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CASES ADJUDGED

IN

THE SUPREME COURT

AT

OCTOBER TERM, 2012

BEGINNING OF TERM

OCTOBER 1, 2012, THROUGH MARCH 25, 2013

TOGETHER WITH OPINION OF INDIVIDUAL JUSTICE IN CHAMBERS

CHRISTINE LUCHOK FALLON

REPORTER OF DECISIONS

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Erratum

522 U. S. 212, line 15: "*Michael P. Gaughen*" should be "*Michael P. Gaughan*".

JUSTICES

OF THE

SUPREME COURT

DURING THE TIME OF THESE REPORTS

JOHN G. ROBERTS, JR., CHIEF JUSTICE.
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SUPREME COURT OF THE UNITED STATES

Allotment of Justices

It is ordered that the following allotment be made of the Chief Justice and Associate Justices of this Court among the circuits, pursuant to Title 28, United States Code, Section 42, and that such allotment be entered of record, effective September 28, 2010, viz.:

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

For the First Circuit, Stephen Breyer, Associate Justice.

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

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

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

For the Fifth Circuit, Antonin Scalia, Associate Justice.

For the Sixth Circuit, Elena Kagan, Associate Justice.

For the Seventh Circuit, Elena Kagan, Associate Justice.

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

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

For the Tenth Circuit, Sonia Sotomayor, Associate Justice.

For the Eleventh Circuit, Clarence Thomas, Associate Justice.

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

September 28, 2010.

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

TABLE OF CASES REPORTED

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

Cases reported before page 801 are those decided with opinions of the Court or decisions *per curiam*. Cases reported on page 801 *et seq.* are those in which orders were entered. The opinion reported on page 1401 *et seq.* is that written in chambers by an individual Justice.

	Page
A.; Delia *v.*	1080
A.; Wos *v.*	627
AAA Ins.; Lewis *v.*	963
Aaron *v.* Harris	1002
Abbott; Asgeirsson *v.*	1249
Abbott Laboratories; Farrell *v.*	930
Abdelbary *v.* United States	1135
Abebe *v.* Scott	1070
Abed *v.* Bledsoe	997
Abed *v.* Thomas	1136
Abel *v.* California	902
Abeldanez Sanchez *v.* United States	964
Abhyankar *v.* Brazelton	1231
ABM Janitorial Services-North Central, Inc.; Sklyarsky *v.*	1165
Abousaleh *v.* United States	1177
Abpikar *v.* U. S. District Court	1218
Abraham, *In re*	812
Abraham *v.* Automobile Workers	1083,1196
Abraham *v.* Pennsylvania	1213
Abrahem *v.* United States	1175
Abram *v.* Gerry	914,1020
Acasio *v.* Guittard Chocolate Co.	840
Accardi *v.* United States	857
Accenture LLP; Bhat *v.*	963,1077
Access Mediquip L. L. C.; UnitedHealthcare Ins. Co. *v.*	1194
Acevedo *v.* Texas	964
Acevedo *v.* United States	921
Acevedo-Vila; San Geronimo Caribe Project, Inc. *v.*	1228
Achouatte *v.* New York	861,1077

Page
Acord *v.* Young Again Products, Inc. 818
Acosta *v.* N. A. P. H. Care 912
Acosta-Sierra *v.* United States 1183
Actavis, Inc.; Federal Trade Comm'n *v.* 1155,1224,1247
Acuna *v.* United States 1187
Acuna-Reyna *v.* United States 912
Adamcik *v.* Idaho 839
Adame-Wilson *v.* United States 1113
Adams *v.* Adams 986
Adams; Cloke *v.* 1047,1142
Adams *v.* Equal Employment Opportunity Comm'n 1078
Adams *v.* Hart 843
Adams; Honesto *v.* 899,1044
Adams; Portillo *v.* 1199
Adams; Shorter *v.* 852
Adams *v.* Tennessee 880
Adams *v.* Thaler 844
Adams *v.* United States 1017,1203,1204
Adams *v.* Virginia Employment Comm'n 1235
Adams *v.* Wesley 1175
Adams Offshore Ltd.; Blake Marine Group, Inc. *v.* 1027
Adderly *v.* United States 953
Addison; Young *v.* 1160
Adefumi *v.* Philadelphia 870
Adeleke *v.* Thaler 1127
Adesoye *v.* United States 1136
Adetiloye, *In re* 1122
Adetiloye *v.* United States 992,1140
Adger *v.* United States 968
Adiele *v.* Holder 1029
Adkins *v.* Armstrong 837,1020
Adkins *v.* Johnson 948,1045
Adkins *v.* United States 1005
Adlabs Films USA *v.* Newburgh/Six Mile Limited Partnership II 963
Adoh *v.* United States 1203
Adonna *v.* Sargent Mfg. Co. 943
Adoptive Couple *v.* Baby Girl 1081,1224
Advance Auto Parts, Inc.; Richter *v.* 1210
Aeronautical Accessories, Inc.; Nelson *v.* 822
Aeropostale, Inc.; Picture Patents LLC *v.* 1041
Agency for Int'l Development *v.* Alliance for Open Society Int'l 1119
Agent, *In re* 1211
Agiliga, *In re* 938
Agu *v.* United States 1133

Page
Aguayo; U. S. Bank N. A. *v.* 814
Aguilar *v.* Illinois 1167
Aguilar-Ortiz *v.* United States 995
Aguilera *v.* United States 994
Aguillard *v.* United States 1049
Agurcia-Bardales *v.* United States 1181
Ahlers *v.* Rabinowitz 944
Ahluwalia *v.* Ayers 1031
Ahuja; Craft *v.* 1198
Ahumada-Rodriguez *v.* United States 1256
Aidoo *v.* United States 1017
AIG Annuity Ins. Co.; Law Offices of Theodore Coates, P. C. *v.* 932
Ailemen *v.* United States 1054
Airservices Australia *v.* Conklin 1229
Air Wisconsin Airlines Corp. *v.* Hoeper 1083
Aitken *v.* Crews 1147
Akaoma *v.* Supershuttle International Corp. 827
Akers *v.* Hinds Community College 1010
Akers; Marsh *v.* 1194
Akin's; Davis *v.* 935
Alabama; Baker *v.* 815
Alabama; Carey *v.* 1216
Alabama; Cineas *v.* 1089
Alabama; Daniel *v.* 840
Alabama; Jenkins *v.* 1252
Alabama; McCray *v.* 846
Alabama; Mitchell *v.* 829
Alabama; Morrison *v.* 998
Alabama; Ocampo Albarran *v.* 1032
Alabama; Potugari *v.* 1213
Alabama; Revis *v.* 1174
Alabama; Selensky *v.* 864,1043
Alabama; Whiters *v.* 1130
Alabama; Williams *v.* 1095
Alabama Bd. of Pardons and Paroles; Thomas *v.* 868
Alabama Dept. of Corrections; Thomas *v.* 854
Alabama Dept. of Revenue; Kimberly-Clark Corp. *v.* 1138
Alabama State Bar; Clements *v.* 810,1012
Alabaster; Maverick Enterprises, LLC *v.* 885
Alamillo *v.* United States 1135
Alamillo-Serna *v.* United States 1135
Al-Ami'n *v.* Clarke 836
Alana *v.* Clarke 1034
Alaniz-Diaz *v.* United States 1132

Page
Alarcia *v.* Remington 826
Albarran *v.* Alabama 1032
Albertelli *v.* United States 994
Albousaleh *v.* United States 1177
Albrecht *v.* Butts 1237
Alcantara-Garcia *v.* United States 1135
Aldape *v.* Scribner 1067
Alden Leeds, Inc. *v.* United States 1048
Aldred *v.* Birkett 910
Alejandro *v.* United States 1055,1189
Alejo-Pena *v.* United States 958
Alexander *v.* Gipson 1131
Alexander *v.* Lewis 1123
Alexander; Lynn *v.* 979
Alexander *v.* Ryan 954
Alexander *v.* United States 923,1201,1243
Alexander; United States Fire Ins. Co. *v.* 1025
Alex Solomon Family Ltd. Partnership *v.* Bayview Loan Servicing 1144
Alfonso *v.* United States 1037
Alford *v.* Texas 815
Al Ghaith Suleiman *v.* Obama 888
Ali *v.* Crews 1167
Ali *v.* Maness 846
Ali *v.* Springfield 853
Ali *v.* United States 883
Ali-Gardner *v.* United States 883
Alisic *v.* United States 1245
Aljazi *v.* State Farm Ins. 868
All American Painting; Chiropractic & Sports Injury Center *v.* 1143
Allard *v.* United States 1109
Allen, *In re* 812,1154
Allen *v.* Clements 1031,1188
Allen *v.* CLP Corp. 1124,1246
Allen *v.* Florida 950,1105
Allen; Harper *v.* 849
Allen *v.* Harry 1230
Allen *v.* Indiana 845,1063
Allen *v.* McDonald's 1124,1246
Allen *v.* Oklahoma 834
Allen; Rutledge *v.* 933,1020
Allen *v.* Trammell 1005
Allen *v.* United States 1180
Allen *v.* Zavaras 1031,1096
Allen Group Partners *v.* Golden 1010

Page
Allergan, Inc. *v.* Watson Laboratories, Inc. 970
Alleyne *v.* United States 936
Alliance for Open Society Int'l; Agency for Int'l Development *v.* 1119
AllianceOne Receivables Management, Inc.; Nicholas *v.* 823
Allums *v.* Phillips 830,1042
Ally Financial Inc.; Springs *v.* 1215
Almager; Herrera *v.* 843
Almager; Murray *v.* 1106
Almedina *v.* United States 1018
Almendarez *v.* Texas 1070
Almly *v.* United States 1080
ALM Media, LLC; Giovanniello *v.* 801
Almond *v.* Unified School Dist. #501 885
Almy *v.* Sebelius 1086
Alonzo *v.* Thaler 1232
Alonzo *v.* United States 857
Alpha Mining Systems; Linglong Group Co. *v.* 1087
Alpha Mining Systems; Shandong Linglong Rubber Co. *v.* 1087
Alphas Co. *v.* Dan Tudor & Sons Sales, Inc. 1027
Alpha Tyre Systems; Linglong Group Co. *v.* 1087
Alpha Tyre Systems; Shandong Linglong Rubber Co. *v.* 1087
Al-Qaisi *v.* United States 1101
Already, LLC *v.* Nike, Inc. 85,961
Al-Rikabi *v.* United States 864
Alshaif *v.* North Carolina 1192
Alston *v.* United States 953
Alston *v.* Voorhies 984
Alswager *v.* Rocky Mountain Instrumental Laboratories, Inc. . . . 888
Al Tawheed *v.* Springfield 853
Altes *v.* California 882
Alvarado *v.* Texas 1014
Alvarado *v.* United States 1075
Alvarez *v.* American Civil Liberties Union of Ill. 1027
Alvarez; Lozano *v.* 1227
Alvarez *v.* United States 1017,1091,1111
Aly; Emerson *v.* 1025,1164
Amaechi *v.* University of Ky. 943
Aman *v.* United States 919
Amaro, *In re* 977
Amawi *v.* United States 1209
Ambrose *v.* Booker 1148
Ambrose *v.* United States 873
Amenuvor *v.* Mazurkiewicz 1166
Amer *v.* United States 1024

Page
Ameren UE; Banks *v.* 929
American Atheists, Inc. *v.* Kentucky Office of Homeland Security 1228
American Bar Assn.; Hodge-Bannerman *v.* 1162
American Civil Liberties Union of Ill.; Alvarez *v.* 1027
American Express Co. *v.* Italian Colors Restaurant 1006,1152
American Express Travel Related Services *v.* Sidamon-Eristoff 887
American Greetings Corp.; Gibson *v.* 885
American Home Shield; Birdette *v.* 1103
American Timber & Steel Co. *v.* Ivey 1124
American Trucking Assns., Inc. *v.* Los Angeles 1119
Americold Corp.; Conagra, Inc. *v.* 928
Americold Logistics, LLC; Paul *v.* 810
Amezcua *v.* Eighth Judicial District Court of Nev., Clark County 981
Amgen Inc. *v.* Connecticut Retirement Plans and Trust Funds . . 455,961
Amidax Trading Group *v.* S. W. I. F. T. SCRL 1229
Amlong & Amlong, P. A. *v.* Denny's, Inc. 813
Amnesty International USA; Clapper *v.* 398
Amos *v.* Diaz 1128
Amos *v.* Renico 1034
Amos *v.* United States 1196
Amr *v.* Crowley 965,1077
Amr *v.* Moore 1155
Amster *v.* United States 1018
Anadarko Petroleum Corp.; Mendez *v.* 1142
Anaya *v.* United States 910,1073
Anaya-Aguilar *v.* Holder 1205
Anaya-Granillo *v.* United States 1073
Anaya-Santiago *v.* United States 1180
Anchondo; Miranda *v.* 876
Anchorage; Latham *v.* 1168
Ancient Coin Collectors Guild *v.* U. S. Customs Agency 1251
Andablo-Saenz *v.* United States 916
Andersen *v.* Rochester City School Dist. 1085
Anderson *v.* Aon Corp. 826
Anderson *v.* Arkansas 920
Anderson *v.* AstraZeneca, L. P. 1125
Anderson *v.* Brown 1051
Anderson *v.* Brunsman 847
Anderson *v.* California 907
Anderson *v.* Cate 961
Anderson *v.* Florida 1176
Anderson; Hayes *v.* 877
Anderson *v.* Inter-Con Security Systems, Inc. 1226
Anderson *v.* Kansas 982

Page
Anderson *v.* Massachusetts 946
Anderson; Murray *v.* 888,1077
Anderson *v.* Oldham 1096
Anderson *v.* Riverside 1014,1188
Anderson; Santiago *v.* 1053
Anderson *v.* United States 1148,1176,1182,1203,1218,1243,1257
Anderson County; Finger *v.* 1003
Anderson News, L. L. C.; Curtis Circulation Co. *v.* 1087
Andover School Bd.; Silverstein *v.* 820
Andrade-Paromo *v.* Franke 1031
Andrade-Torres *v.* United States 1218
Andrews *v.* Jarvis 1055
Andrews *v.* Paxson 1174
Andrews *v.* United States 1003
Andrews Arts & Sciences Law, LLC *v.* SnoWizard, Inc. 1232
Andrulonis *v.* United States 859
Angel *v.* Brazelton 1128
Angel *v.* California 1252
Angelica Textile Services, Inc.; Boyd *v.* 947
Angellino *v.* Royal Family Al-Saud 1087
Angelos; Pfizer Inc. *v.* 1121
Anglin *v.* Breckinridge Circuit Court 983
Anglin; Bristol-Myers Squibb Co. *v.* 943
Anglinmatumona *v.* Micron Corp. 1133,1246
Anh Dao, *In re* 1122,1189
Annabel *v.* Wolfenbarger 1000
Anorve-Verduzco *v.* United States 1145
Anthem Blue Cross Life; Aster *v.* 1195
Antico *v.* United States 1228
Antone *v.* United States 927
Antonetti *v.* Cox 1034
Antonetti *v.* Neven 914
Antonio-Agusta *v.* United States 958
Anzalone *v.* Hubbard 964
Aon Corp.; Anderson *v.* 826
A. P. *v.* J. M. M. 1174
Apex 1 Processing, Inc. *v.* Edwards 1027
Apker; Romero *v.* 1126,1209
Apollo *v.* Dickinson 1067
Apotex, Inc. *v.* Otsuka Pharmaceutical Co. 1123
Applegate; Jividen *v.* 1103
Aptalis Pharmatech, Inc.; Mylan Pharmaceuticals Inc. *v.* 1123
Arafat *v.* State Farm Ins. Co. 910,1044
Aragon; Ruppert *v.* 838,1043

Page
Aramark Correctional Services, LLC; Zachary *v.* 948
Aranas; Hill *v.* 1049
Arar, Inc. *v.* Frontera Eastern Ga., Ltd. 1090
Arceneaux *v.* Texas 1099
Archbishop Gregory *v.* Society of Holy Transfiguration Monastery 1167
Archibald *v.* United States 1109
Archuleta *v.* Galetka 830
Ardila-Calderon *v.* Florida 1100
Arellano-Garcia *v.* United States 1203
Arenas-Lopez *v.* United States 1114
Arencio Mauricio *v.* Thaler 1171
Argentina; BG Group plc *v.* 997
Argentina *v.* EM Ltd. 931
Argueta *v.* United States 978
Arias *v.* Grounds 1167
Arias *v.* TBC Corp. 962
Ariegwe *v.* Kirkegard 1071
Ariegwe *v.* Montana 1034
Arizona; Bonillas *v.* 1095
Arizona; Clack *v.* 985
Arizona; Cota *v.* 828
Arizona; Droegemeier *v.* 962
Arizona; Hardy *v.* 1127
Arizona *v.* Inter Tribal Council of Ariz., Inc. 962,1121,1155
Arizona; Johnson *v.* 1092
Arizona; Joseph *v.* 1127
Arizona; Martinez *v.* 1051
Arizona; Merriett *v.* 1035
Arizona; Mink *v.* 1198
Arizona; Nelson *v.* 836
Arizona; Nordstrom *v.* 1145
Arizona; Patterson *v.* 1146
Arizona; Pingel *v.* 1199
Arizona; Poblete *v.* 1192
Arizona; Santa Maria *v.* 1249
Arizona; Sebba *v.* 1231
Arizona; Spencer *v.* 851
Arizona; Surgick *v.* 1237
Arizona; VanWinkle *v.* 1094
Arizona; Ybarra-Johnson *v.* 1128
Arizona; Young *v.* 1255
Arizona Dept. of Economic Security; Borecki *v.* 910
Arkansas; Anderson *v.* 920
Arkansas; Howard *v.* 981

Page
Arkansas; Millsap *v.* 952
Arkansas; Osburn *v.* 827
Arkansas; Robinson *v.* 1169
Arkansas; Rodriguez *v.* 1199
Arkansas; Springs *v.* 981
Arkansas; Wilson *v.* 1200
Arkansas Game and Fish Comm'n *v.* United States 23
Arlington *v.* Federal Communications Comm'n 936,1046,1080,1142
Arlotta *v.* Johnson 819
Armant, *In re* 1068
Armstead *v.* Sinclair 1255
Armstrong; Adkins *v.* 837,1020
Armstrong *v.* Benito 1096
Armstrong *v.* Nevada 1238
Armstrong *v.* Redding Parole Dept. 1128
Arnone; Coleman *v.* 1235
Arnone; Crespo *v.* 916
Aros *v.* Hollingsworth 1074
Arredia; Threatt *v.* 937
Arredondo *v.* United States 1135
Arredondo-De La O *v.* United States 1180
Arredondo-Martinez *v.* United States 1135
Arreygue *v.* Virga 866
Arrington *v.* Sauers 986
Arrow Financial Services; Shlikas *v.* 1235
Arroyo *v.* Gross 864,1064
Arthur; Brooks *v.* 1143
Artiaga *v.* United States 958
Artuso *v.* United States 1195
Artz *v.* State Bar of Cal. 1231
Aruanno *v.* Main 837
Arzoumanian *v.* Munchener Ruckversicherungs-Gesellschaft AG 809
ASARCO LLC *v.* Environmental Protection Agency 1143
Asgeirsson *v.* Abbott 1249
Ashbaugh *v.* Corporation of Bolivar 1230
Ashford *v.* Wenerowicz 1014,1034,1140,1188
Ashley *v.* United States 927
Ashmore *v.* Ashmore 1094,1254
Ashworth *v.* Ziegler 850
Askew *v.* Trustees of Church of Apostolic Faith Inc. 1125
Askew *v.* United States 934
Aslan *v.* United States 1112
Aspelmeier *v.* Illinois 1224
Asse *v.* Georgia 987

Page
Asset Acceptance, LLC; Birdette *v.* 1225
Associated Recovery Systems; Birdette *v.* 947,1064
Associate Justice, Supreme Court of U. S.; Caldwell *v.* 931,1020
Association for Molecular Pathology *v.* Myriad Genetics, Inc. 1045
Astacio *v.* United States 1110
Aster *v.* Anthem Blue Cross Life 1195
Astoria Federal Savings & Loan Assn.; Brown *v.* 826
AstraZeneca, L. P.; Anderson *v.* 1125
Astrue; Bobo *v.* 919
Astrue; Christides *v.* 1250
Astrue; Chromy *v.* 918
Astrue; Crosby *v.* 1098
Astrue; Foulke *v.* 842,1063
Astrue; Jones *v.* 1125
Astrue; Koroma *v.* 1199
Astrue; Lloyd *v.* 1199
Astrue; McDonald *v.* 914
Astrue; Pacetti *v.* 1238
Astrue; Roberson *v.* 1105
Astrue; Sanders *v.* 810,1024
Astrue; Scott *v.* 892
ATA Airlines, Inc. *v.* Federal Express Corp. 820
Atchison; Harris *v.* 1148
Atchison; McDonald *v.* 805
Atchison; Rann *v.* 1030
Atchison; Russo *v.* 838
Atchison; Tucker *v.* 1253
Atkins *v.* Bert Bell/Pete Rozelle NFL Player Retirement Plan 1160
Atlantic States Cast Iron Pipe Co. *v.* United States 1231
AT&T Corp.; Hepting *v.* 958
Atterberry *v.* Illinois 833
AT&T Mobility; Birdette *v.* 1174
AT&T of Nev.; Autotel *v.* 1159
Attorney General; Adiele *v.* 1029
Attorney General; Anaya-Aguilar *v.* 1205
Attorney General; Baczynski *v.* 987
Attorney General; Bajanaar *v.* 913
Attorney General; Banse *v.* 860
Attorney General; Bazuaye *v.* 824
Attorney General; Bell *v.* 1136
Attorney General; Bisong *v.* 1071
Attorney General; Black *v.* 985
Attorney General; Blanco-Avalos *v.* 950
Attorney General; Carandang Librojo *v.* 1159

Page
Attorney General; Chaidy *v.* 1192
Attorney General; Cordova-Soto *v.* 1026
Attorney General; De La Rosa *v.* 1063
Attorney General; De Mederios *v.* 986
Attorney General; Deyerberg *v.* 1088
Attorney General; Diallo *v.* 950
Attorney General; Djadjou *v.* 1068
Attorney General; Dover *v.* 939,1030
Attorney General; Effiom *v.* 1104
Attorney General; Garcia-Torres *v.* 814
Attorney General; Glenn *v.* 1228
Attorney General; Grandados Gaitan *v.* 978
Attorney General; Hernandez *v.* 1257
Attorney General; Hewlett *v.* 957
Attorney General; Hwang *v.* 885
Attorney General; Iqbal *v.* 1231
Attorney General; John *v.* 1177
Attorney General; Kourouma *v.* 1071
Attorney General; Lewis *v.* 1159
Attorney General; Llorente *v.* 1071,1209
Attorney General; Lucas *v.* 885
Attorney General; Maldonado-Aguilar *v.* 878
Attorney General; Mejia *v.* 1170
Attorney General; Meza *v.* 1082
Attorney General; Nelson *v.* 863
Attorney General; Nix *v.* 1010
Attorney General; Nunes *v.* 1001
Attorney General; Obomighie *v.* 951
Attorney General; Orellana Campos *v.* 839
Attorney General; Ouologuem *v.* 986
Attorney General; Owenga *v.* 1052
Attorney General; Pasicov *v.* 1193
Attorney General; Seale *v.* 1172
Attorney General; Shelby County *v.* 1006,1151
Attorney General; Sheppard *v.* 882
Attorney General; Sillah *v.* 1168
Attorney General; Smith *v.* 1022
Attorney General; Souleman *v.* 882
Attorney General; Tausere *v.* 1082
Attorney General; Taylor *v.* 922
Attorney General; Thomas *v.* 944
Attorney General; Thompson *v.* 1004
Attorney General; Velasquez-Otero *v.* 977
Attorney General; Woldegiorgise *v.* 984

