINE *v.* SAMUELS. C. A. 10th Cir. Certiorari denied.

No. 16–6727. HENDON *v.* BAROYA ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–6728. GREEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 80.

No. 16–6735. JACKSON *v.* SLOAN, WARDEN. Sup. Ct. Ohio. Certiorari denied. Reported below: 150 Ohio St. 3d 14, 2016-Ohio-5106, 78 N. E. 3d 822.

No. 16–6736. WALDEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 778.

No. 16–6737. MAXIME *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–6738. TURNIDGE *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 359 Ore. 364, 374 P. 3d 853.

No. 16–6740. ANDERSON *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–6742. PILOTO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 816.

No. 16–6744. DAVIS *v.* PRINGLE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 16–6745. CLAUDIO *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–6751. MIESEGAES *v.* HARRIS, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–6752. KOH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–6755. LUIS LEONOR *v.* FRAKES, DIRECTOR, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES. Sup. Ct. Neb. Certiorari denied. Reported below: 293 Neb. xix.

No. 16–6756. LANE *v.* MURRIE. C. A. 7th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 666.

No. 16–6757. JUDY *v.* WILSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 803.

No. 16–6758. VISICH *v.* WALSH, SUPERINTENDENT, SULLIVAN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 16–6759. ALEXANDER *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 190 So. 3d 83.

No. 16–6763. MORROW *v.* BRENNAN, POSTMASTER GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 480.

No. 16–6764. MORROW *v.* BRENNAN, POSTMASTER GENERAL. C. A. 7th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 480.

No. 16–6765. MEGWA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 674.

No. 16–6766. JOHNSON *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 191 So. 3d 732.

No. 16–6767. NEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 659 Fed. Appx. 376.

No. 16–6768. CHARLES *v.* HARRY, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CAMP HILL, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–6769. CARTER *v.* SHERMAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6770. SMITH *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 16–6771. LONGORIA *v.* UNITED STATES;
No. 16–6779. LONGORIA *v.* UNITED STATES; and
No. 16–6794. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 831 F. 3d 663.

No. 16–6772. MOSS *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 199 So. 3d 273.

No. 16–6773. MULLENS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 197 So. 3d 16.

No. 16–6774. MELENDEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 735.

No. 16–6775. PATRICIO MENDIETA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 352.

No. 16–6776. NEYHART *v.* IDAHO. Ct. App. Idaho. Certiorari denied. Reported below: 160 Idaho 746, 378 P. 3d 1045.

No. 16–6777. MORTON *v.* PERRY, SECRETARY, NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY. C. A. 4th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 780.

No. 16–6778. CHETTANA *v.* KIRKPATRICK, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 16–6781. STEVENSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 832 F. 3d 412.

No. 16–6782. NORTHERN *v.* TEGELS. Ct. App. Wis. Certiorari denied.

No. 16–6783. MELENDEZ-JIMENEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 856.

No. 16–6784. TEVIS *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 16–6785. WILLIAMS *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 17.

No. 16–6787. JUANICO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 658 Fed. Appx. 906.

No. 16–6788. PAYNE *v.* AMERICAN CORRECTIONAL ASSN. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 149.

No. 16–6789. MYERS *v.* MATHIAS, JUDGE, COURT OF APPEALS OF INDIANA, THIRD DISTRICT, ET AL. C. A. 7th Cir. Certiorari denied.

No. 16–6790. PHILLIPS *v.* BITER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 299.

No. 16–6791. TOLBERT *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 16–6792. DIMPERIO *v.* NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION. C. A. 2d Cir. Certiorari denied. Reported below: 653 Fed. Appx. 52.

No. 16–6793. SANTA *v.* TEXAS. C. A. 5th Cir. Certiorari denied.

No. 16–6797. MAGWOOD *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 841.

No. 16–6798. LAL *v.* PFEIFFER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6799. BOONE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 828 F. 3d 705.

No. 16–6800. BONVENTRE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 646 Fed. Appx. 73.

No. 16–6803. LYNN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 639 Fed. Appx. 67.

No. 16–6804. BUTLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 659 Fed. Appx. 390.

No. 16–6805. ECCLESTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 648 Fed. Appx. 606.

No. 16–6808. GADDY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 628.

No. 16–6809. BENDEL *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 16–6810. PICKFORD *v.* JANDA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 660 Fed. Appx. 494.

No. 16–6811. PRESTON *v.* UNITED STATES; and
No. 16–6819. ALLEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 659 Fed. Appx. 169.

No. 16–6816. RUSSELL *v.* UNITED STATES; and
No. 16–6877. LANGE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 834 F. 3d 58.

No. 16–6820. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 492.

No. 16–6821. BRANDON *v.* BORDERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6822. CATERBONE *v.* HALLETT, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT FRAMINGHAM, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–6824. FISHER *v.* CITY OF IRONTON, OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 146 Ohio St. 3d 1412, 2016-Ohio-3390, 51 N. E. 3d 657.

No. 16–6825. FRANKLIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 622 Fed. Appx. 501.

No. 16–6826. HORTON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 638 Fed. Appx. 126.

No. 16–6827. MOSQUERA GAMBOA *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–6830. HEDRICK *v.* UNITED STATES MARSHALS SERVICE. C. A. 4th Cir. Certiorari denied. Reported below: 642 Fed. Appx. 292.

No. 16–6832. HORNER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 16–6833. FEREBEE *v.* INTERNATIONAL HOUSE OF PANCAKES. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 536.

No. 16–6834. ROGERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 657 Fed. Appx. 735.

No. 16–6836. GIL-MARTINEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 809 F. 3d 686.

No. 16–6838. FREEMAN *v.* STEELE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 16–6839. GUERRA-GUALA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–6841. MAGUEYAL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 392.

No. 16–6847. BAPTISTE *v.* HOPSON ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 469.

No. 16–6848. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 829 F. 3d 476.

No. 16–6851. LANDRON-CLASS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 16–6852. STARR *v.* OBENLAND. C. A. 9th Cir. Certiorari denied.

No. 16–6853. CAMPOS, AKA GONZALEZ-REYES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–6854. VIVES-MACIAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 865.

No. 16–6857. WILLIAMS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 182 So. 3d 645.

No. 16–6858. JONES *v.* VIRGA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6859. DUBRULE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 822 F. 3d 866.

No. 16–6860. JOHNSON *v.* DAVEY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 518.

No. 16–6862. CAVAZOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 831 F. 3d 663.

No. 16–6864. SAUNDERS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 16–6865. NELSON *v.* BALLARD, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 654 F. 3d 633.

No. 16–6867. BRUCE *v.* DREW, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 658 Fed. Appx. 935.

No. 16–6869. MORAN DIAZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 839.

No. 16–6871. WOODS *v.* ARIZONA ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–6873. HEARD *v.* KERNAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. Sup. Ct. Cal. Certiorari denied.

No. 16–6874. HERNANDEZ-AYALA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 440.

No. 16–6876. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 128.

No. 16–6878. BIKUNDI *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 16–6881. LOPEZ-NEGRON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 16–6888. CARTER *v.* BRENNAN, POSTMASTER GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 667 Fed. Appx. 349.

No. 16–6889. ESPINOZA-SANTOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 108.

No. 16–6892. ESTRADA *v.* MCDOWELL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6893. MCCALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 833 F. 3d 560.

No. 16–6894. RUDDOCK *v.* LYNCH, ATTORNEY GENERAL. C. A. 8th Cir. Certiorari denied.

No. 16–6896. TAFFNER ET UX. *v.* ARKANSAS DEPARTMENT OF HUMAN SERVICES ET AL. Sup. Ct. Ark. Certiorari denied. Reported below: 2016 Ark. 231, 493 S. W. 3d 319.

No. 16–6897. SHOCKEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 660 Fed. Appx. 470.

No. 16–6898. MITCHELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 825 F. 3d 422.

No. 16–6900. SCOTT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 110.

No. 16–6905. DAVIS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 16–6906. BURGESS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–6910. EVANS *v.* DORETHY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 833 F. 3d 758.

No. 16–6912. DUKES *v.* JENKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–6914. LEE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–6916. MARTIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 265.

No. 16–6924. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 114.

No. 16–6929. NGUYEN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 829 F. 3d 907.

No. 16–6933. HAIRE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 23.

No. 16–6934. GARCIA-ESCALERA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 942.

No. 16–6935. LAWRENCE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–6936. BASURTO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 834 F. 3d 1109.

No. 16–6937. AL-AMIN, AKA ROBINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–6938. LOZOYA-VASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 866.

No. 16–6942. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 821 F. 3d 1293.

No. 16–6945. NAPOLI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 661 Fed. Appx. 221.

No. 16–6946. REDD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 300.

No. 16–6949. BROCK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–6950. CAMERON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 835 F. 3d 46.

No. 16–6951. VERNACE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 811 F. 3d 609.

No. 16–6954. ROACH *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 227 Md. App. 768.

No. 16–6955. FOX *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–6956. HALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 803 F. 3d 209.

No. 16–6959. RUIZ *v.* BUTLER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 16–6962. GRIFFIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 617 Fed. Appx. 618.

No. 16–6963. LENZ *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 197 So. 3d 56.

No. 16–6965. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–6966. BARELA *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 16–6967. BAKER *v.* PFISTER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 16–6968. BUTLER *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 16–6970. GRADY *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 247 N. C. App. 479, 787 S. E. 2d 465.

No. 16–6974. BRYANT *v.* UNITED STATES POSTAL SERVICE. C. A. Fed. Cir. Certiorari denied.

No. 16–6975. AGUILAR *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 16–6977. ALVARADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 524.

No. 16–6978. VILLALOBOS-ALCALA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 833 F. 3d 453.

No. 16–6979. MCMILLON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 657 Fed. Appx. 326.

No. 16–6980. POPA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 835 F. 3d 506.

No. 16–6981. MORSETTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 499.

No. 16–6983. LEWIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 660 Fed. Appx. 396.

No. 16–6986. BRENNAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 662.

No. 16–6990. HARRIS *v.* MEEKS, WARDEN. C. A. 3d Cir. Certiorari denied.

No. 16–6997. TORRES-RIVAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 825 F. 3d 483.

No. 16–6998. BROWNE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 834 F. 3d 403.

No. 16–7003. RIVERA-RIVERA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 827 F. 3d 184.

No. 16–7004. WITTEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 880.

No. 16–7005. WILSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 433.

No. 16–7009. GARCIA-LAGUNAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 835 F. 3d 479.

No. 16–7011. WILLIAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 381.

No. 16–7015. RAY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 831 F. 3d 431.

No. 16–7017. EWING *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 919.

No. 16–7018. CANNON *v.* JANDA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 217.

No. 16–7021. PRIGGE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 830 F. 3d 1094.

No. 16–7024. JAMES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 68.

No. 16–7026. BOYKIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 660 Fed. Appx. 35.

No. 16–7027. WASHINGTON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 654 Fed. Appx. 11.

No. 16–7029. CUNNINGHAM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 16–7031. TERRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–7033. MCQUEEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 636 Fed. Appx. 652.

No. 16–7039. PIERRE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 825 F. 3d 1183.

No. 16–7040. BARBEE *v.* CABARRUS COUNTY, NORTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 691.

No. 16–7041. NEWSOME *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 980.

No. 16–7042. OMRAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 427.

No. 16–7045. MURRAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 659 Fed. Appx. 1023.

No. 16–7047. HARRISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 659 Fed. Appx. 166.

No. 16–7049. RANDLE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 16–7057. LARABEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 620.

No. 16–7058. JENKINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 659 Fed. Appx. 327.

No. 16–7062. JUSTICE *v.* PARRIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–7068. SISCO *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 239 Ariz. 532, 373 P. 3d 549.

No. 16–7074. HALL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–7075. MYTON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 16–7076. HERNANDEZ-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 576.

No. 16–7085. CLEMMONS *v.* LYNCH, ATTORNEY GENERAL, ET AL. C. A. 2d Cir. Certiorari denied.

No. 16–7089. GOCHIE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 668 Fed. Appx. 384.

No. 16–7090. GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 658 Fed. Appx. 748.

No. 16–7091. GUY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 457.

No. 16–7094. VIREN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 828 F. 3d 535.

No. 16–7095. WARREN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 660 Fed. Appx. 611.

No. 16–7097. GARDNER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 140 A. 3d 1172.

No. 16–7098. LLOYD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 594.

No. 16–7102. SMITH *v.* OKLAHOMA CITY, OKLAHOMA, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 505.

No. 16–7106. FREEMAN *v.* MEDEIROS, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT NORFOLK. C. A. 1st Cir. Certiorari denied. Reported below: 691 Fed. Appx. 642.

No. 16–7108. EASTER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 589.

No. 16–7113. ALSBORG *v.* SWARTHOUT, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 883.

No. 16–7114. BLACK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 376.

No. 16–7117. MCGEE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–7119. MONROE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 661 Fed. Appx. 247.

No. 16–7126. MCDOWELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–7128. OKEAYAINNEH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 681.

No. 16–7129. GALIANY-CRUZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 16–7130. FABRICANT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–7139. BRUNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 658 Fed. Appx. 685.

No. 16–7140. ANNESE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 761.

No. 16–7142. THINH HUNG LE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 661 Fed. Appx. 162.

No. 16–7143. KREBS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 830 F. 3d 800.

No. 16–7147. AWULYE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 662 Fed. Appx. 15.

No. 16–7149. ACOSTA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 660 Fed. Appx. 749.

No. 16–7161. EDWARDS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 827 F. 3d 1134.

No. 16–200. GOOGLE INC. *v.* CIOFFI ET AL. C. A. Fed. Cir. Motion of Public Knowledge et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 632 Fed. Appx. 1013.

No. 16–231. SOUTH CAROLINA *v.* MILLER. Sup. Ct. S. C. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 16–276. DOE ET AL. *v.* BACKPAGE.COM, LLC, ET AL. C. A. 1st Cir. Motions of Human Trafficking Institute et al., National Center for Missing and Exploited Children, FAIR Girls, Coalition Against Trafficking Women et al., Professor Chad Flanders et al., and Legal Momentum et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 817 F. 3d 12.

No. 16–360. MYLAN PHARMACEUTICALS INC. ET AL. *v.* ACORDA THERAPEUTICS INC. ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 817 F. 3d 755.

No. 16–366. ETHICON ENDO-SURGERY, INC. *v.* COVIDIEN LP ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 812 F. 3d 1023.

No. 16–377. LIFESCAN SCOTLAND, LTD. *v.* PHARMATECH SOLUTIONS, INC., ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 633 Fed. Appx. 789.

No. 16–493. MERCK & CIE ET AL. *v.* WATSON LABORATORIES, INC. C. A. Fed. Cir. Certiorari denied. JUSTICE ALITO took

no part in the consideration or decision of this petition. Reported below: 822 F. 3d 1347.

No. 16–500. R. P. ET UX. *v.* LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES ET AL. Ct. App. Cal., 2d App. Dist., Div. 5. Motions of respondents Minor, Alexandria P.; and Father J. E. for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 1 Cal. App. 5th 331, 204 Cal. Rptr. 3d 617.

No. 16–511. KOLAILAT *v.* MCKENNETT. Ct. App. Mich. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 16–558. SKINNER *v.* SCHLUMBERGER TECHNOLOGY CORP. ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 655 Fed. Appx. 188.

No. 16–601. HARRIS *v.* VANGUARD GROUP, INC. C. A. 4th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 667 Fed. Appx. 815.

No. 16–6604. GERONIMO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 16–6650. FINCH *v.* MOORE ET AL. C. A. 11th Cir. Certiorari before judgment denied.

No. 16–6726. CARTER *v.* LANE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE, ET AL. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 16–6875. GIORDANO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR and JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 16–6960. GORBEY *v.* RATHMAN, WARDEN. C. A. 11th Cir. Certiorari denied. THE CHIEF JUSTICE and JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 16–6961. GORBEY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. THE CHIEF JUSTICE and JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 16–7052. GORBEY *v.* TAYLOR, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. THE CHIEF JUSTICE and JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 16–7061. MORROW *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

Rehearing Denied

No. 15–9141. IN RE BRASCOM, *ante*, p. 814;

No. 15–9276. IN RE WHITTAKER, *ante*, p. 813;

No. 15–9322. BAZZO *v.* ASUNCION, ACTING WARDEN, *ante*, p. 836;

No. 15–9328. STOCKMAN *v.* BERGHUIS, WARDEN, *ante*, p. 836;

No. 15–9355. KENNEDY *v.* TEXAS, *ante*, p. 837;

No. 15–9514. KORSCHGEN *v.* MCKINNEY, WARDEN, *ante*, p. 843;

No. 15–9546. TRICOME *v.* PENNSYLVANIA, *ante*, p. 844;

No. 15–9581. BASHAW *v.* PARAMO, WARDEN, *ante*, p. 846;

No. 15–9650. REED *v.* KERNAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, *ante*, p. 850;

No. 15–9711. EVERETT *v.* CONLEY, WARDEN, *ante*, p. 854;

No. 15–9842. DAKER *v.* NATIONAL BROADCASTING CO. ET AL., *ante*, p. 861;

No. 16–19. BARNUM *v.* OHIO STATE UNIVERSITY MEDICAL CENTER ET AL., *ante*, p. 867;

No. 16–44. SHEK *v.* ACE–USA/ESIS ET AL., *ante*, p. 869;

No. 16–119. RICKS *v.* QUALITY CARRIERS, INC., ET AL., *ante*, p. 873;

No. 16–147. LANHAM *v.* HAZLETT ET AL., *ante*, p. 918;

No. 16–322. AZKOUR *v.* LITTLE REST TWELVE, INC., *ante*, p. 962;

No. 16–339. TAYLOR *v.* MARGO ET AL., *ante*, p. 962;

No. 16–343. TUVELL *v.* INTERNATIONAL BUSINESS MACHINES, INC., *ante*, p. 980;

No. 16–403. ELKHARWILY *v.* MAYO HOLDING CO. ET AL., *ante*, p. 988;

No. 16–404. NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF MULTIJURISDICTION PRACTICE ET AL. *v.* LYNCH, ATTORNEY GENERAL, ET AL., *ante*, p. 980;

No. 16–5069. MOAN *v.* WISE, *ante*, p. 879;

No. 16–5115. Martinez *v.* United States, *ante*, p. 882;

No. 16–5134. Latimer et al. *v.* City of Charlotte, North Carolina, *ante*, p. 883;

No. 16–5156. Lewis *v.* United States, *ante*, p. 884;

No. 16–5167. Triplett *v.* LeBlanc, Secretary, Louisiana Department of Public Safety and Corrections, et al., *ante*, p. 885;

No. 16–5219. Rogers *v.* North Carolina, *ante*, p. 888;

No. 16–5254. Rahman *v.* United States, *ante*, p. 890;

No. 16–5290. Adetiloye *v.* United States, *ante*, p. 892;

No. 16–5312. Jimenez-Rojas *v.* United States, *ante*, p. 963;

No. 16–5328. Volpentesta *v.* United States, *ante*, p. 894;

No. 16–5342. In re Ramon, *ante*, p. 813;

No. 16–5425. Sepehry-Fard *v.* Bank of New York Mellon et al., *ante*, p. 920;

No. 16–5470. Manning *v.* Hudson County, New Jersey, *ante*, p. 921;

No. 16–5497. Mua et ux. *v.* California Casualty Indemnity Exchange et al., *ante*, p. 922;

No. 16–5503. Ballard *v.* North Carolina, *ante*, p. 922;

No. 16–5514. Reid *v.* Hurley Medical Center, *ante*, p. 922;

No. 16–5534. Johnson *v.* Eckert, Superintendent, Wende Correctional Facility, *ante*, p. 923;

No. 16–5535. Rodarte *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division, *ante*, p. 923;

No. 16–5539. Rodarte *v.* Beneficial Texas, Inc., *ante*, p. 923;

No. 16–5569. Rivera-Arvelo *v.* Supreme Court of Puerto Rico, *ante*, p. 924;

No. 16–5571. Mitchell *v.* Enloe, Warden, *ante*, p. 935;

No. 16–5575. Requena *v.* Norwood, Secretary, Kansas Department of Corrections, et al., *ante*, p. 924;

No. 16–5577. Smotherman *v.* United States, *ante*, p. 904;

No. 16–5617. Desper *v.* Clarke, Director, Virginia Department of Corrections, *ante*, p. 935;

No. 16–5741. Easley *v.* Aquilina, Judge, Circuit Court of Michigan, Ingham County, *ante*, p. 925;

No. 16–5742. Sarvestaney *v.* Sarvestaney, *ante*, p. 965;

No. 16–5750. Olague *v.* Workers' Compensation Appeals Board et al., *ante*, p. 965;

No. 16–5761. MARTIN *v.* MACKIE, WARDEN, *ante*, p. 965;

No. 16–5793. LEI KE *v.* DREXEL UNIVERSITY ET AL., *ante*, p. 966;

No. 16–5834. RIGGINS *v.* MILLER, WARDEN, ET AL., *ante*, p. 966;

No. 16–5836. SMITH *v.* BOROUGH OF MORRISVILLE, PENNSYLVANIA, *ante*, p. 966;

No. 16–5903. WRIGHT *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 929;

No. 16–5928. JOHNSON *v.* EBBERT, WARDEN, *ante*, p. 937;

No. 16–5950. JACKSON *v.* LINK, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL., *ante*, p. 969;

No. 16–5974. JONES *v.* MCGINLEY, ACTING SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL., *ante*, p. 969;

No. 16–6024. MATELYAN *v.* SUPREME COURT OF THE UNITED STATES, *ante*, p. 971;

No. 16–6060. KNIEST ET AL. *v.* MISSOURI, *ante*, p. 1004;

No. 16–6066. HIGGINS *v.* UNITED STATES, *ante*, p. 971;

No. 16–6070. GATLING *v.* UNITED STATES, *ante*, p. 971;

No. 16–6083. GRANDA *v.* IVES, WARDEN, *ante*, p. 972;

No. 16–6096. HARRIS *v.* UNITED STATES, *ante*, p. 972;

No. 16–6155. LITTLE COYOTE *v.* UNITED STATES, *ante*, p. 974;

No. 16–6161. BURNS *v.* UNITED STATES, *ante*, p. 974;

No. 16–6163. HOLMES *v.* MERIT SYSTEMS PROTECTION BOARD, *ante*, p. 974;

No. 16–6165. HOPE *v.* UNITED STATES, *ante*, p. 974;

No. 16–6293. JANAKIEVSKI *v.* GRIFFIN, EXECUTIVE DIRECTOR, ROCHESTER PSYCHIATRIC CENTER, *ante*, p. 991; and

No. 16–6538. GADSDEN *v.* UNITED STATES, *ante*, p. 1013. Petitions for rehearing denied.

No. 15–9925. BATISTA *v.* COUNTRYWIDE HOME LOANS, INC., ET AL., *ante*, p. 910. Petition for rehearing denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 16–310. ALFRIEND ET AL. *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA ET AL., *ante*, p. 984. Petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 16–5458. AKEL *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA, *ante*, p. 910; and

No. 16–6362. KISSI *v.* UNITED STATES, *ante*, p. 992. Petitions for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of these petitions.

No. 15–1130. IN RE RATCLIFF, 578 U. S. 1011. Motion of petitioner for leave to file petition for rehearing denied.

JANUARY 10, 2017

Miscellaneous Order

No. 16A646. NORTH CAROLINA ET AL. *v.* COVINGTON ET AL. Application for stay of the order of the United States District Court for the Middle District of North Carolina, case No. 1:15–cv–399, entered on November 29, 2016, presented to THE CHIEF JUSTICE, and by him referred to the Court, granted pending the timely filing of a statement as to jurisdiction. Should such statement be timely filed, this order shall remain in effect pending this Court's action on the appeal. If the judgment should be affirmed, or the appeal dismissed, this stay shall expire automatically. In the event jurisdiction is noted or postponed, this order will remain in effect pending the sending down of the judgment of this Court.

JANUARY 11, 2017

Certiorari Denied

No. 16–723 (16A584). WILKINS *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 THOMAS, and by him referred to the Court, denied. Certiorari denied. Reported below: 832 F. 3d 547.

JANUARY 13, 2017

Certiorari Granted

No. 16–240. WEAVER *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari granted. Reported below: 474 Mass. 787, 54 N. E. 3d 495.

No. 16–299. NATIONAL ASSOCIATION OF MANUFACTURERS *v.* DEPARTMENT OF DEFENSE ET AL. C. A. 6th Cir. Certiorari granted. Reported below: 817 F. 3d 261.

No. 16–309. MASLENJAK *v.* UNITED STATES. C. A. 6th Cir. Certiorari granted. Reported below: 821 F. 3d 675.

No. 16–349. HENSON ET AL. *v.* SANTANDER CONSUMER USA INC. C. A. 4th Cir. Certiorari granted. Reported below: 817 F. 3d 131.

No. 16–399. PERRY *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. D. C. Cir. Certiorari granted. Reported below: 829 F. 3d 760.

No. 16–529. KOKESH *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 10th Cir. Certiorari granted. Reported below: 834 F. 3d 1158.

No. 16–605. TOWN OF CHESTER, NEW YORK *v.* LAROE ESTATES, INC. C. A. 2d Cir. Certiorari granted. Reported below: 828 F. 3d 60.

No. 15–1039. SANDOZ INC. *v.* AMGEN INC. ET AL.; and
No. 15–1195. AMGEN INC. ET AL. *v.* SANDOZ INC. C. A. Fed. Cir. Motion of Apotex, Inc., et al. for leave to file brief as *amici curiae* granted. Certiorari granted, cases consolidated, and a total of one hour is allotted for oral argument. Reported below: 794 F. 3d 1347.

No. 16–285. EPIC SYSTEMS CORP. *v.* LEWIS. C. A. 7th Cir.;
No. 16–300. ERNST & YOUNG LLP ET AL. *v.* MORRIS ET AL. C. A. 9th Cir.; and
No. 16–307. NATIONAL LABOR RELATIONS BOARD *v.* MURPHY OIL USA, INC., ET AL. C. A. 5th Cir. Certiorari granted, cases consolidated, and a total of one hour is allotted for oral argument. Reported below: No. 16–285, 823 F. 3d 1147; No. 16–300, 834 F. 3d 975; No. 16–307, 808 F. 3d 1013.

No. 16–373. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM *v.* ANZ SECURITIES, INC., ET AL. C. A. 2d Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 655 Fed. Appx. 13.

No. 16–405. BNSF RAILWAY CO. *v.* TYRRELL, SPECIAL ADMINISTRATOR FOR THE ESTATE OF TYRRELL, DECEASED, ET AL. Sup. Ct. Mont. Motions of National Association of Manufacturers, Chamber of Commerce of the United States of America et al., Association of American Railroads, and Washington Legal Foun-

dation for leave to file briefs as *amici curiae* granted. Certiorari granted. Reported below: 383 Mont. 417, 373 P. 3d 1.

No. 16–5294. McWilliams *v.* Dunn, Commissioner, Alabama Department of Corrections, et al. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 634 Fed. Appx. 698.

No. 16–6219. Davila *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* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 650 Fed. Appx. 860.

January 17, 2017

Miscellaneous Orders

No. D–2936. In re Disbarment of Stone. Disbarment entered. [For earlier order herein, see *ante*, p. 957.]

No. 16M73. Ortiz *v.* Jimenez Sanchez et al. Motion for leave to proceed as a veteran denied.

No. 16–476. Christie, Governor of New Jersey, et al. *v.* National Collegiate Athletic Assn. et al. C. A. 3d Cir.; and

No. 16–477. New Jersey Thoroughbred Horsemen's Assn., Inc. *v.* National Collegiate Athletic Assn. et al. C. A. 3d Cir. The Acting Solicitor General is invited to file a brief in these cases expressing the views of the United States.

No. 16–6048. Hodge et ux. *v.* College of Southern Maryland et al. C. A. 4th Cir. Motion of petitioners for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 994] denied. The Chief Justice took no part in the consideration or decision of this motion.

No. 16–6814. Ashe *v.* PNC Financial Services Group, Inc. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until February 7, 2017, 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 Alito took no part in the consideration or decision of this motion.

No. 16–7262. IN RE WILLIAMS. Petition for writ of habeas corpus denied.

No. 16–637. IN RE SCHAAP. Petition for writ of mandamus denied.

No. 16–653. IN RE MCDONALD. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 15–9532. JEWEL *v.* UAW INTERNATIONAL ET AL. C. A. 6th Cir. Certiorari denied.

No. 15–9725. MCDONALD *v.* MCHUGH, SECRETARY OF THE ARMY. C. A. 5th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 356.

No. 16–123. DAVIS *v.* MONTANA (Reported below: 383 Mont. 281, 371 P. 3d 979); and SHERMAN *v.* MONTANA (384 Mont. 552). Sup. Ct. Mont. Certiorari denied.

No. 16–237. SERRANO-MERCADO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 784 F. 3d 838.

No. 16–482. ABBOTT ET AL. *v.* BANNER HEALTH NETWORK, FKA BANNER HEALTH, INC., ET AL. Sup. Ct. Ariz. Certiorari denied. Reported below: 239 Ariz. 409, 372 P. 3d 933.