Page
Attorney General; Yacaman Meza *v.* 1126
Attorney General; Yakubu *v.* 826
Attorney General; Zhenghao Liu *v.* 857
Attorney General of Ala.; Lord Abbett Municipal Income Fund *v.* 816
Attorney General of Ariz.; Kotzeva *v.* 1088
Attorney General of Ariz.; Willoughby *v.* 899
Attorney General of Ark.; Neely *v.* 980
Attorney General of Cal.; Jost *v.* 1070
Attorney General of Cal.; National Assn. of Optometrists *v.* 1157
Attorney General of Colo.; Lewis *v.* 1214
Attorney General of Colo.; Warrener *v.* 860
Attorney General of Fla.; Blanton *v.* 916
Attorney General of Fla.; Cutaia *v.* 975,1083
Attorney General of Fla.; Hunter *v.* 1000
Attorney General of Fla.; Smith *v.* 869
Attorney General of Fla.; Stephens *v.* 952
Attorney General of Md.; Randolph *v.* 1165
Attorney General of Mass.; Builes *v.* 840
Attorney General of Mass.; Watson *v.* 1071
Attorney General of Mich. *v.* Coalition to Defend Affirm. Action 1249
Attorney General of Mo.; Missouri Assn. of Club Executives *v.* 813
Attorney General of Mont.; Lair *v.* 974
Attorney General of Nev.; O'Guinn *v.* 904
Attorney General of Nev.; Padron Rodriguez *v.* 951
Attorney General of Nev.; Stinchfield *v.* 807
Attorney General of Ore.; Sisson *v.* 818
Attorney General of Pa.; Coulter *v.* 883,1044
Attorney General of Pa.; Waliyud-Din *v.* 857
Attorney General of S. C.; Smart *v.* 902,1044
Attorney General of Tex.; Asgeirsson *v.* 1249
Attorney General of Va.; Rodis *v.* 1003
Attorney Grievance Comm'n; Ross *v.* 1155
Auburn Regional Medical Center; Sebelius *v.* 145,1008
Audette *v.* Swarthout 939
Auto Club Family Ins. Co.; Lewis *v.* 963
Automobile Workers; Abraham *v.* 1083,1196
Automobile Workers; Chapman *v.* 943
Autotel *v.* AT&T of Nev. 1159
Autotel *v.* Nevada Bell Telephone Co. 1159
Avalos *v.* United States 848
Avalos Cerpas *v.* United States 849
Avalos-Martinez *v.* United States 1176
Avant *v.* United States 925
Avazos; Osika *v.* 844

Page
AVCO Corp. *v.* Stewart 884
Avena, *In re* 1025
Avenida San Juan Partnership *v.* San Clemente 819
Averill; Taylor *v.* 821
AvidAir Helicopter Supply, Inc. *v.* Rolls-Royce Corp. 817
Avila *v.* United States 1100
Avilez *v.* Massachusetts 1147
Avis Rent A Car System, Inc.; Laney *v.* 1231
Avitia-Guillen *v.* United States 957
Avitia-Ruiz *v.* United States 1076
Awand *v.* United States 822
Axcess Staffing Services; Birdette *v.* 1224
Ayala *v.* Lee 1146
Ayala-Lopez *v.* United States 1196
Ayers; Ahluwalia *v.* 1031
Ayers; Ben-Sholom *v.* 1095
Ayers; Hampton *v.* 913
Ayers; Lawhorn *v.* 806
Ayers *v.* United States 877
Ayesh *v.* United States 1243
Ayres; Trotter *v.* 1000
B. *v.* Illinois 827
B. *v.* Milwaukee County 846
B. *v.* Pennsylvania State Police 1191
B. *v.* West Virginia Dept. of Health and Human Resources 1121
Babayeva *v.* New York City Health and Hospitals Corp. 1097
Babino *v.* Ludwick 1168
Baby Girl; Adoptive Couple *v.* 1081,1224
Baca, *In re* 1156
Baccus *v.* Byars 949
Bach *v.* Milwaukee County 1168,1233
Bach *v.* Ryan 1214
Bachmann *v.* Tucker 909
Backus *v.* South Carolina 801
Bacon *v.* Eighth Judicial District Court of Nev., Clark County . . . 1141
Bacon *v.* Florida 1252
Bacon *v.* Geissinger 1120
Baczynski *v.* Holder 987
Baden; Ravenel *v.* 845
Bader *v.* United States 888
Baenen; Brown *v.* 1002
Baez *v.* Thaler 1235
Baez *v.* United States 808,868,994,1043,1118
Bagdis *v.* United States 1143

Page

Baggett *v.* Illinois 1254
Bahena *v.* Illinois 882
Bahena-Aranda *v.* United States 1204
Bahena-Carreno *v.* United States 953
Bailey; Hinton *v.* 898
Bailey *v.* Mississippi 857
Bailey *v.* Smith 1001
Bailey *v.* Suhar 809,1009
Bailey *v.* Tucker 1053
Bailey *v.* United States 186,864,867
Bainbridge Island; Samson *v.* 1041
Baird *v.* United States 879
Baisden *v.* I'm Ready Productions, Inc. 1229
Baisey *v.* Stansberry 896
Bajanaar *v.* Holder 913
Bak *v.* Donahoe 868,1020
Baker *v.* Alabama 815
Baker; Krug *v.* 843
Baker; Shepard *v.* 1103
Baker *v.* United States 880,883,980,994,1135,1148
Baker *v.* Walker 1167
Baker; Ybarra *v.* 959
Baldovinas *v.* United States 850
Baldwin; Smith *v.* 1070
Baldwin *v.* United States 1182
Baldwin *v.* U. S. District Court 911
Ball *v.* New Hampshire 1194
Ball *v.* Ryan 1199
Ballard; Keeney *v.* 953
Ballard; Kitchen *v.* 891
Ballard *v.* Levens 1125
Ballard *v.* Long 1032
Ballard *v.* United States 1106
Ballejos *v.* Yates 859
Ball State Univ.; Vance *v.* 1008
Balsam; Trancos, Inc. *v.* 979,1116
Balsley; LFP, Inc. *v.* 1124
Balthazor *v.* United States 1075
Baltimore *v.* United States 1232
Balzarotti, *In re* 1084,1222
Bambic *v.* Wood 862,1043
Bandi *v.* Becnel 1086
Bangs; Gilbert *v.* 1029
BankChampaign, N. A.; Bullock *v.* 977,1155

Page
Bankers Lending Services, Inc.; Henriques Group, P. A. *v.* 1027
Bank of America; Birdette *v.* 1095
Bank of America; Lawrence *v.* 825
Bank of America; Niyaz *v.* 808
Bank of America; Saber *v.* 908
Bank of America Corp.; Brown *v.* 943
Bank of America Corp.; McCorkle *v.* 1159
Bank of America, N. A.; Merisier *v.* 1212
Bank of America, N. A.; Samadi *v.* 1008
Bank of America, N. A.; Wade *v.* 1172
Bank of N. Y.; Dillard *v.* 950
Banks *v.* Ameren UE 929
Banks *v.* California 1128
Banks; Pennsylvania *v.* 927
Banks; Tabb *v.* 807
Banks *v.* Thaler 1014
Bannister *v.* United States 1245
Banse *v.* Holder 860
Baptista *v.* Clark 1015
Baptista; PNC Bank, N. A. *v.* 1114
Baptiste *v.* United States 1182
Baradji *v.* United States 1111
Barahona *v.* United States 1038,1257
Barahona-Hernandez *v.* United States 994
Baranwal *v.* United States 1026
Barba *v.* California 1007
Barber; Personhood Okla. *v.* 978
Barclay *v.* Barclay 928
Bard, Inc.; W. L. Gore & Associates, Inc. *v.* 1138
Barfield *v.* United States 934
Bargo *v.* United States 926,1117
Barker, *In re* 938,1142
Barker *v.* Barrow 987
Barlass *v.* Janesville 946,1077
Barley *v.* Edmonds 894
Barlow *v.* Scribner 840
Barlow *v.* United States 1037
Barnes *v.* United States 1017,1113
Barnett *v.* SKF USA, Inc. 942
Barnett *v.* United States 1136,1204
Barney *v.* United States 848,953
Barragan *v.* California 966
Barragan *v.* United States 968,1038
Barrandey *v.* United States 1038

Page
Barren *v.* United States 1016,1220
Barrett *v.* Belleque 886
Barrett *v.* Kitzhaber 965
Barrett *v.* Ludwick 1254
Barriera-Vera *v.* United States 850
Barrington *v.* United States 1074
Barroga-Hayes; Settenbrino *v.* 997
Barron *v.* United States 1183
Barron-Galvan *v.* United States 1111
Barros *v.* Wetzel 1237
Barrow; Barker *v.* 987
Barrow; Jackson *v.* 1032
Barrow *v.* United States 817
Bartel *v.* United States 1203
Bartholomew *v.* Pasadena Tournament of Roses Assn., Inc. .. 1103,1246
Bartkowski; Chao Lin Feng *v.* 1106
Bartlett *v.* Keller 894
Bartlett; Mutual Pharmaceutical Co. *v.* 1045,1211
Bartolillo *v.* Brown 910
Basat *v.* Bell 847
Basham *v.* United States 1187
Baskerville *v.* United States 827,1108
Baskin *v.* United States 1100
Basquez *v.* Janda 1160
Bassett *v.* Illinois 950
Bassett Medical Center; Dumont *v.* 1152
Bass Pro Outdoor World, LLC *v.* Kelly 1122
Bates *v.* Lockett 807
Batista *v.* United States 1047,1121,1196
Batten, *In re* 812
Battiste *v.* United States 1100
Battle *v.* United States 934,1111
Bauer *v.* Merchant 1068
Baul *v.* California 1052
Bauman; Brown *v.* 1217
Bauman; Curtis *v.* 1178
Bauman; Griffin *v.* 872
Bauman; Henderson *v.* 855
Bauman; Jones *v.* 846
Bawgus *v.* United States 1004
Bayene *v.* Farmland Foods, Inc. 1102,1259
Bayer Corp.; Pieczenik *v.* 959
Baylis *v.* Cate 933
Bay Mills Indian Community; Michigan *v.* 1083

Page

Bayou Steel Corp. *v.* National Union Fire Ins. Co. of Pittsburgh 1231
Bayview Loan Servicing; Alex Solomon Family Partnership *v.* . . 1144
Bazuaye *v.* Holder 824
Bear Cloud *v.* Wyoming 802
Beard; Camarena *v.* 1235
Beard; Dumas *v.* 1166
Beard; Garcia Sandoval *v.* 1198
Beard; Jameson *v.* 1225
Beard *v.* United States 892
Beary Landscaping, Inc. *v.* Costigan 888
Beaty *v.* United States 994
Beck *v.* Nooth 1102
Beck *v.* United States 933
Becker *v.* Knipp 1166
Becnel; Bandi *v.* 1086
Becton, Dickinson & Co. *v.* Retractable Technologies, Inc. 1085
Becton, Dickinson & Co.; Retractable Technologies, Inc. *v.* 1084
Bedzhanyan *v.* United States 1232
Beech *v.* Hercules Drilling Co., L. L. C. 1193
Beeman *v.* United States 1031
Beeson *v.* United States 838
Behrend; Comcast Corp. *v.* 809,996
Beineke *v.* Kappos 1158
Belanus *v.* Chandler 1094
Belden *v.* Lampert 890
Belitz *v.* Washington 847
Belize *v.* Belize Social Development Ltd. 882
Belize Social Development Ltd.; Government of Belize *v.* 882
Bell, *In re* 812
Bell; Basat *v.* 847
Bell *v.* Clarke 1046
Bell *v.* Holder 1136
Bell *v.* Jones 1183
Bell *v.* Keffer 852
Bell *v.* Lee 866
Bell; Motten *v.* 877
Bell *v.* United States 1100,1101,1107,1134,1187,1257
Bell *v.* Washington Hospital Center 1159
Bellamy *v.* United States 1105
Belle Glades Correctional Institution; Lyons *v.* 834
Belleque; Barrett *v.* 886
Bellott *v.* United States 1101
Bellwood School Dist. 88; Sledge *v.* 1213
Beltran *v.* Florida 1014

Page
Beltran *v.* United States 1182
Beltran; Williams *v.* 967
Benavides *v.* United States 1164
Bench Billboard Co. *v.* Toledo 1159
Bender; Newell Window Furnishings Inc. *v.* 943
Bender *v.* Texas 1144
Benedetti; Hibbler *v.* 1172
Benedetti; Riker *v.* 1167
Benito; Armstrong *v.* 1096
Ben-Morka *v.* United States 901,1077
Bennett, *In re* 939
Bennett; Bush *v.* 983
Bennett; R&L Carriers Shared Services, L. L. C. *v.* 1011
Bennett *v.* United States 864,1218
Benov; Sanchez-Montes *v.* 1107
Ben-Sholom *v.* Ayers 1095
Benson *v.* Luttrell 1013,1139
Benson *v.* United States 1105
Bentley Motors, Inc.; Williams *v.* 883
Benton *v.* Cory 1250
Berger; Weinstein *v.* 1088
Bergh; Burgess *v.* 882
Bergh; Finley *v.* 879
Berghuis; Cunningham *v.* 898
Berghuis; Lindensmith *v.* 1252
Berghuis; Pillette *v.* 952
Berghuis; Whitman *v.* 1218
Bergrin *v.* United States 1037
Berkebile; Morgan *v.* 1145
Berman *v.* Every 1158
Bermudez *v.* Unemployment Compensation Bd. of Review . . . 1106,1222
Bernadel *v.* United States 1183
Bernegger *v.* U. S. District Court 1108
Bernini *v.* St. Paul 978
Bernstein; Harris *v.* 985
Berrios *v.* United States 1143
Berrones-Zavala *v.* United States 1055
Berry *v.* Tennessee 840
Berry *v.* United States 847,1185
Bertanelli *v.* Ryan 848,867
Bert Bell/Pete Rozelle NFL Player Retirement Plan; Atkins *v.* 1160
Beshear; Flint *v.* 815
Bess *v.* Walton 939
Best *v.* New York 1131

Page
Betancort-Salazar *v.* United States 1042
Bettencourt *v.* Knowles 913
Beverly *v.* Illinois 1235
Bey *v.* Pennsylvania 886
BG Group plc *v.* Republic of Argentina 997
Bharara; Morrow *v.* 1178
Bhardwaj *v.* Pathak 944
Bhat, *In re* 1248
Bhat *v.* Accenture LLP 963,1077
Bhatt; Shahin *v.* 1081
Bibbs *v.* Texas 1234
Bickell; Leach *v.* 1239
Bickell; Rocco *v.* 1142
Bickell; Stinson *v.* 1237
Bieri *v.* Cordonnier 1154
Bigelow; Todd *v.* 1168
Bigesby *v.* United States 1145
Bigio *v.* Coca-Cola Co. 1138
Bilyeu; First Unum Life Ins. Co. *v.* 1157
Bilyeu *v.* United States 956
Binford *v.* Thaler 833
Bird *v.* United States 1204
Birdette *v.* American Home Shield 1103
Birdette *v.* Asset Acceptance, LLC 1225
Birdette *v.* Associated Recovery Systems 947,1064
Birdette *v.* AT&T Mobility 1174
Birdette *v.* Axcess Staffing Services 1224
Birdette *v.* Bank of America 1095
Birdette *v.* Capitol One Bank, N. A. 1095
Birdette *v.* CBE Group, Verizon Wireless 1095
Birdette *v.* Chase Receivables 1103
Birdette *v.* CIGPF I Corp. 1152
Birdette *v.* Citibank, N. A. 1225
Birdette *v.* Credit First N. A. 1225
Birdette *v.* Dish Network 1131
Birdette *v.* Douglas County Bd. of Ed. 1224
Birdette *v.* Firstsource Advantage, LLC 1115
Birdette *v.* Lithia Christian Academy 1152
Birdette *v.* Penn Foster School 1174
Birdette *v.* Publishers Clearing House 1053
Birdette *v.* Saxon Mortgage 1225
Birdette *v.* SIMOS 1225
Birdette *v.* Superior Court of Ga., Douglas County 987,1117
Birdette *v.* Vector Marketing, Inc. 1224

Page

Birhan *v.* United States 918
Birkett; Aldred *v.* 910
Birkett; Conner *v.* 846
Birkett; Hicks *v.* 854
Birkett; Missouri *v.* 1215
Biscoe; Cox *v.* 1126,1222
Bishop-Oyedepo *v.* United States 922
Bisong *v.* Holder 1071
Bistline *v.* United States 958
Biter; Hamilton *v.* 1175
Biter; Phillips *v.* 1254
Biter; Wood *v.* 836,1233
Bixler; Vickerman *v.* 907,1020
B. J. G. *v.* Court of Civil Appeals of Okla., Division IV 1161
Blach *v.* Dovey 950
Black *v.* Columbus Public Schools 1194
Black *v.* Holder 985
Black *v.* Risner 941
Black *v.* Terrell 1095
Black *v.* Texas 857
Black *v.* United States 876
Black *v.* Uribe 1082
Black *v.* Wilkinson 1235
Black Farmers Assn., Inc. *v.* Vilsack 1195
Blackfeet Housing Authority; Marceau *v.* 1138
Blackmon *v.* Booker 1217
Blackmon *v.* Douglas 935
Blackmon *v.* Horel 840,1043
Blackwell *v.* California 1081
Blackwood *v.* United States 920
Blagojevich; Collier *v.* 837,1063
Blakely *v.* Los Angeles Soc. for Prevention of Cruelty to Animals 820
Blake Marine Group, Inc. *v.* Adams Offshore Ltd. 1027
Blanchard *v.* United States 870
Blanco-Avalos *v.* Holder 950
Bland *v.* Lemke 1228
Blank; LaVergne *v.* 1161
Blanks *v.* United States 1074
Blanton *v.* Bondi 916
Bledsoe; Abed *v.* 997
Bledsoe; Cardona *v.* 1077
Bledsoe; Green *v.* 808
Bledsoe *v.* United States 1241
Blocker *v.* Kelley 807

Page
Bloomberg; Robinson *v.* 1165
Bloomberg; Samuel *v.* 1199
Bludworth *v.* Evans 857
Blue *v.* Thaler 828,1189
Bluechristine99 *v.* John Wiley & Sons, Inc. 519,939
Blue Cross & Blue Shield of Mont., Inc. *v.* Fossen 1142
Blue Shield of Cal. *v.* Harlick 1212
Blue & White Food Products Corp.; Tornheim *v.* 947
Blume *v.* Supilanas 982
BMO Harris Bank N. A.; Myers *v.* 807
BNSF R. Co.; Crawford *v.* 818
Board of Appeal on Motor Vehicle Liability Policies; Butler *v.* . . . 1194
Board of Comm'rs of Bernalillo County, N. M.; Kerns *v.* 809,1026
Board of Ed., Brunswick County Schools; Dodd *v.* 878,1116
Board of Ed. of City School Dist. of N. Y.; Gear *v.* 1254
Board of Regents of Univ. of Okla.; Elwell *v.* 1159
Board of Water Comm'rs for Denver; Field *v.* 818
Bobby; Brown *v.* 1192
Bobby; Noling *v.* 1192
Bobo *v.* Astrue 919
Bobo *v.* Tulare Co. 948
Boeing North America, Inc.; Lindsay *v.* 1020,1151
Bolar *v.* United States 1110
Bolden; Gladden *v.* 924
Boles *v.* Newth 1002,1140
Bo Liu *v.* Illinois 979
Bolivar; Ashbaugh *v.* 1230
Bolls *v.* Virginia Bd. of Bar Examiners 817
Bolmer *v.* Connolly Properties, Inc. 821
Bolner *v.* United States 1181
Bolton *v.* United States 866
Bombardier Inc. *v.* Dow Chemical Canada ULC 942
Bonanno *v.* U. S. District Court 1201
Bond *v.* United States 1140
Bondi; Blanton *v.* 916
Bondi; Cutaia *v.* 975,1083
Bondi; Hunter *v.* 1000
Bondi; Smith *v.* 869
Bondi; Stephens *v.* 952
Bone *v.* G4S Youth Services, LLC 1159
Bonevelle; Jones *v.* 837
Bongiovanni *v.* Grubin 838
Bongiovi; Steele *v.* 933,1045
Boniecki *v.* Stewart 1209

Page
Bonillas *v.* Arizona 1095
Boody, *In re* 1025
Book *v.* Bysiewicz 804,1024
Book *v.* Connecticut Resources Recovery Authority 803,1009
Book *v.* Parks 1007
Booker; Ambrose *v.* 1148
Booker; Blackmon *v.* 1217
Booker *v.* Crews 1236
Booker; Evans *v.* 906
Booker; Gagne *v.* 965
Booker *v.* Godinez 1036,1209
Booker; Jackson *v.* 809
Booker; Neal *v.* 1147
Booker; Vary *v.* 1089
Booker; Williams *v.* 817,1077
Booker-El *v.* Wilson 836
Bookman *v.* U. S. District Court 832
Boone *v.* Texas 850
Boone *v.* Zych 858
Boother *v.* Florida Dept. of Corrections 1127,1246
Borbon *v.* United States 892
Borecki *v.* Arizona Dept. of Economic Security 910
Borg *v.* Minnesota 1025
Borgata Hotel Casino & Spa; Kim *v.* 1160
Bormes; United States *v.* 6
Bormuth *v.* Dahlem Conservancy 1230
Borough. See name of borough.
Borrero *v.* United States 1074
Borrero-Rodriguez *v.* United States 991
Borst Automotive Inc.; Teters *v.* 1237
Bosamia *v.* Commissioner 813
Boskovic *v.* United States 992
Bosley; LFP, Inc. *v.* 1124
Bostic *v.* United States 1183
Boston *v.* Nevada 837
Bosworth *v.* United States 1091,1188
Botello *v.* United States 848
Botha *v.* United States 910
Bouchard Transportation *v.* Messier 1229
Bouchat *v.* Maryland 1191
Boulds *v.* Thaler 841,1116
Bourdon *v.* Mabus 1213
Bourg *v.* Louisiana 1096
Bourgeois, *In re* 1068,1189

Page
Bouyea *v.* United States 994
Bowden; Mosley *v.* 843,1116
Bowell *v.* California 881
Bowen *v.* Bowen 910,1117
Bowen *v.* Jones 846
Bowen; Noonan *v.* 1153
Bower *v.* Hobbs 1147,1259
Bowers *v.* Call 871
Bowersock *v.* Lima 935
Bowersox; Cole *v.* 891
Bowersox; Williams *v.* 921
Bowie *v.* United States 926
Bowler *v.* Lafler 897
Bowman; Brown *v.* 822
Bowman *v.* Clarke 830
Bowman *v.* Monsanto Co. 936,1151
Bowman *v.* Thaler 1096
Boyd, *In re* 1226
Boyd *v.* Angelica Textile Services, Inc. 947
Boyd *v.* Lee 1131,1222
Boyd *v.* United States 1181
Boyer *v.* Louisiana 936
Boyle *v.* United States 889
Bracamontes *v.* United States 894
Bracamontes-Rayo *v.* United States 894
Bradford *v.* Rivera 953
Bradley *v.* Florida 853
Bradley *v.* Mississippi 1170
Bradley *v.* United States 1256
Bradt; Brown *v.* 987
Bradt; Carpenter *v.* 866
Bradt; Garbutt *v.* 902
Brady *v.* Persson 900
Brahmana *v.* Henard 1050
Brakeman *v.* Wands 968
Brammer *v.* California 1216,1234
Brand *v.* Los Angeles Unified School Dist. 976
Brandau *v.* Pastrana 1218
Brandon; Harmer *v.* 1221
Branham *v.* United States 871
Branker; Richardson *v.* 948
Brannen, III, P. C. *v.* United States 999
Branson; Meador *v.* 1105,1189
Brantley *v.* NBC Universal, Inc. 998

Page
Brasure, *In re* 1047
Brasure *v.* Chapell 1049
Braunstein *v.* Cox 1146
Braverman; Simmons *v.* 829,1005
Bravo *v.* California 965
Braxton; Lacey *v.* 984
Brayboy *v.* Napel 1097
Brazelton; Abhyankar *v.* 1231
Brazelton; Angel *v.* 1128
Brazelton; Werth *v.* 1147
Breckinridge Circuit Court; Anglin *v.* 983
Brehm *v.* United States 1076
Breland *v.* Louisiana 1234
Brennan *v.* Illinois 1162
Brent *v.* Wayne County Dept. of Human Services 1095
Brewer; Ellis *v.* 1053
Brewer *v.* Hedgpeth 964
Brewer; Missouri Title Loans, Inc. *v.* 822,1042
Brewer *v.* Runnels 967
Brewer *v.* United States 852,927
Brewster *v.* Easterling 1015
Brideson *v.* United States 1076
Bridge, Inc.; Neal *v.* 1093
Bridges *v.* North Carolina 1201
Bridgmon *v.* Ohio 859,1043
Briggs *v.* Grounds 1108
Brigham *v.* United States 927
Bright *v.* Florida 897
Brightwell *v.* United States 1244
Bris-Sotelo *v.* United States 1218
Bristol-Myers Squibb Co. *v.* Anglin 943
British Airways World Cargo; Sattari *v.* 818
British Petroleum of America; Johnson *v.* 1100,1222
British Petroleum Oil Co.; Vann *v.* 807
Britt *v.* General Star Indemnity Co. 1231
Britten; Gray *v.* 877
Brizuela *v.* United States 1251
Broadnax *v.* Texas 828
Brodhead; Harr *v.* 1114
Brodie *v.* Rosen 1029
Broich *v.* Southampton 978
Bromwell *v.* Nixon 897
Brooks *v.* Arthur 1143
Brooks *v.* Medina 945,1234