No. 16–483. SIGHTSOUND TECHNOLOGIES, LLC *v.* APPLE INC. C. A. Fed. Cir. Certiorari denied. Reported below: 809 F. 3d 1307.

No. 16–495. BROOKLINE HOUSING AUTHORITY ET AL. *v.* DECAMBRE. C. A. 1st Cir. Certiorari denied. Reported below: 826 F. 3d 1.

No. 16–545. BANK OF AMERICA CORP. ET AL. *v.* GELBOIM ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 823 F. 3d 759.

No. 16–623. MUNN, DIRECTOR OF THE NEBRASKA DEPARTMENT OF BANKING AND FINANCE, ET AL. *v.* BENNIE. C. A. 8th Cir. Certiorari denied. Reported below: 822 F. 3d 392.

No. 16–631. TOWN OF BALL, LOUISIANA *v.* HOWELL ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 827 F. 3d 515.

No. 16–634. CREPEA *v.* COCHISE COUNTY, ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 605.

No. 16–638. SILVERS *v.* IREDELL COUNTY DEPARTMENT OF SOCIAL SERVICES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 182.

No. 16–648. KOUASSI *v.* WESTERN ILLINOIS UNIVERSITY ET AL. C. A. 7th Cir. Certiorari denied.

No. 16–650. GREENE *v.* HARRIS CORP. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 160.

No. 16–664. NERONI *v.* GRIEVANCE COMMITTEE OF THE FIFTH JUDICIAL DISTRICT OF NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 27 N. Y. 3d 943, 49 N. E. 3d 1197.

No. 16–690. CHICAGO REGIONAL COUNCIL OF CARPENTERS PENSION FUND ET AL. *v.* SCHAL BOVIS, INC. C. A. 7th Cir. Certiorari denied. Reported below: 826 F. 3d 397.

No. 16–724. FROLING ET AL. *v.* CITY OF BLOOMFIELD HILLS, MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 16–738. ROGERS *v.* PEARLAND INDEPENDENT SCHOOL DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 827 F. 3d 403.

No. 16–749. BARBEAU *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 2016 WI App 51, 370 Wis. 2d 736, 883 N. W. 2d 520.

No. 16–754. BATTERSON *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 200 So. 3d 71.

No. 16–776. WALKER *v.* SHONDRICK-NAU, EXECUTRIX OF THE ESTATE OF NOON AND SUCCESSOR TRUSTEE OF THE JOHN R. NOON TRUST. Sup. Ct. Ohio. Certiorari denied. Reported below: 149 Ohio St. 3d 282, 2016-Ohio-5793, 74 N. E. 3d 427.

No. 16–5924. BELLO MURILLO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 826 F. 3d 152.

No. 16–5980. BRENES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 700.

No. 16–5984. BRICE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 251.

No. 16–6236. BROOKS *v.* EMPLOYMENT DEPARTMENT ET AL. Ct. App. Ore. Certiorari denied.

No. 16–6478. LACY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–6642. ADAMS *v.* JENKINS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 826 F. 3d 306.

No. 16–6802. LOTT *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–6807. ALEXANDER *v.* GEORGIA. C. A. 11th Cir. Certiorari denied.

No. 16–6815. RUNNER *v.* HOFFNER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–6817. G. I. *v.* FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES ET AL. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 187 So. 3d 898.

No. 16–6823. SHIPE *v.* RAY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 223.

No. 16–6828. HOLLEY *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 16–6831. FULLER *v.* HOLLOWAY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–6835. MARTINEZ *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–6837. KALAK *v.* TRIERWEILER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–6840. GARDNER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 16–6842. PURDIE *v.* GAGE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 16–6844. MACK *v.* HUSTON ET AL. C. A. 2d Cir. Certiorari denied.

No. 16–6849. BALLARD *v.* BUCHANAN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 167.

No. 16–6850. MELANDER *v.* WYOMING ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 661 Fed. Appx. 521.

No. 16–6863. MUNNS *v.* ABOOTALEBI. Ct. App. Cal., 2d App. Dist., Div. 5. Certiorari denied.

No. 16–6866. MORRIS *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 199 So. 3d 278.

No. 16–6870. WHITE *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied. Reported below: 824 F. 3d 753.

No. 16–6879. PETER-TAKANG *v.* SONNIER, SECRETARY, LOUISIANA DEPARTMENT OF CHILDREN AND FAMILY SERVICES, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 315.

No. 16–6884. BLAND *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–6885. LOZANO-TENORIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 634.

No. 16–6921. REMENAR *v.* SCARP, ATTORNEY ADMISSION CLERK, UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON. C. A. 9th Cir. Certiorari denied.

No. 16–6928. PEDERSON *v.* PRINGLE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 16–6947. RACE *v.* STOUT MANAGEMENT ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 132 Nev. 1020, 385 P. 3d 51.

No. 16–6971. GRAY *v.* HILL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6988. BESTER *v.* STEWART, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 836 F. 3d 1331.

No. 16–6994. STARKS *v.* EASTERLING, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 659 Fed. Appx. 277.

No. 16–7006. CLARK *v.* OHIO. Ct. App. Ohio, 1st App. Dist., Hamilton County. Certiorari denied. Reported below: 2016-Ohio-948.

No. 16–7007. HILL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 835 F. 3d 796.

No. 16–7051. MARSHALL *v.* BRADLEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–7103. RIDDICK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 669 Fed. Appx. 613.

No. 16–7120. MUNT *v.* GRANDLIENARD, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 829 F. 3d 610.

No. 16–7131. GROOVER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied

No. 16–7148. BRANCH, AKA BRANCH-EL *v.* CARRILLO ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 215.

No. 16–7153. SEBOLT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 289.

No. 16–7158. LUSTYIK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 833 F. 3d 1263.

No. 16–7159. BOODE *v.* ADAMS, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 536.

No. 16–7162. RINCON-RINCON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 606.

No. 16–7170. JAMEEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 626 Fed. Appx. 415.

No. 16–7173. VALENZUELA-SANCHEZ, AKA ANGEL CONTRERAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 419.

No. 16–7178. ABELLERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–7185. SMITH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–7192. PERRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 659 Fed. Appx. 146.

No. 16–7193. CAZAREZ-SANTOS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 543.

No. 16–7200. AYALA-VENTURA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 661 Fed. Appx. 908.

No. 16–7202. LASLEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 832 F. 3d 910.

No. 16–7213. VALDEZ-JAIME *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 615.

No. 16–452. BENNIE *v.* MUNN, DIRECTOR OF THE NEBRASKA DEPARTMENT OF BANKING AND FINANCE, ET AL. C. A. 8th Cir. Motions of Nine Law Professors, Cato Institute et al., Center for Competitive Politics, and Southeastern Legal Foundation et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 822 F. 3d 392.

No. 16–489. JOHNSON & JOHNSON VISION CARE, INC. *v.* REMBRANDT VISION TECHNOLOGIES, L. P. C. A. Fed. Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 818 F. 3d 1320.

No. 16–641. CLAUSE *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI ET AL. C. A. 8th Cir. Motion of Pension Rights Center for leave to file brief as *amicus curiae* granted. Certiorari denied.

Rehearing Denied

No. 15–9399. BURTON *v.* CALIFORNIA, *ante*, p. 838;

No. 16–456. ELLIS ET UX. *v.* LEMONS ET AL., *ante*, p. 988;

No. 16–5393. HOLLAND *v.* DEPARTMENT OF VETERANS AFFAIRS, *ante*, p. 1001;

No. 16–5982. DULCIO *v.* HALL, WARDEN, ET AL., *ante*, p. 1002;

No. 16–6079. CLARK *v.* CALIFORNIA, *ante*, p. 983; and

No. 16–6125. HOWELL *v.* COLLIN COUNTY, TEXAS DETENTION FACILITY, ET AL., *ante*, p. 1005. Petitions for rehearing denied.

JANUARY 18, 2017

Miscellaneous Order

No. 16A707. GRAY *v.* MCAULIFFE, GOVERNOR OF VIRGINIA, ET AL. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

JANUARY 19, 2017

Dismissal Under Rule 46

No. 16–473. FENKELL *v.* ALLIANCE HOLDINGS, INC., ET AL. C. A. 7th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 829 F. 3d 803.

Certiorari Granted

No. 16–466. BRISTOL-MYERS SQUIBB CO. *v.* SUPERIOR COURT OF CALIFORNIA, SAN FRANCISCO COUNTY, ET AL. Sup. Ct. Cal. Certiorari granted. Reported below: 1 Cal. 5th 783, 377 P. 3d 874.

No. 15–1485. DISTRICT OF COLUMBIA ET AL. *v.* WESBY ET AL. C. A. D. C. Cir. Motion of International Municipal Lawyers Association, Inc., for leave to file brief as *amicus curiae* granted. Certiorari granted. Reported below: 765 F. 3d 13.

JANUARY 23, 2017

Miscellaneous Orders

No. 16M74. WI-LAN USA, INC., ET AL. *v.* APPLE INC. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal granted.

No. 16M75. WOODMAN'S FOOD MARKET, INC. *v.* CLOROX CO. ET AL. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 15–118. HERNANDEZ ET AL. *v.* MESA ET AL. C. A. 5th Cir. [Certiorari granted, *ante*, p. 915.] Motion of federal respondents for divided argument granted.

No. 15–1248. McLane Co., Inc. *v.* Equal Employment Opportunity Commission. C. A. 9th Cir. [Certiorari granted, 579 U. S. 969.] Motion of respondent for allocation of argument time granted.

No. 16–142. Honeycutt *v.* United States. C. A. 6th Cir. [Certiorari granted, *ante*, p. 1028.] Motion of petitioner to dispense with printing joint appendix granted.

No. 16–6895. Roberts *v.* Ferman et al. C. A. 3d Cir.; and
No. 16–6913. Caceres *v.* Skanska USA Building Inc. et al. C. A. 2d Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until February 13, 2017, 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. 16–6890. In re Caldwell et al.; and
No. 16–6919. In re Thomas. Petitions for writs of mandamus denied.

No. 16–720. In re MacNeill. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 15–1527. Aronshtein *v.* United States;
No. 15–1528. Mazer *v.* United States; and
No. 16–152. Denault *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 631 Fed. Appx. 57.

No. 15–1539. Kaley *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 643 Fed. Appx. 930.

No. 16–257. Hawkins *v.* Woods, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 305.

No. 16–333. Brown et al. *v.* Buhman. C. A. 10th Cir. Certiorari denied. Reported below: 822 F. 3d 1151.

No. 16–392. H&R Block, Inc., et al. *v.* Lopez. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 491 S. W. 3d 221.

No. 16–435. Iowa *v.* Marshall. Sup. Ct. Iowa. Certiorari denied. Reported below: 882 N. W. 2d 68.

No. 16–455. Drywall Dynamics, Inc. *v.* Southwest Regional Council of Carpenters. C. A. 9th Cir. Certiorari denied. Reported below: 823 F. 3d 524.

No. 16–471. Ceja-Lua *v.* Lynch, Attorney General. C. A. 5th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 508.

No. 16–521. Marshall *v.* Honeywell Technology Systems Inc. et al. C. A. D. C. Cir. Certiorari denied. Reported below: 828 F. 3d 923.

No. 16–595. Arthur *v.* Alabama. Sup. Ct. Ala. Certiorari denied.

No. 16–642. Grossman *v.* Wehrle. C. A. 6th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 330.

No. 16–655. Los Angeles County, California, et al. *v.* Castro. C. A. 9th Cir. Certiorari denied. Reported below: 833 F. 3d 1060.

No. 16–657. Von Goetzman *v.* Willy Schreiber Enterprises Inc., dba Seffner Self Storage East, et al. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 209 So. 3d 586.

No. 16–659. Berron et al. *v.* Illinois Concealed Carry Licensing Review Board et al. C. A. 7th Cir. Certiorari denied. Reported below: 825 F. 3d 843.

No. 16–660. Aguayo et al. *v.* Jewell, Secretary of Interior, et al. C. A. 9th Cir. Certiorari denied. Reported below: 827 F. 3d 1213.

No. 16–663. Rubey *v.* Vannett. Ct. App. Minn. Certiorari denied.

No. 16–665. Snyder *v.* Grounds, Warden. C. A. 9th Cir. Certiorari denied.

No. 16–669. United States ex rel. Jallali *v.* Sun Healthcare Group et al. C. A. 11th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 745.

No. 16–671. Stokes *v.* Corsbie. Ct. App. Tex., 6th Dist. Certiorari denied. Reported below: 496 S. W. 3d 270.

No. 16–696. FRAKES *v.* OTT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 130.

No. 16–702. RUSSELL *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 16–751. LANDELL *v.* DEPARTMENT OF DEFENSE. C. A. Fed. Cir. Certiorari denied. Reported below: 616 Fed. Appx. 1001.

No. 16–761. BARE ET AL. *v.* ASSURANCE GROUP, INC. Ct. App. N. C. Certiorari denied. Reported below: 245 N. C. App. 566, 782 S. E. 2d 581.

No. 16–766. MEDINA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 642 Fed. Appx. 59.

No. 16–787. MARGARYAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 289.

No. 16–5515. BROWN *v.* OVERMYER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FOREST, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–5726. SHAW *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 207 So. 3d 79.

No. 16–5779. COLE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–6018. RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 16–6049. HILL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 820 F. 3d 1003.

No. 16–6054. HOLMES *v.* NEAL, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied. Reported below: 816 F. 3d 949.

No. 16–6113. LOPEZ-AQUIRRE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 917.

No. 16–6203. WYMER *v.* UNITED STATES; and
No. 16–6886. WYMER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 735.

No. 16–6456. NURITDINOVA *v.* CHILDREN'S HOSPITAL MEDICAL CENTER. C. A. 6th Cir. Certiorari denied.

No. 16–6460. MOON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 802 F. 3d 135.

No. 16–6475. MCBRIDE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 826 F. 3d 293.

No. 16–6498. DAMREN *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 776 F. 3d 816.

No. 16–6603. SULLY *v.* DAVIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6746. BOHANNON *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 222 So. 3d 525.

No. 16–6882. DENOCE *v.* NEFF. C. A. 9th Cir. Certiorari denied. Reported below: 824 F. 3d 1181.

No. 16–6883. DAVIS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 16–6891. CONYERS-CARSON *v.* GERMANTOWN HOMES ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 136 A. 3d 1030.

No. 16–6899. STEELMAN *v.* LONG, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6901. SANAI *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON. C. A. 9th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 560.

No. 16–6902. SCOTT *v.* GROVES ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–6904. JOHNSON *v.* MOONEY, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT RETREAT, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–6907. CANALES *v.* FOX, ASSISTANT WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 346.

No. 16–6911. CAMPBELL *v.* KERNAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 632 Fed. Appx. 355.

No. 16–6915. JOHNSON *v.* MICHIGAN ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–6917. WIGGINS *v.* ROCKFORD HOUSING AUTHORITY ET AL. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 16–6918. WELLS *v.* OHIO. Ct. App. Ohio, 7th App. Dist., Jefferson County. Certiorari denied. Reported below: 2016-Ohio-892.

No. 16–6920. WELLS *v.* KONVISER, ACTING JUSTICE, SUPREME COURT OF NEW YORK, NEW YORK COUNTY, ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 138 App. Div. 3d 501, 28 N. Y. S. 3d 307.

No. 16–6940. TSCHEU *v.* SMITH, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 16–6964. KNOX *v.* STEWART, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–6985. BAKER *v.* URS FEDERAL SERVICES. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 502.

No. 16–7025. JONES *v.* MCCULLICK, ACTING WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–7038. MCKENZIE *v.* JORIZZO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 738.

No. 16–7044. OBERMILLER *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 147 Ohio St. 3d 175, 2016-Ohio-1594, 63 N. E. 3d 93.

No. 16–7079. RICHARD TT. *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 27 N. Y. 3d 718, 59 N. E. 3d 500.

No. 16–7086. SAUNDERS *v.* GARMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–7164. SCOTT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 609.

No. 16–7180. STENHOUSE *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2016 Ark. 295, 497 S. W. 3d 679.

No. 16–7194. KOLE *v.* COLORADO. Dist. Ct. Colo., Larimer County. Certiorari denied.

No. 16–7208. ADEOLU *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 836 F. 3d 330.

No. 16–7216. CARON *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 16–7218. SPICER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 119.

No. 16–7222. SYLVESTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–7226. VALENCIA, AKA VILLANUEVA-ACOSTA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 829 F. 3d 1007.

No. 16–7227. BATTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 661 Fed. Appx. 787.

No. 16–7231. MARKOSIAN *v.* UNITED STATES; and
No. 16–7247. SHAROPETROSIAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 289.

No. 16–7240. CRUZ ET AL. *v.* UNITED STATES; and
No. 16–7259. VASQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: No. 16–7240, 649 Fed. Appx. 373; No. 16–7259, 838 F. 3d 968.

No. 16–7241. CASEY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 825 F. 3d 1.

No. 16–7242. EVANS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 830 F. 3d 761.

No. 16–7243. DAVIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 840 F. 3d 99.

No. 16–7250. HASLAM *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 833 F. 3d 840.

No. 16–7255. FREEBURG *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 649.

No. 16–7258. VIDES-CONTRERAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–7260. THOMAS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 838 F. 3d 926.

No. 16–7261. TOWNS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 886.

No. 16–7266. ABAKPORO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 649 Fed. Appx. 117.

No. 16–7275. BROWN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 289.

No. 16–7283. LAMAR *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 16–7310. BARTOK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 16–7328. ANDREWS *v.* INDIRECT PURCHASER CLASS. C. A. 6th Cir. Certiorari denied.

No. 16–393. ABBOTT, GOVERNOR OF TEXAS, ET AL. *v.* VEASEY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 830 F. 3d 216.

Statement of CHIEF JUSTICE ROBERTS respecting the denial of certiorari.

In 2011, the Texas Legislature enacted Senate Bill 14 (SB14). The law requires voters to present government-issued photo identification before, or shortly after, casting a ballot in person. The United States and private plaintiffs filed suit in the United States District Court for the Southern District of Texas seeking to enjoin enforcement of the law. They argued that SB14 violates the Fourteenth and Fifteenth Amendments because the Texas Legislature acted with discriminatory intent, and that the law violates §2 of the Voting Rights Act of 1965 because it "results in a denial or abridgment of the right . . . to vote on account of race or color." After conducting a bench trial, the District Court ruled in plaintiffs' favor on both claims and enjoined the voter-

identification provisions of SB14. *Veasey* v. *Perry*, 71 F. Supp. 3d 627, 633, 707 (2014).

The United States Court of Appeals for the Fifth Circuit stayed the injunction, heard the case en banc, and sent it back to the District Court. First, the Fifth Circuit vacated the District Court's finding of discriminatory intent and remanded for further consideration of the facts. 830 F. 3d 216, 230 (2016). Second, the court affirmed the District Court's conclusion that SB14 violates §2 of the Voting Rights Act. *Id.*, at 264–265. Because the §2 violation did not justify enjoining SB14 in its entirety, however, the court remanded for further proceedings on an appropriate remedy. *Id.*, at 268–271. Six judges would have reversed the District Court's conclusion that SB14 is unconstitutional and violates §2. *Id.*, at 280, 326 (opinions of Jones, J., and Elrod, J., concurring in part and dissenting in part).

The Texas officials who are defendants in this lawsuit have petitioned for certiorari. Their petition asks the Court to review whether the Texas Legislature enacted SB14 with a discriminatory purpose and whether the law results in a denial or abridgment of the right to vote under §2. Although there is no barrier to our review, the discriminatory purpose claim is in an interlocutory posture, having been remanded for further consideration. As for the §2 claim, the District Court has yet to enter a final remedial order. Petitioners may raise either or both issues again after entry of final judgment. The issues will be better suited for certiorari review at that time.

No. 16–670. VON SCHOENEBECK ET AL. *v.* KONINKLIJKE LUCHTVAART MAATSCHAPPIJ N. V., AKA KLM ROYAL DUTCH AIRLINES. C. A. 9th Cir. Motion of Flyers Rights Education Fund et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 659 Fed. Appx. 392.

No. 16–7249. HARRIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 838 F. 3d 98.

Rehearing Denied

No. 15–1490. STANFORD *v.* UNITED STATES, *ante*, p. 997;

No. 16–5295. RAY *v.* ALABAMA DEPARTMENT OF CORRECTIONS ET AL., *ante*, p. 963;

No. 16–5434. Bell *v.* Florida Highway Patrol et al., *ante*, p. 899;

No. 16–5655. Sykes *v.* United States District Court for the Middle District of Florida, *ante*, p. 936;

No. 16–5697. Taylor *v.* Culliver, Superintendent, Holman Correctional Facility, et al., *ante*, p. 1001;

No. 16–5714. Allen *v.* Williams et al., *ante*, p. 1002;

No. 16–5864. Moss *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division, *ante*, p. 982;

No. 16–5887. Walker *v.* Cartledge, Warden, *ante*, p. 989;

No. 16–5890. Newell *v.* Alden Village Health Facility for Children and Young Adults, *ante*, p. 982;

No. 16–5919. Rother *v.* Clarke, Director, Virginia Department of Corrections, *ante*, p. 990;

No. 16–5940. Tavares *v.* United Airlines et al., *ante*, p. 990;

No. 16–5946. Redford *v.* Georgia, *ante*, p. 968;

No. 16–5957. Johnson *v.* Beach Park School District, *ante*, p. 1002;

No. 16–6095. Wells *v.* City of New York, New York, et al., *ante*, p. 1005;

No. 16–6227. Marr *v.* Harkness, *ante*, p. 983; and

No. 16–6643. Strecker *v.* United States, *ante*, p. 1034. Petitions for rehearing denied.

January 25, 2017

Miscellaneous Orders

No. 15–1039. Sandoz Inc. *v.* Amgen Inc. et al.; and

No. 15–1195. Amgen Inc. et al. *v.* Sandoz Inc. C. A. Fed. Cir. [Certiorari granted, *ante*, p. 1089.] The following briefing schedule is adopted: Petitioner in No. 15–1039 will file opening brief limited to the question presented in its petition, not to exceed 15,000 words, on or before Friday, February 10, 2017. Petitioners in No. 15–1195 will file consolidated opening brief on the question presented in their petition and response brief, not to exceed 19,000 words, on or before Friday, March 10, 2017. Petitioner in No. 15–1039 will file consolidated response brief and reply brief, not to exceed 10,000 words, on or before Friday, March 31, 2017. Petitioners in No. 15–1195 will file reply brief, not to exceed 6,000 words, on or before Friday, April 14, 2017.

Any brief for *amicus curiae* in support of petitioner in No. 15–1039 or in support of neither party is to be filed on or before Friday, February 17, 2017, and the brief should bear a light green cover. Any brief for *amicus curiae* in support of petitioners in No. 15–1195 is to be filed on or before Friday, March 17, 2017, and the brief should bear a dark green cover. An *amicus curiae* may file only a single brief in these cases.

No. 16–285. Epic Systems Corp. *v.* Lewis. C. A. 7th Cir.;
No. 16–300. Ernst & Young LLP et al. *v.* Morris et al. C. A. 9th Cir.; and
No. 16–307. National Labor Relations Board *v.* Murphy Oil USA, Inc., et al. C. A. 5th Cir. [Certiorari granted, *ante*, p. 1089.] The following briefing schedule is adopted: Petitioners in Nos. 16–285 and 16–300 and respondents in No. 16–307 will file opening and reply briefs under the schedule set forth in this Court's Rules 25.1 and 25.3. Respondents in Nos. 16–285 and 16–300 and petitioner in No. 16–307 will file response briefs under the schedule set forth in Rule 25.2.

January 26, 2017

Miscellaneous Order

No. 16A750. Edwards *v.* Collier, Executive Director, Texas Department of Criminal Justice, et al. Application for stay of execution of sentence of death, presented to Justice Thomas, and by him referred to the Court, denied.

Certiorari Denied

No. 16–7710 (16A752). Edwards *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 Thomas, and by him referred to the Court, denied. Certiorari denied. Reported below: 865 F. 3d 197.

No. 16–7714 (16A759). Edwards *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 Thomas, and by him referred to the Court, denied. Certiorari denied. Reported below: 676 Fed. Appx. 319.

JANUARY 27, 2017

Dismissal Under Rule 46

No. 14–7506. ARBOLEDA ORTIZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari dismissed under this Court's Rule 46.

Miscellaneous Order

No. 16A683 (16–880). HABEAS CORPUS RESOURCE CENTER ET AL. *v.* DEPARTMENT OF JUSTICE ET AL. Application to recall and stay the mandate pending disposition of the petition for writ of certiorari, presented to JUSTICE KENNEDY, and by him referred to the Court, denied.

JANUARY 31, 2017

Certiorari Denied

No. 16–7730 (16A769). CHRISTESON *v.* GRIFFITH, WARDEN. C. A. 8th Cir. Application for stay of execution of sentence of death, presented to JUSTICE ALITO, and by him referred to the Court, denied. Certiorari denied. JUSTICE GINSBURG would grant the application for stay of execution. Reported below: 860 F. 3d 585.

FEBRUARY 17, 2017

Miscellaneous Order

No. 16–149. COVENTRY HEALTH CARE OF MISSOURI, INC., FKA GROUP HEALTH PLAN, INC. *v.* NEVILS. Sup. Ct. Mo. [Certiorari granted, *ante*, p. 977.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

FEBRUARY 21, 2017

Certiorari Granted—Vacated and Remanded

No. 16–578. BISHOP ET AL. *v.* WELLS FARGO & CO. ET AL. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Universal Health Services, Inc.* v. *United States ex rel. Escobar*, 579 U. S. 176 (2016). Reported below: 823 F. 3d 35.

Certiorari Dismissed

No. 16–6943. VILLA *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. 16–6958. AMIR-SHARIF *v.* COLLIER, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 16–7188. LORDMASTER, FKA GOLDADER *v.* SUSSEX II STATE PRISON 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*).

No. 16–7279. DA VANG *v.* WISCONSIN. Ct. App. Wis. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 2016 WI App 50, 370 Wis. 2d 261, 881 N. W. 2d 358.

No. 16–7290. MAGWOOD *v.* FLORIDA COURTS 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*).

Miscellaneous Orders

No. 16A632. FISCH *v.* UNITED STATES. S. D. Tex. Application for stay, addressed to JUSTICE KAGAN and referred to the Court, denied.

No. 16A716. ARZU-SUAZO *v.* JOHNSON, SECRETARY, DEPARTMENT OF HOMELAND SECURITY, ET AL. Application for injunc-

tive relief, addressed to JUSTICE SOTOMAYOR and referred to the Court, denied.

No. D–2943. IN RE DISBARMENT OF LOCRICCHIO. Disbarment entered. [For earlier order herein, see *ante*, p. 978.]

No. D–2946. IN RE DISCIPLINE OF PICKERSTEIN. Harold James Pickerstein, of Fairfield, Conn., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2947. IN RE DISCIPLINE OF HUDGENS. David Erickson Hudgens, of Daphne, Ala., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2948. IN RE DISCIPLINE OF DAVIDSON. Marvin S. Davidson, of West Orange, N. J., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2949. IN RE DISCIPLINE OF JOHNSON. Rankin Johnson IV, of Portland, Ore., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2950. IN RE DISCIPLINE OF THOMPSON. Robert Thomas Thompson, Jr., of Atlanta, Ga., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2951. IN RE DISCIPLINE OF SCHWARTZ. Jeffrey Scott Schwartz, of San Diego, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 16M76. SMITH *v.* JACKSON;
No. 16M77. SALATA *v.* FULTON ET AL.;

No. 16M78. ADAMS ET UX. *v.* COMMISSIONER OF INTERNAL REVENUE;

No. 16M79. GRIFFIN *v.* ADAMS ET AL.;

No. 16M80. SMITH *v.* HOUSTON INDEPENDENT SCHOOL DISTRICT;

No. 16M81. FARLEY *v.* JOHNSON, WARDEN;

No. 16M85. ROUSER *v.* CALIFORNIA; and

No. 16M86. HELVEY *v.* THOMPSON. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 16M82. ORTIZ *v.* JIMENEZ-SANCHEZ ET AL. Motion of petitioner for leave to proceed *in forma pauperis* with declaration of indigency under seal denied.

No. 16M83. BLOCKER *v.* KELLEY ET AL.; and

No. 16M84. BLOCKER *v.* NASHVILLE RESCUE MISSION. Motions to direct the Clerk to file petitions for writs of certiorari out of time under this Court's Rule 14.5 denied.

No. 142, Orig. FLORIDA *v.* GEORGIA. Motion of the Special Master for allowance of fees and disbursements granted, and the Special Master is awarded a total of $213,547.35 for the period September 1 through December 31, 2016, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, *ante*, p. 931.]

No. 15–214. MURR ET AL. *v.* WISCONSIN ET AL. Ct. App. Wis. [Certiorari granted, 577 U. S. 1098.] Motion of Nevada et al. for leave to participate in oral argument as *amici curiae* and for divided argument denied.

No. 15–1039. SANDOZ INC. *v.* AMGEN INC. ET AL.; and

No. 15–1195. AMGEN INC. ET AL. *v.* SANDOZ INC. C. A. Fed. Cir. [Certiorari granted, *ante* p. 1089.] Motion of the parties to dispense with printing joint appendix granted.

No. 15–1503. TURNER ET AL. *v.* UNITED STATES; and

No. 15–1504. OVERTON *v.* UNITED STATES. Ct. App. D. C. [Certiorari granted, *ante*, p. 1040.] Motion of the parties to deem the Court of Appeals' joint appendix as supplemental volumes to the joint appendix filed with this Court granted.

No. 16–299. NATIONAL ASSOCIATION OF MANUFACTURERS *v.* DEPARTMENT OF DEFENSE ET AL. C. A. 6th Cir. [Certiorari granted, *ante*, p. 1088.] Motion of petitioner to dispense with printing joint appendix granted.

No. 16–529. KOKESH *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 10th Cir. [Certiorari granted, *ante*, p. 1089.] Motion of petitioner to dispense with printing joint appendix granted.

No. 16–6179. CORRION *v.* BERGH, WARDEN. Ct. App. Mich Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1028] denied.

No. 16–6268. CARBAJAL *v.* WELLS FARGO BANK ET AL. Ct. App. Colo. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1017] denied.

No. 16–6806. WEST *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 1st Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1046] denied.

No. 16–6845. ADAMS *v.* MERIT SYSTEMS PROTECTION BOARD ET AL. C. A. Fed. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1046] denied.

No. 16–7022. NOBLE *v.* VAUGHN, WARDEN, ET AL. C. A. 3d Cir.;

No. 16–7069. ADKINS *v.* WHOLE FOODS MARKET GROUP, INC. C. A. 4th Cir.;

No. 16–7155. SAMPLE *v.* JPMORGAN CHASE BANK, N. A. Ct. App. S. C.;

No. 16–7269. BILLER *v.* TRIPLETT ET AL. Sup. Ct. App. W. Va.;

No. 16–7278. MUA ET AL. *v.* CALIFORNIA CASUALTY INDEMNITY EXCHANGE. Cir. Ct. Montgomery County, Md.;

No. 16–7281. UPADHYAY *v.* AETNA LIFE INSURANCE CO. C. A. 9th Cir.; and

No. 16–7325. SOLIZ *v.* TEXAS. Ct. App. Tex., 4th Dist. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 14, 2017, 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. 16–7157. NOBLE *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is

allowed until March 14, 2017, 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 ALITO took no part in the consideration or decision of this motion.

No. 16–7390. BAHEL *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until March 14, 2017, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court. JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion.

No. 16–7475. IN RE JACKSON;
No. 16–7483. IN RE BELL;
No. 16–7543. IN RE PENDLETON;
No. 16–7724. IN RE STARKS; and
No. 16–7728. IN RE ZONE. Petitions for writs of habeas corpus denied.

No. 16–7014. IN RE JONES;
No. 16–7030 IN RE SAMAD;
No. 16–7107. IN RE ZATER;
No. 16–7135. IN RE CARTER; and
No. 16–7190. IN RE WIDEMAN. Petitions for writs of mandamus denied.

No. 16–7177. IN RE KIDD. Petition for writ of mandamus and/or prohibition denied.

Certiorari Granted

No. 16–424. CLASS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari granted.

Certiorari Denied

No. 16–199. DENELSBECK *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 225 N. J. 103, 137 A. 3d 462.

No. 16–255. BISHWAKARMA *v.* SESSIONS, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 314.

No. 16–279. NEWSPAPER AND MAIL DELIVERERS' UNION OF NEW YORK AND VICINITY *v.* NATIONAL LABOR RELATIONS

BOARD. C. A. 2d Cir. Certiorari denied. Reported below: 644 Fed. Appx. 16.

No. 16–312. BANCO BILBAO VIZCAYA ARGENTARIA, S. A. *v.* VERA, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF VERA, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 651 Fed. Appx. 22.

No. 16–326. WILSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 827.

No. 16–364. BLACKMAN *v.* GASCHO, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL.; and

No. 16–383. ZIK ET AL. *v.* GASCHO, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 822 F. 3d 269.

No. 16–384. LEFT FIELD MEDIA LLC *v.* CITY OF CHICAGO, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 822 F. 3d 988.

No. 16–470. BOSTON SCIENTIFIC CORP. ET AL. *v.* MIROWSKI FAMILY VENTURES, LLC. Ct. Sp. App. Md. Certiorari denied. Reported below: 227 Md. App. 177, 133 A. 3d 1176.

No. 16–496. BIG BABOON, INC. *v.* LEE, DIRECTOR, UNITED STATES PATENT AND TRADEMARK OFFICE, ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 667 Fed. Appx. 995.

No. 16–497. SMITH *v.* INTERNAL REVENUE SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 828 F. 3d 1094.

No. 16–513. TRASK ET AL. *v.* SHULKIN, SECRETARY OF VETERANS AFFAIRS. C. A. 11th Cir. Certiorari denied. Reported below: 822 F. 3d 1179.

No. 16–535. HUSE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 491 S. W. 3d 833.

No. 16–544. VICINAY CADENAS, S. A. *v.* PETOBRAS AMERICA, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 815 F. 3d 211 and 829 F. 3d 770.

No. 16–562. RINEHART ET AL. *v.* LEHMAN BROTHERS HOLDINGS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 817 F. 3d 56.

No. 16–567. American Business USA Corp. *v.* Florida Department of Revenue. Sup. Ct. Fla. Certiorari denied. Reported below: 191 So. 3d 906.

No. 16–589. Morva *v.* Zook, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 821 F. 3d 517.

No. 16–613. True the Vote, Inc. *v.* Lerner et al. C. A. D. C. Cir. Certiorari denied. Reported below: 831 F. 3d 551.

No. 16–619. White *v.* Condict. C. A. 3d Cir. Certiorari denied. Reported below: 655 Fed. Appx. 87.

No. 16–620. Czech Republic-Ministry of Health *v.* Diag Human S. E. C. A. D. C. Cir. Certiorari denied. Reported below: 824 F. 3d 131.

No. 16–628. Seahorn Investments, L. L. C. *v.* Goodman Manufacturing Co., L. P., et al. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 452.

No. 16–632. Hutto et al. *v.* South Carolina Retirement System et al. Sup. Ct. S. C. Certiorari denied.

No. 16–635. American Freedom Law Center et al. *v.* Obama, Former President of the United States, et al. C. A. D. C. Cir. Certiorari denied. Reported below: 821 F. 3d 44.

No. 16–674. Hanson *v.* Meadows. Ct. App. Tenn. Certiorari denied.

No. 16–680. Perkins *v.* Texas. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 16–681. McKay *v.* Goins et al. C. A. 6th Cir. Certiorari denied.

No. 16–682. Jenkins *v.* Grant Thornton LLP et al. C. A. 11th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 754.

No. 16–693. Hare *v.* Neufeld. Ct. App. Minn. Certiorari denied.

No. 16–694. United States ex rel. Gage *v.* Davis S. R. Aviation, LLC, et al. C. A. 5th Cir. Certiorari denied. Reported below: 658 Fed. Appx. 194.

No. 16–695. MOLINA *v.* CALIFORNIA; and
No. 16–7065. MCGUIRE *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 16–711. OHIO *v.* HAND. Sup. Ct. Ohio. Certiorari denied. Reported below: 149 Ohio St. 3d 94, 2016-Ohio-5504, 73 N. E. 3d 448.

No. 16–714. TAVARES *v.* BRICKELL COMMERCE PLAZA, INC., ET AL. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 194 So. 3d 1036.

No. 16–718. ASAP SERVICES, INC., ET AL. *v.* COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–726. COHAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 667 Fed. Appx. 6.

No. 16–728. PADILLA FAJARDO *v.* SESSIONS, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 594.

No. 16–731. CAROLINAS ELECTRICAL WORKERS RETIREMENT PLAN ET AL. *v.* ZENITH AMERICAN SOLUTIONS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 658 Fed. Appx. 966.

No. 16–732. BUSTOS-CAMERO ET AL. *v.* SESSIONS, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 16–734. CASTRO *v.* INDYMAC INDX MORTGAGE LOAN TRUST 2005–AR21 ET AL. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 16–735. UNITED STATES EX REL. LEE ET AL. *v.* ERNST & YOUNG LLP ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 503.

No. 16–737. ELLIS *v.* TEXAS ET AL. C. A. 5th Cir. Certiorari denied.

No. 16–741. MAHDI *v.* SOUTH CAROLINA. Ct. Common Pleas of Calhoun County, S. C. Certiorari denied.

No. 16–746. ADEMA *v.* DELL. Ct. App. Wis. Certiorari denied. Reported below: 2016 WI App 26, 367 Wis. 2d 748, 877 N. W. 2d 650.

No. 16–747. BECTON *v.* COLVIN, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 399.

No. 16–748. BROWN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 16–750. BACHARACH *v.* SUNTRUST MORTGAGE, INC. C. A. 5th Cir. Certiorari denied. Reported below: 827 F. 3d 432.

No. 16–752. NEWKIRK *v.* CVS CAREMARK CORP. ET AL. Ct. App. N. C. Certiorari denied.

No. 16–756. XIU JIAN SUN *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 668 Fed. Appx. 888.

No. 16–760. ENGLISH *v.* BANK OF AMERICA, N. A., ET AL. Super. Ct. N. J., App. Div. Certiorari denied.

No. 16–763. KE KAILANI DEVELOPMENT LLC ET AL. *v.* KE KAILANI PARTNERS, LLC, ET AL. Int. Ct. App. Haw. Certiorari denied.

No. 16–767. WILLIAMS *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. 5th Cir. Certiorari denied.

No. 16–769. FRENCH *v.* NEW HAMPSHIRE INSURANCE CO. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 16–770. LOPEZ ET AL. *v.* CITY OF LAWRENCE, MASSACHUSETTS, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 823 F. 3d 102.

No. 16–772. CHIROPRACTORS UNITED FOR RESEARCH AND EDUCATION, LLC, AKA CURE, ET AL. *v.* BESHEAR, ATTORNEY GENERAL OF KENTUCKY, ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–774. MICHIGAN COMPREHENSIVE CANNABIS LAW REFORM COMMITTEE *v.* JOHNSON, MICHIGAN SECRETARY OF STATE, ET AL. Ct. App. Mich. Certiorari denied.

No. 16–777. FIRST MARBLEHEAD CORP. ET AL. *v.* HEFFERNAN, MASSACHUSETTS COMMISSIONER OF REVENUE. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 475 Mass. 159, 56 N. E. 3d 132.

No. 16–779. MARZETT *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 16–781. SARVIS *v.* ALCORN, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS A MEMBER OF THE VIRGINIA STATE BOARD OF ELECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 826 F. 3d 708.

No. 16–782. SANGSTER *v.* HALL ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–783. SCRIP *v.* SENECA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 651 Fed. Appx. 107.

No. 16–785. CLABAUGH *v.* GRANT. C. A. 10th Cir. Certiorari denied. Reported below: 658 Fed. Appx. 411.

No. 16–788. ROUSE *v.* DEVLIN'S POINTE APARTMENTS. Super. Ct. Pa. Certiorari denied.

No. 16–794. SIMS *v.* MURPHY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 689.

No. 16–802. SOOK HEE LEE *v.* KIM ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 654 Fed. Appx. 64.

No. 16–803. KELLY-BROWN ET AL. *v.* WINFREY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 659 Fed. Appx. 55.

No. 16–804. LAW OFFICES OF STEVEN M. JOHNSON, P. C., ET AL. *v.* PLAINTIFFS' ADVISORY COMMITTEE. C. A. 3d Cir. Certiorari denied. Reported below: 658 Fed. Appx. 29.

No. 16–817. HAMMAD *v.* BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS, PENNSYLVANIA STATE BOARD OF VETERINARY MEDICINE. Commw. Ct. Pa. Certiorari denied.

No. 16–818. GAMCO INVESTORS, INC., ET AL. *v.* VIVENDI UNIVERSAL, S. A., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 838 F. 3d 214.

No. 16–819. POBUDA *v.* WELCH ET AL. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 16–822. MILLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 242.

No. 16–829. Rizzo *v.* Illinois. Sup. Ct. Ill. Certiorari denied. Reported below: 2016 IL 118599, 61 N. E. 3d 92.

No. 16–835. Robol *v.* Dispatch Printing Co. C. A. 6th Cir. Certiorari denied. Reported below: 826 F. 3d 297.

No. 16–838. Kiorkis *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2016 IL App (1st) 151228–U.

No. 16–839. Copeland *v.* State Farm Insurance Co. et al. C. A. 5th Cir. Certiorari denied. Reported below: 657 Fed. Appx. 237.

No. 16–842. Walsh *v.* Shulkin, Secretary of Veterans Affairs. C. A. Fed. Cir. Certiorari denied. Reported below: 655 Fed. Appx. 854.

No. 16–844. Friedman et ux. *v.* Comptroller of the Treasury. Ct. Sp. App. Md. Certiorari denied. Reported below: 228 Md. App. 732 and 736.

No. 16–855. Williams *v.* United States Postal Service. C. A. Fed. Cir. Certiorari denied. Reported below: 655 Fed. Appx. 858.

No. 16–856. Lord *v.* High Voltage Software, Inc. C. A. 7th Cir. Certiorari denied. Reported below: 839 F. 3d 556.

No. 16–859. IPLearn-Focus, LLC *v.* Microsoft Corp. C. A. Fed. Cir. Certiorari denied. Reported below: 667 Fed. Appx. 773.

No. 16–861. Turner *v.* United States Capitol Police. C. A. D. C. Cir. Certiorari denied. Reported below: 653 Fed. Appx. 1.

No. 16–870. Doubt *v.* NCR Corp. C. A. 9th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 238.

No. 16–871. Eiland et al. *v.* Anderson et al. Ct. App. Wis. Certiorari denied. Reported below: 2016 WI App 41, 369 Wis. 2d 223, 880 N. W. 2d 183.

No. 16–872. Halloran *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 821 F. 3d 321.

No. 16–873. YOOSUN HAN *v.* EMORY UNIVERSITY. C. A. 11th Cir. Certiorari denied. Reported below: 658 Fed. Appx. 543.

No. 16–882. WILLIAMSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 175.

No. 16–892. NANOVAPOR FUELS GROUP, INC., ET AL. *v.* VAPOR POINT, LLC, ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 832 F. 3d 1343.

No. 16–893. PRATT, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF PRATT, DECEASED *v.* HARRIS COUNTY, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 822 F. 3d 174.

No. 16–904. HABETLER *v.* PRICE, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 9th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 633.

No. 16–922. BELMONT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 831 F. 3d 1098.

No. 16–5631. ESTRADA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 624 Fed. Appx. 293.

No. 16–5682. ALLEN *v.* BACA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 814.

No. 16–5769. WHITFIELD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 649 Fed. Appx. 192.

No. 16–5777. RUDD *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 141 A. 3d 601.

No. 16–5804. ROBERTSON *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 4th Cir. Certiorari denied. Reported below: 619 Fed. Appx. 261.

No. 16–5891. LOCKHART *v.* TEXAS. Ct. App. Tex., 13th Dist. Certiorari denied.

No. 16–5927. BUTLER *v.* MURPHY, SUPERINTENDENT, OLD COLONY CORRECTIONAL CENTER. C. A. 1st Cir. Certiorari denied. Reported below: 815 F. 3d 87.

No. 16–6080. CARABALLO-RODRIGUEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 632 Fed. Appx. 712.

No. 16–6133. MULLET ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 822 F. 3d 842.

No. 16–6264. SHELTON *v.* LEE, WARDEN. Sup. Ct. Ga. Certiorari denied. Reported below: 299 Ga. 350, 788 S. E. 2d 369.

No. 16–6489. LAVE *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 255.

No. 16–6622. MEZA SEGUNDO *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 831 F. 3d 345.

No. 16–6813. MOSTAGHIM *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 16–6856. WANG *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 323 Conn. 115, 145 A. 3d 906.

No. 16–6887. TILLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below 655 Fed. Appx 172.

No. 16–6903. JORDAN ET AL. *v.* FISHER, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 823 F. 3d 805.

No. 16–6908. GUZEK *v.* OREGON. Sup. Ct. Ore. Certiorari denied. Reported below: 358 Ore. 251, 363 P. 3d 480.

No. 16–6922. SMITH *v.* DUBOISE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 661 Fed. Appx. 941.

No. 16–6927. MOFFIT *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 16–6930. VELAZQUEZ *v.* TERRITORY OF THE VIRGIN ISLANDS. Sup. Ct. V. I. Certiorari denied. Reported below: 65 V. I. 312.

No. 16–6932. WIGGINS *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 197 So. 3d 561.

No. 16–6941. AN THAI TU *v.* CIRCUIT COURT OF MARYLAND, MONTGOMERY COUNTY, ET AL. Ct. Sp. App. Md. Certiorari denied.

No. 16–6944. MILLER *v.* ARNOLD, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6952. BELTON *v.* DAVEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6957. RODRIGUEZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 16–6972. GALLUZZO *v.* VILLAGE OF SAINT PARIS, OHIO. Ct. App. Ohio, 2d App. Dist., Champaign County. Certiorari denied. Reported below: 2015-Ohio-3385.

No. 16–6976. BARANY *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 54 N. E. 3d 386.

No. 16–6984. LLOYD *v.* LOCKLEAR, SUPERINTENDENT, NEW HANOVER CORRECTIONAL, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 691.

No. 16–6987. ADAMIS *v.* LAMPROPOULOU, AKA LAMBROPOULOS. C. A. 2d Cir. Certiorari denied. Reported below: 659 Fed. Appx. 11.

No. 16–6991. GRAYS *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist., Div. 5. Certiorari denied. Reported below: 246 Cal. App. 4th 679, 202 Cal. Rptr. 3d 288.

No. 16–6992. GRAY *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 224 Md. App. 721.

No. 16–6993. RABB *v.* SHERMAN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 564.

No. 16–6996. WEAVER *v.* MONTGOMERY, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6999. DOLCE *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–7000. AN THAI TU *v.* LEITH ET AL. Ct. Sp. App. Md. Certiorari denied.

No. 16–7001. SEALED *v.* SEALED. C. A. 11th Cir. Certiorari denied.

No. 16–7002. LACK *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 6. Certiorari denied.

No. 16–7012. WOODS *v.* NORMAN, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 825 F. 3d 390.

No. 16–7016. RODRIGUEZ *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 207 So. 3d 878.

No. 16–7019. ELBERT *v.* KANSAS CITY, MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 881.

No. 16–7020. PATTERSON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 199 So. 3d 253.

No. 16–7023. PABLO LOPEZ *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 493 S. W. 3d 126.

No. 16–7028. SATTERFIELD *v.* BENEFICIAL FINANCIAL I INC. ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2016 IL App (1st) 151483–U.

No. 16–7034. MCKINNEY *v.* WOFFORD, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7035. BRACKETT *v.* IDAHO. Ct. App. Idaho. Certiorari denied. Reported below: 160 Idaho 619, 377 P. 3d 1082.

No. 16–7036. BIRDSONG *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 16–7037. MIDDLEMISS *v.* MONTANA ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–7043. OSIE *v.* OHIO. Ct. App. Ohio, 12th App. Dist., Butler County. Certiorari denied. Reported below: 2015-Ohio-3406.

No. 16–7046. ANTONIO K. *v.* MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 2016 ME 137, 147 A. 3d 1159.

No. 16–7048. BLASSINGAME *v.* CARTLEDGE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 978.

No. 16–7053. QUINN *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 16–7054. SMITH *v.* COURTNEY ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–7055. SANCHEZ *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 87 Mass. App. 1130, 32 N. E. 3d 369.

No. 16–7056. SMITH *v.* CITY OF MCDONOUGH, GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 16–7059. JACKSON *v.* GUALTIERI, SHERIFF, PINELLAS COUNTY, FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 16–7060. MAYER *v.* BEEMER, ATTORNEY GENERAL OF PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–7063. JONES *v.* MCFADDEN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 800.

No. 16–7064. JAVIER PADILLA *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–7066. MONTGOMERY *v.* CITY OF AMES, IOWA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 829 F. 3d 968.

No. 16–7071. LAHOOD *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 253.

No. 16–7072. KUHN *v.* GILMORE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–7073. JEANNIN *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 197 So. 3d 1277.

No. 16–7077. LORENZO GARCIA *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 16–7078. ALLANTE V. *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2016 IL App (1st) 160131–U.

No. 16–7082. DUGDALE *v.* SESSIONS, ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 672 Fed. Appx. 35.

No. 16–7083. GULBRANDSON *v.* ARIZONA. Super. Ct. Ariz., County of Maricopa. Certiorari denied.

No. 16–7087. RHODES *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–7088. RODRIGUEZ *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 789.

No. 16–7093. JIMENA *v.* SAI HO WONG ET AL. Ct. App. Cal., 2d App. Dist., Div. 1. Certiorari denied.

No. 16–7099. KISSNER *v.* HARRY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 826 F. 3d 898.

No. 16–7100. RAGLAND *v.* NASH-ROCKY MOUNT BOARD OF EDUCATION. Ct. App. N. C. Certiorari denied. Reported below: 247 N. C. App. 738, 787 S. E. 2d 422.

No. 16–7105. GIBSON *v.* INDIANA. Sup. Ct. Ind. Certiorari denied. Reported below: 51 N. E. 3d 204.

No. 16–7109. WILLIAMS *v.* ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 925.

No. 16–7111. ENDERLE *v.* LUDWICK, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 16–7112. BUTLER *v.* NEW YORK. County Ct., Westchester County, N. Y. Certiorari denied.

No. 16–7116. SORRELLS *v.* SPEARMAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7118. HARNAGE *v.* DAVIS ET AL. C. A. 2d Cir. Certiorari denied.

No. 16–7121. RANCEL *v.* COLVIN, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 11th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 865.

No. 16–7122. SMITH *v.* HOWERTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–7123. SMITH *v.* BUTLER, WARDEN. Sup. Ct. Ill. Certiorari denied.

No. 16–7125. LEBEAU *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 826.

No. 16–7127. PLANAS *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 827.

No. 16–7132. GUAJARDO *v.* WINN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–7133. GIBSON *v.* SLOAN, WARDEN. Sup. Ct. Ohio. Certiorari denied. Reported below: 147 Ohio St. 3d 240, 2016-Ohio-3422, 63 N. E. 3d 1172.

No. 16–7134. GRACIA *v.* BOUGHTON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 16–7136. CONSTANT *v.* KUMAR, JUDGE, CIRCUIT COURT OF MICHIGAN, OAKLAND COUNTY. C. A. 6th Cir. Certiorari denied.

No. 16–7137. STAPLES *v.* ACOLATZE ET AL. C. A. 2d Cir. Certiorari denied.

No. 16–7138. ROSA *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 16–7141. DIXON *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied.

No. 16–7144. LOVEDAY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 16–7150. BARATI *v.* FLORIDA ET AL. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 198 So. 3d 69.

No. 16–7152. CLEVELAND *v.* DUVALL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 156.

No. 16–7154. RUSK *v.* UTAH. C. A. 10th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 954.

No. 16–7163. STANTON *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–7165. STEPHENS *v.* JEREJIAN, JUDGE, SUPERIOR COURT OF NEW JERSEY, BERGEN COUNTY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 655 Fed. Appx. 64.

No. 16–7166. COWHERD *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 16–7167. BOONE *v.* KENNEDY, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 16–7168. DUNLAP *v.* FRICK. C. A. 9th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 267.

No. 16–7169. CUEVAS CARDOZA *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 16–7172. TIMMONS *v.* SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION ET AL. Ct. App. S. C. Certiorari denied.

No. 16–7174. ZUVICH *v.* CITY OF LOS ANGELES, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 669.

No. 16–7175. WARREN *v.* OVERMYER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FOREST, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–7176. WILLIAMS *v.* GEORGIA. Super. Ct. Richmond County, Ga. Certiorari denied.

No. 16–7179. GOMEZ MILLAN *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 753.

No. 16–7181. BARTLETT *v.* ALLEGAN COUNTY COURTS ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–7183. SCOTT *v.* MEMORIAL HEALTH CARE SYSTEM, INC. C. A. 6th Cir. Certiorari denied. Reported below: 660 Fed. Appx. 366.

No. 16–7186. STEVENS *v.* LEGRAND, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 498.

No. 16–7187. SMITH *v.* ANDERSON ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 385 Mont. 539.

No. 16–7189. PALMER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 16–7191. WILLIAMS *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–7195. ZUCK *v.* PEART ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 181.

No. 16–7196. TWOBABIES *v.* ALLBAUGH, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 662 Fed. Appx. 574.

No. 16–7197. ANGEL TORRES *v.* GREEN, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 76.

No. 16–7198. WILLMAN *v.* SHERMAN, WARDEN. C. A. 9th Cir. Cert orari denied.

No. 16–7199. AFFLECK *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 210 So. 3d 1067.

No. 16–7201. AVILA *v.* HIDALGO COUNTY, TEXAS. 139th Jud. Dist. Ct. Tex., Hidalgo County. Certiorari denied.

No. 16–7203. MANN *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 828 F. 3d 1143.

No. 16–7205. CAMILO LOPEZ *v.* WHITMIRE ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–7206. ABEYTA *v.* BAKER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–7207. BAILEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–7209. AJAI, AKA WILLIS *v.* PENNSYLVANIA ET AL. C. A. 7th Cir. Certiorari denied.

No. 16–7210. DIAZ *v.* HUGHES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 808.

No. 16–7211. CREEL *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 16–7219. ROBINSON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 145 A. 3d 793.

No. 16–7220. SHORT *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 369 N. C. 31, 789 S. E. 2d 5.

No. 16–7221. STOLLER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 827 F. 3d 591.

No. 16–7223. SANFORD *v.* CITY OF FRANKLIN, VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 478.

No. 16–7224. RITZ *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 16–7225. STORCK *v.* MAHALLY, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–7228. UZAHODJAEV *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 16–7229. SIMS *v.* LIZARRAGA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7230. WARE *v.* KERNAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 16–7232. CANNON *v.* BUNTING, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–7233. CUEVAS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 8. Certiorari denied.

No. 16–7235. CULLEN *v.* SADDLER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 656.

No. 16–7236. RANDALL *v.* ALLBAUGH, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 662 Fed. Appx. 571.

No. 16–7244. EDWARDS *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 16–7245. DUBERRY *v.* BRENNAN, POSTMASTER GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 770.

No. 16–7246. ARACENA *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 208 So. 3d 712.

No. 16–7251. MACKENZIE *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 190 So. 3d 645.

No. 16–7252. KAMDEM-OUAFFO *v.* PEPSICO INC. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 657 Fed. Appx. 949.

No. 16–7253. MACIAS LANDEROS *v.* DICKERSON ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–7256. COMFORT *v.* SHULKIN, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 670 Fed. Appx. 711.

No. 16–7263. BOWLES *v.* KANSAS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 662 Fed. Appx. 552.

No. 16–7264. BUCKLEY *v.* DAVEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7265. ARNOLD *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 204 So. 3d 580.

No. 16–7267. BARBEE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 369 N. C. 75, 793 S. E. 2d 234.

No. 16–7268. BURNS *v.* EDDY ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–7270. DICKEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–7271. BARRETT *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 16–7272. BACCUS *v.* STIRLING ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 187.

No. 16–7274. DAVIS *v.* MEDICAL UNIVERSITY OF SOUTH CAROLINA-PHYSICIANS. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 532.

No. 16–7277. WELLS *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–7280. MORRISON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 833 F. 3d 491.

No. 16–7282. DEJONGE *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 16–7284. JAIME *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–7285. MANUEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 717.

No. 16–7286. RASHID *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 654 Fed. Appx. 54.

No. 16–7287. RODGERS *v.* DUNN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–7288. SCOTT *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 49.

No. 16–7289. HERNANDEZ *v.* PENNYWELL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7291. CROOKER *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 828 F. 3d 1357.

No. 16–7292. DZIEDZIC *v.* STATE UNIVERSITY OF NEW YORK AT OSWEGO ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 648 Fed. Appx. 125.

No. 16–7293. HORTON *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 16–7294. HUNTER *v.* GALAZA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7295. GRANDBERRY *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–7296. FRANCIS *v.* CAMERON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–7297. HUGHES *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 16–7298. GONZALES *v.* NEBRASKA. Ct. App. Neb. Certiorari denied. Reported below: 23 Neb. App. xvi.

No. 16–7299. NAZARETTE-GARCIA *v.* MCCOY. C. A. 4th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 831.

No. 16–7300. HARRIS *v.* HARDEMAN COUNTY, TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–7301. PEREZ HERNANDEZ *v.* WALKER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7302. RODRIGUEZ *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 789.

No. 16–7303. STEINBERG *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 198.

No. 16–7304. BRAXTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 253.

No. 16–7305. TILLISON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 661 Fed. Appx. 626.

No. 16–7306. VELLAI-PALOTAY *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied.

No. 16–7308. DAVIS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 141 A. 3d 1105.

No. 16–7309. ALANIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 630.

No. 16–7312. Clark *v.* Jones, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied. Reported below: 821 F. 3d 1270.