Page
Brooks *v.* Sisto 836
Brooks *v.* United States 1085
Brooksville *v.* Westchester Fire Ins. Co. 980
Brosnan *v.* United States 969
Brotherhood. For labor union, see name of trade.
Broussard *v.* Thaler 1000
Broward County School Bd.; Lewis *v.* 1094,1246
Brown, *In re* 1047,1189
Brown; Anderson *v.* 1051
Brown *v.* Astoria Federal Savings & Loan Assn. 826
Brown *v.* Baenen 1002
Brown *v.* Bank of America Corp. 943
Brown; Bartolillo *v.* 910
Brown *v.* Bauman 1217
Brown *v.* Bobby 1192
Brown *v.* Bowman 822
Brown *v.* Bradt 987
Brown *v.* California 1102
Brown *v.* Cate 920
Brown; Dunn *v.* 888
Brown *v.* Florida 841,1170
Brown *v.* Florida Dept. of Corrections 1115
Brown *v.* Gray 1107,1259
Brown *v.* Henley 1089
Brown *v.* Illinois 839,1234
Brown *v.* Keller 1002
Brown; Kordenbrock *v.* 892,1044
Brown *v.* Louisiana 1198
Brown *v.* Merit Systems Protection Bd. 887
Brown *v.* Minnesota 1072
Brown *v.* Nabours 1048
Brown *v.* Nebraska 1146
Brown; Philips *v.* 963
Brown *v.* Pollard 896
Brown; Reed *v.* 1104
Brown; Ringgold *v.* 1250
Brown *v.* South Carolina 1103
Brown *v.* Thaler 1164
Brown *v.* Tucker 907
Brown *v.* Unemployment Compensation Bd. of Review 911
Brown *v.* United States 857,
879,912,918,921,931,1018,1115,1133,1181,1185,1220,1247
Brown *v.* Unknown Objectors 820
Brown *v.* Washington 967

Page
Brown; Williams *v.* 839
Brown County Corp.; Del Marcelle *v.* 1028
Browne *v.* United States 1242
Bruederle *v.* Metropolitan Govt. of Louisville and Jefferson County 1100
Brumaire *v.* United States 870
Brumfield *v.* United States 1074
Bruner *v.* Josephine County 820
Bruner *v.* Whitman 928
Brunsman; Anderson *v.* 847
Brunsman; Hall *v.* 853
Brunsman; Keeling *v.* 839
Brunsman; Mason *v.* 950
Brunsman; McDonald *v.* 1014
Brunsman; Vanover *v.* 1199
Brunson *v.* United States 956
Brunson *v.* U. S. District Court 846,1043
Brush *v.* Sears Holding Corp. 1143
Brush *v.* Sears, Roebuck & Co. 1143
Bryan *v.* Defense Technology, U. S. 841
Bryant; Jenkins *v.* 1027
Bryant; Johnson *v.* 1124
Bryant *v.* Lufkin Independent School Dist. 1083,1164
Bryant *v.* Michigan 1028
Bryant *v.* Sheahan 1108
Bryant *v.* United States 955
Bryson; Gladden *v.* 810,1030
Brzezinski; McCormick *v.* 1127
Bucci *v.* United States 890
Buchanan, *In re* 812
Buchanan; Ford *v.* 1049
Buchanan *v.* Illinois 1170
Buchanan; Montgomery *v.* 984
Buchanan; Orris *v.* 1173
Buckland *v.* Buckland 1089,1209
Buckuse *v.* United States 1111
Buczek *v.* United States 924,1045
Budha *v.* United States 1164
Budziak *v.* United States 1244
Buehner *v.* LaRose 1217
Buffington *v.* SunTrust Banks, Inc. 942
Buford *v.* Horel 1094
Bugg *v.* United States 927
Buggs *v.* Rapelje 948
Bui *v.* Texas 1147

Page
Builes *v.* Coakley 840
Bullock *v.* BankChampaign, N. A. 977,1155
Bullock; Lair *v.* 974
Bullock *v.* Napolitano 822
Bulmer *v.* United States 1181
Bunch; Harman *v.* 887,1044
Bundy *v.* United States 1184
Buniff *v.* Cain 1027
Bunin *v.* United States 1136
Burch *v.* United States 912
Bure *v.* Florida 1128
Bureau of Administrative Adjudication; Zakat *v.* 949,1064
Bureau of Immigration and Customs Enforcement; Rojas-Vega *v.* 906
Burgard *v.* United States 852
Burgdorf *v.* United States 993
Burgess *v.* Bergh 882
Burgess *v.* Tennessee 1254
Burgess *v.* United States 968,1135
Burghardt *v.* California 1000
Burghart *v.* Shinseki 935
Burgie *v.* Hobbs 1182
Burgos *v.* Massachusetts 1072
Burgos *v.* United States 1072
Burgos-Rodriguez *v.* United States 958
Burke; Dool *v.* 1144
Burke *v.* McCollum 1013,1188
Burke *v.* Vermont 1072
Burkhardt *v.* United States 1018
Burks, *In re* 812,1191
Burnell *v.* United States 921
Burnett *v.* Norman 986
Burnett *v.* United States 803
Burnie *v.* New York 1096
Burns *v.* United States 803
Burress, *In re* 1248
Burrowes *v.* United States 1240
Burrows *v.* Curtin 1094
Burt *v.* Titlow 1191
Burton *v.* California 1099
Burwell *v.* United States 1196
Buschard *v.* Ohio 944
Bush *v.* Bennett 983
Bush *v.* Oklahoma 1216
Bush *v.* U. S. District Court 1200

Page
Bush *v.* Wilson 890
Butera; Cody *v.* 1100,1210
Butler *v.* Board of Appeal on Motor Vehicle Liability Policies . . . 1194
Butler *v.* Florida Dept. of Corrections 909
Butler *v.* Shinseki 910,1044
Butler *v.* Texas 1163
Butler *v.* United States 1136
Butler County Children and Youth Services; J. C. *v.* 886,1044
Butrick *v.* Del City 824,1042
Butt *v.* Utah 1192
Butts; Albrecht *v.* 1237
Butts *v.* Clarke 1102
Butts; Coleman *v.* 874
Butts; Emerson *v.* 986
Butts; Kimbrell *v.* 1198
Butts *v.* Sebelius 859
Buxenbaum; Fulmer *v.* 1050
Buzbee *v.* Maryland 862
Buzzard *v.* Glebe 1168
Byars; Baccus *v.* 949
Byars; David *v.* 1169
Byars; Fair *v.* 872
Byars *v.* Michigan 1216
Bynum *v.* Mississippi 1168
Bynum *v.* United States 857
Byong Yu; Cornick *v.* 810,997
Byrd, *In re* 1156
Byrd *v.* Thaler 1013
Byrne *v.* Wood, Herron & Evans, LLP 1190
Byron *v.* Shinseki 1086
Byse *v.* Georgia 1033
Bysiewicz; Book *v.* 804,1024
C. *v.* Butler County Children and Youth Services 886,1044
C. *v.* California 862
C. *v.* Indiana 1230
C. *v.* Iowa 1161
Caballerio *v.* United States 1075
Caballero *v.* Harrington 999
Caballero *v.* Tucker 841
Cable, Telecom., & Technology Comm. *v.* FCC 936,1046,1080,1142
Cabrera *v.* United States 909
Cabrera Saucedo *v.* United States 896
Cade; Guillion *v.* 831,1042
Cadman; Campbell *v.* 1194

Page
Cadogan *v.* Warren 1141
Cagno *v.* New Jersey 1104
Cain; Buniff *v.* 1027
Cain; Ducros *v.* 945
Cain; Hall *v.* 1114,1222
Cain; Hampton *v.* 1026,1116
Cain; Houghton *v.* 1012
Cain; James *v.* 945
Cain; Jeanlouis *v.* 1171
Cain; Nellon *v.* 1170
Cain; Phillips *v.* 866
Cain *v.* Premo 857
Cain; Rollins *v.* 913
Cain; Sharp *v.* 1033
Cain; Texada *v.* 808
Cain; Valentine *v.* 1130
Cain; Verdun *v.* 1015
Cain; Walker *v.* 1121
Calabrese *v.* New Jersey Dept. of Taxation 1089
Calabrese *v.* United States 1069
Caldera Pharmaceuticals, Inc.; Regents of Univ. of Cal. *v.* 1193
Caldwell *v.* Kagan 931,1020
Caldwell *v.* Ohio 816
Calhoun *v.* United States 1206
California; Abel *v.* 902
California; Altes *v.* 882
California; Anderson *v.* 907
California; Angel *v.* 1252
California; Banks *v.* 1128
California; Barba *v.* 1007
California; Barragan *v.* 966
California; Baul *v.* 1052
California; Blackwell *v.* 1081
California; Bowell *v.* 881
California; Brammer *v.* 1216,1234
California; Brown *v.* 1102
California; Burghardt *v.* 1000
California; Burton *v.* 1099
California; Cannon *v.* 1104,1119
California; Cardenas *v.* 875
California; Cervantes *v.* 1172
California; Chae Chang *v.* 1238
California; Contreras *v.* 967
California; Cornelius *v.* 861

Page

California; Cox *v.* 947
California; Davis *v.* 837
California; Dement *v.* 869
California; Duncan *v.* 1235
California; Dunsmore *v.* 835
California; E. C. *v.* 862
California; Efstathiou *v.* 845
California; Elliott *v.* 981
California; Enraca *v.* 865
California; Enriquez *v.* 861,1196
California; Esteen *v.* 967
California; Favor *v.* 1181
California; Foulk *v.* 1166
California; Freeman *v.* 1013
California; Fuentes Martinez *v.* 840
California; Fuiava *v.* 1069
California; Garcia *v.* 988,1013
California; Gilmore *v.* 872
California; Gleason *v.* 1050
California; Gonzales *v.* 1104
California; Green *v.* 831
California; Guiamelon *v.* 980
California; Gutierrez *v.* 877
California; Hanson *v.* 875
California; Hearon *v.* 987
California; Hernandez *v.* 964
California; Hernandez Lopez *v.* 1217
California; Hooker *v.* 831,1063
California; Houston *v.* 1234
California; Howard *v.* 1145
California; Howell *v.* 900
California; Huezo *v.* 1238
California; James *v.* 870,1043
California; Johnson *v.* 966,1117,1165
California; Jones *v.* 804,875
California; Larson *v.* 804,868
California; Laudermill *v.* 1216
California; Livingston *v.* 1093
California; Lopez *v.* 912
California; Low *v.* 1232
California; Lugo *v.* 892
California; Malburg *v.* 823
California; Marez *v.* 967
California; Martinez *v.* 858,1129

Page
California; Mauricio *v.* 975
California; Mayer *v.* 1089
California; McBride *v.* 1035
California; McCaskill *v.* 822
California; Mejorado *v.* 1173
California; Michael S. *v.* 1178
California; Miller *v.* 1122
California; Mooney *v.* 1176
California; Muhammad *v.* 1101
California; Myles *v.* 876
California; Naddi *v.* 1225
California; Norman *v.* 909
California; Pace-White *v.* 1098
California; Pacheco *v.* 892
California; Pina *v.* 840
California; Potvin *v.* 842
California; Quochuy Tran *v.* 1133
California; Ramirez Bravo *v.* 965
California; Retanan *v.* 986
California; Reviere *v.* 1152
California; Reyes *v.* 911
California; Rochin *v.* 965
California; Rodriguez *v.* 984,1052
California; Romero *v.* 1093
California; Rose *v.* 965
California; Scott *v.* 1174
California; Scrase *v.* 949
California; Shao *v.* 880,1064
California; Sisavath *v.* 866
California; Smart *v.* 1012
California; Solis *v.* 1033,1222
California; Souza *v.* 1216
California; Starks *v.* 1101
California; Stevens *v.* 841
California; Thomas *v.* 923,1098
California; Treglia *v.* 1015
California; Tully *v.* 1175
California; Turner *v.* 842
California; Van Buren *v.* 845
California; Warren *v.* 1102
California; Weaver *v.* 1095
California; Williams *v.* 840,1032,1169
California; Yuan *v.* 1232
California Dept. of Corrections and Rehabilitation; Mitchell *v.* . . . 1253

Page
California *ex rel.* Parker; Young *v.* 814
California Physicians' Service *v.* Harlick 1212
California Table Grape Comm'n *v.* Delano Farms Co. 1025
California Worker's Comp. Appeals Bd.; Montgomery *v.* . . 810,1024,1144
Calimlim *v.* Office of Personnel Management 1172
Call; Bowers *v.* 871
Callow; Morozova *v.* 1215,1253
Calloway, *In re* 1084
Calloway *v.* Sandor 1096
Calvo *v.* United States 1240
Camacho Naranjo; Chevron Corp. *v.* 958
Camarena *v.* Beard 1235
Cameron; Hickman *v.* 873
Cameron; Mangino *v.* 848
Campbell *v.* Cadman 1194
Campbell *v.* Florida 873
Campbell *v.* Merced County 1128
Campbell *v.* Perley 1013
Campbell; Reilly *v.* 902
Campbell *v.* Robinson 981
Campbell *v.* Stein 1051
Campbell *v.* United States 802,1111
Campbell *v.* Washington Dept. of Social and Health Services 883
Campos *v.* Holder 839
Campos *v.* Minnesota 1128
Canady *v.* United States 1180
Canas *v.* United States 874
Candia *v.* United States 1139
Cannon *v.* California 1104,1119
Cano *v.* United States 944
Cantillo Burgos *v.* United States 1072
Cantil-Sakauye; E. T. *v.* 963
Cantrell *v.* Murphy 815
Cantu-Ramirez *v.* United States 873
Capelton *v.* United States 874
Capital Group Cos.; Harrison *v.* 1069
Capitol One Bank, N. A.; Birdette *v.* 1095
Capitol Records, Inc.; Thomas-Rasset *v.* 1229
Capogrosso *v.* Kansas 884
Capogrosso *v.* 30 River Court East Urban Renewal Co. 979
Capozza; Maxwell *v.* 1096
Capozzi *v.* United States 925
Cappellini; Muhammad *v.* 964
Caraballo *v.* Florida 1000

Page
Carandang Librojo *v.* Holder 1159
Caraway *v.* United States 1107
Carbajal *v.* United States 1195
Carden *v.* United States 954
Cardenas *v.* California 875
Cardenas *v.* United States 1037,1108,1242
Cardona *v.* Bledsoe 1077
Cardona *v.* United States 904,1045
Cardoza *v.* United States 1091
Carera *v.* United States 909
Carey *v.* Alabama 1216
Carey *v.* Ryan 889,1044
Carlson *v.* Wiggins 885
Carmona *v.* Martel 1169
Carnahan *v.* United States 1016
Carneygee; Chupp *v.* 847
Caro *v.* United States 823
Carolina Chloride, Inc. *v.* Richland County 821
Caroon *v.* Roy 808
Carpenter *v.* Bradt 866
Carpenter *v.* Gage 1125
Carpenter *v.* United States 918,922,1038
Carr *v.* Traffic Court of Tyler 1216
Carr *v.* United States 866,1004
Carrasco *v.* Horel 947
Carrasco Espinoza *v.* United States 1004
Carrazco-Galvan *v.* United States 1202
Carreno-Gutierrez *v.* United States 958
Carrillo *v.* Crews 1127
Carrillo-Torres *v.* United States 1134
Carroll *v.* Florida 982
Carrollton Presbyterian Church; Presbytery of South La. *v.* 818
Carson *v.* Illinois 924
Carter *v.* Dempsey 869
Carter *v.* Department of Navy 980
Carter *v.* Illinois 1130
Carter *v.* Kentucky 860
Carter *v.* Louisiana 823
Carter *v.* Maximov 1226
Carter; Millen *v.* 847
Carter *v.* Oliver 1183
Carter *v.* Smith 949
Carter *v.* Thaler 947
Carter *v.* Thompson 1090

Page
Carter; Tibbals *v.* 57
Carter *v.* United States 913,1038,1112,1149,1219
Carter *v.* Washington 1183
Carter *v.* Wolfenbarger 950
Carthen *v.* United States 1092
Cartinhour; Robertson *v.* 951
Cartledge; Hudgins *v.* 1197
Cartledge; Maldonado *v.* 867,1064
Cartledge; Marshall *v.* 832
Cartledge; McKinney *v.* 1173
Cartwright *v.* United States 952
Caruso; Greer *v.* 856
Caruso; Harris *v.* 945
Caruso; Lewis *v.* 945
Caruthers *v.* Norman 1069
Carver *v.* United States 1162
Casanova *v.* United States 1017
Casey *v.* United States 989,1067
Cash; Herrera *v.* 874
Cash Advance Network, Inc. *v.* Felts 1193
Cason *v.* Thaler 874
Cassese; Hunt *v.* 877
Castaneda *v.* United States 1186
Castaneda-Jimenez *v.* United States 1107
Castelloe; Davis *v.* 1170
Castilla-Lugo *v.* United States 1214
Castillo; Jones *v.* 1258
Castillo *v.* Texas 1125
Castillo *v.* United States 1180
Castillo-Gamez *v.* United States 1092
Castillo Quintanar *v.* United States 1026
Castle *v.* Speese 807
Castleman *v.* United States 955
Castorillo Ibale *v.* Safeway Inc. 831
Castro *v.* Florida Bd. of Bar Examiners 932
Castro *v.* Pennsylvania 1102
Castro *v.* United States 1245
Castro Davis *v.* United States 924
Castro-Davis *v.* United States 920
Castro-Magama *v.* United States 876
Castro-Ramirez *v.* United States 917
Caswell *v.* LaValley 985,1117
Catalano *v.* Colson 1147
Cataldo *v.* United States Steel Corp. 1157

Page
Cate; Anderson *v.* 961
Cate; Baylis *v.* 933
Cate; Brown *v.* 920
Cate; Contreras *v.* 893
Cate; Fulbright *v.* 855
Cate; Hill *v.* 843
Cate; Johnson *v.* 804
Cate; Jones *v.* 901
Cate; K'napp *v.* 946
Cate; Kou Cha *v.* 952
Cate; Leinweber *v.* 1035
Cate; Moore *v.* 911
Cate; Ontiveros *v.* 1070
Cate; Raigosa Arredondo *v.* 845
Cate; Schrubb *v.* 1071
Cate; Shannon *v.* 833
Cate; Shehata *v.* 863
Cate; Williams *v.* 990
Cate; Wilson *v.* 850
Cathey *v.* United States 1241
Catlett *v.* United States 956
Catsiff *v.* McCarty 1194
Cavanaugh; Kendrick *v.* 966,1117
Cavazos *v.* United States 1004
Cavins *v.* Hunter 880
Cawley; Jones *v.* 939
Cazares Rojas *v.* Salazar 861
C. B. *v.* West Virginia Dept. of Health and Human Resources . . . 1121
CBE Group, Verizon Wireless; Birdette *v.* 1095
CCA Associates *v.* United States 940,1063
CCL Label, Inc.; Culver *v.* 820
Celio *v.* United States 810,1091
Cendant Mortgage Corp.; Hollis-Arrington *v.* 806
Centeno Nunez *v.* United States 1204
Center State Bank; Williams *v.* 1165
Central Intelligence Agency; Qamar *v.* 1128
CenturyTel of Eastern Oregon, Inc.; Western Radio Services Co. *v.* 1231
Cephus *v.* United States 1004
Cerda *v.* United States 923
Cerda-Enriquez *v.* United States 923
Cerpas *v.* United States 849
Cervantes *v.* California 1172
Cesal *v.* Cross 935,1118
C. F. *v.* West Virginia Dept. of Health and Human Resources . . . 808,1035

Page
Cha *v.* Cate 952
Chadbourne & Parke LLP *v.* Troice 809,1140
Chae Chang *v.* California 1238
Chafee *v.* United States 1122
Chaffins *v.* Southwest Va. Regional Jail-Abingdon 835
Chafin *v.* Chafin 165,1021
Chaidez *v.* United States 342
Chaidy *v.* Holder 1192
Chairman, Broadcasting Bd. of Governors; Khaksari *v.* 819
Chalasani *v.* Daines 1084
Chamberlain *v.* Tucker 1052
Chambers *v.* Mayo 944
Chambers *v.* Tucker 939
Champney *v.* Wetzel 1091
Chandia *v.* United States 1011
Chandler; Belanus *v.* 1094
Chandler *v.* Department of Veterans Affairs 1238
Chandler *v.* Hobbs 1120
Chandler *v.* Tucker 870
Chandler *v.* Wackenhut Corp. 824
Chaney *v.* United States 1109
Chang *v.* California 1238
Chang; Hanson *v.* 810,999
Chang Huang *v.* United States 1075
Chanthachack *v.* United States 1016
Chao *v.* Mount Sinai Hospital 981
Chao Lin Feng *v.* Bartkowski 1106
Chaparro *v.* Schroeder 1179
Chapell; Brasure *v.* 1049
Chapman, *In re* 1084
Chapman *v.* Automobile Workers 943
Chapman; Thames *v.* 1036
Chapman *v.* United States 969
Chappell *v.* Gonzales 928
Chappell; Histon *v.* 1126,1222
Chappell; McNeely *v.* 1253
Chappell; Smith *v.* 869
Chappell *v.* Thomas 1186
Chappell *v.* United States 1136
Chappius; Rodriguez *v.* 1237
Charles *v.* Felker 941
Charles *v.* Massachusetts 1238
Charles *v.* United States 913,1241
Charleston; Gravely *v.* 1198

Page
Charlotte Mecklenburg Schools; Mixon *v.* 1101
Chase Home Finance, LLC; Scarborough *v.* 811
Chase Receivables; Birdette *v.* 1103
Chatman *v.* Florida 1164
Chatman *v.* United States 1111
Chatt *v.* West Memphis 860
Chau *v.* Massachusetts 1192
Chavarria *v.* Hamlet 1126
Chavez *v.* Hedgpeth 869
Chavez; Johnson *v.* 1241
Chavez; Morris *v.* 847
Chavez *v.* Texas 948
Chavez-Garcia *v.* United States 1073
Chavez-Ibarra *v.* United States 1176
Chavez-Marquez *v.* United States 926
Chavis *v.* New Jersey 860
Chebssi *v.* United States 1026
Cheever; Kansas *v.* 1192
Chelsea; Rivera *v.* 851,925,1236
Chen *v.* Siemens Energy Inc. 1076
Chen *v.* United States 1219
Chen Wang *v.* Plasmart, Inc. 1144
Cherer *v.* Frazier 966,1117
Cherry *v.* Howes 952
Cherry; Shaw Coastal, Inc. *v.* 820
Chesteen *v.* Thaler 1012
Chester *v.* Thaler 978
Chevalier *v.* New York 1154
Chevron Corp. *v.* Camacho Naranjo 958
Chevron Phillips Chemical Co. LP; Hughes *v.* 976,1114,1246
Chiang; Suever *v.* 1157
Chiaradio *v.* United States 1004
Chicago; Hayes *v.* 888
Chicago; Pooh Bah Enterprises, Inc. *v.* 887
Chicago American Mfg., LLC; Jarden Consumer Solutions *v.* 1076
Chicago American Mfg., LLC; Sunbeam Products, Inc. *v.* 1076
Chicago Ins. Co.; Hamilton *v.* 1098,1222
Chicago Transit Authority; McKay *v.* 1123,1209
Chicot County Memorial Hospital; Dintelman *v.* 814
Chief Judge, Circuit Ct. of W. Va., Kanawha County; Zakaib *v.* 899
Chief Judge, U. S. Dist. Ct.; Kolosky *v.* 1124
Chief Judge, U. S. Dist. Ct.; Sims *v.* 988,1117
Chief Judge, U. S. Dist. Ct. for Eastern Dist. of Ark.; Mosby *v.* 1199
Chief Justice, Supreme Ct. of U. S.; Krug *v.* 1248

Page
Chien *v.* Skystar Bio Pharmaceutical Co. 886
Chikinkira *v.* United States 909
Childers *v.* Floyd 1190
Childers *v.* Ohio 950
Childress *v.* Dassault Systemes, S. A. 892
Chiles *v.* Jones 1086
Chilton *v.* Kelly 1236
Chi Mak *v.* United States 1203
China Terminal & Electric Corp. *v.* Willemsen 975,1143
Chiropractic & Sports Injury Center *v.* All American Painting 1143
Chitwood *v.* United States 893
Choi *v.* United States 1071
Chow *v.* Commissioner 1163
Christi *v.* United States 988
Christian *v.* Frank 1120
Christian *v.* Los Angeles County 1234
Christian *v.* Townsend 844
Christian *v.* U. S. District Court 945,1064
Christides *v.* Astrue 1250
Christie *v.* United States 1112
Christoff *v.* Ohio Northern Univ. Employee Benefit Plan 1160
Chromy *v.* Astrue 918
Chrones; Pickens *v.* 1215
Chrones; Spencer *v.* 1098
Chu; Rockefeller *v.* 825
Chuang *v.* New York 1162
Chuck's Rentals, Inc.; Ledbetter *v.* 882
Chung *v.* Johnston 883
Chung *v.* United States 873,955
Chupp *v.* Carneygee 847
Churchill McGee, LLC; Herrera *v.* 1028
Ciacci *v.* Hawaii 967,986,1053
Ciacci *v.* United States 1037
Ciarlone *v.* Reading 1160
Cicchiello *v.* Wetzel 820
CIGPF I Corp.; Birdette *v.* 1152
Cineas *v.* Alabama 1089
Cingular Wireless Employee Services, LLC; Muhonen *v.* 896
Cini *v.* Cini 839
Cinotto *v.* Delta Air Lines, Inc. 979
Ciota *v.* United States 1184
Circle K Stores; Hulihan *v.* 821,1042
Ciresi *v.* United States 1220
Cisneros *v.* United States 1257