No. 16–7313. Singleton *v.* Kelly, Superintendent, Oregon State Penitentiary. C. A. 9th Cir. Certiorari denied.

No. 16–7315. Bing Yi Chen *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 16–7316. Jones *v.* United States. C. A. 10th Cir. Certiorari denied.

No. 16–7318. Stokes *v.* McFadden, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 523.

No. 16–7322. Lintz *v.* Brennan, Postmaster General, et al. C. A. 9th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 284.

No. 16–7326. Jackson *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 152 A. 3d 150.

No. 16–7329. Wright *v.* Illinois App. Ct Ill., 1st Dist. Certiorari denied. Reported below: 2015 IL App (1st) 131487–U.

No. 16–7330. Agolli *v.* Office of Inspector General, Department of Justice, et al. C. A. D. C. Cir. Certiorari denied.

No. 16–7331. McQuillan *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 16–7332. Olaveson *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 434.

No. 16–7333. Johnson *v.* Vannoy, Warden. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 474.

No. 16–7334. Goldberg *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 661 Fed. Appx. 33.

No. 16–7339. Hicks *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 299.

No. 16–7341. Hinkel *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 837 F. 3d 111.

No. 16–7347. POLLARD *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 2016 IL App (5th) 130514, 54 N. E. 3d 234.

No. 16–7348. ODEH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 832 F. 3d 764.

No. 16–7351. QUINONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 377.

No. 16–7353. RICHARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 26.

No. 16–7355. HAMILTON *v.* GRIFFIN, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 16–7356. INIGUEZ *v.* BITER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7357. GUITE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 829.

No. 16–7358. HOWELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 838 F. 3d 489.

No. 16–7360. ANGEL GUTIERREZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 6. Certiorari denied.

No. 16–7361. HILL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 659 Fed. Appx. 707.

No. 16–7362. BRADLEY *v.* SABREE ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 842 F. 3d 1291.

No. 16–7366. TREJO-GAMBOA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 197.

No. 16–7368. WICK *v.* CITIBANK, N. A. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2016 IL App (2d) 150557–U.

No. 16–7369. LOPEZ *v.* LEWIS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 642 Fed. Appx. 287.

No. 16–7374. PIPER *v.* WILSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 429.

No. 16–7375. PHILLIPS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 95.

No. 16–7377. SCHREIBER *v.* LUDWICK, WARDEN. Sup. Ct. Iowa. Certiorari denied.

No. 16–7379. WHITE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 893.

No. 16–7383. WHITE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 16–7384. WHITE *v.* PEARSON, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 16–7385. WRIGHT *v.* O'BRIEN. App. Ct. Mass. Certiorari denied. Reported below: 90 Mass. App. 1105, 59 N. E. 3d 455.

No. 16–7387. RODRIGUEZ VASQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–7389. TAHER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 663 Fed. Appx. 28.

No. 16–7395. SCOTT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–7396. QUINTEROS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 16–7397. HEATHER S. *v.* CONNECTICUT DEPARTMENT OF CHILDREN AND FAMILIES. App. Ct. Conn. Certiorari denied. Reported below: 165 Conn. App. 245, 138 A. 3d 469.

No. 16–7398. WARREN *v.* SHARTLE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 657 Fed. Appx. 183.

No. 16–7401. CONLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 433.

No. 16–7407. SCOTT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 831 F. 3d 1027.

No. 16–7409. CARMENATTY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 16–7410. MACKENZIE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 16–7412. CANDELARIO-SANTANA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 834 F. 3d 8.

No. 16–7416. WILLIAMS *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 646 Fed. Appx. 976.

No. 16–7417. WASHINGTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–7420. GROVO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 826 F. 3d 1207 and 653 Fed. Appx. 512.

No. 16–7421. ONUNWOR *v.* MOORE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 369.

No. 16–7422. MITCHELL *v.* JOYNER ET AL. C. A. 8th Cir. Certiorari denied.

No. 16–7426. GORDON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 657 Fed. Appx. 773.

No. 16–7433. WOMACK *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 833 F. 3d 1237.

No. 16–7434. WALKER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 647 Fed. Appx. 511.

No. 16–7436. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–7438. BAKER *v.* TAYLOR, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 854.

No. 16–7439. BRYANT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 238.

No. 16–7440. HILL *v.* TENNESSEE DEPARTMENT OF TRANSPORTATION. C. A. 6th Cir. Certiorari denied.

No. 16–7441. PALOMAREZ *v.* YOUNG, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 16–7442. MCCLARTY *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–7443. GONZALEZ-MARES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 246.

No. 16–7444. FUENTES-CRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 255.

No. 16–7445. ROBINSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 664 Fed. Appx. 768.

No. 16–7446. LANE *v.* MAYE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 664 Fed. Appx. 725.

No. 16–7447. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–7453. SUMMERHAYS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 903.

No. 16–7455. SMITH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 314.

No. 16–7464. VARELA *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 664.

No. 16–7467. RUIZ-MONTES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–7468. BAILEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 840 F. 3d 99.

No. 16–7473. HERRERA REYES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 311.

No. 16–7477. KAPLAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 839 F. 3d 795.

No. 16–7478. JIMENEZ-AGUILAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 332.

No. 16–7485. HUNTER *v.* MUNIZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 481.

No. 16–7486. TATUM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 244.

No. 16–7490. MCCURRY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 832 F. 3d 842.

No. 16–7491. PINKERTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 508.

No. 16–7493. VENABLE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 840 F. 3d 99.

No. 16–7494. TORRENCE *v.* COMCAST CORP. C. A. 7th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 475.

No. 16–7496. WILSON *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2016 Ark. 327, 499 S. W. 3d 638.

No. 16–7502. MARSHALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 275.

No. 16–7504. RUTLEDGE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 265.

No. 16–7505. RADEMAKER *v.* PARAMO, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 835 F. 3d 1018.

No. 16–7506. SKVARLA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 673 Fed. Appx. 111.

No. 16–7507. SOBCZAK-SLOMCZEWSKI *v.* WDH, LLC. C. A. 7th Cir. Certiorari denied. Reported below: 826 F. 3d 429.

No. 16–7510. DAVIS *v.* GRANDLIENARD, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 828 F. 3d 658.

No. 16–7511. CARMONA-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 334.

No. 16–7515. JEFFERSON *v.* VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 686.

No. 16–7526. MANDELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 833 F. 3d 816.

No. 16–7531. SAMUELS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–7534. RUFFIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 664 Fed. Appx. 224.

No. 16–7540. BLOCK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–7544. CASILLAS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 830 F. 3d 403.

No. 16–7546. ROWELL *v.* RICHARDSON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 16–7555. BODISON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–7558. FRIERSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 943.

No. 16–7559. GORDON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 16–7562. CRISP *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–7563. SCONIERS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 16–7566. DE LA CRUZ-TREVINO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 669 Fed. Appx 752.

No. 16–7567. DE LA CRUZ, AKA DELACRUZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 744.

No. 16–7568. RUIZ *v.* TICE, ACTING SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 672 Fed. Appx. 207.

No. 16–7571. BANKS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 828 F. 3d 609.

No. 16–7572. EPSKAMP, AKA SEALED DEFENDANT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 832 F. 3d 154.

No. 16–7573. MACON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 840 F. 3d 99.

No. 16–7583. CHITWOOD *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 2016 WI App 36, 369 Wis. 2d 132, 879 N. W. 2d 786.

No. 16–7584. MORROW *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 153 A. 3d 83.

No. 16–7590. AGOSTO-LOPEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 16–7595. DEAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–7596. CARTER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 834 F. 3d 259.

No. 16–7597. LOPEZ-LOPEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 382.

No. 16–7599. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 426.

No. 16–7600. WILLIAMS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 502 S. W. 3d 168.

No. 16–7602. VAZQUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 16–7609. MEDINA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 219.

No. 16–7611. HOUSE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 825 F. 3d 381.

No. 16–7614. GORDON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 664 Fed. Appx. 242.

No. 16–7618. BENITEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 16–7621. TROTTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 837 F. 3d 864.

No. 16–7622. WAYS, AKA BLACKSTEEL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 832 F. 3d 887.

No. 16–7629. ROBERTS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 746.

No. 16–7630. SANTANA-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 740.

No. 16–7632. ENDRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 277.

No. 16–7636. NUNEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 840 F. 3d 1.

No. 16–7637. NUNEZ-DUENAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 665 Fed. Appx. 618.

No. 16–7640. DOOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 570.

No. 16–7646. HERRERA-VILLAREAL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 665 Fed. Appx. 762.

No. 16–7648. WALKER *v.* ARKANSAS DEPARTMENT OF CORRECTION ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 335.

No. 16–7653. ROBINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 664 Fed. Appx. 278.

No. 16–602. ARTHUR *v.* DUNN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Motion of Certain Medical Professionals and Medical Ethicists for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 840 F. 3d 1268.

JUSTICE SOTOMAYOR, with whom JUSTICE BREYER joins, dissenting.

Nearly two years ago in *Glossip* v. *Gross*, 576 U. S. 863 (2015), the Court issued a macabre challenge. In order to successfully attack a State's method of execution as cruel and unusual under the Eighth Amendment, a condemned prisoner must not only prove that the State's chosen method risks severe pain, but must also propose a "known and available" alternative method for his own execution. *Id.*, at 877–878, 880.

Petitioner Thomas Arthur, a prisoner on Alabama's death row, has met this challenge. He has amassed significant evidence that Alabama's current lethal-injection protocol will result in intolerable and needless agony, and he has proposed an alternative—death by firing squad. The Court of Appeals, without considering any of the evidence regarding the risk posed by the current

protocol, denied Arthur's claim because Alabama law does not expressly permit execution by firing squad, and so it cannot be a "known and available" alternative under *Glossip*. Because this decision permits States to immunize their methods of execution—no matter how cruel or how unusual—from judicial review and thus permits state law to subvert the Federal Constitution, I would grant certiorari and reverse. I dissent from my colleagues' decision not to do so.

I

A

Execution by lethal injection is generally accomplished through serial administration of three drugs. First, a fast-acting sedative such as sodium thiopental induces "a deep, comalike unconsciousness." *Baze* v. *Rees*, 553 U. S. 35, 44 (2008) (plurality opinion). Second, a paralytic agent—most often pancuronium bromide—"inhibits all muscular-skeletal movements and, by paralyzing the diaphragm, stops respiration." *Ibid.* Third, potassium chloride induces fatal cardiac arrest. *Ibid.*

The first drug is critical; without it, the prisoner faces the unadulterated agony of the second and third drugs. The second drug causes "an extremely painful sensation of crushing and suffocation," see Denno, When Legislatures Delegate Death: The Troubling Paradox Behind State Uses of Electrocution and Lethal Injection and What It Says About Us, 63 Ohio St. L. J. 63, 109, n. 321 (2002); but paralyzes the prisoner so as to "mas[k] any outward sign of distress," thus serving the States' interest "'in preserving the dignity of the procedure,'" *Baze*, 553 U. S., at 71, 73 (Stevens, J., concurring in judgment). And the third drug causes an "excruciating burning sensation" that is "equivalent to the sensation of a hot poker being inserted into the arm" and traveling "with the chemical up the prisoner's arm and . . . across his chest until it reaches his heart." Denno, *supra*, at 109, n. 321.

Execution absent an adequate sedative thus produces a nightmarish death: The condemned prisoner is conscious but entirely paralyzed, unable to move or scream his agony, as he suffers "what may well be the chemical equivalent of being burned at the stake." *Glossip*, 576 U. S., at 949 (SOTOMAYOR, J., dissenting).

B

For many years, the barbiturate sodium thiopental seemed up to this task.[1] In 2009, however, the sole American manufacturer of sodium thiopental suspended domestic production and later left the market altogether. *Id.*, at 869–870 (majority opinion). States then began to use another barbiturate, pentobarbital. *Id.*, at 870. But in 2013, it also became unavailable. *Id.*, at 870–871. Only then did States turn to midazolam, the drug at the center of this case.

Midazolam, like Valium and Xanax, belongs to a class of medicines known as benzodiazepines and has some anesthetic effect. *Id.*, at 952–953 (SOTOMAYOR, J., dissenting). Generally, anesthetics can cause a level of sedation and depression of electrical brain activity sufficient to block *all* sensation, including pain. App. to Pet. for Cert. 283a–290a. But it is not clear that midazolam adequately serves this purpose. This is because midazolam, unlike barbiturates such as pentobarbital, has no analgesic—pain-relieving—effects. *Id.*, at 307a; see also *Glossip*, 576 U. S., at 953 (SOTOMAYOR, J., dissenting). Thus, "for midazolam to maintain unconsciousness through application of a particular stimulus, it would need to depress electrical activity *to a deeper level* than would be required of, for example, pentobarbital." App. to Pet. for Cert. 307a.[2] Although it can be used to render individuals

[1] We examined the constitutionality of lethal injection in *Baze* v. *Rees*, 553 U. S. 35 (2008). There, the parties did not dispute that "proper administration of . . . sodium thiopental . . . eliminates any meaningful risk that a prisoner would experience pain" and results in a humane death. *Id.*, at 49 (plurality opinion). The petitioners nonetheless challenged Kentucky's three-drug protocol on the ground that, if prison executioners failed to follow the mandated procedures, an unconstitutional risk of significant pain would result. *Ibid.* A plurality of the Court concluded that "petitioners ha[d] not carried their burden of showing that the risk of pain from maladministration of a concededly humane lethal injection protocol" would violate the prohibition on cruel and unusual punishments. *Id.*, at 41.

[2] Because "midazolam is not an analgesic drug, any painful stimulus applied to an inmate will generate and transmit full intensity pain signals to the brain without interference." App. to Pet. for Cert. 309a. Arthur's expert witness provides "a rough analogy":

"[I]f being sedated is like being asleep, analgesia is like wearing earplugs. If two people are sleeping equally deeply, but only one is wearing earplugs, it will be much easier to shout and wake the person who is not wearing

unconscious, midazolam is not used on its own to *maintain* anesthesia—complete obliviousness to physical sensation—in surgical procedures, and indeed, the Food and Drug Administration has not approved the drug for this purpose. *Glossip*, 576 U. S., at 953 (SOTOMAYOR, J., dissenting).

Like the experts in *Glossip*, the experts in this case agree that midazolam is subject to a ceiling effect, which means that there is a point at which increasing the dose of the drug does not result in any greater effect. *Ibid.* The main dispute with respect to midazolam relates to how this ceiling effect operates—if the ceiling on midazolam's sedative effect is reached before complete unconsciousness can be achieved, it may be incapable of keeping individuals insensate to the extreme pain and discomfort associated with administration of the second and third drugs in lethal-injection protocols. *Ibid.*

After the horrific execution of Clayton Lockett, who, notwithstanding administration of midazolam, awoke during his execution and appeared to be in great pain, we agreed to hear the case of death-row inmates seeking to avoid the same fate. In *Glossip*, these inmates alleged that because midazolam is incapable of rendering prisoners unconscious and insensate to pain during lethal injection, Oklahoma's intended use of the drug in their executions would violate the Eighth Amendment. The Court rejected this claim for two reasons.

First, the Court found that the District Court had not clearly erred in determining that "midazolam is highly likely to render a person unable to feel pain during an execution." *Id.*, at 881. Second, the Court held that the petitioners had failed to satisfy the novel requirement of pleading and proving a "known and available alternative" method of execution. *Id.*, at 880.

Post-*Glossip*, in order to prevail in an Eighth Amendment challenge to a State's method of execution, prisoners first must prove the State's current method "entails a substantial risk of severe pain," *id.*, at 867, and second, must "identify a known and available alternative method of execution that entails a lesser risk of pain," *ibid.*

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earplugs. If two people are sedated to equivalent levels of electrical brain activity, but only one has analgesia, the person sedated without analgesia will be much more easily aroused to consciousness by the application of pain." *Ibid.*

II

This case centers on whether Thomas Arthur has met these requirements with respect to Alabama's lethal-injection protocol.

A

Alabama adopted lethal injection as its default method of execution in 2002. Ala. Code § 15–18–82.1(a) (2011); see also *Ex parte Borden*, 60 So. 3d 940, 941 (Ala. 2007). The State's capital punishment statute delegates the task of prescribing the drugs necessary to compound a lethal injection to the Department of Corrections. § 15–18–82.1(f). Consistent with the practice in other States following the national shortage of sodium thiopental and pentobarbital, the department has adopted a protocol involving the same three drugs considered in *Glossip*. See *Brooks* v. *Warden*, 810 F. 3d 812, 823 (CA11 2016).

Perhaps anticipating constitutional challenges, Alabama's legislature enacted a contingency plan: The statute provides that "[i]f electrocution or lethal injection is held to be unconstitutional . . . all persons sentenced to death for a capital crime shall be executed by any constitutional method of execution." § 15–18–82.1(e).

B

Thomas Douglas Arthur killed his paramour's husband in 1982. 840 F. 3d 1268, 1272–1273 (CA11 2016). Over the next decade, two juries found Arthur guilty of murder, and each time, Arthur's conviction was overturned on appeal. *Ibid.* After a third trial in 1992, Arthur was convicted and sentenced to death. *Ibid.* Since then, Arthur has been scheduled to die on six separate occasions, and each time, his execution was stayed. *Id.*, at 1275, n. 2. After 34 years of legal challenges, Arthur has accepted that he will die for his crimes. He now challenges only *how* the State will be permitted to kill him.

Arthur asserted two distinct claims in the District Court. First, Arthur asserted a *facial* challenge, arguing that midazolam is generally incapable of performing as intended during Alabama's three-drug lethal-injection procedure. Second, Arthur asserted an *as-applied* challenge, arguing that because of his individual health attributes, midazolam creates a substantial risk of severe pain for him during the procedure.

The District Court considered these two claims separately. With respect to the facial challenge, the District Court ordered

bifurcated proceedings, with the first hearing limited to the availability of a feasible alternative method of execution. App. to Pet. for Cert. 189a, and n. 2. Arthur's initial complaint proposed a single dose either of pentobarbital or sodium thiopental rather than a three-drug protocol, but the District Court found that those methods were unavailable given the elimination of both drugs from the domestic market. *Id.*, at 203a–205a.

Arthur then moved to amend his complaint to allege the firing squad as an alternative method of execution. The District Court denied the motion, holding that "execution by firing squad is not permitted by statute and, therefore, is not a method of execution that could be considered either feasible or readily implemented by Alabama at this time." *Id.*, at 241a. Because Arthur's claim failed on this ground, the court never considered Arthur's evidence with respect to midazolam, despite later observing that it was "impressive." *Id.*, at 166a.

In a separate order, the District Court considered Arthur's as-applied challenge. Arthur alleged, based on the expert opinion of Dr. Jack Strader, that "his cardiovascular issues, combined with his age and emotional makeup, create a constitutionally unacceptable risk of pain that will result in a violation of the Eighth Amendment if he is executed under the [midazolam] protocol." *Id.*, at 151a. Echoing its rationale with respect to Arthur's facial challenge, the District Court found that Arthur failed to prove the existence of a feasible, readily available alternative.

The court then turned to the question it had avoided in the facial challenge: whether Alabama's lethal-injection protocol created a risk of serious illness or needless suffering. But because the District Court considered the question as part of Arthur's as-applied challenge, it focused on the protocol as applied to Arthur's personal physical condition. The court rejected Dr. Strader's opinion that the dose of midazolam required by Alabama's protocol "'will likely induce a rapid and dangerous reduction in blood pressure more quickly than it results in sedation,'" and that during this time gap, Arthur—whom he believed to suffer from heart disease—would suffer a painful heart attack. *Id.*, at 169a. Because Dr. Strader's experience was limited to *clinical* doses of midazolam, which typically range from 2 to 5 mg, the court concluded that he had no basis to extrapolate his experience to non-clinical, *lethal* doses, such as the 500-mg bolus required by Alabama's lethal-injection protocol. *Id.*, at 177a.

The District Court expressly refused to consider the expert opinions that Arthur proffered as part of his facial challenge, noting that they "are untested in court, due to Arthur's inability to provide a[n alternative] remedy in his facial, and now as-applied, challenges." *Id.*, at 167a, n. 16.

The District Court therefore concluded that Arthur failed to meet the *Glossip* standard and entered judgment in favor of the State. App. to Pet. for Cert. 238a.

C

The Eleventh Circuit affirmed. In a 111-page slip opinion issued the day before Arthur's scheduled execution, the court first found that "Arthur never showed Alabama's current lethal injection protocol, *per se* or as applied to him, violates the Constitution." 840 F. 3d, at 1315. The court based this finding on Arthur's failure to "satisfy the first [*Glossip*] prong as to midazolam" as part of his as-applied challenge, *ibid.*, and the fact that this Court "upheld the midazolam-based execution protocol" in *Glossip*, 840 F. 3d, at 1315. Like the District Court, the Eleventh Circuit *never* considered the evidence Arthur introduced in support of his facial challenge to the protocol. Then, "[a]s an alternative and independent ground," *ibid.*, the Court of Appeals found that the firing squad is not an available alternative because that method is "beyond [the Department of Corrections'] statutory authority," *id.*, at 1320. Finally, and as yet another independent ground for denying relief, the Court held Arthur's motion regarding the firing squad barred by the doctrine of laches. *Ibid.*, n. 35. According to the Eleventh Circuit, the "known and available" alternative requirement was made clear in *Baze*—not *Glossip*—and because Arthur failed to amend his complaint in 2008 when *Baze* was decided, his claim was barred by laches.

On the day of his scheduled execution, Arthur filed a petition for certiorari and an application to stay his execution. The Court granted the stay, *ante*, p. 977, but now denies certiorari.

III

A

The decision below permits a State, by statute, to bar a death-row inmate from vindicating a right guaranteed by the Eighth Amendment. Under this view, even if a prisoner can prove that

the State plans to kill him in an intolerably cruel manner, and even if he can prove that there is a feasible alternative, all a State has to do to execute him through an unconstitutional method is pass a statute declining to authorize any alternative method. This cannot be right.

To begin with, it contradicts the very decisions it purports to follow—*Baze* and *Glossip*. *Glossip* based its "known and available alternative" requirement on the plurality opinion in *Baze*. *Baze*, in turn, states that "[t]o qualify, the alternative procedure must be feasible, readily implemented, and in fact significantly reduce a substantial risk of severe pain." 553 U. S., at 52 (plurality opinion). The Court did not mention—or even imply—that a State must authorize the alternative by statute. To the contrary, *Baze* held that "[i]f a State refuses to adopt such an alternative in the face of these documented advantages," its "*refusal* to change its method can be viewed as 'cruel and unusual' under the Eighth Amendment." *Ibid.* (emphasis added). The decision below turns this language on its head, holding that if the State *refuses* to adopt the alternative legislatively, the inquiry ends. That is an alarming misreading of *Baze*.

Even more troubling, by conditioning federal constitutional rights on the operation of state statutes, the decision below contravenes basic constitutional principles. The Constitution is the "supreme law of the land"—irrespective of contrary state laws. Art. VI, cl. 2. And for more than two centuries it has been axiomatic that this Court—not state courts or legislatures—is the final arbiter of the Federal Constitution. See *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803). Acting within our exclusive "province and duty" to "say what the law is," *ibid.*, we have interpreted the Eighth Amendment to entitle prisoners to relief when they succeed in proving that a State's chosen method of execution poses a substantial risk of severe pain and that a constitutional alternative is "known and available," *Glossip*, 576 U. S., at 878–881. The States have no power to override this constitutional guarantee. While States are free to define and punish crimes, "state laws respecting crimes, punishments, and criminal procedure are . . . subject to the overriding provisions of the United States Constitution." *Payne* v. *Tennessee*, 501 U. S. 808, 824 (1991).

Equally untenable are the differing interpretations of the Eighth Amendment that would result from the Eleventh Circuit's

rule. Under the Eleventh Circuit's view, whether an inmate who will die in an intolerably cruel manner can obtain relief under *Glossip* depends not on the Constitution but on vagaries of state law. The outcome of this case, for instance, would turn on whether Arthur had been sentenced in Oklahoma, where state law expressly permits the firing squad, see Okla. Stat., Tit. 22, § 1014 (Supp. 2016), rather than in Alabama, which—according to the Eleventh Circuit [3]—does not, see Ala. Code § 15–18–82.1. But since the very beginning of our Nation, we have emphasized the "necessity of uniformity" in constitutional interpretation "throughout the whole United States, upon all subjects within the purview of the constitution." *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 347–348 (1816) (emphasis deleted). Nowhere is the need for uniformity more pressing than the rules governing States' imposition of death.

B

The Eleventh Circuit's alternative holdings are unavailing.

First, the court erroneously concluded that Arthur failed to carry his burden on the first *Glossip* requirement—proving that Alabama's midazolam-centered protocol poses a substantial risk of severe pain. The court used the District Court's finding that Arthur failed to meet this prong with respect to his *as-applied* challenge to hold that Arthur's *facial* challenge likewise failed. But it is undisputed that Arthur put forth "impressive" evidence to support his facial challenge that neither the District Court nor the Court of Appeals considered. This evidence included the expert testimony of Dr. Alan Kaye, chairman of the Department

[3] I question the Eleventh Circuit's conclusion that the statute does not authorize the firing squad as an available means of execution. In my view, the Alabama statute unambiguously reads as a codification of *Glossip*. If *either* of the specified methods—lethal injection *or* electrocution—is declared unconstitutional, the statute authorizes the State to execute prisoners by "*any* constitutional method of execution." Ala. Code § 15–18–82.1(c) (2016) (emphasis added). The state statute thus permits exactly what the Court required in *Glossip*—if a condemned prisoner can prove that the lethal-injection protocol presents an unconstitutional risk of needless suffering, he may propose an alternative, constitutional means of execution, which may include the firing squad. Even assuming, however, that the Eleventh Circuit properly interpreted Alabama's statute, the question remains whether States may legislatively determine what the Eighth Amendment requires or prohibits. That question is worthy of our review.

of Anesthesiology at Louisiana State University's Health Sciences Center, who found the dose of midazolam prescribed in Alabama's protocol insufficient to "cure . . . the *fundamental unsuitability* of midazolam as the first drug in [Alabama's lethal-injection] protocol." App. to Pet. for Cert. 302a (emphasis added). Dr. Kaye concluded that "the chemical properties of midazolam limit its ability to depress electrical activity in the brain. The lack of another chemical property—analgesia—renders midazolam incapable of maintaining even that limited level of depressed electrical activity under the undiminished pain of the second and third lethal injection drugs." *Id.*, at 311a.

The court next read *Glossip* as categorically "uph[olding] the midazolam-based execution protocol." 840 F. 3d, at 1315. *Glossip* did no such thing. The majority opinion in *Glossip* concluded that, based on the facts presented in that case, "[t]he District Court did not commit clear error when it found that midazolam is highly likely to render a person unable to feel pain during an execution." 576 U. S., at 881. The opinion made no determination whether midazolam-centered lethal injection represents a constitutional method of execution.

Finally, the court's laches finding faults Arthur for failing to act immediately after *Baze*, which, according to the panel, "made clear in 2008 . . . that a petitioner-inmate had the burden to show that a proffered alternative was 'feasible, readily implemented, and in fact significantly reduce[d] a substantial risk of severe pain.'" 840 F. 3d, at 1320, n. 35 (quoting *Baze*, 553 U. S., at 41). But the District Court in this case—not to mention at least four Justices of this Court, see *Glossip*, 576 U. S., at 970–973 (SOTOMAYOR, J., dissenting)—did not read *Baze* as requiring an alternative. See Record in *Arthur* v. *Myers*, No. 2:11–cv–438 (MD Ala.), Doc. 195, p. 11 ("[T]he court does not accept the State's argument that [a known and available alternative method of execution] is a specific pleading requirement set forth by *Baze* that must be properly alleged before a case can survive a motion to dismiss"). Arthur filed a statement within 14 days of our decision in *Glossip* informing the District Court of his belief that our decision would impact his case, see *id.*, Doc. 245, and moved to amend his complaint a few weeks later, see *id.*, Doc. 256.

In sum, the Eleventh Circuit's opinion rests on quicksand foundations and flouts the Constitution, as well as the Court's deci-

sions in *Baze* and *Glossip*. These errors alone counsel in favor of certiorari.

IV

The decision below is all the more troubling because it would put an end to an ongoing national conversation—between the legislatures and the courts—around the methods of execution the Constitution tolerates. The meaning of the Eighth Amendment's prohibition on cruel and unusual punishments "is determined not by the standards that prevailed when the Eighth Amendment was adopted in 1791" but instead derives from "'the evolving standards of decency that mark the progress of a maturing society.'" *Kennedy* v. *Louisiana*, 554 U. S. 407, 419 (2008) (quoting *Trop* v. *Dulles*, 356 U. S. 86, 101 (1958) (plurality opinion)). Evolving standards have yielded a familiar cycle: States develop a method of execution, which is generally accepted for a time. Science then reveals that—unknown to the previous generation—the States' chosen method of execution causes unconstitutional levels of suffering. A new method of execution is devised, and the dialogue continues. The Eighth Amendment requires this conversation. States should not be permitted to silence it by statute.