Page
Citibank, N. A.; Birdette *v.* 1225
Citigroup Global Markets Inc. *v.* StoneMor Operating LLC 1048
Citigroup Inc.; Gray *v.* 962
CitiMortgage, Inc.; Jones *v.* 895
CitiMortgage, Inc.; Sattari *v.* 816
City. See also name of city.
City Council of Newport News *v.* T-Mobile Northeast LLC 826
City Univ. of N. Y., Brooklyn College; Williams *v.* 902,1044
CKS Packaging, Inc.; Ramos *v.* 835
Clack *v.* Arizona 985
Clair *v.* Maynard 963,1064
Clanton *v.* Commissioner 1162
Clapper *v.* Amnesty International USA 398
Clark; Baptista *v.* 1015
Clark; Davis *v.* 1141,1227
Clark *v.* Illinois 835
Clark; Inman *v.* 850,1063
Clark; Jimenez *v.* 1170
Clark *v.* Parker 1129
Clark *v.* Riley 947
Clark; Silvar Lopez *v.* 1071
Clark *v.* Thaler 850,984
Clark *v.* United States 901,924,1038,1126,1178
Clarke; Al-Ami'n *v.* 836
Clarke; Alana *v.* 1034
Clarke; Bell *v.* 1046
Clarke; Bowman *v.* 830
Clarke; Butts *v.* 1102
Clarke; Creamer *v.* 986
Clarke; Doane *v.* 866
Clarke; Fields *v.* 1012
Clarke; Hancock *v.* 899
Clarke; Hill *v.* 877
Clarke; Holt *v.* 1129
Clarke; Hughes *v.* 1051
Clarke; Knowlin *v.* 911
Clarke; Mangum *v.* 891
Clarke; Morris *v.* 872
Clarke; Muhammad *v.* 1130
Clarke; O'Neill *v.* 893
Clarke; Patterson *v.* 804
Clarke; Pratt *v.* 923
Clarke; Proctor *v.* 906
Clarke; Smith *v.* 902

Page
Clarke; Williams *v.* 899,1077,1233
Clarke; Woodfin *v.* 900,1044
Classen Immunotherapies, Inc.; GlaxoSmithKline *v.* 1137
Clausen; Icicle Seafoods, Inc. *v.* 823
Clavelle *v.* Florida 857
Claveria-Martinez *v.* United States 1176
Clawson; Jones *v.* 1177
Clawson *v.* United States 1092
Clay *v.* Glebe 861
Clay; R. J. Reynolds Tobacco Co. *v.* 1027
Clay; Stancle *v.* 1198
Clay *v.* United States 810,970,1012
Clayton *v.* Tucker 837
Clayton *v.* United States 959
ClearValue, Inc. *v.* Pearl River Polymers, Inc. 1010
Cleaver-Bascombe *v.* Kartano 828
Clemans *v.* Yates 834
Clemente-Bernabe *v.* United States 879
Clements *v.* Alabama State Bar 810,1012
Clements; Allen *v.* 1031,1188
Clements; Dunlap *v.* 1164
Clements; Freeman *v.* 1002
Clements; Montour *v.* 918
Clemons *v.* Indiana 1032
Clerk, Circuit Court of Mich., 13th Circuit; Stair *v.* 1088
Cleveland *v.* Oklahoma 907
Clifton *v.* Dexter 951
Cline; Woodward *v.* 1036
Clinton; Dominguez-Gonzalez *v.* 838
Cloer; Sebelius *v.* 1021
Cloke *v.* Adams 1047,1142
Close *v.* United States 957
Cloud *v.* United States 862
CLP Corp.; Allen *v.* 1124,1246
C. L. S.; J. O. *v.* 1155,1259
Cluck *v.* Union Pacific R. Co. 1122
Clutter *v.* United States 882
C. M. H. *v.* D. M. 1028
Coakley; Builes *v.* 840
Coakley; Watson *v.* 1071
Coalition to Defend Affirmative Action; Schuette *v.* 1249
Coan *v.* McCall 865
Coates, P. C. *v.* AIG Annuity Ins. Co. 932
Coatesville VA Medical Center; Keating *v.* 1255

Page
Coats *v.* Illinois 831
Cobb *v.* Thaler 1126
Cobb *v.* United States 954,955
Cobbins *v.* Tennessee 1092
Cobble, *In re* 1156
Cobble *v.* McLaughlin 1175
Cobell; Craven *v.* 995
Cobell; Good Bear *v.* 1005
Coca-Cola Co.; Bigio *v.* 1138
Coca-Cola Co.; POM Wonderful LLC *v.* 1248
Cochran, *In re* 1084,1222
Cochran *v.* Oliver 930
Cochran *v.* United States 969
Cochrane; Muhammad *v.* 1173
Codiga *v.* Washington 874
Cody *v.* Butera 1100,1210
Coffey *v.* United States 1243
Cofield *v.* United States 954
Cohen; Wallace *v.* 880
Coke *v.* New York 947,1117
Colalasure; Richmond *v.* 1146
Cole *v.* Bowersox 891
Cole *v.* Harris 816
Cole; Oravec *v.* 1122
Cole; Roberts *v.* 963
Cole; Shehata *v.* 1197
Coleman *v.* Arnone 1235
Coleman *v.* Butts 874
Coleman *v.* Florida 1236
Coleman *v.* Hardy 1104
Coleman *v.* Landrum 841
Coleman; Quiggle *v.* 830
Coleman; Rolan *v.* 1036
Coleman *v.* Thaler 866
Coleman *v.* United States 802,826,860,917,1038
Colen *v.* United States 926
Collier *v.* Blagojevich 837,1063
Collier County; Marshall *v.* 1196
Collins *v.* Kappos 885
Collins *v.* Lee 842
Collins *v.* United States 898,927,988,1149,1204
Collins *v.* Wolfe 946
Collyer *v.* Farris 1130
Colo'n *v.* Downs 882

Page
Colon *v.* United States 956
Colorado; Glasser *v.* 1012
Colorado; Hernandez *v.* 1015
Colorado; Laeke *v.* 829
Colorado; Rico Sierra *v.* 1097
Colorado Mining Assn. *v.* Department of Agriculture 928
Colson; Catalano *v.* 1147
Colson; Cunningham *v.* 946
Colter *v.* United States 990
Columbia; Smith-Jeter *v.* 1001
Columbia Christians for Life *v.* Wideman 1
Columbus Exploration, L. L. C. *v.* Williamson 963
Columbus Public Schools; Black *v.* 1194
Colvin *v.* Louisiana 889
Combs *v.* United States 1183
Comcast Corp. *v.* Behrend 809,996
Comeaux *v.* Thaler 1067
Comfort *v.* Lee 1177
Comfort Inn; Gilchrist *v.* 1254
Commandant, U. S. Discip. Barracks, Fort Leavenworth; Brown *v.* 1107
Commissioner; Bosamia *v.* 813
Commissioner; Chow *v.* 1163
Commissioner; Clanton *v.* 1162
Commissioner; Connolly *v.* 1011
Commissioner; Driscoll *v.* 888
Commissioner; Hyde *v.* 1091
Commissioner; Maehr *v.* 976,1067,1232
Commissioner; Marcinek *v.* 823
Commissioner; MyMail, Ltd. *v.* 1251
Commissioner; Natkunanathan *v.* 1191
Commissioner; PPL Corp. *v.* 977
Commissioner; Tucker *v.* 1026
Commissioner; Union Carbide Corp. *v.* 1244
Commissioner; Winterroth *v.* 999
Commissioner of Internal Revenue. See Commissioner.
Commissioner of Social Security; Sanders *v.* 1024
Commissioner of Tenn. Dept. of Revenue; Scholastic Book Clubs *v.* 1028
Commission for Lawyer Discip. of State Bar of Tex.; Wilkinson *v.* 1169
Commonwealth. See name of Commonwealth.
Commonwealth Brands, Inc.; Holliday *v.* 1161
Communications Workers of America; Fisher *v.* 885
Community State Bank; Strong *v.* 813
Companonio *v.* Dichaut 857
Compass Bank Corp.; Renobato *v.* 1090

Page
Compton *v.* United States 1134,1184,1222
Computer Packages, Inc. *v.* WhitServe, LLC 1162
Comstock *v.* United States 1134
Conagra Foods Inc.; Egilman *v.* 1229
Conagra, Inc. *v.* Americold Corp. 928
Concepcion *v.* Grounds 1147
Concepcion *v.* United States 869
Confredo *v.* United States 934
Congrejo Investments, LLC *v.* Mann 1085
Conklin; Airservices Australia *v.* 1229
Connecticut; Maggiore *v.* 942,1077
Connecticut; Rizzo *v.* 836
Connecticut; Thompson *v.* 1146
Connecticut Comm'r of Revenue Services; Scholastic Book Clubs *v.* 940
Connecticut Resources Recovery Authority; Book *v.* 803,1009
Connecticut Retirement Plans and Trust Funds; Amgen Inc. *v.* . . 455,961
Connell; Robinson *v.* 904,1005
Connelly; Lawlor *v.* 998
Conner *v.* Birkett 846
Conner *v.* Warren 1234
Connolly *v.* Commissioner 1011
Connolly Properties, Inc.; Bolmer *v.* 821
Connor *v.* Museum of Transportation 883
Connor *v.* St. Louis County 883
Conour, *In re* 1023
Conover; Krider *v.* 1199
Conrad *v.* United States 1090
Consalvo *v.* Tucker 849
Consolidated Rail Corp.; Higgins *v.* 851,1043
Conti *v.* Texas 1025,1163
Continental Ins. Co. *v.* Thorpe Insulation Co. 815
Continental Motors, Inc. *v.* U. S. District Court 1230
Contour Spa at Hard Rock, Inc. *v.* Seminole Tribe of Fla. 1086
Contreras *v.* California 967
Contreras *v.* Cate 893
Contreras *v.* Holland 1137
Contreras *v.* Knowles 1236
Contreras *v.* Shartle 914
Contreras-Lopez *v.* United States 911
Controlotron Corp. *v.* Siemens Industry, Inc. 815
Contursi; Tormenia *v.* 810,997,1085
Conway *v.* Ohio 967
Conyers *v.* Pistole 933
Conze *v.* United States 968

Page
Cook; Galluzzo *v.* 1097
Cook *v.* Gipson 805
Cook *v.* Howard 1230
Cook *v.* Humphrey 1146,1189,1190
Cook *v.* Reinke 1092
Cook *v.* United States 1017
Cooke *v.* United States 1048
Cooks; Hoyt *v.* 817
Cooley *v.* Small 904
Cooper *v.* Denney 835
Cooper *v.* Illinois 946
Cooper *v.* Illinois Lottery Control Bd. 1024
Cooper *v.* Merit Systems Protection Bd. 810,1091
Cooper *v.* Missouri 831
Cooper; Noble *v.* 1252
Cooper *v.* Sexton 1171
Cooper *v.* Sniezek 808
Coppola *v.* United States 1086
Coppola & Coppola; Tomaselli *v.* 858
Corbett *v.* United States 819
Corby *v.* Martuscello 1180
Cordero *v.* Tucker 983
Cordonnier; Bieri *v.* 1154
Cordova-Soto *v.* Holder 1026
Corelleone *v.* Covina Police Dept. 913
Cornelius *v.* California 861
Cornell Univ.; Hyman *v.* 1161
Cornett *v.* United States 991
Cornick *v.* Byong Yu 810,997
Cornish *v.* Kappos 1213
Corona *v.* United States 1161
Corona-Porras *v.* United States 1055
Corporate Express US Inc.; Slocum *v.* 982
Corporation of Bolivar; Ashbaugh *v.* 1230
Corrections Commissioner. See name of commissioner.
Corrections Medical Service; Mixon *v.* 1233
Corrion *v.* Corrion 834
Cortes *v.* Franke 1070
Cortes-Salazar *v.* United States 1149
Cortez Masto; O'Guinn *v.* 904
Cortez Masto; Padron Rodriguez *v.* 951
Cortez Masto; Stinchfield *v.* 807
Cortez-Melo *v.* Illinois 1217
Cortland County; Kiehle *v.* 1228

Page
Cory; Benton *v.* 1250
Cosmo *v.* United States 1113
Cossey *v.* United States 909
Costello; Tucker *v.* 805,997
Costigan; Beary Landscaping, Inc. *v.* 888
Cota *v.* Arizona 828
Cota-Becerra *v.* United States 1220
Cotton *v.* Keffer 993
Cotton *v.* United States 1018,1178
Coty Inc.; Dinh Tran *v.* 1161
Coughlin *v.* Crews 1120
Coulibaly *v.* United States 861
Coulter *v.* Doerr 1068
Coulter *v.* Kelly 883,1044
Coulter *v.* U. S. District Court 835,1020
Countrywide Home Loans; De Masi *v.* 1082
County. See name of county. 989
Coursey; Garrett *v.* 832
Coursey; Heilman *v.* 951
Coursey; Roe *v.* 848
Coursey; Williams *v.* 949
Court of Appeals. See also U. S. Court of Appeals.
Court of Appeals of Tex., Second District; Willis *v.* 1083
Court of Civil Appeals of Okla., Division IV; B. J. G. *v.* 1161
Cousin *v.* United States 829
Coviello *v.* United States 1257
Covina Police Dept.; Corelleone *v.* 913
Covington *v.* United States 1075
Cowan *v.* Florida 1053
Cowan *v.* McCall 869
Cowan *v.* United States 922
Cox, *In re* 1227
Cox; Antonetti *v.* 1034
Cox *v.* Biscoe 1126,1222
Cox; Braunstein *v.* 1146
Cox *v.* California 947
Cox *v.* Howerton 1010,1139
Cox; Ruffin *v.* 1177
Cox *v.* Small 948
Cox *v.* United States 854,867,922
Cozner; Sexton *v.* 1099
Craft *v.* Ahuja 1198
Craig *v.* Craig 1238
Craig *v.* Grounds 1096

Page
Craig *v.* United States 1226
Crane *v.* Norman 986
Crane, Inc. *v.* Hardick 1161
Crape *v.* United States 890
Craven *v.* Cobell 995
Crawford *v.* BNSF R. Co. 818
Crawford *v.* Everhome Mortgage Co. 976,1092
Crawford *v.* Tampa 895
Crawford *v.* United States 866,1077,1182
Crawford *v.* U. S. Court of Appeals 933
Crawford-Bey *v.* New York Presbyterian Hospital 961
Crawley *v.* Minnesota 1212
Crawley *v.* United States 1017
Cray *v.* United States 826
C. R. Bard, Inc.; W. L. Gore & Associates, Inc. *v.* 1138
Creamer *v.* Clarke 986
Creamer *v.* ESIS Claims Unit 934,1118
Creamer *v.* Smith County Sheriff's Dept. 966,1118
Credit Agricole Indosuez; Raedle *v.* 1068
Credit First N. A.; Birdette *v.* 1225
Cree, Inc.; Robertson *v.* 1084,1196
Creek *v.* United States 917
Crenshaw *v.* United States 1218
Crespo *v.* Arnone 916
Crestview Condominium Trust; Lyons *v.* 1161
Crews; Aitken *v.* 1147
Crews; Ali *v.* 1167
Crews; Booker *v.* 1236
Crews; Carrillo *v.* 1127
Crews; Coughlin *v.* 1120
Crews; Daniels *v.* 1233
Crews; Dearmas-Valdes *v.* 1244
Crews; DeJesus *v.* 1235
Crews; Dobbs *v.* 1171
Crews; Estey *v.* 1200
Crews; Flint *v.* 1218
Crews *v.* Howell 1210
Crews; Hurst *v.* 1128
Crews; Jeffus *v.* 1138
Crews; Lamb *v.* 1170
Crews; Lewis *v.* 1254
Crews; Morse *v.* 1130
Crews; Nelson *v.* 1235
Crews; Nettles *v.* 1238

Page
Crews; Nichols *v.* 1201
Crews; Peterka *v.* 1166
Crews; Pope *v.* 1233
Crews; SanAntonio *v.* 1236
Crews; Stephens *v.* 1174
Crews; Thompson *v.* 1197
Crews; Trepal *v.* 1237
Crews *v.* United States 1135,1184
Crews; Wallace *v.* 1169
Crews; Weekley *v.* 1169
Crews; Wilson *v.* 1218
Crews; Zarr *v.* 1198
Crider *v.* United States 881
CRIIMI MAE Services; Teachers Ins. & Annuity Assn. of Am. *v.* 1010
Crissup, *In re* 1248
Crisswalle *v.* Pennsylvania 1201
Croft *v.* Henry 1001
Croneberger *v.* Washington 947
Cronin *v.* Spokane Police Dept. 1214
Crook *v.* Texas 808
Crooker *v.* United States 1054
Croom *v.* Illinois 1177
Crosby, *In re* 812
Crosby *v.* Astrue 1098
Crosby *v.* Crosby 831
Crosby *v.* Menzena 835
Crosby *v.* United States 902
Cross; Cesal *v.* 935,1118
Cross *v.* Keith 1236
Cross; Morris *v.* 1015,1140
Cross *v.* Nevada 984
Crowley; Amr *v.* 965,1077
Crown Cork & Seal USA, Inc.; Keller *v.* 1230
Crownhart *v.* Kogousek 874
Crown Point Police Dept.; Phernetton *v.* 836
Crumbly *v.* United States 1100
Crummer *v.* Horel 835
Crutcher *v.* United States 874
Crutcher-Sanchez; Herron *v.* 1160
Cruz *v.* New York State Bd. of Ed. 943
Cruz *v.* United States 978,1184
Cruz Beltran *v.* Florida 1014
Cruz-Gregorio *v.* United States 1111
Cruz-Lopez *v.* United States 941

Page
Crystal Dunes Owners' Assn., Inc. *v.* Destin 1068
CSX Transportation, Inc.; Smith *v.* 980
Cuatro Del Mar *v.* Imperial Irrigation Dist. 885
Cubas *v.* Thaler 1170
Cuccinelli; Rodis *v.* 1003
Cuevas *v.* Grondolsky 874
Culgan *v.* Miller 855
Cullen; Payton *v.* 944
Cullen *v.* Pelham Manor 1088,1209
Cullum; Quarterman *v.* 807,1047
Cully; Lee *v.* 863
Culver *v.* CCL Label, Inc. 820
Cummings *v.* Doughty 1041
Cummins *v.* Hawaii 888
Cummins *v.* Yuma 1023
Cunningham *v.* Berghuis 898
Cunningham *v.* Colson 946
Cunningham *v.* McCluskey 816,1020
Cunningham *v.* United States 919,1035,1233
Cunningham *v.* Whalen 1158
Cuomo; Rivera *v.* 856
Cure *v.* Louisiana 988
Curescu *v.* United States 909
Curley; Rucker *v.* 840
Curley; Walker *v.* 866
Curling; Favors *v.* 805
Curran; Mack *v.* 838
Currence *v.* United States 918
Currie, *In re* 1084
Currier, *In re* 977
Currier *v.* United States 989
Curry; Lozano *v.* 945
Curry; Scott *v.* 869
Curry *v.* United States 1068
Curtin; Burrows *v.* 1094
Curtin; Moore *v.* 1146
Curtin; Ramsey *v.* 1000
Curtin; Werth *v.* 1230
Curtis *v.* Bauman 1178
Curtis Circulation Co. *v.* Anderson News, L. L. C. 1087
Curvan *v.* Trombley 858
Custodio *v.* Office of Personnel Management 846
Cutaia *v.* Bondi 975,1083
Cuyahoga Cty. Dept. of Children & Family Services; L. F. *v.* ... 853,1139

Page
D. *v.* Grievance Committee of Eighth Judicial District of N. Y. .. 903
D.; Solana Beach School Dist. *v.* 1026
Da Costa *v.* United States 960
Daewoo Electronics America *v.* T. C. L. Industries (H.K.) Holdings 815
Dahlem Conservancy; Bormuth *v.* 1230
Daiga *v.* United States 1133
Daily *v.* Pennsylvania State Civil Service Comm'n 889
Daines; Chalasani *v.* 1084
Daker *v.* Georgia 937,941
Dalal *v.* Krantz & Berman LLP 1245
Dale *v.* United States 1137
Dallas; Hughes *v.* 877
Dalton; Florimonte *v.* 1048,1139
Daly *v.* United States 1075
Damato *v.* United States 886
Damayo *v.* United States 922
Damiter; Keeling *v.* 804
Danaher Corp.; Leon *v.* 945
Danenberg *v.* Georgia 1006,1124
Danforth; Williams *v.* 1034,1140
Dang *v.* Solar Turbines Inc. 902,1020
Daniel *v.* Alabama 840
Daniel *v.* Office of Personnel Management 809,1024
Daniel *v.* Rapelje 1148
Danielczyk *v.* United States 1193
Daniels, *In re* 812,1047
Daniels *v.* Crews 1233
Daniels *v.* Gonzalez 835
Daniels *v.* Jones 1001,1117
Daniels *v.* United States 903,926,1100,1115,1164,1188
Dan's City Auto Body *v.* Pelkey 1065,1223
Dan's City Used Cars, Inc. *v.* Pelkey 1065,1223
Dan Tudor & Sons Sales, Inc.; Alphas Co. *v.* 1027
D'Antuono *v.* New York 1236
Danville; Thompson *v.* 817
Dao, *In re* 1122,1189
Darden *v.* Lockett 916
Darden; Williams *v.* 1034
Dark Horse *v.* Henry 1001
Darr *v.* United States 824
Dassault Systemes, S. A.; Childress *v.* 892
Daugherty *v.* The Heights 1227
Da Vang *v.* Hoover 1003
Davenport *v.* McLaughlin 1014,1139

Page
David *v.* Byars 1169
David D. *v.* Grievance Committee of Eighth Jud. Dist. of N. Y. .. 903
David E. Watson, P. C. *v.* United States 888
Davidson, *In re* 812
Davidson *v.* Tennessee 1092
Davila *v.* United States 874,1080
Davis, *In re* 813
Davis *v.* Akin's 935
Davis *v.* California 837
Davis *v.* Castelloe 1170
Davis *v.* Clark 1141,1227
Davis *v.* Farley 1055
Davis *v.* Florida 1101,1195
Davis; Harrison *v.* 1051
Davis *v.* Hobbs 870
Davis *v.* Hudson Refinery 1247
Davis *v.* Indiana 912
Davis *v.* Kansas 861
Davis *v.* Kia Motors of America 878,1043
Davis; Kolosky *v.* 1124
Davis; Lomax *v.* 965,1117
Davis *v.* Ludgate 949
Davis; McCarthy *v.* 1152
Davis; McClain *v.* 1035
Davis *v.* McDuffie 875
Davis *v.* McLaughlin 1015,1150
Davis *v.* Nooth 872
Davis *v.* Oklahoma 867
Davis *v.* Ortiz 1082
Davis *v.* Pastrana 954
Davis; Rogers *v.* 845
Davis *v.* Rozum 835,1005
Davis *v.* Scribner 1129
Davis *v.* United States 893,
954,969,981,991,992,1037,1107,1178,1183,1184,1187,1190,1243
Davis *v.* U. S. Postal Service 987,1117
Davison *v.* United States 1240
Dawkins *v.* Gonyea 1179
Dayton *v.* United States 992
Dayton Bar Assn.; Parisi *v.* 823
Daza Gutierrez *v.* Harkleroad 901
Dealer Computer Services, Inc.; Michael Motors Co. Inc. *v.* 1124
De Alwis; Siu *v.* 942
Dean *v.* Louisiana 861

Page
Dean *v.* Teeuwissen 981
Dean *v.* Texas 1130
Dean *v.* Uribe 967
Deane *v.* United States 1022
Deans *v.* South Carolina Dept. of Corrections 1072
Dearmas-Valdes *v.* Crews 1244
Deaton; Rhine *v.* 842
Deberry *v.* United States 968
Decastro *v.* United States 1092
Decker *v.* Northwest Environmental Defense Center 597,1008,1118
Dedaj *v.* United States 1150
Dede *v.* United States 931
Deer *v.* Washington 1148
Deering *v.* United States 992
Defense Technology, U. S.; Bryan *v.* 841
DeGennaro *v.* Maine 951
DeGlace *v.* Jarvis 1042,1151
Deibert *v.* United States 894
Deida *v.* United States 990
DeJesus *v.* Crews 1235
De La Cerda *v.* Vaughn 892
de la Cruz *v.* Texas 841
Delacruz *v.* United States 1004
Delano Farms Co.; California Table Grape Comm'n *v.* 1025
De La Rosa *v.* Holder 1063
De La Rosa *v.* New York City Police Dept. 914,1044
Delarosa; Nickerson *v.* 1173
Delaware; Desmond *v.* 1102
Delaware; Smith *v.* 1172
Delaware; Weber *v.* 865
Delaware Dept. of Transportation; Shahin *v.* 1119,1120
Del City; Butrick *v.* 824,1042
Del City; Koch *v.* 824,1042
Delco *v.* United States 991
Deleo *v.* United States 1240
DeLeon *v.* Florida Dept. of Corrections 913
Deleon-Torres *v.* United States 926
Deleston *v.* Rivera 1000
Delfin *v.* Shinseki 852,1043
Delgado *v.* Illinois 1191
Delgado *v.* Tucker 856
Delgado *v.* United States 904,958,978,1163
Delgado *v.* Warren 893
Delgado-Benitez *v.* United States 865

Page
Delia *v.* E. M. A. 1080
Dellas *v.* United States 1251
Delling *v.* Idaho 1038
Del Marcelle *v.* Brown County Corp. 1028
Delnor Community Health Systems; Doe *v.* 1213
Delossantos *v.* United States 1215
Del Rio, *In re* 812,813,1084,1227
Delta Air Lines, Inc.; Cinotto *v.* 979
Del Toro-Barboza *v.* United States 1003,1004
De Masi *v.* Countrywide Home Loans 1082
Dembry *v.* Oliver 1054
De Medeiros *v.* Holder 986
Dement *v.* California 869
Democratic Nat. Committee; Republican Nat. Committee *v.* 1138
Dempsey; Carter *v.* 869
Denham, *In re* 1122
Denmark *v.* United States 1100
Dennard *v.* Tucker 896
Denney; Cooper *v.* 835
Denney; Elam *v.* 893
Denney; Tatum *v.* 870
Denny *v.* United States 1176
Denny's, Inc.; Amlong & Amlong, P. A. *v.* 813
Denson *v.* United States 1149
Denver; Kudlis *v.* 1158
De Oleo *v.* United States 1177
Department of Agriculture; Colorado Mining Assn. *v.* 928
Department of Agriculture; Horne *v.* 1021
Department of Agriculture; Prescott *v.* 1086
Department of Agriculture; Public Lands for People, Inc. *v.* 1194
Department of Agriculture; Strader *v.* 1029
Department of Agriculture; Wyoming *v.* 928
Department of Army; Rana *v.* 929,1042
Department of Commerce; Gladden *v.* 992
Department of Ed.; Moore *v.* 884
Department of Homeland Security; Girma *v.* 908
Department of Homeland Security; Gonzalez *v.* 885,1044
Department of Justice; Greene *v.* 1003
Department of Navy; Carter *v.* 980
Department of Navy; Groseclose *v.* 826
Department of Navy; Moore *v.* 864
Department of State; Rodriguez *v.* 852
Department of Treasury; Murray *v.* 1069
Department of Treasury; Tawadrous *v.* 1102,1246

Page
Department of Veterans Affairs; Chandler *v.* 1238
Department of Veterans Affairs; Pearson *v.* 810
DeProspero *v.* United States 1163
DeRamcy; Sullivan *v.* 891,1064
Derby; Wabno *v.* 1086
DeRosa *v.* Workman 1255
DeRouen *v.* Falls County Sheriff's Dept. 839,1043
Derringer *v.* Termain 847
Desadier *v.* United States 1257
Descamps *v.* United States 976,1024
DeSilva *v.* United States 919
Deskins *v.* United States 1258
Des Moines *v.* Kragnes 884
Desmond *v.* Delaware 1102
Dess; Muthukumar *v.* 905,1044
Destin; Crystal Dunes Owners' Assn., Inc. *v.* 1068
DeSue *v.* Florida 846,1063
Detroit; Leavey *v.* 1087
Detroit Police Dept.; Sanders *v.* 1022,1121
Devers *v.* Fayram 912
Dew *v.* United States 1205
DeWalt; Edwards *v.* 1228
DeWitt *v.* District of Columbia 951
Dexter; Clifton *v.* 951
Dexter; Perez *v.* 1034
Dexter; San Nicolas *v.* 1195
Deyerberg *v.* Holder 1088
Deyton *v.* Keller 1145
Dhillon *v.* Zions First National Bank 819
Diallo *v.* Holder 950
Diamreyan *v.* United States 1037
Diaz; Amos *v.* 1128
Diaz *v.* Felker 1167
Diaz; Garcia *v.* 1128
Diaz *v.* McEwen 1234
Diaz; Thomas *v.* 1128
Diaz *v.* United States 968,1113
Diaz; Wolcott *v.* 950
Diaz *v.* Wyoming 941
Diaz-Galiana *v.* United States 968
Diaz-Palmerin *v.* United States 1192
Diaz-Ramirez *v.* United States 827
Diaz Rosas *v.* United States 968
Dibbs *v.* Mazzarelli 1213

Page
Dichaut; Companonio *v.* 857
Dickerson *v.* Nevada System of Higher Ed. 821
Dickerson *v.* United States 920
Dickhaut; Morgan *v.* 951
Dickinson; Apollo *v.* 1067
Dickinson *v.* Ocwen Loan Servicing, LLC 1069,1140
Dickinson; Rogers *v.* 930
Dickson *v.* Subia 1054
Diehl *v.* Pennsylvania 845,1043
Diehl-Armstrong *v.* United States 1134
Dietz; Malcomb *v.* 983
Difenderfer; Travillion *v.* 1033
Diggs, *In re* 1156
Diggs *v.* United States 941
Dillard *v.* Bank of N. Y. 950
Dillard *v.* United States 1054
Dillon *v.* United States 896
DiMuro *v.* United States 1091
Dingle Veterans Hospital Medical Center; Murray *v.* 1200
Dinh Tan Ho *v.* Thaler 1250
Dinh Tran *v.* Coty Inc. 1161
Dinkins *v.* United States 1177
Dintelman *v.* Chicot County Memorial Hospital 814
Dionne *v.* Sampson 834
Dire *v.* United States 1145
Director, Office of Workers' Compensation Programs; Hand *v.* . . 907,1044
Director of penal or correctional institution. See name or title of director.
Disharoon *v.* Georgia 1052
Dish Network; Birdette *v.* 1131
Dismukes, *In re* 940
District Attorney of Philadelphia; Rainey *v.* 989
District Court. See also U. S. District Court.
District Court of Minn., Hennepin County; Neng Por Yang *v.* . . . 1225
District Judge. See also U. S. District Judge.
District Judge of 9th District Court, Montgomery Cty.; McPeters *v.* 883
District of Columbia; DeWitt *v.* 951
District of Columbia; Lewis *v.* 1148
District of Columbia; Ord *v.* 980
District of Columbia; W. R. *v.* 918
District of Columbia Bd. of Elections; Libertarian Party *v.* 1230
District of Columbia Bd. of Elections; Sibley *v.* 997,1087
District of Columbia Office of Bar Counsel; Yelverton *v.* 908
Dittmer *v.* Michigan Dept. of Corrections 881

Page
Diver *v.* Smith 1240
Dixon, *In re* 811
Dixon *v.* Kernan 834
Dixon *v.* United States 957
Djadjou *v.* Holder 1068
D. M.; C. M. H. *v.* 1028
D. M. *v.* New Jersey Division of Youth and Family Services . . 988,1117
Doan *v.* United States 1192
Doane *v.* Clarke 866
Dobbins *v.* United States 1204
Dobbs *v.* Crews 1171
Dobbs *v.* Michigan 1035
Dobric *v.* Park Lane North Owner, Inc. 1052,1189
Dodakian *v.* United States 1018
Dodd *v.* Board of Ed., Brunswick County Schools 878,1116
Dodge County; Luckert *v.* 1089
Doe *v.* Delnor Community Health Systems 1213
Doe *v.* United States 1067,1203,1229
Doe *v.* White Plains Hospital Medical Center 884
Doe *v.* Willits Charter School 1088
Doerr; Coulter *v.* 1068
Dolan *v.* Gerbering 873
Dolenz *v.* United States 931,1005
Dombos *v.* Janecka 1200
Dominguez *v.* United States 918
Dominguez-Devalle *v.* United States 1202
Dominguez-Gonzalez *v.* Clinton 838
Dominguez-Sianez *v.* United States 850
Donahoe; Bak *v.* 868,1020
Donahoe; George *v.* 887,1044
Donahoe; Haynes *v.* 1142
Donahoe; Ou-Young *v.* 1251
Donahoe; Triplett *v.* 1239
Donahue *v.* United States 852
Donat; Linder *v.* 1053
Donchak *v.* United States 889
Donley; Ford *v.* 1194
Donofrio, *In re* 1226
Donohue *v.* Donohue 1028
Dool *v.* Burke 1144
Dooley; Grauberger *v.* 860,1116
Doory; Jackson *v.* 1236
Dorman *v.* United States 1205
Dormire; Ferdinand *v.* 1050

Page
Dormire; Hayes *v.* 842
Dormire; Lawrence *v.* 804
Dormire; Streu *v.* 895
Doroteo *v.* United States 858
Dorsey *v.* Ohio 1180
Dorsey *v.* United States 990
Dortch *v.* United States 1149
Doughty; Cummings *v.* 1041
Douglas; Blackmon *v.* 935
Douglas *v.* Ingersoll 902
Douglas *v.* United States 960
Douglas County Bd. of Ed.; Birdette *v.* 1224
Dove *v.* United States 993,1209
Dover *v.* Holder 939,1030
Dovey; Blach *v.* 950
Dow Chemical Canada ULC; Bombardier Inc. *v.* 942
Dow Chemical Co.; Nova Chemicals Corp. *v.* 979
Dowell *v.* Garcia 908,1044
Dow Lohnes PLLC; Houston *v.* 1028
Downing *v.* Life Time Fitness, Inc. 1229
Downs; Colo'n *v.* 882
Downs *v.* United States 1018,1100,1220
Doyle, *In re* 1047
Doyle *v.* United States 954,1240
Drain *v.* Ludwick 952
Drane *v.* Georgia 1034
Drew; Fox *v.* 900
Drew *v.* Illinois *ex rel.* Glasgow 944
Drew *v.* Manpower of Southern Nev., Inc. 835
Drew; Sastrom *v.* 903
Drew *v.* United States 920
Dreyer; Holmes *v.* 855
D. R. Horton, Inc. *v.* Lyndoe 1229
Driggers *v.* Simpson 1170
Driggers *v.* United States 960
Driscoll *v.* Commissioner 888
Droegemeier *v.* Arizona 962
Drummond Co.; Giraldo *v.* 1250
DS Waters of America, Inc. *v.* Twin City Fire Ins. Co. 1087
Duarte *v.* United States 999
Duarte-Sabori *v.* United States 999
Duboc *v.* United States 1177
Dubuc *v.* Green Oak 1029
Duc Huu Pham *v.* United States 1242

Page
Ducros *v.* Cain 945
Dudenhoeffer; Fifth Third Bancorp. *v.* 1248
Duenas *v.* United States 1242
Duke Energy International, Inc. *v.* Williams 1123
Dukes *v.* Illinois 986
Dulaney *v.* United States 878
Dumas *v.* Beard 1166
Dumont *v.* Bassett Medical Center 1152
Dunaway *v.* United States 924
Dunbar, *In re* 1084,1155
Duncan *v.* California 1235
Duncan *v.* Texas 1234
Dunevant *v.* United States 1258
Dung Nguyen *v.* Levitas 1101
Dunkin' Donuts, Inc.; Progressive Foods, LLC *v.* 1161
Dunlap *v.* Clements 1164
Dunn *v.* Brown 888
Dunn *v.* Edmonds 870,1116
Dunn *v.* United States 872
Dunsmore *v.* California 835
du Pont de Nemours & Co.; Shahin *v.* 1120
Durham *v.* Varano 921
Duronio *v.* United States 811,1186
Duronio *v.* Werlinger 811,1186
Durr *v.* Illinois 947
Durr *v.* Tucker 844
Dutton-Myrie *v.* United States 860
Duwel; Toliver *v.* 1099
Dwyer *v.* United States 1037
Dyches *v.* United States 1245
Dyer *v.* Morrow 1217
Dyer *v.* Palmer 818
Dynes *v.* United States 1202
Eagle Creek Homeowners Assn.; Kim *v.* 825
Eagleton; Singleton *v.* 869,1043
Easley *v.* United States 1221
East Baton Rouge Parish; Washington *v.* 1226
East Coast Foods, Inc. *v.* Range Road Music, Inc. 824
Easterling; Brewster *v.* 1015
Easterling *v.* United States 956
Eastland, *In re* 811
Easton *v.* United States 1122
Eastside Exhibition Corp. *v.* 210 East 86th St. Corp. 1028
Eastwood *v.* United States 1074

Page
Eato *v.* Florida 1235
Ebonie S. *v.* Pueblo School Dist. 1229
E. C. *v.* California 862
Echols *v.* Warren 1105
Ecklin *v.* Virginia 1098
Edenfield; Williams *v.* 880,1005
Eder *v.* United States 1053
Edge *v.* Pennsylvania 834
Edmiston *v.* Wells Fargo Bank 1216
Edmond *v.* Mississippi 874
Edmonds; Barley *v.* 894
Edmonds; Dunn *v.* 870,1116
Edmonds *v.* United States 803
Edmondson; Edwards *v.* 1047,1145
Educational Credit Management Corp.; Traversa *v.* 817
Edwards; Apex 1 Processing, Inc. *v.* 1027
Edwards *v.* DeWalt 1228
Edwards *v.* Edmondson 1047,1145
Edwards; Geneva-Roth Ventures, Inc. *v.* 1027
Edwards; McPeters *v.* 883
Edwards; Mizukami *v.* 961,1042,1067,1139,1164
Edwards *v.* Scutt 1126,1246
Effiom *v.* Holder 1104
Efstathiou *v.* California 845
Egbufor *v.* United States 1136
Egilman *v.* Conagra Foods Inc. 1229
Eichler *v.* Knipp 861
E. I. du Pont de Nemours & Co.; Shahin *v.* 1120
Eighth Judicial District Court of Nev., Clark County; Amezcua *v.* 981
Eighth Judicial District Court of Nev., Clark County; Bacon *v.* . . 1141
Eighth Judicial District Court of Nev., Clark County; Vontress *v.* 1046
Eisenhauer; Kidwell *v.* 963
EJS Properties, LLC *v.* Toledo 1250
Ekanem *v.* United States 1137
Elam *v.* Denney 893
Elam *v.* Lykos 984
El-Amin *v.* Louisiana 835
Elashi *v.* United States 977
Elbey *v* U. S. District Court 1082
Eldridge *v.* United States 901
Eleanya *v.* United States 1074
Electrical Workers *v.* U. S. Information Systems, Inc. 1154
Elfgeeh *v.* United States 1036
Eli Lilly & Co.; McClamrock *v.* 1252

Page
Elinsky; Smith *v.* 807
Elizondo *v.* Garland 818
Elkins *v.* United States 1108
Ellerbee *v.* Florida 1093
Ellers; Whetstone *v.* 840
Elliott *v.* California 981
Elliott *v.* Neven 1233
Elliott *v.* New York City 1194
Elliott *v.* United States 1055
Ellis *v.* Brewer 1053
Ellis *v.* Fort Worth 824
Ellis *v.* Hanson 817
Ellis; Morales *v.* 880
Elmer *v.* Florida 1200
El-Mezain *v.* United States 977
El Paso; El Paso Entertainment, Inc. *v.* 886
El Paso Entertainment, Inc. *v.* El Paso 886
El Sayed *v.* United States 968
Elwell *v.* Oklahoma *ex rel.* Board of Regents of Univ. of Okla. . . . 1159
E. M. A.; Delia *v.* 1080
E. M. A.; Wos *v.* 627
Emanuel; Heller *v.* 816
Emanuel *v.* United States 954,1184
Embody *v.* Ward 1048
Emerick *v.* Prelesnik 1124
Emerick *v.* United States 1185
Emerson *v.* Aly 1025,1164
Emerson *v.* Butts 986
EM Ltd.; Republic of Argentina *v.* 931
Employers Mut. Casualty Co.; Lovland *v.* 887
Engle *v.* United States 850
Ennis *v.* Kirkpatrick 875
Enraca *v.* California 865
Enriquez *v.* California 861,1196
Enriquez *v.* United States 1091
Enriquez *v.* Virginia 942
Enriquez Cerda *v.* United States 923
Entler, *In re* 1084
Entrepreneur Media, Inc.; Smith *v.* 808
Entwistle *v.* Massachusetts 1129
EPA; ASARCO LLC *v.* 1143
EPA; Montana Sulphur & Chemical Co. *v.* 819
Epic Systems Corp. *v.* McKesson Technologies, Inc. 1223
Epperson *v.* SouthBank 1090

Page
Epps; Manning *v.* 1251
Epps *v.* Sheahan 1216
Epps *v.* United States 1055,1134,1189
Epps; White *v.* 1200
Epstein *v.* Franke 951
Equal Employment Opportunity Comm'n; Adams *v.* 1078
Ercole *v.* LaHood 1203
Erickson, *In re* 1154
Ernst *v.* United States 994
Ervin *v.* Rapelje 1236
Ervin *v.* United States 1037,1134
Escalante *v.* Watson 1132
Escalera *v.* Scribner 1088
Escamilla-Rojas *v.* United States 827
ESIS Claims Unit; Creamer *v.* 934,1118
Esparza *v.* United States 1195
Esparza Isais *v.* United States 1195
Espinoza *v.* United States 1004
Esposito *v.* Humphrey 982
Esquivel *v.* Guleria 830
Esquivel *v.* Ledezma 874
Esquivel-Padilla *v.* United States 1134
Essex, *In re* 811
Esso *v.* United States 993
Esso Standard Oil Co. *v.* Trilla Pinero 1114
Esteen *v.* California 967
Estey *v.* Crews 1200
Estrada, *In re* 812
Estrada *v.* Texas 861
Estrada-Lopez *v.* Ohio 1217
Estrada-Medina *v.* United States 1218
Estrada Rosas *v.* United States 1148
E. T. *v.* Cantil-Sakauye 963
Etoty *v.* United States 906
Eubanks *v.* Lempke 892
Eurand, Inc.; Mylan Pharmaceuticals Inc. *v.* 1123
Evans, *In re* 811,812
Evans; Bludworth *v.* 857
Evans *v.* Booker 906
Evans *v.* Felker 1255
Evans; Garcia *v.* 855
Evans; Gonzalez *v.* 921
Evans; Hernandez *v.* 1013
Evans; Hite *v.* 1013

Page
Evans; Howard *v.* 830
Evans *v.* Michigan 313,975
Evans; Robinson *v.* 1198
Evans *v.* United States 916,1020,1105,1179
Evans; Vogel *v.* 1029
Everhome Mortgage Co.; Crawford *v.* 976,1092
Every; Berman *v.* 1158
Ewell *v.* Scribner 1133
F. *v.* Cuyahoga County Dept. of Children and Family Services 853,1139
F. *v.* Utah 962,1049
F. *v.* West Virginia Dept. of Health and Human Resources . . . 808,1035
Fabian; Marlowe *v.* 810,1030
Fabian *v.* United States 877,899,905
Facebook, Inc.; Leader Technologies, Inc. *v.* 1090
Fagan; Weisshaus *v.* 816
Fair *v.* Byars 872
Fairman; Marti *v.* 878
Faison *v.* Kaiser Aluminum Corp. 1120
Fakhoury; Grantham *v.* 865
Falcon *v.* United States 865,900,1044
Faldas *v.* Tucker 1088
Falkinberg *v.* Falkinberg 1127
Falls *v.* United States 932
Falls County Sheriff's Dept.; DeRouen *v.* 839,1043
Family Practice Associates of Western Kansas, LLC; Turrubiates *v.* 883
Fanary *v.* United States 895
Fantauzzi *v.* Glunt 1129
Farley; Davis *v.* 1055
Farlow *v.* United States 955
Farmer *v.* United States 836
Farmers Ins. Co. of Wash. *v.* Moratti 929
Farmland Foods, Inc.; Bayene *v.* 1102,1259
Farmon; Frazier *v.* 1110
Farrell *v.* Abbott Laboratories 930
Farrell; Harper *v.* 901
Farris; Collyer *v.* 1130
Farvey *v.* United States 993,1209
Fasano *v.* United States 1209
Faulk *v.* Lamas 1003
Faulk *v.* United States 1110
Faulkenberry *v.* United States 874
Favor *v.* California 1181
Favors *v.* Curling 805
Fayram; Devers *v.* 912

Page
Fazio *v.* United States 1203
Fears *v.* Robinson 941
Federal Bureau of Investigation; Scarnati *v.* 1256
Federal Bureau of Prisons; Himmelreich *v.* 987,1117
Federal Bureau of Prisons; Jones *v.* 1091
Federal Bureau of Prisons; Moore *v.* 1130,1144,1221
Federal Bureau of Prisons; Moorer-Bey *v.* 988
FCC; Arlington *v.* 936,1046,1080,1142
FCC; Cable, Telecom., & Technology Comm. *v.* 936,1046,1080,1142
Federal Correctional Institution at Beckley; Woltz *v.* 840
Federal Election Comm'n; McCutcheon *v.* 1156
Federal Election Comm'n; Real Truth About Abortion, Inc. *v.* . . 1114
Federal Express Corp.; ATA Airlines, Inc. *v.* 820
Federal Express Corp.; Walker *v.* 1114
Federal Express Corp.; Weatherby *v.* 1090
Federal National Mortgage Association; Kwasnik *v.* 1153
Federal Trade Comm'n *v.* Actavis, Inc. 1155,1224,1247
Federal Trade Comm'n; Namer *v.* 1195
Federal Trade Comm'n *v.* Phoebe Putney Health System, Inc. . . . 216
Federal Trade Comm'n; Polypore International, Inc. *v.* 1155
Federal Trade Comm'n; Trudeau *v.* 941
Federal Trade Comm'n *v.* Watson Pharmaceuticals, Inc. 1066
Federation of State Medical Bds.; Jihui Zhang *v.* 1068
Fegan *v.* Gipson 879
Feldman *v.* Thaler 1233
Felice *v.* Stallone 1175
Felicindo *v.* United States 869
Felix; Palivoda *v.* 942
Felker; Charles *v.* 941
Felker; Diaz *v.* 1167
Felker; Evans *v.* 1255
Felker; Harris *v.* 930
Felker; Jackson *v.* 1165
Felker; Suarez *v.* 1036
Felker; Tong Xiong *v.* 1147
Felker; Williams *v.* 948
Fels *v.* Illinois 842,1077
Felton *v.* Hall 1129
Felts; Cash Advance Network, Inc. *v.* 1193
Feng *v.* Bartkowski 1106
Ferdinand *v.* Dormire 1050
Ferdinand *v.* Missouri 1252
Ferguson *v.* Florida 973,974
Ferguson *v.* North Carolina 872

Page
Ferguson *v.* Palmer 974
Ferguson *v.* Republic of Trinidad and Tobago 1125
Ferguson *v.* Tucker 974
Fermin *v.* United States 1213
Fernandez *v.* United States 1203
Fernandez-Avina *v.* United States 925
Fernandez Martinez *v.* United States 960
Ferranti *v.* United States 1019
Ferriter; Ritchie *v.* 986
Fessler, *In re* 977,1116
FF Acquisition, L. L. C.; Powell *v.* 1230
F. H. *v.* Shimko 1232
Fharmacy Records *v.* Nassar 979
Fharmacy Records Production Co. *v.* Nassar 979
Fidelity National Title Ins. Co.; McCray *v.* 1186
Field *v.* Board of Water Comm'rs for Denver 818
Field; Schafler *v.* 1250
Fields, *In re* 809
Fields *v.* Clarke 1012
Fields *v.* Rainbow Rehabilitation Center 982
Fields; Santiago *v.* 1071
Fields *v.* United States 802,1181,1240
Fiesta Fashions; Jovani Fashion, Ltd. *v.* 1230
Fifth Third Bancorp. *v.* Dudenhoeffer 1248
Figuereo-Sanchez *v.* United States 1205
Figueroa *v.* Lea 872
Figueroa *v.* New York 1050
Figueroa *v.* United States 925,1073,1257
Figueroa *v.* U. S. District Court 925
Figura Torrefranca *v.* Ryan 805,1024
Finch; O'Bryant *v.* 949
Finch *v.* United States 905
FindWhat.com *v.* FindWhat Investor Group 814
FindWhat Investor Group; FindWhat.com *v.* 814
Fine *v.* Tucker 1052
Finger *v.* Anderson County 1003
Finley *v.* Bergh 879
Finley *v.* United States 1073
Fiore; Walden *v.* 1211
First California Bank; Keenan *v.* 1124
First National Bank of Franklin Park; Forest Preserve Dist. *v.* 814
First National Ins. Co. of America; Kapetanakis *v.* 1087
Firstsource Advantage, LLC; Birdette *v.* 1115
First Unum Life Ins. Co. *v.* Bilyeu 1157