A

From the time of the founding until the early 20th century, hanging was the preferred practice. Gardner, Executions and Indignities—An Eighth Amendment Assessment of Methods of Inflicting Capital Punishment, 39 Ohio St. L. J. 96, 119 (1978). After several grotesque failures at the gallows—including slow asphyxiation and violent decapitation—revealed the "crude and imprecise" nature of the practice, *Campbell* v. *Wood*, 511 U. S. 1119, 1122 (1994) (Blackmun, J., dissenting from denial of certiorari), States sought to execute condemned prisoners "'in a less barbarous manner'" and settled on electrocution. See *In re Kemmler*, 136 U. S. 436, 444 (1890).

New York carried out the world's first electrocution in ghastly fashion,[4] leading the New York Times to declare it "a disgrace to

[4] New York executed William Kemmler on August 6, 1890. According to the New York Times, "[p]robably no convicted murderer of modern times has been made to suffer as Kemmler suffered." Far Worse Than Hanging, N. Y. Times, Aug. 7, 1890, p. 1. Witnesses recounted the execution:

"After the first convulsion there was not the slightest movement of Kemmler's body. . . . Then the eyes that had been momentarily turned from Kemm-

civilization." See Far Worse Than Hanging, N. Y. Times, Aug. 7, 1890, p. 1. Electrocution nonetheless remained the dominant mode of execution for more than a century, until the specter of charred and grossly disfigured bodies proved too much for the public, and the courts, to bear.[5] See, *e. g.*, *Dawson* v. *State*, 274 Ga. 327, 335, 554 S. E. 2d 137, 144 (2001) ("[W]e hold that death by electrocution, with its specter of excruciating pain and its certainty of cooked brains and blistered bodies, violates the prohibition against cruel and unusual punishment").

The States then tried lethal gas. Although the gas chamber was initially believed to produce relatively painless death, it ultimately became clear that it exacted "exquisitely painful" sensations of "anxiety, panic, [and] terror," leading courts to declare it unconstitutional. See, *e. g.*, *Fierro* v. *Gomez*, 77 F. 3d 301, 308 (CA9 1996) (internal quotation marks omitted).[6]

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ler's body returned to it and gazed with horror on what they saw. The men rose from their chairs impulsively and groaned at the agony they felt. 'Great God! [H]e is alive!' someone said[.] 'Turn on the current,' said another . . .

"Again came that click as before, and again the body of the unconscious wretch in the chair became as rigid as one of bronze. It was awful, and the witnesses were so horrified by the ghastly sight that they could not take their eyes off it. The dynamo did not seem to run smoothly. The current could be heard sharply snapping. Blood began to appear on the face of the wretch in the chair. It stood on the face like sweat. . . .

"An awful odor began to permeate the death chamber, and then, as though to cap the climax of this fearful sight, it was seen that the hair under and around the electrode on the head and the flesh under and around the electrode at the base of the spine was singeing. The stench was unbearable." *Ibid.* (paragraph break omitted).

[5] After a particularly gruesome electrocution in Florida, this Court granted certiorari on the question whether electrocution creates a constitutionally unacceptable risk of physical suffering in violation of the Eighth Amendment, see *Bryan* v. *Moore*, 528 U. S. 960 (1999), but later dismissed the writ as improvidently granted in light of an amendment to the State's execution statute that permitted prisoners to choose lethal injection rather than electrocution, see *Bryan* v. *Moore*, 528 U. S. 1133 (2000). See also Fla. Stat. Ann. § 922.10 (West 2001).

[6] This Court granted certiorari in *Fierro*, vacated the judgment, and remanded for consideration in light of the California Legislature's adoption of lethal injection as the State's primary method of execution. See *Gomez* v. *Fierro*, 519 U. S. 918 (1996).

Finally, States turned to a "more humane and palatable" method of execution: lethal injection. Denno, 63 Ohio St. L. J., at 92. Texas performed the first lethal injection in 1982 and, impressed with the apparent ease of the process, other States quickly followed suit. S. Banner, The Death Penalty: An American History 297 (2002). One prison chaplain marveled: "'It's extremely sanitary. . . . The guy just goes to sleep. That's all there is to it.'" *Ibid.* What cruel irony that the method that appears most humane may turn out to be our most cruel experiment yet.

B

Science and experience are now revealing that, at least with respect to midazolam-centered protocols, prisoners executed by lethal injection are suffering horrifying deaths beneath a "medically sterile aura of peace." Denno, *supra*, at 66. Even if we sweep aside the scientific evidence, we should not blind ourselves to the mounting firsthand evidence that midazolam is simply unable to render prisoners insensate to the pain of execution. The examples abound.

After Ohio administered midazolam during the execution of Dennis McGuire in January 2014, he "strained against the restraints around his body, and . . . repeatedly gasped for air, making snorting and choking sounds for about 10 minutes." Johnson, Inmate's Death Called 'Horrific', Columbus Dispatch, Jan. 17, 2014, pp. A1, A10.

The scene was much the same during Oklahoma's execution of Clayton Lockett in April 2014. After executioners administered midazolam and declared him unconscious, Lockett began to writhe against his restraints, saying, "[t]his s*** is f***ing with my mind," "something is wrong," and "[t]he drugs aren't working." *Glossip*, 576 U. S., at 951 (SOTOMAYOR, J., dissenting).

When Arizona executed Joseph Rudolph Wood in July 2014 using a midazolam-based protocol, he "gulped like a fish on land." Kiefer, Botched Execution, Arizona Republic, July 24, 2014, pp. A1, A9. A witness reported more than 640 gasps as Wood convulsed on the gurney for more than an hour and a half before being declared dead. *Ibid.*

Finally, and just over a month after this Court stayed Thomas Arthur's execution, Alabama executed Ronald Bert Smith. Following the dose of midazolam, Smith "clenched his fist" and was "apparently struggling for breath as he heaved and coughed for

about 13 minutes." Berman & Barnes, Alabama Inmate Was Heaving, Coughing During Lethal-Injection Execution, Washington Post, Dec. 10, 2016, p. A3.

It may well be that as originally designed, lethal injection can be carried out in a humane fashion that comports with the Eighth Amendment. But our lived experience belies any suggestion that midazolam reliably renders prisoners entirely unconscious to the searing pain of the latter two drugs. These accounts are especially terrifying considering that each of these men received doses of powerful paralytic agents, which likely masked the full extent of their pain. Like a hangman's poorly tied noose or a malfunctioning electric chair, midazolam might render our latest method of execution too much for our conscience—and the Constitution—to bear.

C

As an alternative to death by midazolam, Thomas Arthur has proposed death by firing squad. Some might find this choice regressive, but the available evidence suggests "that a competently performed shooting may cause nearly instant death." Denno, Is Electrocution an Unconstitutional Method of Execution? The Engineering of Death Over the Century, 35 Wm & Mary L. Rev. 551, 688 (1994). In addition to being near instant, death by shooting may also be comparatively painless. See Banner, *supra*, at 203. And historically, the firing squad has yielded significantly fewer botched executions. See A. Sarat, Gruesome Spectacles: Botched Executions and America's Death Penalty, App. A, p. 177 (2014) (calculating that while 7.12% of the 1,054 executions by lethal injection between 1900 and 2010 were "botched," none of the 34 executions by firing squad had been).

Chief Justice Warren famously wrote that "[t]he basic concept underlying the Eighth Amendment is nothing less than the dignity of man." *Trop*, 356 U. S., at 100 (plurality opinion). States have designed lethal-injection protocols with a view toward protecting their own dignity, but they should not be permitted to shield the true horror of executions from official and public view. Condemned prisoners, like Arthur, might find more dignity in an instantaneous death rather than prolonged torture on a medical gurney.

To be clear, this is not a matter of permitting inmates to choose the manner of death that best suits their desires. It is a matter of permitting a death-row inmate to make the showing *Glossip*

requires in order to prove that the Constitution demands something less cruel and less unusual than what the State has offered. Having met the challenge set forth in *Glossip*, Arthur deserves the opportunity to have his claim fairly reviewed in court. The Eleventh Circuit denied him this opportunity, and in doing so, thwarted the Court's decision in *Glossip*, as well as basic constitutional principles.

* * *

Twice in recent years, this Court has observed that it "has never invalidated a State's chosen procedure for carrying out a sentence of death as the infliction of cruel and unusual punishment." *Baze*, 553 U. S., at 48 (plurality opinion); *Glossip*, 576 U. S., at 869 (same). In *Glossip*, the majority opinion remarked that the Court "did not retreat" from this nonintervention strategy even after Louisiana strapped a 17-year-old boy to its electric chair and, having failed to kill him the first time, argued for a second try—which this Court permitted. *Id.*, at 869. We should not be proud of this history. Nor should we rely on it to excuse our current inaction.

I dissent.

No. 16–686. BNSF Railway Co. *v.* Noice, as Personal Representative for Noice. Sup. Ct. N. M. Motion of Association of American Railroads for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 2016–NMSC–032, 383 P. 3d 761.

No. 16–905. E. I. du Pont de Nemours & Co. *v.* MacDermid Printing Solutions, L. L. C. C. A. Fed. Cir. Certiorari denied. Justice Alito took no part in the consideration or decision of this petition. Reported below: 657 Fed. Appx. 1004.

No. 16–6496. Johnson et al. *v.* Kelley, Director, Arkansas Department of Correction, et al. Sup. Ct. Ark. Certiorari denied. Reported below: 2016 Ark. 268, 496 S. W. 3d 346.

Justice Sotomayor, with whom Justice Breyer joins, dissenting.

I dissent for the reasons set out in *Arthur* v. *Dunn*, *supra*, p. 1141 (Sotomayor, J., dissenting from denial of certiorari).

No. 16–7437. Sanchez-Rosado *v.* United States. C. A. 1st Cir. Certiorari denied. Justice Kagan took no part in the consideration or decision of this petition.

No. 16–7492. RUDZAVICE *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 16–7591. AKERS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 669 Fed. Appx. 959.

Rehearing Denied

No. 15–9313. CALKINS *v.* UNITED STATES, *ante*, p. 986;

No. 15–9671. MOORE *v.* FLORIDA, *ante*, p. 852;

No. 15–9894. HAGGERTY *v.* COURT OF COMMON PLEAS OF PENNSYLVANIA, INDIANA COUNTY, *ante*, p. 864;

No. 16–196. ELLSWORTH *v.* RAMOS, WARDEN, ET AL., *ante*, p. 933;

No. 16–363. GHOGOMU *v.* DELTA AIRLINES GLOBAL SERVICES, LLC, ET AL., *ante*, p. 999;

No. 16–421. MARTIN *v.* BRAVENEC ET AL., *ante*, p. 1020;

No. 16–453. KUPERSMIT *v.* COMMISSIONER OF INTERNAL REVENUE, *ante*, p. 1031;

No. 16–622. PAUNESCU ET UX. *v.* ECKERT ET AL., *ante*, p. 1054;

No. 16–717. PATEL *v.* GEORGIA DEPARTMENT OF BEHAVIOR HEALTH, *ante*, p. 1056;

No. 16–5099. ADKINS *v.* JOCHEM ET AL., *ante*, p. 989;

No. 16–5257. FELTON *v.* MASSACHUSETTS, *ante*, p. 890;

No. 16–5337. RANDOLPH ET UX. *v.* SOLUTIA, INC., *ante*, p. 1032;

No. 16–5473. HALL *v.* UNITED STATES, *ante*, p. 901;

No. 16–5475. GOMILLION *v.* GEORGIA, *ante*, p. 921;

No. 16–5580. BROOM *v.* OHIO, *ante*, p. 1038;

No. 16–5588. OLUIGBO-BERNARDS *v.* UNITED STATES, *ante*, p. 904;

No. 16–5653. STONE *v.* REYES ET AL., *ante*, p. 1021;

No. 16–5823. DOBBS *v.* FLORIDA, *ante*, p. 966;

No. 16–5829. THORNBERG *v.* STATE FARM FIRE & CASUALTY CO. ET AL., *ante*, p. 1002;

No. 16–5849. STOCKWELL *v.* KEY, SUPERINTENDENT, AIRWAY HEIGHTS CORRECTIONS CENTER, *ante*, p. 967;

No. 16–5915. LEGATE *v.* COLLIER, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, *ante*, p. 990;

No. 16–5926. VAN BUREN *v.* CALIFORNIA, *ante*, p. 990;

No. 16–6030. CONNER *v.* TEXAS, *ante*, p. 1004;

No. 16–6068. HANSON-HODGE *v.* COLVIN, ACTING COMMISSIONER OF SOCIAL SECURITY, *ante*, p. 1004;

No. 16–6086. REMENAR *v.* EMPLOYMENT DEPARTMENT ET AL., *ante*, p. 1005;

No. 16–6173. MAYER *v.* BEEMER, ATTORNEY GENERAL OF PENNSYLVANIA, *ante*, p. 974;

No. 16–6240. DURHAM *v.* SUNY ROCKLAND COMMUNITY COLLEGE ET AL., *ante*, p. 1023;

No. 16–6248. SELDEN *v.* FLORIDA ET AL., *ante*, p. 1023;

No. 16–6282. WRIGHT *v.* CIRCUIT COURT OF MISSISSIPPI, HINDS COUNTY, *ante*, p. 1024;

No. 16–6305. SMITH *v.* VIRGINIA, *ante*, p. 1008;

No. 16–6318. SEIBERT *v.* CRICKMAR, WARDEN, *ante*, p. 1032;

No. 16–6327. DAVISON *v.* UNITED STATES, *ante*, p. 992;

No. 16–6363. BRITFORD *v.* ALABAMA, *ante*, p. 1009;

No. 16–6373. SANDLAIN *v.* UNITED STATES, *ante*, p. 1009;

No. 16–6402. HAMILTON *v.* DAVILA, *ante*, p. 1010;

No. 16–6488. MAYES *v.* UNITED STATES, *ante*, p. 1011;

No. 16–6529. LONGARIELLO *v.* AURA AT MIDTOWN/ALLIANCE RESIDENTIAL, LLC, *ante*, p. 1062;

No. 16–6660. HICKLIN *v.* STEELE, WARDEN, *ante*, p. 1066;

No. 16–6698. CLAY *v.* MCDONALD, SECRETARY OF VETERANS AFFAIRS, *ante*, p. 1068;

No. 16–6824. FISHER *v.* CITY OF IRONTON, OHIO, *ante*, p. 1074;

No. 16–6921. REMENAR *v.* SCARP, ATTORNEY ADMISSION CLERK, UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, *ante*, p. 1094; and

No. 16–7328. ANDREWS *v.* INDIRECT PURCHASER CLASS, *ante*, p. 1104. Petitions for rehearing denied.

No. 16–431. WALSH *v.* GEORGE ET AL., *ante*, p. 1036. Petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

FEBRUARY 27, 2017

Affirmed on Appeal

No. 16–743. INDEPENDENCE INSTITUTE *v.* FEDERAL ELECTION COMMISSION. Affirmed on appeal from D. C. D. C. Reported below: 216 F. Supp. 3d 176.

Miscellaneous Orders

No. 16M87. SEPULVEDA MEDINA *v.* ORIENTAL BANK & TRUST, HATO REY BRANCH. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 137, Orig. MONTANA *v.* WYOMING ET AL. Motion of the Special Master for allowance of fees and disbursements granted, and the Special Master is awarded a total of $162,815.08 for the period May 1, 2014, through December 31, 2016, to be paid equally by Montana and Wyoming. JUSTICE KAGAN took no part in the consideration or decision of this motion. [For earlier decision herein, see, *e. g.*, 577 U. S. 423.]

No. 16–341. TC HEARTLAND LLC *v.* KRAFT FOODS GROUP BRANDS LLC. C. A. Fed. Cir. [Certiorari granted, *ante*, p. 1039.] Motion of petitioner to file joint appendix under seal with redacted copies for the public record granted.

No. 16–668. MAGEE *v.* COCA-COLA REFRESHMENTS USA, INC. C. A. 5th Cir. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 16–6219. DAVILA *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. [Certiorari granted, *ante*, p. 1090.] Motion of petitioner for appointment of counsel granted, and Seth Kretzer, Esq., of Houston, Tex., is appointed to serve as counsel for petitioner in this case.

No. 16–7372. IN RE NOBLE. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until March 20, 2017, 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 ALITO took no part in the consideration or decision of this motion.

No. 16–7592. WHITE ET UX. *v.* ATTORNEY GRIEVANCE COMMISSION OF MICHIGAN. Sup. Ct. Mich. Motion of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 20, 2017, 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. 16–7807. IN RE HILLS; and

No. 16–7854. IN RE BRICE. Petitions for writs of habeas corpus denied.

No. 16–908. IN RE BUNDY. Petition for writ of mandamus denied.

Certiorari Granted

No. 16–460. ARTIS *v.* DISTRICT OF COLUMBIA. Ct. App. D. C. Certiorari granted. Reported below: 135 A. 3d 334.

No. 16–658. HAMER *v.* NEIGHBORHOOD HOUSING SERVICES OF CHICAGO ET AL. C. A. 7th Cir. Certiorari granted. Reported below: 835 F. 3d 761.

No. 16–6855. WILSON *v.* SELLERS, WARDEN. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Adam K. Mortara, Esq., of Chicago, Ill., is invited to brief and argue as *amicus curiae* in support of judgment below. Reported below: 834 F. 3d 1227.

Certiorari Denied

No. 15–1193. JOHNSON *v.* CARPENTER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 15–9092. WALKER *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 15–9638. SHEPPARD *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 807 F. 3d 815.

No. 16–144. ABDUR'RAHMAN *v.* WESTBROOKS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 805 F. 3d 710.

No. 16–548. BELMORA LLC ET AL. *v.* BAYER CONSUMER CARE AG ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 819 F. 3d 697.

No. 16–753. JARVIS ET AL. *v.* CUOMO, GOVERNOR OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 660 Fed. Appx. 72.

No. 16–791. A. S. *v.* PADILLA, JUDGE, SUPERIOR COURT OF ARIZONA, MARICOPA COUNTY, ET AL. Ct. App. Ariz. Certiorari denied. Reported below: 239 Ariz. 314, 371 P. 3d 642.

No. 16–792. ADAMSKI *v.* ADAMSKA. Sup. Ct. Nev. Certiorari denied. Reported below: 132 Nev. 937.

No. 16–793. ROUSE *v.* II–VI INC. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 658 Fed. Appx. 21.

No. 16–797. TERRY ET AL. *v.* NEWELL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 257.

No. 16–798. ALUMNI ASSOCIATION OF NEW JERSEY INSTITUTE OF TECHNOLOGY *v.* NEW JERSEY INSTITUTE OF TECHNOLOGY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 16–799. ALTO ET AL. *v.* HAUGRUD, ACTING SECRETARY OF THE INTERIOR, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 661 Fed. Appx. 502.

No. 16–807. SODOMSKY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 137 A. 3d 620.

No. 16–815. MUHAMMAD *v.* MUHAMMAD ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 455.

No. 16–820. MEYER *v.* MCKINLEY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 522.

No. 16–821. O'DONNELL ET AL. *v.* CITY OF CLEVELAND, OHIO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 838 F. 3d 718.

No. 16–823. BEDNARZ *v.* WELLS FARGO BANK, N. A. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2016 IL App (1st) 152738, 53 N. E. 3d 1079.

No. 16–824. ANGIUONI *v.* TOWN OF BILLERICA, MASSACHUSETTS, ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 838 F. 3d 34.

No. 16–826. PICKENS *v.* GANNETT CO., INC., ET AL. Sup. Ct. Fla. Certiorari denied.

No. 16–852. KRZYSIAK *v.* SESSIONS, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 667 Fed. Appx. 324.

No. 16–869. ROBINSON *v.* ROBINSON. Ct. App. Utah. Certiorari denied. Reported below: 2016 UT App 32, 368 P. 3d 147.

No. 16–897. JONES *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 16–900. STEVENSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 834 F. 3d 80 and 660 Fed. Appx. 4.

No. 16–913. WI-LAN USA, INC., ET AL. *v.* APPLE INC. C. A. Fed. Cir. Certiorari denied. Reported below: 830 F. 3d 1374.

No. 16–914. WOODMAN'S FOOD MARKET, INC. *v.* CLOROX CO. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 833 F. 3d 743.

No. 16–918. COLBURN, AKA CULBURN *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 201 So. 3d 462.

No. 16–935. GILLENWATER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 844.

No. 16–5046. COTONUTS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 501.

No. 16–5307. NORMAN *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 817 F. 3d 226.

No. 16–5507. MOSES *v.* THOMAS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 815 F. 3d 163.

No. 16–6014. CASH *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 635 Pa. 451, 137 A. 3d 1262.

No. 16–6076. CARRASQUILLO-PENALOZA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 826 F. 3d 590.

No. 16–6115. JIMENEZ *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 16–6224. VENNES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–6580. PUGH *v.* MONTGOMERY COUNTY BOARD OF EDUCATION. C. A. 4th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 398.

No. 16–6676. A. C. S. *v.* Florida Board of Bar Examiners. Sup. Ct. Fla. Certiorari denied.

No. 16–6939. Norris *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 826 F. 3d 821.

No. 16–6982. Gates *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 660 Fed. Appx. 270.

No. 16–7311. Jenkins *v.* Kentucky. Sup. Ct. Ky. Certiorari denied. Reported below: 496 S. W. 3d 435.

No. 16–7319. Dudden *v.* New York. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 138 App. Div. 3d 1452, 30 N. Y. S. 3d 448.

No. 16–7321. Mann *v.* Ryan, Director, Arizona Department of Corrections. C. A. 9th Cir. Certiorari denied.

No. 16–7323. Shallowhorn *v.* Madden, Warden. C. A. 9th Cir. Certiorari denied.

No. 16–7324. Smith *v.* HSBC Bank et al. C. A. 5th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 224.

No. 16–7335. Balderas *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 517 S. W. 3d 756.

No. 16–7336. Brooks *v.* Campbell, Warden. C. A. 6th Cir. Certiorari denied.

No. 16–7342. LaBlanche *v.* Iovate Health Sciences USA, Inc., et al. C. A. 5th Cir. Certiorari denied.

No. 16–7343. May *v.* Allen et al. Ct. App. Ind. Certiorari denied. Reported below: 57 N. E. 3d 900.

No. 16–7344. Morrow *v.* Pash, Warden. C. A. 8th Cir. Certiorari denied.

No. 16–7345. Mims *v.* Florida. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 200 So. 3d 73.

No. 16–7349. MBUGUA *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 16–7350. MIKHAEIL *v.* SANTOS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 646 Fed. Appx. 158.

No. 16–7354. PHILLIPPI *v.* DUCART, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7359. MEDFORD *v.* TARRANT COUNTY, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 253.

No. 16–7363. ANTIC *v.* BANK OF AMERICA, N. A. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2016 IL App (1st) 130160–UB.

No. 16–7364. LIGHTFOOT *v.* XANODYNE PHARMACEUTICALS, INC. C. A. 6th Cir. Certiorari denied.

No. 16–7367. URUK *v.* CALIFORNIA. App. Div., Super. Ct. Cal., County of Santa Barbara. Certiorari denied.

No. 16–7370. KNIGHT *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 202 So. 3d 439.

No. 16–7371. MANNING *v.* PATTON, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 544.

No. 16–7376. PULEO *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 16–7378. STOVALL *v.* CHAPTELAIN, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 660 Fed. Appx. 674.

No. 16–7380. PUGH *v.* GEHUNSKI ET AL. C. A. 6th Cir. Certiorari denied.

No. 16–7381. TURNER *v.* BIGELOW, PRESIDING JUSTICE, COURT OF APPEALS OF CALIFORNIA, SECOND APPELLATE DISTRICT, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–7382. WARNER *v.* HERNANDEZ, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 137.

No. 16–7429. GORDON *v.* KERNAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 633 Fed. Appx. 397.

No. 16–7459. CLUTCHETTE *v.* MONTGOMERY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7463. HEATH *v.* JONES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 266.

No. 16–7476. WASHINGTON *v.* SOTO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7487. PRIORE *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 16–7495. YOUNG *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–7524. JENSEN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 16–7548. PARNELL *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 294 Neb. 551, 883 N. W. 2d 652.

No. 16–7554. BURNS *v.* WELLS FARGO BANK, N. A. C. A. 5th Cir. Certiorari denied.

No. 16–7569. WASHAM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–7575. LEWIS *v.* ODDO, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 450.

No. 16–7578. THOMPSON *v.* BRANNON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 16–7607. MITCHELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–7623. VASQUE VALENZUELA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–7641. ARMSTRONG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 831.

No. 16–7649. MACHORRO-XOCHICALE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 840 F. 3d 545.

No. 16–7651. MALDONADO-PALMA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 839 F. 3d 1244.

No. 16–7656. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 664 Fed. Appx. 785.

No. 16–7657. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 636.

No. 16–7658. WASHINGTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 16–7663. MOCTAR *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 117 A. 3d 1043.

No. 16–7664. PETROSIAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 661 Fed. Appx. 903.

No. 16–7668. BUZANI-MUNOZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 658 Fed. Appx. 752.

No. 16–7670. APPLING *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–7672. DELUCA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 875.

No. 16–7681. STEIBING *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 660 Fed. Appx. 136.

No. 16–7682. SLUSSER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–7684. NEGBENEBOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 659 Fed. Appx. 946.

No. 16–7692. GREENE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 16–7694. GRIFFIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 439.

No. 16–7695. ANTONIO GAMEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 218.

No. 16–7696. FIELDS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 16–7697. LANE *v.* MAYE, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 721.

No. 16–7701. REID *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 16–7702. MONTIEL-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 299.

No. 16–7708. GUZMAN DOMINGUEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 664 Fed. Appx. 306.

No. 16–7720. MCCORMICK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 85.

No. 16–7721. MIRANDA-DE LA ROSA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 16–7726. ALI *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 247 N. C. App. 400, 786 S. E. 2d 433.

No. 16–7752. CARLOS MERAZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 580.

No. 16–656. REED *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2014–1980 (La. 9/7/16), 200 So. 3d 291.

JUSTICE BREYER, dissenting.

Marcus Dante Reed was sentenced to death in Caddo Parish, Louisiana, a county that in recent history has apparently sentenced more people to death per capita than any other county in the United States. See Aviv, Revenge Killing: Race and the Death Penalty in a Louisiana Parish, The New Yorker, July 6 & 13, 2015, p. 34. The arbitrary role that geography plays in the imposition of the death penalty, along with the other serious problems I have previously described, has led me to conclude that the Court should consider the basic question of the death penalty's constitutionality. See *Glossip* v. *Gross*, 576 U. S. 863, 908 (2015) (BREYER, J., dissenting). For this reason, I would grant Reed's petition for a writ of certiorari.

No. 16–910. Board of Pensions of the Evangelical Lutheran Church in America, dba Portico Benefit Services *v.* Bacon et al. Ct. App. Minn. Motion of Alliance Defending Freedom for leave to file brief as *amicus curiae* granted. Certiorari denied.

No. 16–7388. Taitt *v.* Wayne Circuit Court Judge et al. Ct. App. Mich. Certiorari denied. Justice Alito took no part in the consideration or decision of this petition.

Rehearing Denied

No. 15–7828. Wright *v.* Westbrooks, Warden, 578 U. S. 926;

No. 16–511. Kolailat *v.* McKennett, *ante*, p. 1084;

No. 16–532. Aguiar De Souza *v.* Lynch, Attorney General, *ante*, p. 1051;

No. 16–542. Ergur Private Equity Group, LLC *v.* Catron, *ante*, p. 1051;

No. 16–6089. White *v.* Matthews et al., *ante*, p. 1058;

No. 16–6174. Martin *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division, *ante*, p. 1022;

No. 16–6193. Haynie *v.* Holland, Warden, *ante*, p. 991;

No. 16–6366. Latimer et al. *v.* Social Security Administration et al., *ante*, p. 1058;

No. 16–6527. Maddrey *v.* Clark, Superintendent, State Correctional Institution at Albion, et al., *ante*, p. 1062;

No. 16–6575. Staruh *v.* Torma, Superintendent, State Correctional Institution at Cambridge Springs, et al., *ante*, p. 1063;

No. 16–6615. Valdez-Corral *v.* United States, *ante*, p. 1014;

No. 16–6648. Saunders *v.* United States, *ante*, p. 1034;

No. 16–6659. Goodman *v.* Pearson, Warden, *ante*, p. 1066;

No. 16–6662. Jackson *v.* City of Memphis, Tennessee, *ante*, p. 1066;

No. 16–6834. Rogers *v.* United States, *ante*, p. 1074;

No. 16–6871. Woods *v.* Arizona et al., *ante*, p. 1076; and

No. 16–7085. Clemmons *v.* Lynch, Attorney General, et al., *ante*, p. 1081. Petitions for rehearing denied.

FEBRUARY 28, 2017

Miscellaneous Order

No. 16–605. TOWN OF CHESTER, NEW YORK *v.* LAROE ESTATES, INC. C. A. 2d Cir. [Certiorari granted, *ante*, p. 1089.] Motion of Nancy Sherman, Executrix, to be added as respondent and for leave to participate in oral argument denied.

MARCH 6, 2017

Certiorari Granted—Vacated and Remanded. (See No. 16–6316, *ante*, p. 285.)