Page
Fischer; Mills *v.* 1170
Fischer *v.* Pelkie 983
Fischer; Santone *v.* 926
Fischer; Sloane *v.* 983
Fish *v.* Louisiana 832
Fisher *v.* Communications Workers of America 885
Fisher *v.* Halliburton 941
Fisher *v.* JPMorgan Chase & Co. 1019
Fisher; Laroche *v.* 1154
Fisher Investments, Inc.; Wootten *v.* 1089
Fisk; Parker *v.* 1050
Fitch *v.* United States 849
FitzGerald, *In re* 1226
Fitzpatrick; Young *v.* 809
Flanagan *v.* United States 1055
Fleming *v.* Florida 842,1116
Fleming *v.* Mazurkiewicz 908
Fleming *v.* Oklahoma 843
Fleming *v.* United States 1110
Fleming *v.* Wolfe 1110,1246
Flemming *v.* Fried, Frank, Harris, Shriver & Jacobson, L. L. P. 805
Flemming *v.* New York 805
Fletcher *v.* United States 944,1110
Flight Attendants-CWA; Nosie *v.* 982
Flint *v.* Beshear 815
Flint *v.* Crews 1218
Flint *v.* United States 1105
Flores, *In re* 1023
Flores *v.* United States 1075,1076
Flores-Martinez *v.* United States 906
Flores-Mejia *v.* United States 1134
Florida; Allen *v.* 950,1105
Florida; Anderson *v.* 1176
Florida; Ardila-Calderon *v.* 1100
Florida; Bacon *v.* 1252
Florida; Beltran *v.* 1014
Florida; Bradley *v.* 853
Florida; Bright *v.* 897
Florida; Brown *v.* 841,1170
Florida; Bure *v.* 1128
Florida; Campbell *v.* 873
Florida; Caraballo *v.* 1000
Florida; Carroll *v.* 982
Florida; Chatman *v.* 1164

Page
Florida; Clavelle *v.* 857
Florida; Coleman *v.* 1236
Florida; Cowan *v.* 1053
Florida; Cruz Beltran *v.* 1014
Florida; Davis *v.* 1101,1195
Florida; DeSue *v.* 846,1063
Florida; Eato *v.* 1235
Florida; Ellerbee *v.* 1093
Florida; Elmer *v.* 1200
Florida; Ferguson *v.* 973,974
Florida; Fleming *v.* 842,1116
Florida; Forney *v.* 808,1127
Florida; Gary *v.* 842
Florida; Gibson *v.* 1129,1259
Florida; Green *v.* 1221
Florida; Hall *v.* 985
Florida; Harjo *v.* 999
Florida *v.* Harris 237
Florida; Hartley *v.* 1049
Florida; Heyne *v.* 1000
Florida; Hodges *v.* 1103
Florida; Hutchinson *v.* 947
Florida; Jennings *v.* 1100
Florida; Johnson *v.* 1174
Florida; Jones *v.* 806,1025,1033
Florida; Junkin *v.* 1029
Florida; King *v.* 964
Florida; Kopsho *v.* 854
Florida; Lau *v.* 897
Florida; Lawrence *v.* 1254
Florida; Lenoir *v.* 843
Florida; Levitan *v.* 948
Florida; Lyons *v.* 1100,1210
Florida; McMillan *v.* 1171
Florida; Miller *v.* 1132
Florida; Mycoff *v.* 1130
Florida; Nance *v.* 1036
Florida; Neal *v.* 858,1116
Florida; Pardo *v.* 1078
Florida; Partin *v.* 828
Florida; Peede *v.* 1099
Florida; Peterson *v.* 1071
Florida; Ponticelli *v.* 1069
Florida; Poole *v.* 1033

Page
Florida; Pope *v.* 849
Florida; Raleigh *v.* 1095
Florida; Reynolds *v.* 1251
Florida; Riethmiller *v.* 841,1043
Florida; Ross *v.* 871
Florida; Santos *v.* 1239
Florida; Shahly *v.* 1192
Florida; Sheppard *v.* 948
Florida; Shere *v.* 1069
Florida; Sierra *v.* 1133
Florida; Skaggs *v.* 864
Florida; Smith *v.* 1009
Florida; Spivey *v.* 915,1045
Florida; Stein *v.* 1034
Florida; Trujillo *v.* 1132
Florida; Turner *v.* 868,1105
Florida; Ward *v.* 988
Florida; Willacy *v.* 1147
Florida; Yarns *v.* 841
Florida Bd. of Bar Examiners; Castro *v.* 932
Florida Dept. of Children and Families; S. W. *v.* 1170
Florida Dept. of Children and Families; T. M. *v.* 1167
Florida Dept. of Corrections; Boother *v.* 1127,1246
Florida Dept. of Corrections; Brown *v.* 1115
Florida Dept. of Corrections; Butler *v.* 909
Florida Dept. of Corrections; DeLeon *v.* 913
Florida Dept. of Corrections; Hoffman *v.* 1033
Florida Dept. of Corrections; Hormachea *v.* 898
Florida Dept. of Corrections; Humphrey *v.* 855
Florida Dept. of Corrections; Johnson *v.* 1054,1189
Florida Dept. of Corrections; Jones *v.* 873
Florida Dept. of Corrections; Lepeska *v.* 1154
Florida Dept. of Corrections; Molyneaux *v.* 1215
Florida Dept. of Corrections; Searcy *v.* 1166
Florida Dept. of Corrections; Thomas *v.* 1197
Florida Dept. of Corrections; Towbridge *v.* 1099,1246
Florida Parole Comm'n; Reed *v.* 860,1116
Florimonte *v.* Dalton 1048,1139
Flournoy *v.* Small 1105
Flowers *v.* Small 898
Floyd; Childers *v.* 1190
Floyd *v.* New York State Division of Human Rights 807
Floyd *v.* United States 1243
FMR LLC; Lawson *v.* 939

Page
Fogel; Honesto *v.* 929,1045
Fogg *v.* United States 1110
Fogle *v.* New York 1031
Foley; Nails *v.* 1095
Folino; Pew *v.* 1034
Folino; Smith *v.* 895
Folkes *v.* Lee 855
Fondren; Muth *v.* 895
Fontanez *v.* Holt 905
Fontenot *v.* United States 969
FDA; Holistic Candlers & Consumers Assn. *v.* 962
Force; Ware *v.* 1178
Forcum; Krukemyer *v.* 883
Ford *v.* Buchanan 1049
Ford *v.* Donley 1194
Ford *v.* McKesson 807,1097
Ford *v.* Mississippi 1050
Ford *v.* Swarthout 1053
Ford *v.* United States 925
Ford Motor Co.; Wiles *v.* 1161
Forest Preserve Dist. of Du Page County *v.* First National Bank 814
Forney *v.* Florida 808,1127
Forney *v.* West Virginia 854
Forte *v.* United States 855
Fort Worth; Ellis *v.* 824
Foskey *v.* United States 956
Fossen; Blue Cross & Blue Shield of Mont., Inc. *v.* 1142
Foster *v.* Louisiana Dept. of Public Safety and Corrections 873
Foster; Schweiner *v.* 1072
Foster *v.* United States 859
Foster; Wolfenbarger *v.* 1228
Foster Township; Rahman *v.* 1090
Fouche *v.* Guttierrez 1005
Foulk *v.* California 1166
Foulke *v.* Astrue 842,1063
Fox *v.* Drew 900
Fox *v.* Good Samaritan Hospital, L. P. 825
Fox *v.* Michigan Dept. of Corrections 1046
Fox *v.* United States 896,1202
Fox & Spillane, LLP; Siegel *v.* 809
Foxworth *v.* Mississippi 1147,1181
Foye *v.* Southeastern Pa. Transportation Authority 842
Fraker; Young *v.* 1199
Francis *v.* United States 881

Page
Francisco-Pascual *v.* United States 893
Francois *v.* New York 946
Frank; Christian *v.* 1120
Frank *v.* United States 865,1158
Franke; Andrade-Paromo *v.* 1031
Franke; Epstein *v.* 951
Franke; Rivera Cortes *v.* 1070
Frankel *v.* United States 933,1045
Frankenmuth *v.* Loesel 1089
Frank Kent Cadillac; Valdez *v.* 820
Frank Kent Motor Co.; Valdez *v.* 820
Franklin *v.* Garden State Life Ins. 1154
Franklin *v.* Illinois 905,1197
Franklin *v.* Merit Systems Protection Bd. 961
Franklin *v.* Scribner 1034
Franklin *v.* United States 1073
Franklin *v.* U. S. Bank N. A. 904
Fraser *v.* GMAC Mortgage 1096,1197
Frazier; Cherer *v.* 966,1117
Frazier *v.* Farmon 1110
Frazier; Leftwich *v.* 842
Frazier *v.* Thomas 833
Frederick; Profit *v.* 847
Frederick *v.* Shinseki 1249
Frederick *v.* Tucker 1104
FreeEats.com, Inc. *v.* Indiana 825
Freeman *v.* California 1013
Freeman *v.* Clements 1002
Freeman *v.* Kadien 1052
Freeman *v.* Mohr 843
Freeman *v.* Tucker 853
Freeman *v.* United States 921
Freeman *v.* Voorhies 843
Freightquote.com, Inc.; Tindall *v.* 923
Freisinger *v.* Keith 1033
Freitas; Wilkins *v.* 868
Frengler *v.* General Motors 1154
Freshfields Bruckhaus Deringer U. S. LLP; RSM Prod. Corp. *v.* 1089
Fried, Frank, Harris, Shriver & Jacobson, L. L. P.; Flemming *v.* 805
Friedman, *In re* 1226
Frink; Roedel *v.* 890
Frink; Stanton *v.* 1132
Frink; Vondal *v.* 965,1117
Fripp *v.* United States 874

Page
Frison *v.* United States 954
Frluckaj *v.* Long 1010
Frontera Eastern Ga., Ltd.; Arar, Inc. *v.* 1090
Frontier Technology LLC; Shields *v.* 897,1070
Frost *v.* F & R Realty Trust 983,1117
F & R Realty Trust; Frost *v.* 983,1117
Fry *v.* United States 1009
Fuentes *v.* Gonzalez 830
Fuentes *v.* Lempke 953
Fuentes *v.* United States 955,1073
Fuentes Martinez *v.* California 840
Fuiava *v.* California 1069
Fulbright *v.* Cate 855
Fuller *v.* Roper 1234
Fuller *v.* United States 905,954
Fulmer *v.* Buxenbaum 1050
Fulmer *v.* Pennsylvania 815
Fulton *v.* United States 1073
Fulton State Hospital; Luh *v.* 919
Funes *v.* Louisiana 1197
Funes *v.* United States 1239
Furesz *v.* United States 1181
Furlow *v.* United States 1110,1186
Furry *v.* Miccosukee Tribe of Indians of Fla. 1028
Futagi; Toland *v.* 826
Futch *v.* United States 905
G. *v.* Court of Civil Appeals of Okla., Division IV 1161
Gabbert *v.* United States 816
Gabelli *v.* Securities and Exchange Comm'n 442,1046
Gaffney; Orsello *v.* 1081
Gaffney *v.* Tucker 899
Gage; Carpenter *v.* 1125
Gage; Thirtle *v.* 1133
Gagne *v.* Booker 965
Gainer *v.* United States 1258
Gainesville Surgery Center; Kapordelis *v.* 839
Gaitan *v.* Holder 978
Gaitan *v.* New Jersey 1192
Galetka; Archuleta *v.* 830
Galindo *v.* United States 941
Gallardo *v.* United States 1255
Gallegos-Hernandez *v.* United States 993
Gallion *v.* United States 1048
Galloway, *In re* 812,1043

Page

Galloway; Villegas *v.* 911
Galluzzo *v.* Cook 1097
Gamage *v.* Mississippi 935
Gambill *v.* United States 1110
Gamble *v.* Thaler 831
Gamble *v.* Virginia 873
Ganghua Liu *v.* Pearson Ed., Inc. 1247
Gansler; Randolph *v.* 1165
Gantt *v.* United States 991
GAP, Inc.; Green *v.* 1252
Garbutt *v.* Bradt 902
Garcia *v.* California 988,1013
Garcia *v.* Diaz 1128
Garcia; Dowell *v.* 908,1044
Garcia *v.* Evans 855
Garcia *v.* Illinois 872
Garcia *v.* Lopez 975
Garcia *v.* New York 875,966
Garcia *v.* Small 900
Garcia *v.* United States 868,907,912,941,954,1242
Garcia *v.* Whirlpool Corp. 885
Garcia *v.* Yates 893
Garcia Cisneros *v.* United States 1257
Garcia-Hernandez *v.* United States 1239
Garcia-Navarro *v.* United States 967
Garcia-Ramirez *v.* United States 1092
Garcia Rangel *v.* Schmidt 1051,1209
Garcia-Rios *v.* United States 953
Garcia Sandoval *v.* Beard 1198
Garcia-Santos *v.* United States 1003
Garcia-Torres *v.* Holder 814
Garcia-Torres *v.* United States 899
Garcia-Trejo *v.* United States 835
Garden State Life Ins.; Franklin *v.* 1154
Gardner *v.* Romanowski 853
Gardner *v.* Virginia 855
Gardner *v.* Zakaib 899
Garey *v.* United States 1041,1140
Gargano, *In re* 807
Garland; Elizondo *v.* 818
Garmin International, Inc.; Leo *v.* 850,966
Garner *v.* Jones 908
Garner *v.* Medina 1106
Garraway *v.* Samuels 1104

Page
Garrett *v.* Coursey 832
Garrett *v.* Michigan 872
Garrett *v.* Michigan Dept. of Corrections 1097
Garrett *v.* Texas 1129
Garrett *v.* United States 843
Garvey *v.* United States 1185
Gary *v.* Florida 842
Gary *v.* Hill 876
Garza *v.* Kansas 875,1116
Garza *v.* Thaler 945,1167
Garza *v.* United States 827,875
Garza Martinez *v.* United States 989
Gasca-Chavez *v.* United States 925
Gastellum-Chavez *v.* United States 1134
Gates; Kumvachirapitag *v.* 890
Gates *v.* Ryan 819
Gates *v.* Westereng 1049,1189
Gather *v.* Oklahoma Army National Guard 1013,1139
Gato *v.* Smith 855
Gatti *v.* United States 875
Gauley Bridge; Hays *v.* 1194
Gautreaux; Spooner *v.* 976
Gavagni; Wilson *v.* 1000
G. A. W. *v.* Illinois 827
Gay *v.* Illinois 881
Gayekpar *v.* United States 921
Gayle *v.* United States 1201
Gaynor *v.* Taylor 819
Gaytan *v.* Hall 874
Gear *v.* Board of Ed. of City School Dist. of N. Y. 1254
Gearren *v.* McGraw-Hill Cos. 962
Gehringer *v.* United States 1205
Geissinger; Bacon *v.* 1120
Geithner; Liberty Univ. *v.* 808,1022
Geithner; Wiley *v.* 1175
Gempeler; Gruenberg *v.* 1239
General Drivers *v.* Shelter Distribution, Inc. 825
General Motors; Frengler *v.* 1154
General Revenue Corp.; Marx *v.* 371,939
General Star Indemnity Co.; Britt *v.* 1231
Genesis HealthCare Corp. *v.* Symczyk 1008
Genesis HealthCare Corp.; Tinsley *v.* 982
Geneva-Roth Ventures, Inc. *v.* Edwards 1027
George *v.* Donahoe 887,1044

Page
George *v.* Maine 918
George *v.* Michigan 836
George *v.* United States 943
George Washington Univ. School of Medicine; Singh *v.* 821
Georgia; Asse *v.* 987
Georgia; Byse *v.* 1033
Georgia; Daker *v.* 937,941
Georgia; Danenberg *v.* 1006,1124
Georgia; Disharoon *v.* 1052
Georgia; Drane *v.* 1034
Georgia; GeorgiaCarry.Org, Inc. *v.* 1088
Georgia; Jackson *v.* 1236
Georgia; Johnson *v.* 985
Georgia; Martinez *v.* 1048
Georgia; McDermott *v.* 985
Georgia; Merilien *v.* 987
Georgia; Middleton *v.* 1100
Georgia; Mobley *v.* 1103
Georgia; Molette *v.* 985
Georgia; Sands *v.* 1052
Georgia; Young *v.* 837
GeorgiaCarry.Org, Inc. *v.* Georgia 1088
Georgia Dept. of Transportation; Stephens *v.* 873
Georgia-Pacific West *v.* Northwest Env. Defense Ctr. 597,1008,1118
Georgia Sexual Offender Registration Review Bd.; Parks *v.* . . 997,1145
Gerber *v.* Isabella Geriatric Center, Inc. 1103,1210
Gerbering; Dolan *v.* 873
Gerhartz *v.* Pugh 921,1117
Germalic *v.* New York State Bd. of Elections Comm'rs 884,1153
German *v.* Horel 1132
German *v.* United States 881
Gerrara *v.* New York 1097
Gerry; Abram *v.* 914,1020
Gerstenschlager; Michigan Dept. of Licensing and Reg. Affairs *v.* 1083
G4S Youth Services, LLC; Bone *v.* 1159
Ghane *v.* United States 964
Gibbs *v.* Thomas 1024,1240
Gibert *v.* United States 889
Gibson *v.* American Greetings Corp. 885
Gibson *v.* Florida 1129,1259
Gibson; Harrington *v.* 809
Gibson *v.* United States 802,1245
Gieswein *v.* United States 1139
Giggers; Memphis Housing Authority *v.* 884

Page
Gilbert *v.* Bangs 1029
Gilbert *v.* New Line Productions, Inc. 1253
Gilbert *v.* United States 1137
Gilbert; Vann *v.* 988,1117
Gilbert *v.* Wisconsin 992
Gilbert Medical Transcription Service, Inc.; Reddy *v.* 1031
Gilchrist *v.* Comfort Inn 1254
Gilchrist *v.* Parth's Inc. 1254
Giles *v.* United States 1221
Gill *v.* United States 953
Gillespie *v.* Thirteenth Judicial Circuit of Fla. 1172
Gilliam *v.* United States 995
Gilliland *v.* Kansas 1176
Gillispie *v.* West Virginia 1091
Gilmore *v.* California 872
Gilmore *v.* Valenzuela 1034
Gioglio *v.* Michigan 1217
Giordano *v.* United States 993
Giovanniello *v.* ALM Media, LLC 801
Gipson; Alexander *v.* 1131
Gipson; Cook *v.* 805
Gipson; Fegan *v.* 879
Gipson; Gray *v.* 1051
Giraldo *v.* Drummond Co. 1250
Girma *v.* Department of Homeland Security 908
Gitomer, *In re* 1023
Gladden *v.* Bolden 924
Gladden *v.* Bryson 810,1030
Gladden *v.* Department of Commerce 992
Gladden *v.* McHugh 987
Gladden *v.* Solis 1103
Gladden *v.* Vilsack 810,1030
Glair *v.* Los Angeles 1197
Glasgow; Drew *v.* 944
Glasser *v.* Colorado 1012
Glassgow *v.* United States 1019
Glave *v.* Glebe 1201
GlaxoSmithKline *v.* Classen Immunotherapies, Inc. 1137
Gleason *v.* California 1050
Gleason *v.* Haws 879
Gleason *v.* Pearson 1140
Glebe; Buzzard *v.* 1168
Glebe; Clay *v.* 861
Glebe; Glave *v.* 1201

Page

Glebe; Larson *v.* 848
Glebe; Ramez *v.* 897
Glebe; Rexus *v.* 1233
Glebe; Volk *v.* 1169
Glen; Shahin *v.* 1120
Glenn *v.* Holder 1228
Glenn *v.* Kane 1154
Glica *v.* McDonald 1197
Glidden *v.* New Hampshire 854
Glisson *v.* United States 829
Global Credit & Collection Corp.; Zemeckis *v.* 999
Glover *v.* United States 995,1149
GLSS, Inc.; Gorbatova *v.* 845,847
Glunk *v.* Pennsylvania Bureau of Professional and Occ. Affairs . . 979
Glunt; Fantauzzi *v.* 1129
Glunt; McBride *v.* 1147
Glunt; Tomlin *v.* 827
GMAC Mortgage; Fraser *v.* 1096,1197
Goains *v.* Texas 854
Gobert *v.* Texas 827
Godat *v.* United States 1075
Godfrey *v.* Texas 906
Godinez; Booker *v.* 1036,1209
Goding; Treasuer, Trustees of Drury Indus. Health Care Plan *v.* 1250
Goforth *v.* Lappin 808
Goldblatt, *In re* 1153
Golden, *In re* 807,1082
Golden; Allen Group Partners *v.* 1010
Golden Meadows Properties, LC; Strand *v.* 1168
Gold Forever Music, Inc.; Pullman Group, LLC *v.* 1158
Goldman, Sachs & Co. *v.* NECA–IBEW Health & Welfare Fund 1228
Gomez *v.* Illinois 876
Gomez *v.* Neubauer 912
Gomez *v.* Sinclair 1175
Gomez; Smith *v.* 960
Gomez *v.* United States 859
Gomez-Hawkins *v.* United States 910
Gomez Torres *v.* Ryan 964
Gonyea; Dawkins *v.* 1179
Gonzaga Rodriquez *v.* United States 934
Gonzales *v.* California 1104
Gonzales; Chappell *v.* 928
Gonzales; Reyes *v.* 867
Gonzales; Ryan *v.* 57

Page
Gonzalez; Daniels *v.* 835
Gonzalez *v.* Department of Homeland Security 885,1044
Gonzalez *v.* Evans 921
Gonzalez; Fuentes *v.* 830
Gonzalez *v.* Hedgpeth 901
Gonzalez *v.* Jacquez 1254
Gonzalez; Onyewuchi *v.* 963
Gonzalez; Ordonez *v.* 965
Gonzalez; Thomas *v.* 831
Gonzalez; Thompson *v.* 1033,1188
Gonzalez *v.* United States 914,991,1019,1072,1214
Gonzalez-Aguilera *v.* Premo 1200
Gonzalez-Alvarez *v.* United States 1242
Gonzalez-Bello *v.* United States 1019
Gonzalez-Hernandez *v.* United States 907
Gonzalez-Martinez *v.* United States 1075
Gonzalez-Perez *v.* United States 875
Gonzalez-Trejo *v.* United States 907
Gonzalez Uribe *v.* United States 895
Good Bear *v.* Cobell 1005
Goodrich; Romero *v.* 1167
Goodrich *v.* U. S. District Court 914
Good Samaritan Hospital, L. P.; Fox *v.* 825
Goodwin, *In re* 812
Goodwin; Harris *v.* 1050
Goodwin *v.* United States 852,876
Gorbatova *v.* GLSS, Inc. 845,847
Gorbatova *v.* Greater Lynn Senior Services, Inc. 845,847
Gorbatova *v.* Hartstein 837
Gorbey *v.* West Virginia 898,1044,1129
Gordon, *In re* 1191
Gordon *v.* Wehrle 1028
Gore & Associates, Inc. *v.* C. R. Bard, Inc. 1138
Goree *v.* Mississippi 900
Gormley, P. C., *In re* 1084
Gorosave *v.* United States 1219
Gorospe *v.* Tibbals 1052
Gould *v.* Ohio 949
Gouveia *v.* United States 853
Government of Belize *v.* Belize Social Development Ltd. 882
Government of Lao Republic *v.* Thai-Lao Lignite Co. 1195
Government of Virgin Islands; Morton *v.* 1253
Government Printing Office; Stausbaugh *v.* 1082,1162
Governor of Cal.; Ringgold *v.* 1250

Page
Governor of Cal.; Williams *v.* 839
Governor of Ky.; Flint *v.* 815
Governor of Md.; McReady *v.* 998
Governor of Nev.; Scales *v.* 838
Governor of N. Y.; Rivera *v.* 856
Governor of Ore.; Barrett *v.* 965
Governor of R. I. *v.* United States 1122
Grabe; Minor *v.* 980
Graber; Mackey *v.* 1139,1222
Graff *v.* United States 1019
Grafmuller *v.* United States 993
Graham; Miller *v.* 1099
Graham; Williams *v.* 843,1077
Grajeda-Gonzalez *v.* United States 1110
Granados Gaitan *v.* Holder 978
Grandison *v.* Maryland 1093
Grant *v.* United States 968
Grantham *v.* Fakhoury 865
Granville County Bd. of Ed.; Justice *v.* 1252
Graphic Packaging International; Mayes *v.* 996
Grauberger *v.* Dooley 860,1116
Gravely *v.* Charleston 1198
Graves *v.* Knipp 987
Graves *v.* Swarthout 899
Graves *v.* United States 881
Gray *v.* Britten 877
Gray; Brown *v.* 1107,1259
Gray *v.* Citigroup Inc. 962
Gray *v.* Gipson 1051
Gray *v.* Palmer 1000
Gray *v.* United States 802,865,1148,1239
Greater Lynn Senior Services, Inc.; Gorbatova *v.* 845,847
Green *v.* Bledsoe 808
Green *v.* California 831
Green *v.* Florida 1221
Green *v.* GAP, Inc. 1252
Green *v.* Justices of Court of Criminal Appeals of Tex. 1190
Green *v.* Lockett 1205
Green *v.* Nassif 1011
Green *v.* Neven 1181
Green *v.* Texas 960
Green *v.* Thaler 960
Green *v.* United States 1201,1219
Greene *v.* Department of Justice 1003