Vacated and Remanded After Certiorari Granted

No. 16–273. GLOUCESTER COUNTY SCHOOL BOARD *v.* G. G., BY HIS NEXT FRIEND AND MOTHER, GRIMM. C. A. 4th Cir. [Certiorari granted, *ante*, p. 951.] Judgment vacated, and case remanded for further consideration in light of the guidance document issued by the Department of Education and Department of Justice on February 22, 2017.

Certiorari Dismissed

No. 16–7404. MODRALL *v.* FREY ET AL. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 672 Fed. Appx. 34.

No. 16–7803. LAI *v.* BELL, 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–2917. IN RE DISBARMENT OF BRODER. Disbarment entered. [For earlier order herein, see 579 U. S. 962.]

No. D–2919. IN RE BRONSNICK. Warren Jay Bronsnick, of Short Hills, N. J., having requested to resign as a member of the

Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on August 8, 2016, [579 U. S. 963] is discharged.

No. D–2921. IN RE DISBARMENT OF GAHWYLER. Disbarment entered. [For earlier order herein, see 579 U. S. 963.]

No. D–2922. IN RE DISBARMENT OF CULBREATH. Disbarment entered. [For earlier order herein, see *ante*, p. 912.]

No. D–2923. IN RE DISBARMENT OF HUBBARD. Disbarment entered. [For earlier order herein, see *ante*, p. 912.]

No. D–2925. IN RE DISBARMENT OF LAMBAJIAN. Disbarment entered. [For earlier order herein, see *ante*, p. 912.]

No. D–2926. IN RE DISBARMENT OF LUCID. Disbarment entered. [For earlier order herein, see *ante*, p. 912.]

No. D–2927. IN RE DISBARMENT OF RHOADS. Disbarment entered. [For earlier order herein, see *ante*, p. 912.]

No. D–2928. IN RE DISBARMENT OF LERCH. Disbarment entered. [For earlier order herein, see *ante*, p. 912.]

No. D–2929. IN RE DISBARMENT OF CARAMADRE. Disbarment entered. [For earlier order herein, see *ante*, p. 913.]

No. D–2930. IN RE DISBARMENT OF GOLDMAN. Disbarment entered. [For earlier order herein, see *ante*, p. 913.]

No. D–2931. IN RE DISBARMENT OF NACHAMIE. Disbarment entered. [For earlier order herein, see *ante*, p. 913.]

No. D–2932. IN RE DISBARMENT OF VESNAVER. Disbarment entered. [For earlier order herein, see *ante*, p. 913.]

No. D–2933. IN RE DISBARMENT OF DIGGS. Disbarment entered. [For earlier order herein, see *ante*, p. 913.]

No. D–2934. IN RE DISBARMENT OF FUSILIER. Disbarment entered. [For earlier order herein, see *ante*, p. 913.]

No. 16M88. STEVENSON *v.* HALL; and

No. 16M90. PILCHESKY *v.* WELLS FARGO BANK, N. A., ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 16M89. MELVIN *v.* NAYLOR ET AL. Motion for leave to proceed as a veteran denied.

No. 15–1031. HOWELL *v.* HOWELL. Sup. Ct. Ariz. [Certiorari granted, *ante*, p. 1017.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 15–1189. IMPRESSION PRODUCTS, INC. *v.* LEXMARK INTERNATIONAL, INC. C. A. Fed. Cir. [Certiorari granted, *ante*, p. 1017.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted in part, and the time is to be divided as follows: 25 minutes for petitioner, 10 minutes for the Acting Solicitor General, and 30 minutes for respondent.

No. 16–254. WATER SPLASH, INC. *v.* MENON. Ct. App. Tex., 14th Dist. [Certiorari granted, *ante*, p. 1017.] Motion of petitioner Water Splash, Inc., for divided argument denied. Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 16–369. COUNTY OF LOS ANGELES, CALIFORNIA, ET AL. *v.* MENDEZ ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1017.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 16–5294. MCWILLIAMS *v.* DUNN, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. [Certiorari granted, *ante*, p. 1090.] Motion of petitioner for appointment of counsel granted, and Stephen B. Bright, Esq., of Atlanta, Ga., is appointed to serve as counsel for petitioner in this case.

No. 16–6387. LOOMIS *v.* WISCONSIN. Sup. Ct. Wis. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 16–6461. PIANKA *v.* ARIZONA. Ct. App. Ariz. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1028] denied.

No. 16–6495. CLARK *v.* DEPARTMENT OF EDUCATION ET AL. C. A. 2d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1042] denied.

No. 16–6741. ASPELMEIER *v.* ILLINOIS. Sup. Ct. Ill. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1043] denied.

No. 16–6846. WALKER *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1046] denied.

No. 16–7386. CHANG *v.* DELAWARE. Sup. Ct. Del.; and

No. 16–7472. NURRIDDIN *v.* BOLDEN, ADMINISTRATOR, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION. C. A. D. C. Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 27, 2017, 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. 16–7878. IN RE MITCHELL; and

No. 16–7886. IN RE ROBINSON. Petitions for writs of habeas corpus denied.

No. 16–7391. IN RE TAYLOR. Petition for writ of mandamus denied.

Certiorari Denied

No. 16–508. VILOSKI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 814 F. 3d 104.

No. 16–531. AMEREN SERVICES CO., AS AGENT FOR UNION ELECTRIC CO., ET AL. *v.* FEDERAL ENERGY REGULATORY COMMISSION. C. A. 7th Cir. Certiorari denied. Reported below: 819 F. 3d 329.

No. 16–564. DARIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 16–692. INDIAN INSTITUTE OF TECHNOLOGY, KHARAGPUR *v.* FARHANG ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 569.

No. 16–709. DANIELS *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. 9th Cir. Certiorari denied. Reported below: 832 F. 3d 1049.

No. 16–725. JEDA Capital-56, LLC *v.* Village of Potsdam, New York. C. A. 2d Cir. Certiorari denied. Reported below: 661 Fed. Appx. 20.

No. 16–816. Hamilton *v.* Murray et al. C. A. 4th Cir. Certiorari denied. Reported below: 648 Fed. Appx. 344.

No. 16–831. Woldeselassie *v.* American Eagle Airlines, Inc., et al. C. A. 2d Cir. Certiorari denied. Reported below: 647 Fed. Appx. 21.

No. 16–836. Feldt *v.* Heritage Homes of Nebraska, Inc. C. A. 10th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 669.

No. 16–854. McKinney *v.* Kelly, Secretary of Homeland Security. C. A. 7th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 314.

No. 16–862. Regency Heritage Nursing and Rehabilitation Center *v.* National Labor Relations Board. C. A. 3d Cir. Certiorari denied. Reported below: 657 Fed. Appx. 129.

No. 16–878. McKay *v.* Federspiel et al C. A. 6th Cir. Certiorari denied. Reported below: 823 F. 3d 862.

No. 16–885. Brothers, as Independent Executor of the Estate of Sullivan, et al. *v.* Zoss et al. C. A. 5th Cir. Certiorari denied. Reported below: 837 F. 3d 513.

No. 16–890. TDE Petroleum Data Solutions, Inc. *v.* AKM Enterprise, Inc., dba Moblize, Inc. C. A. Fed. Cir. Certiorari denied. Reported below: 657 Fed. Appx. 991.

No. 16–891. Bell et al. *v.* City of Chicago, Illinois. C. A. 7th Cir. Certiorari denied. Reported below: 835 F. 3d 736.

No. 16–895. Vosse *v.* City of New York, New York, et al. C. A. 2d Cir. Certiorari denied. Reported below: 666 Fed. Appx. 11.

No. 16–899. Myr *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 433.

No. 16–909. M2 Software, Inc. *v.* M2 Technology, Inc. C. A. 5th Cir. Certiorari denied. Reported below: 657 Fed. Appx. 318.

No. 16–941. SNIDER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 16–959. FINANCIAL EDUCATION SERVICES, INC. *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 336 Ga. App. 606, 785 S. E. 2d 544.

No. 16–960. WU ET UX. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 835 F. 3d 711.

No. 16–963. TITO *v.* MATTIS, SECRETARY OF DEFENSE. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 27.

No. 16–968. MEIDINGER *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 11th Cir. Certiorari denied. Reported below: 662 Fed. Appx. 774.

No. 16–6313. PETERSON *v.* KLEE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 327.

No. 16–6872. VALDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 559.

No. 16–6953. HOWELL *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 16–6989. FOX *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 650 Fed. Appx. 734.

No. 16–6995. WILLIS *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 496 S. W. 3d 653.

No. 16–7032. YOUNG *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 835 F. 3d 520.

No. 16–7080. TYREE *v.* CHAO, SECRETARY OF TRANSPORTATION. C. A. 1st Cir. Certiorari denied. Reported below: 835 F. 3d 35.

No. 16–7110. HARROD *v.* ARIZONA. Super. Ct. Ariz., County of Maricopa. Certiorari denied.

No. 16–7392. ROMERO-LUNA *v.* MADDEN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7394. SMITH *v.* DICKHAUT, SUPERINTENDENT, SOUZA BARANOWSKI CORRECTIONAL CENTER. C. A. 1st Cir. Certiorari denied. Reported below: 836 F. 3d 97.

No. 16–7399. RODRIGUEZ *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7400. TAYLOR *v.* DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES ET AL. Ct. App. D. C. Certiorari denied. Reported below: 152 A. 3d 150.

No. 16–7402. SHEPARD *v.* MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES. Sup. Ct. Mich. Certiorari denied. Reported below: 499 Mich. 915, 877 N. W. 2d 726.

No. 16–7405. STOUFFER *v.* ROYAL, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 825 F. 3d 1167.

No. 16–7408. STEELE *v.* HARRINGTON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7411. CLARK *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2016 IL App (1st) 133643–U.

No. 16–7413. CLARK *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 63 Cal. 4th 522, 372 P. 3d 811.

No. 16–7414. DAKER *v.* BRYSON, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 820 F. 3d 1278.

No. 16–7418. TAYLOR *v.* UNITED STATES; and
No. 16–7624. COLLIER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 902.

No. 16–7419. GUNCHES *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 240 Ariz. 198, 377 P. 3d 993.

No. 16–7424. ANDERSON *v.* KERNAN, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 16–7431. HICKSON *v.* DELBAISO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–7451. HILL *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL. C. A. 8th Cir. Certiorari denied.

No. 16–7458. DORR *v.* MICHIGAN ET AL. Ct. App. Mich. Certiorari denied.

No. 16–7465. WILLIAMS *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–7479. LAND *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 198 So. 3d 388.

No. 16–7498. WEISCHMAN *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 8th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 194.

No. 16–7516. JIMENEZ *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 196 So. 3d 499.

No. 16–7525. JONES *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 229 Md. App. 726.

No. 16–7530. MOAT *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 208 So. 3d 709.

No. 16–7551. NAVARETTE-DURAN *v.* VANNOY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 16–7552. CANERDY *v.* MONTGOMERY. Ct. App. Miss. Certiorari denied. Reported below: 202 So. 3d 627.

No. 16–7565. WANLAND *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 657 Fed. Appx. 631.

No. 16–7620. WATTS *v.* GRIFFIN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 16–7626. HEFFERNAN *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. Sup. Ct. Ark. Certiorari denied. Reported below: 2016 Ark. 369, 501 S. W. 3d 372.

No. 16–7650. KNORR *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. D. C. Cir. Certiorari denied. Reported below: 672 Fed. Appx. 5.

No. 16–7655. MANZANO *v.* MONTGOMERY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 864.

No. 16–7660. DECKER *v.* PERSSON, SUPERINTENDENT, COFFEE CREEK CORRECTIONAL FACILITY. C. A. 9th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 520.

No. 16–7711. MUNOZ *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 633.

No. 16–7718. REDD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–7729. WATKINS *v.* BAUM ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 652.

No. 16–7731. DAVIS *v.* WALMART STORES EAST, L. P., ET AL. C. A. 5th Cir. Certiorari denied.

No. 16–7733. SPEIGHT-BEY *v.* SAAD, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 77.

No. 16–7743. RICHARDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 209.

No. 16–7747. YOUNG *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 664 Fed. Appx. 686.

No. 16–7758. COLTON *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA. C. A. 8th Cir. Certiorari denied.

No. 16–7761. DOE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 384.

No. 16–7764. BENSON *v.* TAYLOR, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 929.

No. 16–7766. HERNANDEZ OLGIN *v.* UNITED STATES; and
No. 16–7805. GONZALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 841 F. 3d 339.

No. 16–7769. YOUNG *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 727.

No. 16–7772. MARTINEZ RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 845 F. 3d 578.

No. 16–7774. Craig et al. *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 831 F. 3d 1207 and 659 Fed. Appx. 908.

No. 16–7778. Royston *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 16–7787. Haymer *v.* Georgia. Ct. App. Ga. Certiorari denied. Reported below: 335 Ga. App. XXIII.

No. 16–7788. Marcantoni *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 668.

No. 16–7789. Kofalt *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 668 Fed. Appx. 426.

No. 16–7793. Javier Estrada *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 16–7795. Bohn *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 658 Fed. Appx. 554.

No. 16–7799. Morefield *v.* Tice, Acting Superintendent, State Correctional Institution at Huntingdon, et al. C. A. 3d Cir. Certiorari denied.

No. 16–7808. Carter *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 179.

No. 16–7813. Porcayo-Carbajal *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 662 Fed. Appx. 468.

No. 16–7823. Alderman *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 934.

No. 16–7824. Bain *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 211.

No. 16–7826. Duren *v.* Home Properties Cove Townhomes, LLC, et al. Ct. App. Md. Certiorari denied.

No. 16–7827. Lockwood *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 840 F. 3d 896.

No. 16–7828. Martinez-Vega *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 826 F. 3d 514.

No. 16–7829. JACKSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 658 Fed. Appx. 832.

No. 16–7834. CARDONA-VICENTY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 842 F. 3d 766.

No. 16–7844. ZARECK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 662 Fed. Appx. 110.

No. 16–7845. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 426.

No. 16–122. LEONARD *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

Statement of JUSTICE THOMAS respecting the denial of certiorari.

This petition asks an important question: whether modern civil-forfeiture statutes can be squared with the Due Process Clause and our Nation's history.

I

Early in the morning on April 1, 2013, a police officer stopped James Leonard for a traffic infraction along a known drug corridor. During a search of the vehicle, the officer found a safe in the trunk. Leonard and his passenger, Nicosa Kane, gave conflicting stories about the contents of the safe, with Leonard at one point indicating that it belonged to his mother, who is the petitioner here. The officer obtained a search warrant and discovered that the safe contained $201,100 and a bill of sale for a Pennsylvania home.

The State initiated civil-forfeiture proceedings against the $201,100 on the ground that it was substantially connected to criminal activity, namely, narcotics sales. See Tex. Code Crim. Proc. Ann., Art. 59.01 (Vernon Cum. Supp. 2016). The trial court issued a forfeiture order, and petitioner appealed. Citing the suspicious circumstances of the stop and the contradictory stories provided by Leonard and Kane, the Court of Appeals affirmed the trial court's conclusion that the government had shown by a preponderance of the evidence that the money was either the proceeds of a drug sale or intended to be used in such a sale. It also affirmed the trial court's rejection of petitioner's innocent-owner defense. Petitioner had asserted that the money was not related to a drug sale at all, but was instead from a home she had

recently sold in Pennsylvania. The court deemed this testimony insufficient to establish that she was in fact an innocent owner.

Petitioner now challenges the constitutionality of the procedures used to adjudicate the seizure of her property. In particular, she argues that the Due Process Clause required the State to carry its burden by clear and convincing evidence rather than by a preponderance of the evidence.

II

Modern civil-forfeiture statutes are plainly designed, at least in part, to punish the owner of property used for criminal purposes. See, *e. g.*, *Austin* v. *United States*, 509 U. S. 602, 618–619 (1993). When a State wishes to punish one of its citizens, it ordinarily proceeds against the defendant personally (known as *in personam*), and in many cases it must provide the defendant with full criminal procedural protections. Nevertheless, for reasons discussed below, this Court permits prosecutors seeking forfeiture to proceed against the property (known as *in rem*) and to do so civilly. See, *e. g.*, *United States* v. *James Daniel Good Real Property*, 510 U. S. 43, 56–57 (1993). *In rem* proceedings often enable the government to seize the property without any predeprivation judicial process and to obtain forfeiture of the property even when the owner is personally innocent (though some statutes, including the one here, provide for an innocent-owner defense). Civil proceedings often lack certain procedural protections that accompany criminal proceedings, such as the right to a jury trial and a heightened standard of proof.

Partially as a result of this distinct legal regime, civil forfeiture has in recent decades become widespread and highly profitable. See, *e. g.*, Institute for Justice, D. Carpenter, L. Knepper, A. Erickson, & J. McDonald, Policing for Profit: The Abuse of Civil Asset Forfeiture 10 (2d ed. Nov. 2015) (Department of Justice Assets Forfeiture Fund took in $4.5 billion in 2014 alone), https://ij.org/wp-content/uploads/2015/11/policing-for-profit-2nd-edition.pdf (as last visited Feb. 27, 2017). And because the law enforcement entity responsible for seizing the property often keeps it, these entities have strong incentives to pursue forfeiture. *Id.*, at 14 (noting that the Federal Government and many States permit 100 percent of forfeiture proceeds to flow directly to law enforcement); see also App. to Pet. for Cert. B–2 (directing that the money in this case be divided between the "Cleveland Police

Department" and the "Liberty County District Attorney's Office").

This system—where police can seize property with limited judicial oversight and retain it for their own use—has led to egregious and well-chronicled abuses. According to one nationally publicized report, for example, police in the town of Tenaha, Texas, regularly seized the property of out-of-town drivers passing through and collaborated with the district attorney to coerce them into signing waivers of their property rights. Stillman, Taken, The New Yorker, Aug. 12 & 19, 2013, pp. 54–56. In one case, local officials threatened to file unsubstantiated felony charges against a Latino driver and his girlfriend and to place their children in foster care unless they signed a waiver. *Id.*, at 49. In another, they seized a black plant worker's car and all his property (including cash he planned to use for dental work), jailed him for a night, forced him to sign away his property, and then released him on the side of the road without a phone or money. *Id.*, at 51. He was forced to walk to a Walmart, where he borrowed a stranger's phone to call his mother, who had to rent a car to pick him up. *Ibid.*

These forfeiture operations frequently target the poor and other groups least able to defend their interests in forfeiture proceedings. *Id.*, at 53–54; Sallah, O'Harrow, & Rich, Stop and Seize, Washington Post, Sept. 7, 2014, pp. A1, A10. Perversely, these same groups are often the most burdened by forfeiture. They are more likely to use cash than alternative forms of payment, like credit cards, which may be less susceptible to forfeiture. And they are more likely to suffer in their daily lives while they litigate for the return of a critical item of property, such as a car or a home.

III

The Court has justified its unique constitutional treatment of civil forfeiture largely by reference to a discrete historical practice that existed at the time of the founding. See, *e. g.*, *Bennis* v. *Michigan*, 516 U. S. 442, 446–448 (1996). "'English Law provided for statutory forfeitures of offending objects used in violation of the customs and revenue laws.'" *Austin*, *supra*, at 612 (quoting *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U. S. 663, 682 (1974)). This practice "took hold in the United States," where the "First Congress passed laws subjecting ships and cargos involved in customs offenses to forfeiture." 509 U. S., at 613.

Other early statutes also provided for the forfeiture of pirate ships. *United States* v. *Parcel of Rumson, N. J., Land*, 507 U. S. 111, 119 (1993) (plurality opinion). These early statutes permitted the government to proceed *in rem* under the fiction that the thing itself, rather than the owner, was guilty of the crime. See *Calero-Toledo*, *supra*, at 684–685; Act of Aug. 4, 1790, § 67, 1 Stat. 176–177. And, because these suits were *in rem* rather than *in personam*, they typically proceeded civilly rather than criminally. See *United States* v. *La Vengeance*, 3 Dall. 297, 301 (1796).

In the absence of this historical practice, the Constitution presumably would require the Court to align its distinct doctrine governing civil forfeiture with its doctrines governing other forms of punitive state action and property deprivation. See *Bennis*, *supra*, at 454 (THOMAS, J., concurring) ("One unaware of the history of forfeiture laws and 200 years of this Court's precedent regarding such laws might well assume that such a scheme is lawless—a violation of due process"). I am skeptical that this historical practice is capable of sustaining, as a constitutional matter, the contours of modern practice, for two reasons.

First, historical forfeiture laws were narrower in most respects than modern ones. Cf. *James Daniel Good*, *supra*, at 85 (THOMAS, J., concurring in part and dissenting in part) (noting that "ambitious modern statutes and prosecutorial practices have all but detached themselves from the ancient notion of civil forfeiture"). Most obviously, they were limited to a few specific subject matters, such as customs and piracy. Proceeding *in rem* in those cases was often justified by necessity, because the party responsible for the crime was frequently located overseas and thus beyond the personal jurisdiction of United States courts. See Herpel, Toward a Constitutional Kleptocracy: Civil Forfeiture in America, 96 Mich. L. Rev. 1910, 1918–1920 (1998); see also *id.*, at 1925–1926 (arguing that founding-era precedents do not support the use of forfeiture against purely domestic offenses where the owner is plainly within the personal jurisdiction of both state and federal courts). These laws were also narrower with respect to the type of property they encompassed. For example, they typically covered only the instrumentalities of the crime (such as the vessel used to transport the goods), not the derivative proceeds of the crime (such as property purchased with money from the sale of the illegal goods). See *Rumson*, *supra*, at 121–122,

125 (plurality opinion) (Forfeiture of criminal proceeds is a modern innovation).

Second, it is unclear whether courts historically permitted forfeiture actions to proceed civilly in all respects. Some of this Court's early cases suggested that forfeiture actions were in the nature of criminal proceedings. See, *e. g.*, *Boyd* v. *United States*, 116 U. S. 616, 633–634 (1886) ("We are . . . clearly of [the] opinion that proceedings instituted for the purpose of declaring the forfeiture of a man's property by reason of offenses committed by him, though they may be civil in form, are in their nature criminal"); but see R. Waples, Proceedings *In Rem* 29–30 (1882) (collecting contrary authorities). Whether forfeiture is characterized as civil or criminal carries important implications for a variety of procedural protections, including the right to a jury trial and the proper standard of proof. Indeed, as relevant in this case, there is some evidence that the government was historically required to prove its case beyond a reasonable doubt. See *United States* v. *Brig Burdett*, 9 Pet. 682, 690 (1835) ("The object of the prosecution against the Burdett is to enforce a forfeiture of the vessel, and all that pertains to it, for a violation of a revenue law. This prosecution then is a highly penal one, and the penalty should not be inflicted, unless the infractions of the law shall be established beyond reasonable doubt").

IV

Unfortunately, petitioner raises her due process arguments for the first time in this Court. As a result, the Texas Court of Appeals lacked the opportunity to address them in the first instance. I therefore concur in the denial of certiorari. Whether this Court's treatment of the broad modern forfeiture practice can be justified by the narrow historical one is certainly worthy of consideration in greater detail.

No. 16–704. Soo Line Railroad Co., dba Canadian Pacific *v.* Werner Enterprises. C. A. 8th Cir. Certiorari denied. Justice Thomas took no part in the consideration or decision of this petition. Reported below: 825 F. 3d 413.

No. 16–5454. Baston *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 818 F. 3d 651.

JUSTICE THOMAS, dissenting.

The Constitution, through the Foreign Commerce Clause, grants Congress authority to "regulate Commerce with foreign Nations." Art. I, § 8, cl. 3. Without guidance from this Court as to the proper scope of Congress' power under this Clause, the courts of appeals have construed it expansively, to permit Congress to regulate economic activity abroad if it has a substantial effect on this Nation's foreign commerce. In this case, the Court of Appeals declared constitutional a restitution award against a non-U. S. citizen based upon conduct that occurred in Australia. The facts are not sympathetic, but the principle involved is fundamental. We should grant certiorari and reaffirm that our Federal Government is one of limited and enumerated powers, not the world's lawgiver.

I

Petitioner Damion St. Patrick Baston is a citizen of Jamaica. He forced numerous women to prostitute for him through violence, threats, and humiliation. One of his victims, K. L., was a citizen of Australia. She prostituted for petitioner in Australia, the United States, and the United Arab Emirates before escaping from his control. While in the United States, petitioner was arrested and charged with the sex trafficking of K. L. by force, fraud, or coercion, 18 U. S. C. § 1591(a), "'in the Southern District of Florida, Australia, the United Arab Emirates, and elsewhere.'" 818 F. 3d 651, 658 (CA11 2016). As relevant here, § 1591(a)(1) states that the sex trafficking must "affec[t] interstate or foreign commerce." Congress has granted federal courts "extraterritorial jurisdiction" over sex trafficking if the "alleged offender is present in the United States, irrespective of the nationality of the alleged offender." § 1596(a)(2).

After a jury convicted petitioner, the District Court ordered him to pay K. L. $78,000 in restitution, which included the money she earned while prostituting for petitioner in the United States. See § 1593(b)(1) (requiring sentencing courts to order restitution in "the full amount of the victim's losses" for offenses under § 1591). But the court refused to include in the restitution award the $400,000 that K. L. earned while prostituting in Australia. In the court's view, the Foreign Commerce Clause did not permit an award of restitution based on petitioner's extraterritorial conduct. 818 F. 3d, at 657, 660.

The Court of Appeals vacated the order of restitution and remanded with instructions to increase the award by $400,000 to account for K. L.'s prostitution in Australia. The court reasoned that whatever the outer bounds of the Foreign Commerce Clause might be, this Court has suggested that it has at least the same scope as the Interstate Commerce Clause. Relying on our Interstate Commerce Clause precedents, the Court of Appeals concluded that the Foreign Commerce Clause grants Congress power to regulate "activities that have a 'substantial effect' on commerce between the United States and other countries," including sex trafficking overseas. *Id.*, at 668 (citing *Gonzales* v. *Raich*, 545 U. S. 1, 16–17 (2005)).

II

The Court of Appeals correctly noted that this Court has never "thoroughly explored the scope of the Foreign Commerce Clause." 818 F. 3d, at 667; accord, *e. g.*, Goodno, When the Commerce Clause Goes International: A Proposed Legal Framework for the Foreign Commerce Clause, 65 Fla. L. Rev. 1139, 1148–1149 (2013) ("The U. S. Supreme Court has not yet articulated the extent of Congress's power under the Foreign Commerce Clause to enact laws with extraterritorial reach. Because of this lack of guidance . . . lower courts are at a loss for how to analyze Foreign Commerce Clause issues"). The few decisions from this Court addressing the scope of the Clause have generally been confined to laws regulating conduct with a significant connection to the United States. See, *e. g.*, *Board of Trustees of Univ. of Ill.* v. *United States*, 289 U. S. 48, 57 (1933) ("The Congress may determine what articles may be imported into this country and the terms upon which importation is permitted"); *United States ex rel. Turner* v. *Williams*, 194 U. S. 279, 290 (1904) ("[T]he power to regulate commerce with foreign nations . . . includes the entrance of ships, the importation of goods, and the bringing of persons into the ports of the United States"). This Court has also articulated limits on the power of the States to regulate commerce with foreign nations under the so-called dormant Foreign Commerce Clause. See, *e. g.*, *Japan Line, Ltd.* v. *County of Los Angeles*, 441 U. S. 434, 449–454 (1979). We have not, however, considered the limits of Congress' power under the Clause to regulate conduct occurring entirely within the jurisdiction of a foreign sovereign.

In the absence of specific guidance, the courts of appeals—including the court below—have understandably extended this Court's Interstate Commerce Clause precedents abroad. In *United States* v. *Lopez*, 514 U. S. 549, 558–559 (1995), we held that Congress is limited to regulating three categories of interstate activity: "the use of the channels of interstate commerce," "the instrumentalities of interstate commerce," and "activities that substantially affect interstate commerce." Some courts of appeals "have imported the *Lopez* categories directly into the foreign context," some "have applied *Lopez* generally but recognized that Congress has greater power to regulate foreign commerce," and others have gone further still, "holding that Congress has authority to legislate under the Foreign Commerce Clause when the text of a statute has a constitutionally tenable nexus with foreign commerce." *United States* v. *Bollinger*, 798 F. 3d 201, 215 (CA4 2015) (internal quotation marks omitted); see also *id.*, at 215–216 ("Instead of requiring that an activity have a substantial effect on foreign commerce, we hold that the Foreign Commerce Clause allows Congress to regulate activities that demonstrably affect such commerce").

III

I am concerned that language in some of this Court's precedents has led the courts of appeals into error. At the very least, the time has come for us to clarify the scope of Congress' power under the Foreign Commerce Clause to regulate extraterritorially.

A

The courts of appeals have relied upon statements by this Court comparing the foreign commerce power to the interstate commerce power, but have removed those statements from their context. In certain contexts, this Court has described the foreign commerce power as "exclusive and plenary," *Board of Trustees*, *supra*, at 56–57 (citing *Gibbons* v. *Ogden*, 9 Wheat. 1, 196–200 (1824)), explaining that Congress' commerce power "when exercised in respect of foreign commerce may be broader than when exercised as to interstate commerce," *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U. S. 427, 434 (1932); see also *Brolan* v. *United States*, 236 U. S. 216, 218–220 (1915). None of these opinions, however, "involve[d] legislation of extraterritorial operation which purports to regulate conduct inside foreign nations." Col-

angelo, The Foreign Commerce Clause, 96 Va. L. Rev. 949, 1001 (2010). This Court's statements about the comparative breadth of the Foreign Commerce Clause are of questionable relevance where the issue is Congress' power to regulate, or even criminalize, conduct within another nation's sovereign territory.

Moreover, this Court's comparative statements about the breadth of the Foreign Commerce Clause have relied on some "evidence that the Founders intended the scope of the foreign commerce power to be greater" than Congress' power to regulate commerce among the States. *Japan Line*, *supra*, at 448. Whatever the Founders' intentions might have been in this respect, they were grounded in the original understanding of the Interstate Commerce Clause. But this Court's modern doctrine has "drifted far from the original understanding." *Lopez*, *supra*, at 584 (THOMAS, J., concurring). For one thing, the "Clause's text, structure, and history all indicate that, at the time of the founding, the term '"commerce" consisted of selling, buying, and bartering, as well as transporting for these purposes.'" *Raich*, *supra*, at 58 (THOMAS, J., dissenting) (quoting *Lopez*, *supra*, at 585 (opinion of THOMAS, J.)). For another, "the very notion of a 'substantial effects' test under the Commerce Clause is inconsistent with the original understanding of Congress' powers and with this Court's early Commerce Clause cases." *United States* v. *Morrison*, 529 U. S. 598, 627 (2000) (THOMAS, J., concurring).

Thus, even if the foreign commerce power were broader than the interstate commerce power as understood at the founding, it would not follow that the foreign commerce power is broader than the interstate commerce power as this Court now construes it. But rather than interpreting the Foreign Commerce Clause as it was originally understood, the courts of appeals have taken this Court's modern interstate commerce doctrine and assumed that the foreign commerce power is at least as broad. The result is a doctrine justified neither by our precedents nor by the original understanding.

B

Taken to the limits of its logic, the consequences of the Court of Appeals' reasoning are startling. The Foreign Commerce Clause would permit Congress to regulate any economic activity anywhere in the world, so long as Congress had a rational basis to conclude that the activity has a substantial effect on commerce between this Nation and any other. Congress would be able not

only to criminalize prostitution in Australia but also to regulate working conditions in factories in China, pollution from powerplants in India, or agricultural methods on farms in France. I am confident that whatever the correct interpretation of the foreign commerce power may be, it does not confer upon Congress a virtually plenary power over global economic activity.

* * *

We should grant certiorari in this case to consider the proper scope of Congress' Foreign Commerce Clause power.

I respectfully dissent.

No. 16–6250. PEREZ *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 189 So. 3d 797.

JUSTICE SOTOMAYOR, concurring.

Robert Perez is serving more than 15 years in a Florida prison for what may have been nothing more than a drunken joke. The road to this unfortunate outcome began with Perez and his friends drinking a mixture of vodka and grapefruit juice at the beach. Sentencing Tr. 24, App. to Pet. for Cert. (Sentencing Tr.). As the group approached a nearby liquor store to purchase additional ingredients for the mixture, which Perez called a "Molly cocktail," *ibid.*, a store employee overheard the group's conversation, *id.*, at 25. The employee apparently believed he was referencing an incendiary "Molotov cocktail" and asked if it would "burn anything up." *Ibid.* Perez claims he responded that he did not have "that type" of cocktail, and that the whole group laughed at the apparent joke. *Ibid.* Imprudently, however, the inebriated Perez continued the banter, telling another employee that he had only "one Molotov cocktail" and could "blow the whole place up." App. C to Brief in Opposition 82. Perez later returned to the store and allegedly said, "'I'm going to blow up this whole [expletive] world.'" *Id.*, at 121. Store employees reported the incident to police the next day. Sentencing Tr. 15, 34.

The State prosecuted Perez for violating a Florida statute that makes it a felony "to threaten to throw, project, place, or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person." Fla. Stat. § 790.162 (2007). The trial court instructed the jury that they could return a guilty verdict if the State proved two elements. First, the State had to prove the *actus reus*; that

is, the threat itself. The instruction defined a threat as "a communicated intent to inflict harm or loss on another when viewed and/or heard by an ordinary reasonable person." App. F to Brief in Opposition 350. Second, the State had to prove that Perez possessed the necessary *mens rea*; that is, that he intended to make the threat. Circularly, the instruction defined intent as "the stated intent to do bodily harm to any person or damage to the property of any person." *Ibid.* This instruction permitted the jury to convict Perez based on what he "stated" alone—irrespective of whether his words represented a joke, the ramblings of an intoxicated individual, or a credible threat. The jury found Perez guilty, and because he qualified as a habitual offender, the trial court sentenced him to 15 years and 1 day in prison. Sentencing Tr. 44.

In the courts below and in his petition for certiorari, Perez challenged the instruction primarily on the ground that it contravenes the traditional rule that criminal statutes be interpreted to require proof of *mens rea*, see *Elonis* v. *United States*, 575 U. S. 734–737 (2015). In my view, however, the jury instruction—and Perez's conviction—raise serious First Amendment concerns worthy of this Court's review. But because the lower courts did not reach the First Amendment question, I reluctantly concur in the Court's denial of certiorari in this case.

* * *

The First Amendment's protection of speech and expression does not extend to threats of physical violence. See *R. A. V.* v. *St. Paul*, 505 U. S. 377, 388 (1992). Statutes criminalizing threatening speech, however, "must be interpreted with the commands of the First Amendment clearly in mind" in order to distinguish true threats from constitutionally protected speech. *Watts* v. *United States*, 394 U. S. 705, 707 (1969) (*per curiam*). Under our cases, this distinction turns in part on the speaker's intent.

We suggested as much in *Watts*. There, we faced a constitutional challenge to a criminal threat statute and expressed "grave doubts" that the First Amendment permitted a criminal conviction if the speaker merely "uttered the charged words with an apparent determination to carry them into execution." *Id.*, at 708, 707 (emphasis deleted; internal quotation marks omitted).

Virginia v. *Black*, 538 U. S. 343 (2003), made the import of the speaker's intent plain. There, we considered a state statute that

criminalized cross burning "'with the intent of intimidating any person.'" *Id.*, at 348 (quoting Va. Code Ann. §18.2–423 (1996)). We defined a "true threat" as one "where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." 538 U. S., at 359. We recognized that cross burning is not always such an expression and held the statute constitutional "insofar as it ban[ned] cross burning *with intent* to intimidate." *Id.*, at 362 (emphasis added); *id.*, at 365 (plurality opinion).

A four-Member plurality went further and found unconstitutional a provision of the statute that declared the speech itself "'prima facie evidence of an intent to intimidate.'" *Id.*, at 363–364. The plurality reached this conclusion because "a burning cross is not always intended to intimidate." *Id.*, at 365. Two separate opinions endorsed this view. See *id.*, at 372 (Scalia, J., joined by THOMAS, J., concurring in part, concurring in judgment in part, and dissenting in part) ("The plurality is correct in all of this"); *id.*, at 386 (Souter, J., joined by KENNEDY and GINSBURG, JJ., concurring in judgment in part and dissenting in part).

Together, *Watts* and *Black* make clear that to sustain a threat conviction without encroaching upon the First Amendment, States must prove more than the mere utterance of threatening words—*some* level of intent is required. And these two cases strongly suggest that it is not enough that a reasonable person might have understood the words as a threat—a jury must find that the speaker actually intended to convey a threat.

* * *

The jury instruction in this case relieved the State of its burden of proving anything other than Perez's "stated" or "communicated" intent. This replicates the view we doubted in *Watts*, which permitted a criminal conviction based upon threatening words and only "'an *apparent* determination to carry them into execution.'" 394 U. S., at 707. And like the prima facie provision in *Black*, the trial court's jury instruction "ignore[d] all of the contextual factors that are necessary to decide whether a particular [expression] is intended to intimidate." 538 U. S., at 367 (plurality opinion).

Context in this case might have made a difference. Even as she argued for a 15-year sentence, the prosecutor acknowledged that Perez may have been "just a harmless drunk guy at the

beach," Sentencing Tr. 35, and it appears that at least one witness testified that she did not find Perez threatening, Pet. for Cert. 8. Instead of being instructed to weigh this evidence to determine whether Perez actually intended to convey a threat—or even whether a reasonable person would have construed Perez's words as a threat—the jury was directed to convict solely on the basis of what Perez "stated."

In an appropriate case, the Court should affirm that "[t]he First Amendment does not permit such a shortcut." *Black*, 538 U. S., at 367 (plurality opinion). The Court should also decide precisely what level of intent suffices under the First Amendment—a question we avoided two Terms ago in *Elonis*.

No. 16–6814. ASHE *v.* PNC FINANCIAL SERVICES GROUP, INC. C. A. 4th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 652 Fed. Appx. 155.

No. 16–7403. MORALES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 16–7423. MITCHELL *v.* SANCHEZ ET AL. C. A. 8th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 652 Fed. Appx. 491.

No. 16–7466. HAZELQUIST *v.* KLEWIN ET AL. C. A. 9th Cir. Certiorari before judgment denied.

No. 16–7748. VAUGHN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 668 Fed. Appx. 204.

Rehearing Denied

No. 16–645. LINGFEI SUN *v.* CITY OF NEW YORK, NEW YORK, ET AL., *ante*, p. 1055;

No. 16–6056. TAYLOR *v.* BERRY, WARDEN, *ante*, p. 1004;

No. 16–6131. FALANA *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 1006;

No. 16–6564. ARMISTEAD *v.* CLAY, WARDEN, *ante*, p. 1063;

No. 16–6716. GRIMES *v.* MCFADDEN, WARDEN, *ante*, p. 1069;

No. 16–6785. WILLIAMS *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante*, p. 1072;

No. 16–6833. FEREBEE *v.* INTERNATIONAL HOUSE OF PANCAKES, *ante*, p. 1074;

No. 16–6967. BAKER *v.* PFISTER, WARDEN, *ante*, p. 1078;

No. 16–6974. BRYANT *v.* UNITED STATES POSTAL SERVICE, *ante*, p. 1078;

No. 16–7128. OKEAYAINNEH *v.* UNITED STATES, *ante*, p. 1082; and

No. 16–7262. IN RE WILLIAMS, *ante*, p. 1091. Petitions for rehearing denied.

MARCH 7, 2017

Miscellaneous Orders

No. 16A841 (16–7792). RUIZ *v.* TEXAS. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied.

JUSTICE BREYER, dissenting.

Petitioner Rolando Ruiz has been on death row for 22 years, most of which he has spent in permanent solitary confinement. Ruiz argues that his execution "violates the Eighth Amendment" because it "follow[s] lengthy [death row] incarceration in traumatic conditions," principally his "permanent solitary confinement." Pet. for Cert. 25. I believe his claim is a strong one, and we should consider it.

This Court long ago, speaking of a period of only four weeks of imprisonment prior to execution, said that a prisoner's uncertainty before execution is "one of the most horrible feelings to which he can be subjected." *In re Medley*, 134 U. S. 160, 172 (1890). Here the prisoner has undergone death row imprisonment, not of four weeks, but of 22 years.

Moreover, in 1890, this Court recognized longstanding "serious objections" to extended solitary confinement. The Court pointed to studies showing that "[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. It became evident

that some changes must be made in the system," as "its main feature of solitary confinement was found to be too severe." *Id.*, at 168.

Others have more recently pointed out that a terrible "human toll" is "wrought by extended terms of isolation" and that "[y]ears on end of near-total isolation exact a terrible" psychiatric "price." *Davis* v. *Ayala*, 576 U. S. 257, 287–289 (2015) (KENNEDY, J., concurring) (citing *In re Medley*, *supra*, at 170). As a result it has been suggested that, "[i]n a case that present[s] the issue," this Court should determine whether extended solitary confinement survives Eighth Amendment scrutiny. *Ayala*, *supra*, at 289–290 (opinion of KENNEDY, J.). This I believe is an appropriate case to conduct that constitutional scrutiny.

Here the "human toll" that accompanies extended solitary confinement is exacerbated by the fact that execution is in the offing. Moreover, Ruiz has developed symptoms long associated with solitary confinement, namely, severe anxiety and depression, suicidal thoughts, hallucinations, disorientation, memory loss, and sleep difficulty. Further, the lower courts have recognized that Ruiz has been diligent in pursuing his claims, finding the 22-year delay attributable to the State or the lower courts. *Ruiz* v. *Quarterman*, 504 F. 3d 523, 530 (CA5 2007) (citing *Ruiz* v. *Dretke*, 2005 WL 2620193, *2 (WD Tex., Oct. 13, 2005)). Nor are Ruiz's 20 years of solitary confinement attributable to any special penological problem or need. They arise simply from the fact that he is a prisoner awaiting execution. App. to Pet. for Cert. E–16.

If extended solitary confinement alone raises serious constitutional questions, then 20 years of solitary confinement, all the while under threat of execution, must raise similar questions, and to a rare degree, and with particular intensity. That is why I would grant a stay of execution, allowing the Court to examine the record more fully.

No. 16A858 (16–8135). RUIZ *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied.

No. 16A868 (16–8197). RUIZ *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. Application for stay of execution of sentence of death,

presented to JUSTICE THOMAS, and by him referred to the Court, denied.

MARCH 17, 2017

Miscellaneous Orders

No. 15–1503. TURNER ET AL. *v.* UNITED STATES; and

No. 15–1504. OVERTON *v.* UNITED STATES. Ct. App. D. C. [Certiorari granted, *ante*, p. 1040.] Motion of petitioner Russell L. Overton for divided argument granted.

No. 16–74. ADVOCATE HEALTH CARE NETWORK ET AL. *v.* STAPLETON ET AL. C. A. 7th Cir.;

No. 16–86. SAINT PETER'S HEALTHCARE SYSTEM ET AL. *v.* KAPLAN. C. A. 3d Cir.; and

No. 16–258. DIGNITY HEALTH ET AL. *v.* ROLLINS. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1017.] Motion of the Deputy Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

MARCH 20, 2017

Certiorari Granted—Vacated and Remanded

No. 16–7448. STEPHENS *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 *Mathis* v. *United States*, 579 U. S. 500 (2016). Reported below: 651 Fed. Appx. 445.

Certiorari Dismissed

No. 16–7512. ELLIS *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. 16–7537. HAMILTON *v.* BIRD ET AL.;

No. 16–7538. HAMILTON *v.* BIRD ET AL.; and

No. 16–7539. HAMILTON *v.* BIRD ET AL. C. A. 10th Cir. Motions of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 650 Fed. Appx. 585.

No. 16–7674. TAYLOR *v.* UNITED STATES. C. A. Fed. Cir. Motion of petitioner for leave to proceed *in forma pauperis* de-

nied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition. Reported below: 666 Fed. Appx. 896.

Miscellaneous Orders

No. D–2946. IN RE PICKERSTEIN. Harold James Pickerstein, of Fairfield, Conn., having requested to resign as a member of the Bar of this Court, it is ordered that his name be stricken from the roll of attorneys admitted to the practice of law before this Court. The rule to show cause, issued on February 21, 2017, [*ante,* p. 1110] is discharged.

No. D–2952. IN RE DISCIPLINE OF MOFFATT. Jeffrey D. Moffatt, of Lancaster, 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–2953. IN RE DISCIPLINE OF ORLOFF. Dean I. Orloff, of Mt. Laurel, N. J., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2954. IN RE DISCIPLINE OF HARRINGTON. Bruce C. Harrington, of Topeka, 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–2955. IN RE DISCIPLINE OF SULLIVAN. Dennis H. Sullivan, Jr., of Wilmington, 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–2956. IN RE DISCIPLINE OF GOLDTHORPE. Christopher J. Goldthorpe, of Westerville, Ohio, is suspended from the practice

of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 16M91. STANCU *v.* STARWOOD HOTELS & RESORTS WORLDWIDE, INC., ET AL.;

No. 16M94. TAGOE *v.* DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES ET AL.; and

No. 16M95. DODEV *v.* SELECT PORTFOLIO SERVICING INC. ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 16M92. STANCU *v.* STARWOOD HOTELS & RESORTS WORLDWIDE, INC. Motion for leave to file petition for writ of certiorari under seal denied.

No. 16M93. BONNER *v.* SUPERIOR COURT OF CALIFORNIA, SAN DIEGO COUNTY, ET AL. Motion of petitioner for leave to proceed *in forma pauperis* with declaration of indigency under seal granted.

No. 16M96. NEUMAN *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari denied.

No. 141, Orig. TEXAS *v.* NEW MEXICO ET AL. Report of the Special Master received and ordered filed. Exceptions to the Report, with supporting briefs, may be filed within 45 days. Replies, if any, with supporting briefs, may be filed within 30 days. Surreplies, if any, with supporting briefs, may be filed within 30 days. [For earlier order herein, see, *e. g.*, 578 U. S. 1010.]

No. 142, Orig. FLORIDA *v.* GEORGIA. Report of the Special Master received and ordered filed. Exceptions to the Report, with supporting briefs, may be filed within 45 days. Replies, if any, with supporting briefs, may be filed within 30 days. Surreplies, if any, with supporting briefs, may be filed within 30 days. [For earlier order herein, see, *e. g.*, *ante*, p. 1111.]

No. 16–7509. CARUSO *v.* ZUGIBE ET AL. C. A. 2d Cir.;

No. 16–7564. KASTNER *v.* CARDOZO ET AL. C. A. 2d Cir.;

No. 16–7570. WILLIAMS *v.* SCHAFER ET AL. Dist. Ct. App. Fla., 1st Dist.;

No. 16–7580. WHITE *v.* EDS CARE MANAGEMENT LLC ET AL.;

No. 16–7593. WHITE ET UX. *v.* ATTORNEY GRIEVANCE COMMISSION OF MICHIGAN. Sup. Ct. Mich.; and

No. 16–7955. GALEMMO *v.* UNITED STATES. C. A. 6th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until April 10, 2017, 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. 16–293. IN RE FIELDS;
No. 16–8030. IN RE COURTRIGHT;
No. 16–8038. IN RE BROWN;
No. 16–8081. IN RE WELLS-ALI; and
No. 16–8111. IN RE LAWSON. Petitions for writs of habeas corpus denied.

No. 16–7985. IN RE CAMPBELL. 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. 16–294. IN RE FIELDS;
No. 16–907. IN RE BLUMSTEIN ET AL.;
No. 16–7481. IN RE BROWN;
No. 16–7527. IN RE DOUGHERTY; and
No. 16–7588. IN RE ABAZARI. Petitions for writs of mandamus denied.

No. 16–7910. IN RE DAVIS. Petition for writ of mandamus and/or prohibition denied.

No. 16–7589. IN RE BRASCOM. Petition for writ of prohibition denied.

Certiorari Denied

No. 15–6561. EVENSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 15–8605. GAVIN *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 190 So. 3d 579.

No. 15–8629. JONES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 16–141. HYOSUNG D&P CO., LTD. *v.* UNITED STATES ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 809 F. 3d 626.

No. 16–368. NOBLE ENERGY, INC. *v.* HAUGRUD, ACTING SECRETARY OF THE INTERIOR, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 650 Fed. Appx. 9.

No. 16–395. PAYNE *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 493 S. W. 3d 478.

No. 16–445. SIMS *v.* TENNESSEE; and SAMPLE *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 16–464. LAVIGNE *v.* CAJUN DEEP FOUNDATIONS, L. L. C. C. A. 5th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 640.

No. 16–479. BYRD *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 222 So. 3d 380.

No. 16–523. SCOTT *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 299 Ga. 568, 788 S. E. 2d 468.

No. 16–533. RILEY *v.* ELKHART COMMUNITY SCHOOLS. C. A. 7th Cir. Certiorari denied. Reported below: 829 F. 3d 886.

No. 16–579. BRIGHT *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 89 Mass. App. 1116, 47 N. E. 3d 702.

No. 16–603. CONRAD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 815 F. 3d 324.

No. 16–626. GOOGLE INC. ET AL. *v.* ARENDI S. A. R. L. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 832 F. 3d 1355.

No. 16–639. ROWLAND *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 826 F. 3d 100.

No. 16–646. HOLTZMAN, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED *v.* TURZA. C. A. 7th Cir. Certiorari denied. Reported below: 828 F. 3d 606.

No. 16–685. NORFOLK COUNTY RETIREMENT SYSTEM ET AL. *v.* HEALTH MANAGEMENT ASSOCIATES, LLC, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 608 Fed. Appx. 855.

No. 16–705. MoneyMutual LLC *v.* Rilley et al. Sup. Ct. Minn. Certiorari denied. Reported below: 884 N. W. 2d 321.

No. 16–730. Public Integrity Alliance, Inc., et al. *v.* City of Tucson, Arizona, et al. C. A. 9th Cir. Certiorari denied. Reported below: 836 F. 3d 1019.

No. 16–742. Kerr *v.* Haugrud, Acting Secretary of the Interior. C. A. 9th Cir. Certiorari denied. Reported below: 836 F. 3d 1048.

No. 16–745. Meyers *v.* Oneida Tribe of Indians of Wisconsin. C. A. 7th Cir. Certiorari denied. Reported below: 836 F. 3d 818.

No. 16–755. Menendez *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 831 F. 3d 155.

No. 16–809. Mazzei, Individually and on Behalf of All Others Similarly Situated *v.* The Money Store et al. C. A. 2d Cir. Certiorari denied. Reported below: 829 F. 3d 260.

No. 16–827. Alavi Foundation et al. *v.* Kirschenbaum et al. C. A. 2d Cir. Certiorari denied. Reported below: 830 F. 3d 107.

No. 16–848. Hernandez *v.* Ducey, Governor of Arizona, et al. C. A. 9th Cir. Certiorari denied. Reported below: 658 Fed. Appx. 837.

No. 16–849. Dean *v.* Norfolk Southern Railway Co. et al. C. A. 6th Cir. Certiorari denied.

No. 16–851. Lothian Cassidy, LLC, et al. *v.* Lothian Exploration and Development II, L. P. (LEAD II), et al. C. A. 2d Cir. Certiorari denied.

No. 16–863. Jones *v.* Dufek et al. C. A. D. C. Cir. Certiorari denied. Reported below: 830 F. 3d 523.

No. 16–864. Bridgeview Bank Group et al. *v.* FirstMerit Bank, N. A. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2016 IL App (2d) 150364–U.

No. 16–867. Enplas Corp. *v.* Seoul Semiconductor Co., Ltd., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 667 Fed. Appx. 997.

No. 16–880. HABEAS CORPUS RESOURCE CENTER ET AL. *v.* DEPARTMENT OF JUSTICE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 816 F. 3d 1241.

No. 16–883. DATATREASURY CORP. *v.* FIDELITY NATIONAL INFORMATION SERVICES, INC. (Reported below: 669 Fed. Appx. 572); DATATREASURY CORP. *v.* JACK HENRY & ASSOCIATES, INC. (669 Fed. Appx. 573); DATATREASURY CORP. *v.* LEE, DIRECTOR, UNITED STATES PATENT AND TRADEMARK OFFICE (669 Fed. Appx. 574); and DATATREASURY CORP. *v.* FISERV, INC. (669 Fed. Appx. 574). C. A. Fed. Cir. Certiorari denied.

No. 16–884. BURBANK *v.* LINCOLN ET AL. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 2016 ME 138, 147 A. 3d 1165.

No. 16–887. MINNESOTA *v.* THOMPSON. Sup. Ct. Minn. Certiorari denied. Reported below: 886 N. W. 2d 224.

No. 16–896. CHUNG *v.* EL PASO COUNTY SCHOOL DISTRICT #11. C. A. 10th Cir. Certiorari denied. Reported below: 659 Fed. Appx. 953.

No. 16–901. JONES *v.* KIRCHNER ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 835 F. 3d 74.

No. 16–921. HONEY-LOVE, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF LOVE *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 664 Fed. Appx. 358.

No. 16–923. TAYLOR ET AL. *v.* BROWN FAMILY TRUST ET AL. Ct. App. Kan. Certiorari denied. Reported below: 52 Kan. App. 2d xii, 362 P. 3d 1123.

No. 16–925. STUSSY *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 662 Fed. Appx. 972.

No. 16–926. DUTKIEWICZ *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 6th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 430.

No. 16–937. WILLIAMS *v.* DEAL. C. A. 11th Cir. Certiorari denied. Reported below: 659 Fed. Appx. 580.

No. 16–938. WILLIAMS *v.* WELLS FARGO BANK. C. A. 3d Cir. Certiorari denied. Reported below: 658 Fed. Appx. 76.

No. 16–942. GILLENWATER *v.* HARRIS, CLERK, SUPREME COURT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 16–945. ANDERSON *v.* EASTERN CONNECTICUT HEALTH NETWORK, INC., AKA ECHN, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 668 Fed. Appx. 378.

No. 16–946. VERBLE *v.* MORGAN STANLEY SMITH BARNEY, LLC, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 676 Fed. Appx. 421.

No. 16–948. LOPEZ *v.* SESSIONS, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 662 Fed. Appx. 764.

No. 16–953. RETRACTABLE TECHNOLOGIES, INC., ET AL. *v.* BECTON, DICKINSON & CO. C. A. 5th Cir. Certiorari denied. Reported below: 842 F. 3d 883.

No. 16–954. SILVA-PEREIRA *v.* SESSIONS, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 827 F. 3d 1176.

No. 16–958. PRESSLEY *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 16–965. JONES *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 2016 IL 119391, 67 N. E. 3d 256.

No. 16–977. DODD, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF PIERCE, DECEASED *v.* MOORE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 657 Fed. Appx. 613.

No. 16–982. ROMERO *v.* COUNTY OF SANTA CLARA, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 666 Fed. Appx. 609.

No. 16–987. HESSON, INDIVIDUALLY AND AS GUARDIAN AND ON BEHALF OF MINOR CHILDREN M. H. ET AL. *v.* DEPARTMENT OF JUSTICE. C. A. Fed. Cir. Certiorari denied. Reported below: 664 Fed. Appx. 932.

No. 16–1014. TABONE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 664 Fed. Appx. 23.

No. 16–5132. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 646 Fed. Appx. 914.

No. 16–5151. COLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 166.

No. 16–5296. ELLIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 815 F. 3d 419.

No. 16–5302. GARNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 644 Fed. Appx. 880.

No. 16–5419. FORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 756.

No. 16–5442. KINNEY *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 16–5692. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 654.

No. 16–5760. EDWARDS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 635 Fed. Appx. 143.

No. 16–6081. PATTERSON *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 16–6138. FLANAGAN, AKA JENKINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 140.

No. 16–6436. ALTHAGE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–6490. JEFFRIES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 822 F. 3d 192.

No. 16–6497. HERNANDEZ GALLARDO *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 16–6574. BLAINE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 765.

No. 16–6743. GRAF *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 827 F. 3d 581.

No. 16–6801. MADISON *v.* DAVIS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–6812. SALAZAR *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 63 Cal. 4th 214, 371 P. 3d 161.

No. 16–6895. ROBERTS *v.* FERMAN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 826 F. 3d 117.

No. 16–6913. CACERES *v.* SKANSKA USA BUILDING INC. ET AL. C. A. 2d Cir. Certiorari denied.

No. 16–6926. SALAS GAYTON *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 2016 WI 58, 370 Wis. 2d 264, 882 N. W. 2d 459.

No. 16–6948. BROWN *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 16–7171. CUNNINGHAM *v.* PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY. Ct. App. Ore. Certiorari denied. Reported below: 278 Ore. App. 106, 373 P. 3d 1167.

No. 16–7184. STYERS *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 811 F. 3d 292.

No. 16–7273. PAYNE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–7365. TATE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 659 Fed. Appx. 386.

No. 16–7393. SMITH *v.* ROYAL, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 824 F. 3d 1233.

No. 16–7415. HAYNES *v.* STANDING COMMITTEE ON PROFESSIONAL CONDUCT. C. A. 9th Cir. Certiorari denied. Reported below: 639 Fed. Appx. 443.

No. 16–7427. CROWELL *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 130 App. Div. 3d 1362, 15 N. Y. S. 3d 494.

No. 16–7428. GANDY *v.* BARBER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 641 Fed. Appx. 835.

No. 16–7430. Flores-Ramirez *v.* Foster, Warden. C. A. 7th Cir. Certiorari denied. Reported below: 811 F. 3d 861.

No. 16–7432. Tidwell *v.* Valenzuela, Warden. C. A. 9th Cir. Certiorari denied.

No. 16–7435. Freeman *v.* O'Brien, Judge, Circuit Court of Illinois, Cook County. Sup. Ct. Ill. Certiorari denied.

No. 16–7449. Gonzales *v.* Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 16–7450. Ferguson *v.* Jones, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 16–7456. Smith *v.* Glanz et al. C. A. 10th Cir. Certiorari denied. Reported below: 662 Fed. Appx. 595.

No. 16–7457. Smith *v.* United States Court of Appeals for the Fourth Circuit. C. A. 4th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 979.

No. 16–7460. Roberts *v.* Ballard, Warden. Sup. Ct. App. W. Va. Certiorari denied.