Page
Greene; Richardson *v.* 896
Greene *v.* United States 954,994
Green Mountain Financial Fund, LLC; LaCroix *v.* 984
Greeno *v.* United States 922
Green Oak; Dubuc *v.* 1029
Greenough *v.* United States 875
Green Tree Servicing, LLC; Steele *v.* 815
Greenwell *v.* United States 1137
Greenwood *v.* Utah 1160
Greer *v.* Caruso 856
Greer *v.* Michigan 1216
Greer *v.* Thaler 1129
Gregory, *In re* 811,1122
Gregory *v.* Merit Systems Protection Bd. 918,1045
Gregory *v.* United States 1240
Grievance Committee of Eighth Jud. Dist. of N. Y.; David D. *v.* 903
Griffen *v.* United States 872
Griffin *v.* Bauman 872
Griffin *v.* Illinois 913
Griffin *v.* McGrady 1013
Griffin *v.* Shinseki 809,1083
Griffin *v.* Terry 1051
Griffin *v.* United States 909,1193
Griffin *v.* U. S. District Court 1106
Grimmer; Wiley *v.* 880
Grindling *v.* Thomas 901
Grinnage *v.* United States 955
Grogans *v.* United States 1003
Grondolsky; Cuevas *v.* 874
Grose *v.* United States 824
Groseclose *v.* Department of Navy 826
Gross; Vasquez Arroyo *v.* 864,1064
Groth; Patraw *v.* 979
Grounds; Arias *v.* 1167
Grounds; Briggs *v.* 1108
Grounds; Concepcion *v.* 1147
Grounds; Craig *v.* 1096
Grounds; Quintanilla *v.* 867
Grounds; Reed *v.* 1158
Grounds; Sledge *v.* 1014
Grounds; Walker *v.* 903
Groves *v.* Shinseki 1005
Grubin; Bongiovanni *v.* 838
Gruenberg *v.* Gempeler 1239

Page
Grummer *v.* United States 1113
Grupee *v.* United States 1002
Grynberg *v.* Ivanhoe Energy, Inc. 1124
Grynberg Production Corp. *v.* Susman Godfrey, L. L. P. 883
Guatay Christian Fellowship *v.* San Diego County 940
Guerrero; Noel *v.* 1097
Guerrero-Castro *v.* United States 1193
Guess *v.* United States 896,1093
Guiamelon *v.* California 980
Guillen *v.* Ollison 878
Guillion *v.* Cade 831,1042
Guittard Chocolate Co.; Acasio *v.* 840
Guleria; Esquivel *v.* 830
Gunn *v.* Minton 251,936
Guns & Ammo *v.* Harris 1232
Gunter *v.* United States 921
Gupta *v.* Walt Disney World Co. 1175
Gureghian *v.* Philadelphia Newspapers, LLC 1151
Gusman; Wagenfeald *v.* 886
Gustafson, *In re* 812
Gutierrez *v.* California 877
Gutierrez *v. In re* N. M. G. 1049
Gutierrez-Diaz *v.* United States 969
Gutierrez-Hernandez *v.* United States 993
Gutierrez-Perez *v.* United States 1055
Gutierrez-Pineda *v.* United States 1073
Gutierrez-Rodriguez *v.* United States 1185
Guttierrez; Fouche *v.* 1005
Guy *v.* Inglewood 1197
Guy *v.* Lexington-Fayette Urban County Government 980
Guy *v.* Morrow 1240
Guy *v.* Wilson 881
Guzman *v.* United States 875,923
Gwinnett County School Dist.; Stamps *v.* 998
G. W. Williams Co.; Prenatt *v.* 909
H. *v.* D. M. 1028
H. *v.* Public Guardian, Office of Public Advocacy 859
H. *v.* Shimko 1232
H. *v.* United States 978
Habyarimana *v.* Kagame 1232
Hackworth *v.* United States 1092
Hadden *v.* United States 813
Haddix *v.* Texas 1127
Hafter *v.* State Bar of Nev. 1010

Page
Hagen *v.* United States 824
Hager *v.* Michigan 855
Haggard *v.* Jackson 884
Hagins *v.* United States 876
Hagler *v.* United States 991
Hagood *v.* Reynolds 914
Haile *v.* Santa Rosa Memorial Hospital 832
Hairston *v.* United States 931
Hale *v.* North Dakota 1087
Hale *v.* United States 981
Hales *v.* United States 1202
Hall, *In re* 938
Hall *v.* Brunsman 853
Hall *v.* Cain 1114,1222
Hall; Felton *v.* 1129
Hall *v.* Florida 985
Hall; Gaytan *v.* 874
Hall; Harris *v.* 1231
Hall *v.* Hoke 1013
Hall *v.* Jones 913
Hall *v.* Kelly 832
Hall *v.* Kentucky 998
Hall *v.* Louisiana 912
Hall *v.* New York 855,1163
Hall *v.* Oregon Dept. of Corrections 1050,1246
Hall *v.* Peoples 881
Hall *v.* Sebelius 1085
Hall *v.* Texarkana 983
Hall *v.* Virga 987
Halliburton; Fisher *v.* 941
Halsey; Leskinen *v.* 887,1044
Hamby *v.* Montana 832
Hamby *v.* United States 849
Hameed *v.* United States 854
Hamilton *v.* Biter 1175
Hamilton *v.* Chicago Ins. Co. 1098,1222
Hamilton *v.* Junious 1169
Hamilton *v.* United States 1036
Hamlet; Chavarria *v.* 1126
Hamm *v.* Obama 803
Hammonds *v.* United States 1218
Hammoud *v.* United States 1177
Hamner *v.* United States 998
Hampton *v.* Ayers 913

Page
Hampton *v.* Cain 1026,1116
Hampton *v.* Methodist Healthcare System of San Antonio, Ltd. 1250
Hampton *v.* United States 1036
Hamrick; Wright *v.* 997
Hancock *v.* Clarke 899
Hancock *v.* United States 899
Hancock Life Ins. Co. (U. S. A.) *v.* Santomenno 978
Hand *v.* Director, Office of Workers' Compensation Programs . . 907,1044
Haney; Neeley *v.* 866
Hanible *v.* Pennsylvania 1091
Hanson, *In re* 810,997
Hanson *v.* California 875
Hanson *v.* Chang 810,999
Hanson; Ellis *v.* 817
Hanson; Neng Por Yang *v.* 862,1020
Haque *v.* United States 930,1078
Harari *v.* Hollmer 1144
Harbatkin *v.* New York City Dept. of Records & Information Servs. 1157
Harbaugh; Spires *v.* 834
Harbour Pointe Homeowners Assn.; Taylor *v.* 1162
Harden *v.* Maryland 831
Harden *v.* United States 1100
Hardick; John Crane, Inc. *v.* 1161
Hardin *v.* Monroe County 1154
Hardine *v.* Office and Professional Employees 961,1049
Harding *v.* Osborn 849,1116
Hardy *v.* Arizona 1127
Hardy; Coleman *v.* 1104
Hardy; James *v.* 983
Hardy; Trevino *v.* 894
Hardy *v.* West 842,1221
Harjo *v.* Florida 999
Harkleroad; Daza Gutierrez *v.* 901
Harkleroad; Scanlon *v.* 846
Harlick; Blue Shield of Cal. *v.* 1212
Harlick; California Physicians' Service *v.* 1212
Harlow; Maple *v.* 1011
Harman *v.* Bunch 887,1044
Harmer *v.* Brandon 1221
Harmon; Zajrael *v.* 966,1065
Harper, *In re* 1248
Harper *v.* Allen 849
Harper *v.* Farrell 901
Harper *v.* United States 1018

Page
Harr *v.* Brodhead 1114
Harrington; Caballero *v.* 999
Harrington *v.* Gibson 809
Harrington *v.* Harrington 827
Harrington *v.* United States 1244
Harris; Aaron *v.* 1002
Harris *v.* Atchison 1148
Harris *v.* Bernstein 985
Harris *v.* Caruso 945
Harris; Cole *v.* 816
Harris *v.* Felker 930
Harris; Florida *v.* 237
Harris *v.* Goodwin 1050
Harris; Guns & Ammo *v.* 1232
Harris *v.* Hall 1231
Harris; Jost *v.* 1070
Harris *v.* Kansas 893
Harris; National Assn. of Optometrists and Opticians *v.* 1157
Harris *v.* Progressive Casualty Ins. Co. 901
Harris *v.* QCA Health Plan, Inc. 810,1030,1150
Harris *v.* United States 956,1150,1219
Harris; Weaver *v.* 1232
Harris County Bail Bond Bd.; Pruett *v.* 944,1064
Harrison *v.* Capital Group Cos. 1069
Harrison *v.* Davis 1051
Harrison *v.* United States 914,1113,1242
Harry; Allen *v.* 1230
Harry; Morgan *v.* 1087
Hart; Adams *v.* 843
Hart *v.* Penske Truck Leasing Co. 1027
Hart *v.* Texas 815,1013
Hart *v.* United States 866
Hartley *v.* Florida 1049
Hartley; Jackson *v.* 1191
Hartley; Lawlor *v.* 1253
Hartley; Medina *v.* 1051
Hartley; Tate *v.* 1166
Hartman *v.* Robinson 1006,1007
Hartman *v.* Walsh 1007
Hartstein; Gorbatova *v.* 837
Hartwell *v.* Neven 867
Harvard *v.* Metra 814
Harvard *v.* Northeast Ill. Regional Commuter Railroad Corp. . . . 814
Harvest Institute Freedmen Federation, LLC *v.* United States 1042

Page

Harvey *v.* United States 895,1044,1134
Hasan *v.* United States 1073
Hassan *v.* Maricopa County Sheriff's Office 1128
Hasselbeck; Hassett *v.* 852
Hassett *v.* Hasselbeck 852
Hastings *v.* United States 1134
Hatcher *v.* United States 1219
Hatches *v.* United States 993,1209
Hatley *v.* United States 889
Haugen *v.* Oregon 1132
Hawaii; Ciacci *v.* 967,986,1053
Hawaii; Cummins *v.* 888
Hawaii; Samonte *v.* 1034
Hawaii Bd. of Ed.; Mussack *v.* 888
Hawk, *In re* 812,813
Hawkins *v.* Ohio 981
Haws; Gleason *v.* 879
Hayes *v.* Anderson 877
Hayes *v.* Chicago 888
Hayes *v.* Dormire 842
Hayes *v.* Illinois 901
Hayes *v.* Questar Capital Corp. 1090
Hayes *v.* United States 1259
Haynes, *In re* 812
Haynes *v.* Donahoe 1142
Haynes; Maye *v.* 1143
Haynes *v.* Thaler 970
Haynes *v.* United States 1164
Hays *v.* Gauley Bridge 1194
HealthBridge Management, LLC *v.* Kreisberg 1151
Heap *v.* United States 1125
Hearon *v.* California 987
Heath; Williams *v.* 1200
Heath *v.* Wojtowicz 860
Hebert *v.* Milyard 1230
Heck-Dance *v.* Inversiones Isleta Marina, Inc. 814
Hedgepath; Zosa Calvano *v.* 1170
Hedges *v.* Obama 1153
Hedges *v.* Rubin 1249
Hedgpeth; Brewer *v.* 964
Hedgpeth; Chavez *v.* 869
Hedgpeth; Gonzalez *v.* 901
Hedgpeth; Johnson *v.* 1031
Hedgpeth; Jordan *v.* 1198

Page
Hedgpeth; King *v.* 948
Hedgpeth; Perdomo *v.* 1217
Hedgpeth; Riley *v.* 864
Hedgpeth; Smart *v.* 871
Hedgpeth; Valencia *v.* 875
Hedgpeth; Vargas *v.* 944
Hedgpeth; Yokely *v.* 1218
Heerschap *v.* Heerschap 819
Heilman *v.* Coursey 951
Hekyong Pak *v.* Ridgell 1162
Heller *v.* Emanuel 816
Helton *v.* United States 993
Henard; Brahmana *v.* 1050
Henderson *v.* Bauman 855
Henderson; Johnson *v.* 881
Henderson; Kartiganer *v.* 966
Henderson *v.* McDonald 1175
Henderson *v.* Mississippi 1198
Henderson *v.* Nooth 1175
Henderson *v.* Pennsylvania 946
Henderson *v.* United States 266,810,961,1202
Henderson County Appraisal Dist.; Selgas *v.* 884,1020
Hendrick Automotive Group; Johnson *v.* 1001,1140
Hendrix *v.* Illinois 849
Hengjun Chao *v.* Mount Sinai Hospital 981
Henley; Brown *v.* 1089
Henneghan *v.* Roach 845
Hennessey, *In re* 938
Henriques *v.* United States 1221
Henriques Group, P. A. *v.* Bankers Lending Services, Inc. 1027
Henriquez *v.* United States 1258
Henry; Croft *v.* 1001
Henry; Dark Horse *v.* 1001
Henry; McCaskey *v.* 1214
Henry *v.* United States 851,877,1076,1149,1210
Henry Estates Homeowners Assn., Inc.; Miller *v.* 819
Hense; Reed *v.* 1097
Hensley; Young *v.* 942
Henson; Shepherd *v.* 818
Hepting *v.* AT&T Corp. 958
Hercules Drilling Co., L. L. C.; Beech *v.* 1193
Hereford Ins. Co.; O'Diah *v.* 1033
Hermiz; Matatall *v.* 1026
Hernandez, *In re* 1121

Page
Hernandez *v.* California 964
Hernandez *v.* Colorado 1015
Hernandez *v.* Evans 1013
Hernandez *v.* Holder 1257
Hernandez *v.* Thaler 851
Hernandez *v.* Tucker 945
Hernandez *v.* United States 865,953,1248,1259
Hernandez-Cabezas *v.* United States 925
Hernandez-Hernandez *v.* United States 865
Hernandez Jimenez *v.* United States 878
Hernandez Lopez *v.* California 1217
Hernandez-Ochoa *v.* United States 1093
Hernandez-Pavon *v.* United States 1184
Hernandez-Perez *v.* United States 1240
Hernandez-Rodriguez *v.* United States 1025
Herndon; Imperial *v.* 983
Herndon; Ramirez *v.* 1015
Herrera *v.* Almager 843
Herrera *v.* Cash 874
Herrera *v.* Churchill McGee, LLC 1028
Herrera *v.* United States 989,1091
Herrera-Castillo *v.* United States 969
Herrera-Delgado *v.* United States 995
Herrera-Lopez *v.* United States 992
Herrera-Montes *v.* United States 1012
Herring, *In re* 940
Herring; New Mexico *v.* 1086
Herrmann; Tarrant Regional Water Dist. *v.* 1081
Herron *v.* Crutcher-Sanchez 1160
Herron; Tompkins *v.* 1252
Herron *v.* Williams 1160
Hershberger; Tshiwala *v.* 807
Hess *v.* Illinois Attorney Registration and Disciplinary Comm'n 1161
Hess *v.* Ripperger 877
Hester *v.* Officer O. 854
Hettinga *v.* United States 1088,1209
Hewlett *v.* Holder 957
Heyne *v.* Florida 1000
Heyns; Owusu *v.* 906
Heyns; Porter *v.* 906
Heyns; White *v.* 1180
Heyward *v.* United States 1055
Hibbert *v.* Kelly 1050
Hibbler *v.* Benedetti 1172

Page
Hible *v.* United States 1242
Hickingbottom, *In re* 811,1116
Hickman *v.* Cameron 873
Hicks *v.* Birkett 854
Hicks *v.* United States 802
Hidrogo *v.* Texas 855
Hien Anh Dao, *In re* 1122,1189
Hieng *v.* United States 1055
Higdon *v.* United States 990
Higgins *v.* Consolidated Rail Corporation 851,1043
Higgs *v.* United States 1069
Hilario-Polanco *v.* United States 924
Hill, *In re* 1084
Hill *v.* Aranas 1049
Hill *v.* Cate 843
Hill *v.* Clarke 877
Hill; Gary *v.* 876
Hill *v.* Humphrey 1187
Hill; Humphrey *v.* 1189
Hill; Leroy *v.* 891
Hill *v.* Missouri 1092
Hill *v.* Muwwakkil 830
Hill *v.* Nationwide Mut. Ins. Co. 1197
Hill; Rhodes *v.* 1051
Hill *v.* Superior Court of Cal., Los Angeles County 1159
Hill *v.* United States 855,865,895,954,956,1019,1073,1112
Hill *v.* Walsh 1157
Hill *v.* White 836,1246
Hill; Whitmore *v.* 863,881,1116
Hill; Wise *v.* 949,1064
Hilliard *v.* Jacobs 998
Hilliard *v.* United States 1175
Hillman *v.* Maretta 1118
Hilton *v.* Washington 914
Himmelreich *v.* Federal Bureau of Prisons 987,1117
Hinds Community College; Akers *v.* 1010
Hines *v.* Kane 879
Hinojosa *v.* United States 941
Hinson *v.* United States 932
Hinton *v.* Bailey 898
Hinton *v.* United States 968
Hiramanek *v.* Hiramanek 1197
Hiramanek *v.* Superior Court of Cal., Santa Clara County 1197
Hirsch; Washington *v.* 1233

Page
Hirschfield *v.* Superior Court of Cal., Sacramento County 942
Histon *v.* Chappell 1126,1222
Hitachi Home Electronics (America), Inc. *v.* United States 1048
Hitchcock *v.* Tucker 988,1117
Hite *v.* Evans 1013
Ho *v.* Thaler 1250
Hoang Nguyen *v.* Thaler 907
Hobbs; Bower *v.* 1147,1259
Hobbs; Burgie *v.* 1182
Hobbs; Chandler *v.* 1120
Hobbs; Davis *v.* 870
Hobbs; McArty *v.* 920
Hobbs; Mendiola *v.* 896
Hobbs; Nickels *v.* 929,1199
Hobbs; Stallnacker *v.* 1105
Hobbs; Stephens *v.* 1238
Hobbs *v.* Tampkins 914
Hobbs *v.* United States 1105
Hobbs; Watkins *v.* 1035
Hobbs; Williams *v.* 846,871
Hobbs; Wright *v.* 1171
Hobbs; Young *v.* 1172
Hobby Lobby Stores, Inc. *v.* Sebelius 1401
Hodge *v.* Kentucky 1056
Hodge-Bannerman *v.* American Bar Assn. 1162
Hodgell *v.* United States 1258
Hodges *v.* Florida 1103
Hodges *v.* Jarvis 1258
Hodges *v.* Parker 1132
Hodges; Reasonover *v.* 1212
Hoeper; Air Wisconsin Airlines Corp. *v.* 1083
Hoffert *v.* Ryan 990
Hoffman *v.* Florida Dept. of Corrections 1033
Hoffman *v.* Lee 879,1097
Hoffman *v.* Stulga 891
Hoffman *v.* United States 1103
Hoke; Hall *v.* 1013
Holder; Adiele *v.* 1029
Holder; Anaya-Aguilar *v.* 1205
Holder; Baczynski *v.* 987
Holder; Bajanaar *v.* 913
Holder; Banse *v.* 860
Holder; Bazuaye *v.* 824
Holder; Bell *v.* 1136

Page
Holder; Bisong *v.* 1071
Holder; Black *v.* 985
Holder; Blanco-Avalos *v.* 950
Holder; Carandang Librojo *v.* 1159
Holder; Chaidy *v.* 1192
Holder; Cordova-Soto *v.* 1026
Holder; De La Rosa *v.* 1063
Holder; De Medeiros *v.* 986
Holder; Deyerberg *v.* 1088
Holder; Diallo *v.* 950
Holder; Djadjou *v.* 1068
Holder; Dover *v.* 939,1030
Holder; Effiom *v.* 1104
Holder; Garcia-Torres *v.* 814
Holder; Glenn *v.* 1228
Holder; Granados Gaitan *v.* 978
Holder; Hernandez *v.* 1257
Holder; Hewlett *v.* 957
Holder; Hwang *v.* 885
Holder; Iqbal *v.* 1231
Holder; John *v.* 1177
Holder; Kourouma *v.* 1071
Holder; Lewis *v.* 1159
Holder; Llorente *v.* 1071,1209
Holder; Lucas *v.* 885
Holder; Maldonado-Aguilar *v.* 878
Holder; Mejia *v.* 1170
Holder; Meza *v.* 1082,1126
Holder; Nelson *v.* 863
Holder; Nix *v.* 1010
Holder; Nunes *v.* 1001
Holder; Obomighie *v.* 951
Holder; Orellana Campos *v.* 839
Holder; Ouologuem *v.* 986
Holder; Owenga *v.* 1052
Holder; Pasicov *v.* 1193
Holder; Seale *v.* 1171
Holder; Shelby County *v.* 1006,1151
Holder; Sheppard *v.* 882
Holder; Sillah *v.* 1168
Holder; Smith *v.* 1022
Holder; Souleman *v.* 882
Holder; Tausere *v.* 1082
Holder; Taylor *v.* 922

Page
Holder; Thomas *v.* 944
Holder; Thompson *v.* 1004
Holder; Velasquez-Otero *v.* 977
Holder; Woldegiorgise *v.* 984
Holder; Yacaman Meza *v.* 1126
Holder; Yakubu *v.* 826
Holder; Zhenghao Liu *v.* 857
Holiday *v.* United States 1186
Holistic Candlers & Consumers Assn. *v.* FDA 962
Holland; Contreras *v.* 1137
Holland *v.* Holt 1048
Holland *v.* Michigan 815
Holland *v.* Monroe County Children and Youth Services 1032,1188
Holland *v.* United States 849
Holland; Wilkinson *v.* 1128,1222
Holley *v.* Tucker 952
Holliday *v.* Commonwealth Brands, Inc. 1161
Hollin *v.* United States 907
Hollingsworth; Aros *v.* 1074
Hollingsworth; Moore *v.* 1038,1189
Hollingsworth *v.* Perry 1066,1223
Hollins *v.* Illinois 1002
Hollins *v.* United States 1242
Hollis *v.* Lafler 831
Hollis-Arrington *v.* Cendant Mortgage Corp. 806
Hollmer; Harari *v.* 1144
Hollmon *v.* Woods 832
Holloway *v.* Lay 877
Holloway *v.* Magness 836
Holloway; Peyton *v.* 1174
Holloway; Totten *v.* 1071
Holloway *v.* United States 1055
Holly *v.* United States 872
Holmes *v.* Dreyer 855
Holmes *v.* King 1071
Holmes; Mosby *v.* 1199
Holmes *v.* Shoreline 876
Holmes *v.* Texas 899
Holmes *v.* United States 941,957,1115
Holston *v.* Tucker 859,1221
Holston Investments, Inc. B. V. I.; LanLogistics, Corp. *v.* 974
Holt *v.* Clarke 1129
Holt; Fontanez *v.* 905
Holt; Holland *v.* 1048

Page
Holt; Leech *v.* 858
Holt *v.* United States 1181
Holton *v.* United States 866
Holyfield *v.* United States 925
Holz *v.* McFadden 899
Honarmand *v.* J. C. Penney 896,1139
Honeoye Falls-Lima Central School Dist.; Malcolm *v.* 1144
Honesto *v.* Adams 899,1044
Honesto *v.* Fogel 929,1045
Honey *v.* Virginia 989
Hong Doan *v.* United States 1192
Hood *v.* North Carolina 1030
Hood *v.* Texas 832
Hooker *v.* California 831,1063
Hoosier Racing Tire Corp. *v.* Race Tires America, Inc. 825
Hoover; Da Vang *v.* 1003
Hope *v.* United States 895
Hopkins *v.* Springfield Housing Authority 1052
Hopkins *v.* United States 1067,1073
Hopson *v.* Kansas 854
Horel; Blackmon *v.* 840,1043
Horel; Buford *v.* 1094
Horel; Carrasco *v.* 947
Horel; Crummer *v.* 835
Horel; German *v.* 1132
Hormachea *v.* Florida Dept. of Corrections 898
Horn *v.* United States 934
Hornbeck; Potter *v.* 832
Horne *v.* Department of Agriculture 1021
Horne; Kotzeva *v.* 1088
Horne *v.* United States 1076
Horne; Willoughby *v.* 899
Hornick *v.* United States 1181
Horton; Johnson *v.* 1106
Horton, Inc., *v.* Lyndoe 1229
H. O. S. *v.* United States 1256
Hoskins *v.* North Carolina 1013
Hoskins *v.* United States 1186
Hosseini *v.* United States 1011
Hough *v.* Regions Financial Corp. 942
Houghton *v.* Cain 1012
Houk; Jackson *v.* 1164
House, *In re* 937
House *v.* United States 1249