No. 16–7461. Rowe *v.* Villmer, Warden. C. A. 8th Cir. Certiorari denied.

No. 16–7462. Rosa *v.* Shartle, Warden. C. A. 9th Cir. Certiorari denied.

No. 16–7469. Berman *v.* Modell. C. A. 4th Cir. Certiorari denied. Reported below: 614 Fed. Appx. 685.

No. 16–7470. Schlittler *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 488 S. W. 3d 306.

No. 16–7474. Taubman *v.* Muniz, Warden. C. A. 9th Cir. Certiorari denied.

No. 16–7480. Shawley *v.* Bear, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 662 Fed. Appx. 581.

No. 16–7482. Aikens *v.* Jones, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 16–7484. BROOKS *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–7497. TAYLOR *v.* CROWLEY, SUPERINTENDENT, ORLEANS CORRECTIONAL FACILITY, ET AL. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 140 App. Div. 3d 1716, 32 N. Y. S. 3d 542.

No. 16–7499. ADAMS *v.* TRIBLEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–7501. SISK *v.* NEAL, SUPERINTENDENT, INDIANA STATE PRISON. C. A. 7th Cir. Certiorari denied.

No. 16–7508. ESPINOZA *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 16–7513. CHHIM *v.* UNIVERSITY OF TEXAS AT AUSTIN. C. A. 5th Cir. Certiorari denied. Reported below: 836 F. 3d 467.

No. 16–7514. KASSAB *v.* GORE, SHERIFF, SAN DIEGO COUNTY, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 868.

No. 16–7517. LAU *v.* RUO MEI CAI, AKA RUOMEI CAI. C. A. 2d Cir. Certiorari denied.

No. 16–7518. LAU *v.* RUO MEI CAI, AKA RUOMEI CAI. C. A. 2d Cir. Certiorari denied.

No. 16–7519. BARRIERA *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2016 IL App (1st) 133464–U.

No. 16–7520. BANKS *v.* KELLEY, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 16–7529. VON FOX *v.* SOUTH CAROLINA JUDICIAL DEPARTMENT. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 446.

No. 16–7532. ROCHIN *v.* MCEWEN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7533. SANCHEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 63 Cal. 4th 411, 375 P. 3d 812.

No. 16–7536. KNIGHT *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2016 IL App (1st) 143731–U.

No. 16–7542. NEWSOME *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 149.

No. 16–7547. BROWN *v.* MONTGOMERY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7549. PHILLIPS *v.* SHERMAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7550. OWENS *v.* LEWIS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 148.

No. 16–7556. RAGIN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 16–7557. SWEETING *v.* MILLER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 654 Fed. Appx. 140.

No. 16–7560. HOLLOMAN *v.* MARKOWSKI ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 661 Fed. Appx. 797.

No. 16–7561. DAVIS *v.* CITY OF CHICAGO, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 305.

No. 16–7574. KINARD *v.* BURT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–7577. WIERSUM *v.* MIGLIORE. Super. Ct. N. J., App. Div. Certiorari denied.

No. 16–7579. WILLIAMS *v.* TILLETT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 633.

No. 16–7581. WHITE *v.* SOUTHEAST MICHIGAN SURGICAL HOSPITAL ET AL. Ct. App. Mich. Certiorari denied.

No. 16–7582. TURNER *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist., Div. 3. Certiorari denied.

No. 16–7587. OMRAN *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 131.

No. 16–7594. JEFFERSON EL BEY *v.* ROBERT WOOD JOHNSON UNIVERSITY HOSPITAL ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–7598. MATCHETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 802 F. 3d 1185.

No. 16–7601. WILLIAMS *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 840 F. 3d 1006.

No. 16–7603. WILLIAMS *v.* RAYNOR, RENSCH & PFEIFFER, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 340.

No. 16–7604. WILLIAMS *v.* DUNBAR ARMORED, INC. C. A. 7th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 662.

No. 16–7610. MINARD *v.* WAL-MART STORES, INC. C. A. 7th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 389.

No. 16–7619. FRELIX *v.* DEPARTMENTAL DISCIPLINARY COMMITTEE FOR THE FIRST JUDICIAL DEPARTMENT. Ct. App. N. Y. Certiorari denied. Reported below: 27 N. Y. 3d 1060, 54 N. E. 3d 1165.

No. 16–7633. RAMIREZ-ARRIAGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 203.

No. 16–7634. SMITH *v.* JENKINS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–7639. MELVIN *v.* HOOKS, SECRETARY, NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 664 Fed. Appx. 281.

No. 16–7642. CHARLES *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 199 So. 3d 271.

No. 16–7654. SHELDEN *v.* DEPARTMENT OF JUSTICE ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 672 Fed. Appx. 33.

No. 16–7659. EGGERS *v.* TURNER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 826 F. 3d 873.

No. 16–7665. PETRE *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 2d Cir. Certiorari denied. Reported below: 670 Fed. Appx. 723.

No. 16–7678. WATSON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 16–7700. JOHNSON *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 664 Fed. Appx. 919.

No. 16–7704. SHORTER *v.* SCHWEITZER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 659 Fed. Appx. 227.

No. 16–7715. LAWSON *v.* OVERMYER, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FOREST, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–7717. MARQUEZ *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 139.

No. 16–7723. ELANSARI *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 141 A. 3d 603.

No. 16–7742. SHOULDERS *v.* TICE, ACTING SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–7745. LUNSFORD *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 665 Fed. Appx. 563.

No. 16–7746. WRIGHT *v.* GRANNIS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 267.

No. 16–7771. EMMERT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 825 F. 3d 906.

No. 16–7773. CLARK *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 836 F. 3d 1013.

No. 16–7777. RAMOS *v.* HAMBLIN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 840 F. 3d 442.

No. 16–7782. BURNSIDE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 325.

No. 16–7791. DODSON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 144 A. 3d 188.

No. 16–7796. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 627 Fed. Appx. 912.

No. 16–7802. KILMER *v.* SPEARMAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7816. MARTINEZ-SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 274.

No. 16–7817. JONES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 16–7819. SHIREY *v.* SMITH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MUNCY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–7825. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–7831. LIPSCOMBE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 95.

No. 16–7832. JOHNSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 655 Fed. Appx. 247.

No. 16–7842. HAMMOUD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 163.

No. 16–7843. PEAKE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–7847. WILCOX *v.* SHARTLE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7848. TEAGUE *v.* ASLETT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 145.

No. 16–7850. BARNES, AKA WOODARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 121.

No. 16–7851. BAKER *v.* SPEER, ACTING SECRETARY OF THE ARMY. C. A. 5th Cir. Certiorari denied. Reported below: 672 Fed. Appx. 357.

No. 16–7852. BARTOK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 662 Fed. Appx. 61.

No. 16–7859. MARTINEZ SALDANA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 664 Fed. Appx. 326.

No. 16–7860. FORBES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 664 Fed. Appx. 184.

No. 16–7861. HUGHES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 840 F. 3d 1368.

No. 16–7866. ENCINIA-MORENO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 750.

No. 16–7867. DRAWBAUGH *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 154 A. 3d 851.

No. 16–7868. GROOVER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 615 Fed. Appx. 638.

No. 16–7870. FIELDS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 16–7871. HELMER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–7872. HARRIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 653 Fed. Appx. 203.

No. 16–7873. GRANT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–7891. DAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 506.

No. 16–7892. STINE *v.* REVELL; and
No. 16–7893. BUHL *v.* REVELL. C. A. 10th Cir. Certiorari denied.

No. 16–7895. HALDEMANN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 664 Fed. Appx. 820.

No. 16–7897. EWING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 16–7902. BARBER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 153 A. 3d 83.

No. 16–7913. LANE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 16–7919. PRINCE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–7921. NIXON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 138.

No. 16–7922. EARLS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 16–7923. CERVANTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–7925. SCHNEIDER ET VIR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 665 Fed. Appx. 668.

No. 16–7928. SHEALEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 475.

No. 16–7930. GIAMO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 665 Fed. Appx. 154.

No. 16–7933. SUAREZ-RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 16–7936. PEPKE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 662 Fed. Appx. 225.

No. 16–7938. MARRON *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 16–7942. TAYLOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 181.

No. 16–7944. WATSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 843 F. 3d 335.

No. 16–7946. STRYCHARSKE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 839 F. 3d 795.

No. 16–7948. BOLES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 666 Fed. Appx. 805.

No. 16–7949. BUTLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 629 Fed. Appx. 554.

No. 16–7951. HILLIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 656 Fed. Appx. 222.

No. 16–7959. GILES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 652 Fed. Appx. 210.

No. 16–7964. MILTONHALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 345.

No. 16–7965. MILLER *v.* GONYEA, SUPERINTENDENT, MOHAWK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 16–7969. URIBE, AKA SERVIN LUNA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 838 F. 3d 667.

No. 16–7970. WAIR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 666 Fed. Appx. 250.

No. 16–7971. REYES TRUJILLO *v.* GROUNDS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7972. TREJO *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 16–7975. MORENO LEON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 672 Fed. Appx. 468.

No. 16–7982. CHAVEZ-HERNANDEZ, AKA GONZALEZ-HERNANDEZ, AKA ZAMORA-MURILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 596.

No. 16–7983. LEWIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 827 F. 3d 787.

No. 16–7996. NAVA-MAYTOREL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 661 Fed. Appx. 481.

No. 16–7997. PIEDRA-MORALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 843 F. 3d 623.

No. 16–8000. DAWN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 842 F. 3d 3.

No. 16–8001. CLAFLIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 372.

No. 16–8004. GOLDTOOTH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 673 Fed. Appx. 678.

No. 16–8008. BAHARONA ET AL. *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 153 A. 3d 82.

No. 16–582. VALDEZ CAHUE *v.* RUVALCABA MARTINEZ. C. A. 7th Cir. Motion of International Academy of Family Lawyers for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 826 F. 3d 983.

No. 16–858. HOME DESIGN SERVICES, INC. *v.* TURNER HERITAGE HOMES INC. ET AL. C. A. 11th Cir. Motion of American Institute of Building Design et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 825 F. 3d 1314.

No. 16–5910. LEIJA-SANCHEZ ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 820 F. 3d 899.

No. 16–7666. GRANT *v.* KABAKER ET AL. C. A. 7th Cir. Certiorari before judgment denied.

No. 16–7779. EBANKS *v.* SAMSUNG TELECOMMUNICATION AMERICA, LLP, ET AL. C. A. 11th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 667 Fed. Appx. 740.

No. 16–7858. SIRLEAF *v.* ROBINSON ET AL. C. A. 4th Cir. Certiorari before judgment denied.

Rehearing Denied

No. 16–642. GROSSMAN *v.* WEHRLE, *ante*, p. 1099;

No. 16–653. IN RE MCDONALD, *ante*, p. 1091;

No. 16–5886. TOVAR *v.* BAUGHMAN, ACTING WARDEN, *ante*, p. 989;

No. 16–6236. BROOKS *v.* EMPLOYMENT DEPARTMENT ET AL., *ante*, p. 1093;

No. 16–6403. HYNOSKI *v.* ATWOOD, MALONE, TURNER & SABIN, ET AL., *ante*, p. 1059;

No. 16–6449. ALEJANDRO *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1060;

No. 16–6539. HOCKENSMITH *v.* FLORIDA, *ante*, p. 1062;

No. 16–6572. IN RE ROBINSON, *ante*, p. 1046;

No. 16–6594. YANEY *v.* SUPERIOR COURT OF CALIFORNIA, RIVERSIDE COUNTY, ET AL. (two judgments), *ante*, p. 1064;

No. 16–6645. RASAKI *v.* LYNN, *ante*, p. 1066;

No. 16–6723. QUATRINE *v.* BERGHUIS, WARDEN, *ante*, p. 1069;

No. 16–6740. ANDERSON *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1070;

No. 16–6756. LANE *v.* MURRIE, *ante*, p. 1070;

No. 16–6768. CHARLES *v.* HARRY, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CAMP HILL, ET AL., *ante*, p. 1071;

No. 16–6807. ALEXANDER *v.* GEORGIA, *ante*, p. 1093;

No. 16–6827. MOSQUERA GAMBOA *v.* UNITED STATES ET AL., *ante*, p. 1074;

No. 16–6828. HOLLEY *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 1093;

No. 16–6891. CONYERS-CARSON *v.* GERMANTOWN HOMES ET AL., *ante*, p. 1101;

No. 16–6963. LENZ *v.* FLORIDA, *ante*, p. 1078;

No. 16–7050. IN RE SHENEMAN, *ante*, p. 1046;

No. 16–7075. MYTON *v.* UNITED STATES, *ante*, p. 1081;

No. 16–7131. GROOVER *v.* UNITED STATES, *ante*, p. 1095; and

No. 16–7216. CARON *v.* STATE BAR OF CALIFORNIA, *ante*, p. 1103. Petitions for rehearing denied.

No. 16–6464. ALEXANDER *v.* UNITED STATES, *ante*, p. 1015. Petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 16–6726. CARTER *v.* LANE, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE, ET AL., *ante*, p. 1084. Petition for rehearing denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

MARCH 27, 2017

Certiorari Granted—Vacated and Remanded

No. 15–998. MEDINOL LTD. *v.* CORDIS CORP. ET AL. C. A. Fed. Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *SCA Hygiene Products Aktiebolag* v. *First Quality Baby Products, LLC*, *ante*, p. 328. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 16–127. ENDOTACH LLC *v.* COOK MEDICAL LLC. C. A. Fed. Cir. Reported below: 691 Fed. Appx. 907; and

No. 16–202. ROMAG FASTENERS, INC. *v.* FOSSIL, INC., ET AL. C. A. Fed. Cir. Reported below: 817 F. 3d 782. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *SCA Hygiene Products Aktiebolag* v. *First Quality Baby Products, LLC*, *ante*, p. 328.

Certiorari Dismissed

No. 16–7627. SHOVE *v.* DAVIS, 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. 16–7690. CAISON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 16–7792. RUIZ *v.* TEXAS. Ct. Crim. App. Tex. Certiorari dismissed as moot. Reported below: 543 S. W. 3d 805.

No. 16–7992. CRUZ *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. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). JUSTICE ALITO and JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition. Reported below: 665 Fed. Appx. 126.

No. 16–8135. RUIZ *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari dismissed as moot. Reported below: 849 F. 3d 239.

No. 16–8197. RUIZ *v.* DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari dismissed as moot. Reported below: 850 F. 3d 225.

Miscellaneous Orders

No. 16M98. OQUENDO RIVAS *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal granted.

No. 16M99. MAEHR *v.* COMMISSIONER OF INTERNAL REVENUE ET AL. Motion for leave to proceed as a veteran denied.

No. 16M100. SCOTT *v.* ASUNCION, WARDEN; and
No. 16M103. LESLIE *v.* KIRKPATRICK, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 16M101. HASAN *v.* PENNSYLVANIA DEPARTMENT OF EDUCATION 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. JUSTICE ALITO took no part in the consideration or decision of this motion.

No. 16M102. IN RE RE017699808US–01 TRUST. Motion for leave to file petition for writ of prohibition under seal denied.

No. 16M104. EPSTEIN *v.* EPSTEIN ET AL. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 16–466. BRISTOL-MYERS SQUIBB CO. *v.* SUPERIOR COURT OF CALIFORNIA, SAN FRANCISCO COUNTY, ET AL. Sup. Ct. Cal. [Certiorari granted, *ante*, p. 1097.] Motion of TV Azteca, S. A. B de C. V., et al. for leave to file brief as *amici curiae* out of time granted.

No. 16–605. TOWN OF CHESTER, NEW YORK *v.* LAROE ESTATES, INC. C. A. 2d Cir. [Certiorari granted, *ante*, p. 1089.] Motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motion of Nancy Sherman, Executrix, for reconsideration of motion to be added as a respondent and for leave to participate in oral argument [*ante*, p. 1168] denied.

No. 16–768. SNYDER, GOVERNOR OF MICHIGAN, ET AL. *v.* DOE ET AL. C. A. 6th Cir. The Acting Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 16–6855. WILSON *v.* SELLERS, WARDEN. C. A. 11th Cir. [Certiorari granted, *ante*, p. 1159.] In light of the letter filed by respondent on March 15, 2017, the order inviting Adam K. Mortara, Esq., of Chicago, Ill., to brief and argue as *amicus curiae* in support of judgment below is withdrawn.

No. 16–8014. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until April 17, 2017, 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. 16–8148. IN RE SUGGS;
No. 16–8178. IN RE WOODSON;
No. 16–8200. IN RE WALKER; and
No. 16–8216. IN RE YATES. Petitions for writs of habeas corpus denied.

Certiorari Granted

No. 16–581. LEIDOS, INC., FKA SAIC, INC. *v.* INDIANA PUBLIC RETIREMENT SYSTEM ET AL. C. A. 2d Cir. Certiorari granted. Reported below: 818 F. 3d 85.

No. 15–1509. U. S. BANK N. A., TRUSTEE, BY AND THROUGH CWCAPITAL ASSET MANAGEMENT LLC *v.* VILLAGE AT LAKERIDGE, LLC. C. A. 9th Cir. Certiorari granted limited to Question 2 presented by the petition. Reported below: 814 F. 3d 993.

Certiorari Denied

No. 15–1281. HARTLEY ET AL. *v.* SANCHEZ. C. A. 10th Cir. Certiorari denied. Reported below: 810 F. 3d 750.

No. 16–467. TAYLOR *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 448 Md. 242, 137 A. 3d 1029.

No. 16–536. HOWELL *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 75 M. J. 386.

No. 16–758. MODZELEWSKI'S TOWING & RECOVERY, INC. *v.* CONNECTICUT COMMISSIONER OF MOTOR VEHICLES (Reported below: 322 Conn. 20, 139 A. 3d 594); and RAYMOND'S AUTO REPAIR, LLC *v.* CONNECTICUT COMMISSIONER OF MOTOR VEHICLES (322 Conn. 43, 139 A. 3d 609). Sup. Ct. Conn. Certiorari denied.

No. 16–771. Capitol Records, LLC, et al. *v.* Vimeo, LLC, et al. C. A. 2d Cir. Certiorari denied. Reported below: 826 F. 3d 78.

No. 16–786. Justice *v.* Internal Revenue Service. C. A. 11th Cir. Certiorari denied. Reported below: 817 F. 3d 738.

No. 16–795. Edens et al., Individually and as Next of Kin of Edens, Deceased, et al. *v.* Netherlands Insurance Co. C. A. 10th Cir. Certiorari denied. Reported below: 834 F. 3d 1116.

No. 16–796. Binno *v.* American Bar Assn. C. A. 6th Cir. Certiorari denied. Reported below: 826 F. 3d 338.

No. 16–808. Vitreo Retinal Consultants of the Palm Beaches, P. A. *v.* Department of Health and Human Services. C. A. 11th Cir. Certiorari denied. Reported below: 649 Fed. Appx. 684.

No. 16–825. Taylor et al., as Co-Executors of the Estate of Taylor, Deceased *v.* Extendicare Health Facilities, Inc, dba Havencrest Nursing Center, et al. Sup. Ct. Pa. Certiorari denied. Reported below: 637 Pa. 163, 147 A. 3d 490.

No. 16–902. Jones *v.* Wells Fargo Bank, N. A., dba America's Servicing Co. C. A. 4th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 181.

No. 16–915. Wright *v.* Wright. Ct. App. Mich. Certiorari denied.

No. 16–917. Mera et al. *v.* City of Glendale, California. C. A. 9th Cir. Certiorari denied. Reported below: 831 F. 3d 1222.

No. 16–951. Wilson *v.* Sessions, Attorney General, et al. C. A. 9th Cir. Certiorari denied. Reported below: 835 F. 3d 1083.

No. 16–955. Puppolo, Individually and as Personal Representative of the Estate of Puppolo, Deceased, et al. *v.* Sivaraman. Ct. Sp. App. Md. Certiorari denied. Reported below: 226 Md. App. 724 and 725.

No. 16–994. CSB-System International, Inc. *v.* Lee, Director, United States Patent and Trademark Office. C. A. Fed. Cir. Certiorari denied. Reported below: 832 F. 3d 1335.

No. 16–1005. Man Quoc Dinh *v.* California. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 16–1007. Simmons *v.* BAC Home Loans Servicing, LP, et al. C. A. 6th Cir. Certiorari denied.

No. 16–1036. Kaplan *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 836 F. 3d 1199.

No. 16–5853. Torres-Jaime *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 821 F. 3d 577.

No. 16–6309. Tiger *v.* Pynkala et al. C. A. 6th Cir. Certiorari denied.

No. 16–6446. Leaschauer *v.* Huerta, Administrator, Federal Aviation Administration. C. A. 9th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 253.

No. 16–6447. Leaschauer *v.* National Transportation Safety Board et al. C. A. 9th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 260.

No. 16–6469. Leaschauer *v.* Federal Aviation Administration et al. C. A. 9th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 251.

No. 16–7217. Haskins *v.* Vermont. Sup. Ct. Vt. Certiorari denied. Reported below: 2016 VT 79, 202 Vt. 461, 150 A. 3d 202.

No. 16–7238. Hall *v.* Westbrooks, Warden. C. A. 6th Cir. Certiorari denied.

No. 16–7521. Von Fox *v.* Medical University of South Carolina;
No. 16–7522. Von Fox *v.* Market Street Pavilion Hotel;
No. 16–7523. Von Fox *v.* South Carolina et al.;
No. 16–7528. Von Fox *v.* Japan;
No. 16–7625. Von Fox *v.* Arizona State University;
No. 16–7635. Von Fox *v.* College of Charleston;
No. 16–7643. Von Fox *v.* Savage Law Firm;

No. 16–7644. Von Fox *v.* Ritz Carlton Corp.; and
No. 16–7645. Von Fox *v.* Nava. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 442.

No. 16–7605. Gueye *v.* Bishop et al. C. A. 6th Cir. Certiorari denied.

No. 16–7606. Gueye *v.* Richards et al. C. A. 6th Cir. Certiorari denied.

No. 16–7608. Park *v.* California. Ct. App. Cal., 2d App. Dist., Div. 2. Certiorari denied.

No. 16–7613. Hurtado *v.* Sherman, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 410.

No. 16–7615. Geiger *v.* City of Chino, California, et al. C. A. 9th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 320.

No. 16–7616. Horton *v.* Texas. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 16–7617. Hyatt *v.* Silva, Superintendent, Souza Baranowski Correctional Center. C. A. 1st Cir. Certiorari denied. Reported below: 840 F. 3d 8.

No. 16–7628. Smith et vir *v.* First Tennessee Bank N. A. et al. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 41.

No. 16–7631. Dorvil *v.* Jones, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 663 Fed. Appx. 852.

No. 16–7638. McKissick *v.* Deal, Governor of Georgia, et al. C. A. 11th Cir. Certiorari denied.

No. 16–7647. Williams *v.* Washington, Director, Michigan Department of Corrections, et al. C. A. 6th Cir. Certiorari denied.

No. 16–7661. Coleman *v.* Adams, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 880.

No. 16–7669. Belanus *v.* Montana. Sup. Ct. Mont. Certiorari denied. Reported below: 386 Mont. 393, 381 P. 3d 585.

No. 16–7671. BLAKE *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 384 Mont. 407, 377 P. 3d 1213.

No. 16–7673. TSEGLIN ET AL. *v.* CALIFORNIA DEPARTMENT OF DEVELOPMENTAL SERVICES ET AL. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 16–7675. WILLIAMS *v.* JACKSON. Ct. Sp. App. Md. Certiorari denied. Reported below: 228 Md. App. 739 and 751.

No. 16–7680. SIRLEAF *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 879.

No. 16–7683. SMITH *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 16–7687. BROWN *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 16–7688. KLEYPAS *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 305 Kan. 224, 382 P. 3d 373.

No. 16–7691. CIOTTA *v.* FRAUENHEIM, WARDEN. C. A 9th Cir. Certiorari denied.

No. 16–7707. CANADY *v.* MANIS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 651 Fed. Appx. 146.

No. 16–7732. JENNINGS *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 124 So. 3d 257.

No. 16–7735. SHIPLEY *v.* NOBLE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 16–7738. DIXON *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied.

No. 16–7755. CARL *v.* MCGINLEY, ACTING SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–7797. BLACK *v.* SESSIONS, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied.

No. 16–7810. WILLIAMS *v.* RITTER ET AL. C. A. 8th Cir. Certiorari denied.

No. 16–7818. SNIPES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–7863. HOLLENBACK *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 636.

No. 16–7881. SMITH *v.* CAPOZZA, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied.

No. 16–7889. KELSON *v.* GASTELO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–7894. GOODS *v.* HAMKAR. C. A. 9th Cir. Certiorari denied. Reported below: 637 Fed. Appx. 470.

No. 16–7896. YAGODA *v.* NEW HANOVER CHILD PROTECTIVE SERVICES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 38.

No. 16–7903. MORROW *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 886 N. W. 2d 204.

No. 16–7924. TAYLOR *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 672 Fed. Appx. 265.

No. 16–7935. SCHLAKE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 16–7943. WOODBERRY *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 193 So. 3d 5.

No. 16–7945. SCOTT *v.* SHARTLE, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 673 Fed. Appx. 356.

No. 16–7957. CELESTINE *v.* BERRYHILL, ACTING COMMISSIONER OF SOCIAL SECURITY, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 574.

No. 16–7973. THOMAS, AKA BROWN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 16–7980. MACK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 105.

No. 16–7990. NEVER MISSES A SHOT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–7995. NIX *v.* DANIELS, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 16–7999. BETHEA *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 16–8007. ORR *v.* TATUM, WARDEN. C. A. 1st Cir. Certiorari denied.

No. 16–8010. BYERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 479.

No. 16–8017. THORNE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 661 Fed. Appx. 791.

No. 16–8018. WASHINGTON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 142 A. 3d 576.

No. 16–8019. VALDEZ *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 2016 IL 119860, 67 N. E. 3d 233.

No. 16–8021. MCDONNEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 337.

No. 16–8023. DAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 16–8024. COBLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 671 Fed. Appx. 113.

No. 16–8028. MARQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 667 Fed. Appx. 496.

No. 16–8031. PALOM RAMIREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 16–8033. SAYADI-TAKHTEHKAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 861.

No. 16–8035. BRAMWELL *v.* JONES, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 16–8039. BURCIAGA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 661 Fed. Appx. 925.

No. 16–8041. WILSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 377.

No. 16–8042. ZAVESKY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 839 F. 3d 688.

No. 16–8046. ROMAN-DE-JESUS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 16–8048. STEELE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 368.

No. 16–8056. BREVICK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 669 Fed. Appx. 266.

No. 16–8059. BROWN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 364.

No. 16–8060. ALVAREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 835 F. 3d 1180.

No. 16–8061. ALFORD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 16–8066. DODDS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 668 Fed. Appx. 771.

No. 16–8070. MITCHELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 16–8074. LOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 16–8075. LEON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 841 F. 3d 1187.

No. 16–8078. PARTIN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 645.

No. 16–8087. VERGOTT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 662 Fed. Appx. 320.

No. 16–8094. SUE *v.* KLINE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 662 Fed. Appx. 604.

No. 16–8095. SAUCEDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 351.

No. 16–8096. ROBINSON, AKA MOORE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 16–8104. BULOS-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 356.

No. 16–8106. BERRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 664 Fed. Appx. 413.

No. 16–8121. DAVIS *v.* LANGFORD, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 16–8122. PARSONS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 664 Fed. Appx. 187.

No. 16–8126. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 670 Fed. Appx. 885.

No. 16–8132. MORALES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 664 Fed. Appx. 228.

No. 16–8140. YATES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 842 F. 3d 1051.

No. 16–8153. JAVIER VILLAFRANCA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 844 F. 3d 199.

No. 16–710. PHOTOS ETC. CORP. ET AL. *v.* HOME DEPOT U. S. A., INC., ET AL. C. A. 2d Cir. Certiorari denied. THE CHIEF JUSTICE and JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 827 F. 3d 223.

No. 16–762. PUNDT, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED *v.* VERIZON COMMUNICATIONS, INC., ET AL. C. A. 5th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 837 F. 3d 523.

No. 16–6107. FORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 16–8025. ALEXANDER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 661 Fed. Appx. 786.

No. 16–8034. RIVERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 16–8088. YUNQUE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

Rehearing Denied

No. 16–5608. PIANKA *v.* UNITED STATES ET AL., *ante*, p. 924;
No. 16–6186. HALL *v.* BERGHUIS, WARDEN, *ante*, p. 1022;
No. 16–6408. JONES *v.* ILLINOIS DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES ET AL., *ante*, p. 1059;
No. 16–6817. G. I. *v.* FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES ET AL., *ante*, p. 1093;
No. 16–7170. JAMEEL *v.* UNITED STATES, *ante*, p. 1095; and
No. 16–7256. COMFORT *v.* SHULKIN, SECRETARY OF VETERANS AFFAIRS, *ante*, p. 1130. Petitions for rehearing denied.

No. 16–6960. GORBEY *v.* RATHMAN, WARDEN, *ante*, p. 1084. Petition for rehearing denied. THE CHIEF JUSTICE and JUSTICE KAGAN took no part in the consideration or decision of this petition.

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