Page
Household Finance Corp., III; Pickens *v.* 1158
House of Brides; Randle *v.* 1024
Houston *v.* California 1234
Houston *v.* Dow Lohnes PLLC 1028
Houston; Lancaster *v.* 1200
Houston; On *v.* 1215
Houston *v.* Perry 1052
Houston Independent School Dist.; Ruffin *v.* 873,1064,1171
Hovem *v.* Klein Independent School Dist. 1231
Howard *v.* Arkansas 981
Howard *v.* California 1145
Howard; Cook *v.* 1230
Howard *v.* Evans 830
Howard *v.* Howard 1127,1222
Howard *v.* Joseph 1226
Howard; Nitro-Lift Technologies, L. L. C. *v.* 17
Howard *v.* United States 1258
Howell *v.* California 900
Howell; Crews *v.* 1210
Howell *v.* Texas 854
Howerton; Cox *v.* 1010,1139
Howes; Cherry *v.* 952
Howes; Threet *v.* 1099
Hoyle; White *v.* 1168
Hoyt *v.* Cooks 817
HSBC Bank USA, N. A.; Pennington *v.* 1161
HSBC Mortgage Corp.; Parham *v.* 1025
Hua, *In re* 1156
Huang *v.* Napolitano 1193
Huang *v.* United States 1075
Hubbard; Anzalone *v.* 964
Huber *v.* United States 855
Huck *v.* Norman 909
Huddleston *v.* United States 1088
Hudgins *v.* Cartledge 1197
Hudson *v.* United States 859
Hudson County Child Support Unit; Rhett *v.* 1070,1150
Hudson Refinery; Davis *v.* 1247
Huebler *v.* Nevada 1147
Huerta *v.* United States 1242
Huerta Guillen *v.* Ollison 878
Huet *v.* United States 941
Huezo *v.* California 1238
Huffman *v.* Union Pacific R. Co. 1086

Page
Huggins; Pugh *v.* 1215
Hughes, *In re* 1021
Hughes *v.* Chevron Phillips Chemical Co. LP 976,1114,1246
Hughes *v.* Clarke 1051
Hughes *v.* Dallas 877
Hughes *v.* Minnesota 1097
Hughes *v.* Texas 1021
Hughes *v.* United States 1181
Hugueley *v.* Tennessee 808,1051,1189
Huitron-Guizar *v.* United States 893
Hulett; Joslin *v.* 1166
Hulihan *v.* Circle K Stores 821,1042
Humbert *v.* United States 932
Humphrey; Cook *v.* 1146,1189,1190
Humphrey; Esposito *v.* 982
Humphrey *v.* Florida Dept. of Corrections 855
Humphrey *v.* Hill 1189
Humphrey; Hill *v.* 1187
Humphrey; Pugh *v.* 1178
Humphrey; Williams *v.* 982
Hunt *v.* Cassese 877
Hunt *v.* Rand 876
Hunt *v.* Thomas 1012
Hunt *v.* United States 871
Hunt *v.* Yates 905
Hunter *v.* Bondi 1000
Hunter; Cavins *v.* 880
Hunter *v.* Lester Kalmanson Agency, Inc. 1015
Hunter *v.* Louisiana 875
Hunter *v.* North Carolina 1175
Hunter *v.* Owens 875
Hunter *v.* Virginia 1252
Huntley, *In re* 1082
Hurd *v.* Texas 1012
Hurst *v.* Crews 1128
Hurtgam *v.* Lyndonville Central School Dist. 816
Husain *v.* Mahmood 821
Hussein *v.* Nevada System of Higher Ed. 821
Husted *v.* Obama for America 970
Hustler Magazine; Toffoloni *v.* 1068
Huston *v.* United States 860
Hutchins *v.* United States 1220
Hutchinson *v.* Florida 947
Hutto; McNeil-PPC, Inc. *v.* 959

Page

Huu Pham *v.* United States 1242
Huy Troung Bui *v.* Texas 1147
Hwang *v.* Holder 885
Hyde *v.* Commissioner 1091
Hyde *v.* United States 1055
Hylind *v.* Xerox Corp. 1160
Hyman *v.* Cornell Univ. 1161
Ibale *v.* Safeway Inc. 831
Ibarra *v.* United States 849
Ibarra Munoz *v.* Maye 1074
Ibarra-Soto *v.* United States 849
Ibeh *v.* United States 925
IBM (International Business Machines); MacEntee *v.* 1150
Ice *v.* United States 955
Icicle Seafoods, Inc. *v.* Clausen 823
Idaho; Adamcik *v.* 839
Idaho; Delling *v.* 1038
Idaho Dept. of Health and Welfare; McCormick *v.* 1249
Ijewere *v.* United States 900
Illinois; Aguilar *v.* 1167
Illinois; Aspelmeier *v.* 1224
Illinois; Atterberry *v.* 833
Illinois; Baggett *v.* 1254
Illinois; Bahena *v.* 882
Illinois; Bassett *v.* 950
Illinois; Beverly *v.* 1235
Illinois; Bo Liu *v.* 979
Illinois; Brennan *v.* 1162
Illinois; Brown *v.* 839,1234
Illinois; Buchanan *v.* 1170
Illinois; Carson *v.* 924
Illinois; Carter *v.* 1130
Illinois; Clark *v.* 835
Illinois; Coats *v.* 831
Illinois; Cooper *v.* 946
Illinois; Cortez-Melo *v.* 1217
Illinois; Croom *v.* 1177
Illinois; Delgado *v.* 1191
Illinois; Dukes *v.* 986
Illinois; Durr *v.* 947
Illinois; Fels *v.* 842,1077
Illinois; Franklin *v.* 905,1197
Illinois; Garcia *v.* 872
Illinois; G. A. W. *v.* 827

Page
Illinois; Gay *v.* 881
Illinois; Gomez *v.* 876
Illinois; Griffin *v.* 913
Illinois; Hayes *v.* 901
Illinois; Hendrix *v.* 849
Illinois; Hollins *v.* 1002
Illinois; Jonathon C. B. *v.* 827
Illinois; Klincar *v.* 967
Illinois; Mathis *v.* 925
Illinois; McKinney *v.* 1014
Illinois; Murdock *v.* 900
Illinois; Nelson *v.* 840
Illinois; Nesbitt *v.* 844
Illinois; Parker *v.* 1253
Illinois; Pate *v.* 1179
Illinois; Patterson *v.* 1214
Illinois; Pruitt *v.* 1234
Illinois; Refine *v.* 1094
Illinois; Restivo *v.* 965
Illinois; Richter *v.* 1234
Illinois; Riles *v.* 1237
Illinois; Salas *v.* 890
Illinois; Sanchez *v.* 1130
Illinois; Sanders *v.* 985
Illinois; Scaggs *v.* 984
Illinois; Scott *v.* 1097
Illinois; Sherman *v.* 1144
Illinois; Shipp *v.* 1127
Illinois; Smith *v.* 838
Illinois; Thompson *v.* 1254
Illinois; Umphrey *v.* 862
Illinois; Washington *v.* 985
Illinois; Weeks *v.* 876
Illinois Attorney Registration and Disciplinary Comm'n; Hess *v.* 1161
Illinois Dept. of Human Rights; Wiley *v.* 998
Illinois *ex rel.* Glasgow; Drew *v.* 944
Illinois *ex rel.* Illinois Dept. of Human Rights; Wiley *v.* 998
Illinois Lottery Control Bd.; Cooper *v.* 1024
Illinois State Bd. of Elections; Radogno *v.* 801
Imperial *v.* Herndon 983
Imperial Irrigation Dist.; Cuatro Del Mar *v.* 885
I'm Ready Productions, Inc.; Baisden *v.* 1229
Inamed Corp.; Juris *v.* 1124
Indiana; Allen *v.* 845,1063

Page
Indiana; Clemons *v.* 1032
Indiana; Davis *v.* 912
Indiana; FreeEats.com, Inc. *v.* 825
Indiana; K. C. *v.* 1230
Indiana; Kohlmeyer *v.* 1053
Indiana; Mitchell *v.* 914
Indiana; Rohr *v.* 821
Indiana; Singleton *v.* 842
Indiana; Villalon *v.* 1047
Indiana Family and Social Servs. Admin.; New Horizon Dev. Ctr. *v.* 825
Indiana Family and Social Servs. Admin.; Woodruff *v.* 825
Infante-Cabrera *v.* Walton 903
ING Bank; Rader *v.* 1158
Ingersoll; Douglas *v.* 902
Inglewood; Guy *v.* 1197
Ingram, *In re* 1023
Ingram *v.* Texas 843
Ingram *v.* United States 921
Ingwerson; Thomas *v.* 1072
Inman *v.* Clark 850,1063
Inman *v.* South Carolina 863
Innovative Therapies, Inc. *v.* Kinetic Concepts, Inc. 818
In re. See also name of party.
In re N. M. G.; Gutierrez *v.* 1049
Instituto Costarricense de Electricidad *v.* United States 1076
Inter-Con Security Systems, Inc.; Anderson *v.* 1226
Internal Revenue Service; Trivedi *v.* 845
International. For labor union, see name of trade.
International Business Machines Corp.; Webb *v.* 932
International Fiber Corp.; Jackson *v.* 814
International Trade Comm'n; John Mezzalingua Associates, Inc. *v.* 940
International Trade Comm'n; Ninestar Technology Co., Ltd. *v.* 1249
International Trade Comm'n; PPC *v.* 940
Inter Tribal Council of Ariz., Inc.; Arizona *v.* 962,1121,1155
Inversiones Isleta Marina, Inc.; Heck-Dance *v.* 814
Iorio *v.* United States 809,970
Iowa; K. C. *v.* 1161
Iowa; Scott *v.* 948
Iowa Dept. of Corrections; Scott *v.* 871
Iqbal *v.* Holder 1231
Iran *v.* McKesson Corp. 1229
Irene *v.* Massachusetts 968
Isabella Geriatric Center, Inc.; Gerber *v.* 1103,1210
Isais *v.* United States 1195

Page
Isais Esparza *v.* United States 1195
Islam *v.* Scutt 872
Islamic Republic of Iran *v.* McKesson Corp. 1229
Ismay *v.* United States 879,1043
Israel *v.* United States 1149
Italian Colors Restaurant; American Express Co. *v.* 1006,1152
Ivanhoe Energy, Inc.; Grynberg *v.* 1124
Ives; Marrero *v.* 1173
Ives; Thornton *v.* 1251
Ivey; American Timber & Steel Co. *v.* 1124
ivi, Inc. *v.* WPIX, Inc. 1245
Izatt *v.* United States 905
Izquierdo *v.* United States 1242
J. *v.* Mental Health Bd. of Fourth Judicial Dist. 1092
J. *v.* Orange County Dept. of Social Services 869
Jabal *v.* United States 921
Jack *v.* Navy Federal Credit Union 1167
Jackson *v.* Barrow 1032
Jackson *v.* Booker 809
Jackson *v.* Doory 1236
Jackson *v.* Felker 1165
Jackson *v.* Georgia 1236
Jackson; Haggard *v.* 884
Jackson *v.* Hartley 1191
Jackson *v.* Houk 1164
Jackson *v.* International Fiber Corp. 814
Jackson *v.* Kansas 891
Jackson; Klein *v.* 998
Jackson *v.* Louisiana 871
Jackson *v.* North Carolina 846
Jackson *v.* Perry 1001
Jackson *v.* Rapelje 1014
Jackson *v.* Robinson 1145
Jackson *v.* Taylor 894
Jackson *v.* Texas 820
Jackson *v.* Thaler 865
Jackson *v.* United States 828,
920,1009,1037,1111,1150,1176,1180,1183,1202,1203,1220,1241
Jackson; Waddell *v.* 952
Jackson *v.* Warren 903
Jackson *v.* Watford 984
Jackson; Williams *v.* 948
Jackson; Wright *v.* 1237
Jackson; Wright El *v.* 1237

Page
Jacobs; Hilliard *v.* 998
Jacobs *v.* Louisiana 838
Jacques *v.* United States 1113
Jacquez; Gonzalez *v.* 1254
Jacquez; Juarez *v.* 890
Jacquez; Mora *v.* 1199
Jacquez; Pryce *v.* 837
Jacquez; Williams *v.* 922
Jaffe *v.* Pregerson 1211
Jahanian *v.* Thaler 1082
Jaimes *v.* United States 1229
Jaimez Reyes *v.* Kane 1252
Jallali *v.* Nova Southeastern Univ., Inc. 1250
Jallali *v.* United States 1089
Jalowiec *v.* Robinson 828
James, *In re* 1142
James *v.* Cain 945
James *v.* California 870,1043
James *v.* Hardy 983
James; Ryan *v.* 1224
James *v.* Texas 1165
James *v.* United States 1005,1036
James *v.* U. S. Secret Service 1147
James-Bey *v.* North Carolina 1247
Jameson *v.* Beard 1225
Jamison *v.* Robinson 987
Janda; Basquez *v.* 1160
Janecka; Dombos *v.* 1200
Janesville; Barlass *v.* 946,1077
Jangula *v.* United States 925
Janoe *v.* State Bar of Cal. 1127
Japan; Kenney *v.* 1213
Jar Chen Wang *v.* Plasmart, Inc. 1144
Jarden Consumer Solutions *v.* Chicago American Mfg., LLC 1076
Jarrett; McLeod *v.* 836
Jarrett *v.* United States 1183
Jarriel; McClellan *v.* 916
Jarvis; Andrews *v.* 1055
Jarvis; DeGlace *v.* 1042,1151
Jarvis; Hodges *v.* 1258
Jasper *v.* Securities and Exchange Comm'n 1212
Jasper *v.* Thaler 1069
Jaworski *v.* Tucker 1031
J. C. *v.* Butler County Children and Youth Services 886,1044

Page
J. C. B. *v.* Pennsylvania State Police 1191
J. C. Penney; Honarmand *v.* 896,1139
Jean-Baptiste, *In re* 939
Jean-Guerrier *v.* United States 878
Jeanlouis *v.* Cain 1171
Jean-Louis *v.* Massachusetts 1174
Jean-Phillipe *v.* United States 1137
Jeff; Kassab *v.* 841
Jefferson *v.* United States 1041,1108
Jeffries *v.* United States 934
Jeffus *v.* Crews 1138
Jelks *v.* United States 1101
Jenkins *v.* Alabama 1252
Jenkins *v.* Bryant 1027
Jenkins *v.* Smelosky 945
Jenkins *v.* United States 1101,1107
Jenkins *v.* Virginia 839
Jennifer S. Gormley, P. C., *In re* 1084
Jennings *v.* Florida 1100
Jennings *v.* Texas 871
Jennings *v.* United States 914,1163
Jensen *v.* Texas 1073
Jernard *v.* Owens 1255
Jerome; Lindensmith *v.* 1146
Jerrell *v.* Texas 983
Jesse E. Brannen, III, P. C. *v.* United States 999
Jewell; Porter *v.* 1046
Jewusiak *v.* Sandy Kaye Condominium Assn., Inc. 978,1116
JIA Jewelry Importers of America, Inc. *v.* Pandora Jewelry, LLC 1157
Jiang *v.* United States 1004
Jiau *v.* United States 1153
Jiayang Hua, *In re* 1156
Jiggetts *v.* New York City 863
Jiggetts *v.* New York City Human Resources Administration . . . 1235
Jihui Zhang *v.* Federation of State Medical Bds. 1068
Jimenez *v.* Clark 1170
Jimenez *v.* Lee 1200
Jimenez *v.* Rowe 1131
Jimenez *v.* Sun Life Assurance Co. of Canada 1162
Jimenez *v.* Texas 1085
Jimenez *v.* United States 878
Jimenez-Espinoza *v.* United States 923
Jingles *v.* United States 1257
Jinwright *v.* United States 1093

Page
Jividen *v.* Applegate 1103
J&M Associates, Inc.; Romero *v.* 1158
J. M. M.; A. P. *v.* 1174
J. O. *v.* C. L. S. 1155,1259
John *v.* Holder 1177
John *v.* United States 1163
John Crane, Inc. *v.* Hardick 1161
John D. Dingle Veterans Hospital Medical Center; Murray *v.* 1200
John Hancock Life Ins. Co. (U. S. A.) *v.* Santomenno 978
John Mezzalingua Associates, Inc. *v.* International Trade Comm'n 940
Johns Hopkins Univ.; Kerr *v.* 1124
Johnson, *In re* 812,1122,1191
Johnson; Adkins *v.* 948,1045
Johnson *v.* Arizona 1092
Johnson; Arlotta *v.* 819
Johnson *v.* British Petroleum of America 1100,1222
Johnson *v.* Bryant 1124
Johnson *v.* California 966,1117,1165
Johnson *v.* Cate 804
Johnson *v.* Chavez 1241
Johnson *v.* Florida 1174
Johnson *v.* Florida Dept. of Corrections 1054,1189
Johnson *v.* Georgia 985
Johnson *v.* Hedgpeth 1031
Johnson *v.* Henderson 881
Johnson *v.* Hendrick Automotive Group 1001,1140
Johnson *v.* Horton 1106
Johnson; Jones *v.* 1255
Johnson *v.* Kerns 871
Johnson *v.* Knipp 862
Johnson *v.* Lea 966
Johnson *v.* Lindamood 999
Johnson *v.* Lopez 1013
Johnson *v.* Maes 1131
Johnson *v.* Massachusetts 948
Johnson *v.* Mercer 1102
Johnson *v.* Mississippi 837
Johnson *v.* New Jersey 1217
Johnson *v.* New York 827,951
Johnson *v.* Ogletree, Deakins, Nash, Smoak & Stewart, P. C. . . 1001,1188
Johnson *v.* Ohio 1127,1222
Johnson *v.* Oklahoma 822
Johnson *v.* Orange County 1146
Johnson *v.* Parker 1174

Page
Johnson *v.* Paynesville Farmers Union Cooperative Oil Co. 1159
Johnson *v.* Pennsylvania 806
Johnson *v.* Securities and Exchange Comm'n 809,1083,1212
Johnson; Sherrod *v.* 939,1030
Johnson *v.* Sherry 841
Johnson *v.* Sisto 863
Johnson *v.* Swarthout 844
Johnson *v.* Texas 834,985
Johnson *v.* United States 858, 861,880,896,897,922,924,941,988,991,993,1017,1036,1100,1112, 1115,1177,1243,1256
Johnson *v.* Varga 1173
Johnson; Versatile *v.* 1172
Johnson *v.* Wall 917
Johnson *v.* Washington 1166
Johnson *v.* White 1168
Johnson *v.* Williams 289
Johnson *v.* Wolfenbarger 880
Johnson *v.* Zimmer 1087
Johnston; Chung *v.* 883
John Wiley & Sons, Inc.; Bluechristine99 *v.* 519,939
John Wiley & Sons, Inc.; Kirtsaeng *v.* 519,939
Joliet; New West, L. P. *v.* 928
Jonassen *v.* United States 1134,1182
Jonathon C. B. *v.* Illinois 827
Jones *v.* Astrue 1125
Jones *v.* Bauman 846
Jones; Bell *v.* 1183
Jones *v.* Bonevelle 837
Jones; Bowen *v.* 846
Jones *v.* California 804,875
Jones *v.* Castillo 1258
Jones *v.* Cate 901
Jones *v.* Cawley 939
Jones; Chiles *v.* 1086
Jones *v.* CitiMortgage, Inc. 895
Jones *v.* Clawson 1177
Jones; Daniels *v.* 1001,1117
Jones *v.* Federal Bureau of Prisons 1091
Jones *v.* Florida 806,1025,1033
Jones *v.* Florida Dept. of Corrections 873
Jones; Garner *v.* 908
Jones; Hall *v.* 913
Jones *v.* Johnson 1255

Page

Jones *v.* Kirkpatrick 875
Jones *v.* Knowles 1168
Jones *v.* Lopez 1013
Jones *v.* Louisiana Bd. of Parole 1101
Jones; McCoy *v.* 847
Jones *v.* McDaniel 1234
Jones *v.* Missouri 1102
Jones *v.* Missouri Dept. of Corrections 1014
Jones *v.* Murphy 1165
Jones *v.* Nooth 985
Jones *v.* Ochoa 950
Jones; Packer *v.* 1070
Jones; Palecek *v.* 1131
Jones; Pemberton *v.* 949
Jones *v.* Pennsylvania Bd. of Probation and Parole 1167
Jones; Pew *v.* 863
Jones; Robledo *v.* 912
Jones *v.* Ruiz 911
Jones; Tabansi *v.* 863
Jones *v.* Texas 889
Jones *v.* Thomas 845,1077
Jones; Thomas *v.* 1169
Jones *v.* Tucker 851
Jones *v.* Union City 1043
Jones *v.* United Parcel Service, Inc. 883
Jones *v.* United States 873, 911,914,918,926,927,990,1073,1109,1113,1136,1174,1177,1180, 1184,1220,1243,1257
Jones *v.* University of Hawaii 885
Jones *v.* University of Rochester 1102,1222
Jones *v.* Washington 1216
Jones; Whitmore *v.* 1172
Jones *v.* Wingard 904
Jones-El *v.* Webster 1165
Jordan *v.* Hedgpeth 1198
Jordan *v.* Supreme Court of La. 1123
Jordan *v.* Tennessee 807
Jordan *v.* United States 932,933
Jordan *v.* Wiley 920
Jordan Video, Inc.; Kaytel Video Distribution *v.* 817
Jordan Video, Inc.; 144942 Canada, Inc. *v.* 817
Joseph *v.* Arizona 1127
Joseph; Howard *v.* 1226
Joseph *v.* United States 1113

Page
Josephine County; Bruner *v.* 820
Joslin *v.* Hulett 1166
Jost *v.* Harris 1070
Jovani Fashion, Ltd. *v.* Fiesta Fashions 1230
Joyner, *In re* 1025,1189
JP Builders, Inc. *v.* Leebove 819
JPMorgan Chase Bank; Williams *v.* 959,1118
JPMorgan Chase Bank, N. A.; Mitrano *v.* 1082
JPMorgan Chase & Co.; Fisher *v.* 1019
Juarez *v.* Jacquez 890
Juarez-Olvera *v.* United States 1205
Judge, Circuit Court of Mo., Greene Cty.; Airservices Australia *v.* 1229
Judge, Circuit Court of Mo., Greene Cty.; Bieri *v.* 1154
Judge, Circuit Court of Mo., St. Charles Cty.; LaRose *v.* 879
Judge, Circuit Court of Va., 10th Judicial Circuit; Harding *v.* . . 849,1116
Judge, Circuit Court of W. Va., Cabell Cty.; Harper *v.* 901
Judge, Civil District Court Parish of Orlean; Guillion *v.* 831,1042
Judge, Court of Common Pleas, Richland Cty.; Shepherd *v.* 818
Judge, Court of Common Pleas, 23d Judicial District; Davis *v.* . . . 949
Judge, First Circuit Court of Haw.; Hanson *v.* 810,999
Judge, First Judicial District of Idaho, Kootenai Cty.; Driggers *v.* 1170
Judicial Clerkship of Supreme Court of Mo.; Swoboda *v.* 1172
Judy *v.* Obama 904,1116
Jules *v.* United States 1173
Jules Jordan Video, Inc.; Kaytel Video Distribution *v.* 817
Jules Jordan Video, Inc.; 144942 Canada, Inc. *v.* 817
Junious; Hamilton *v.* 1169
Junious *v.* Thaler 1098
Junkin *v.* Florida 1029
Juris *v.* Inamed Corp. 1124
Justice *v.* Granville County Bd. of Ed. 1252
Justices of Court of Criminal Appeals of Tex.; Green *v.* 1190
Justice, Supreme Court of Iowa; Carlson *v.* 885
Juvenile Male *v.* United States 868
Kadien; Freeman *v.* 1052
Kagame; Habyarimana *v.* 1232
Kagan; Caldwell *v.* 931,1020
Kaiser Aluminum Corp.; Faison *v.* 1120
Kaley *v.* United States 1227
Kalmanson Agency, Inc.; Hunter *v.* 1015
Kaminsky *v.* United States 1137
Kane; Glenn *v.* 1154
Kane; Hines *v.* 879
Kane; Jaimez Reyes *v.* 1252

Page
Kansas; Anderson *v.* 982
Kansas; Capogrosso *v.* 884
Kansas *v.* Cheever 1192
Kansas; Davis *v.* 861
Kansas; Garza *v.* 875,1116
Kansas; Gilliland *v.* 1176
Kansas; Harris *v.* 893
Kansas; Hopson *v.* 854
Kansas; Jackson *v.* 891
Kansas; Loggins *v.* 834
Kansas *v.* Nebraska 961
Kansas; Roeder *v.* 845,1063
Kapetanakis *v.* First National Ins. Co. of America 1087
Kapordelis *v.* Gainesville Surgery Center 839
Kappos; Beineke *v.* 1158
Kappos; Collins *v.* 885
Kappos; Cornish *v.* 1213
Kappos; Montgomery *v.* 1068
Kappos; Rudy *v.* 819
Kappos; Three-Dimensional Media Group, Ltd. *v.* 1085
Kappos; Transaction Holdings, Ltd. *v.* 1125
Karim *v.* United States 916
Kartano; Cleaver-Bascombe *v.* 828
Kartiganer *v.* Henderson 966
Karuk Tribe of Cal.; New 49'ers, Inc. *v.* 1228
Kassab *v.* Jeff 841
Katare *v.* Katare 1090
Kates *v.* King 1071
Kawache *v.* United States 825
Kaytel Video Distribution *v.* Jules Jordan Video, Inc. 817
K. C. *v.* Indiana 1230
K. C. *v.* Iowa 1161
K. D.; Solana Beach School Dist. *v.* 1026
Kearney *v.* United States 1223
Kearse *v.* Thaler 904
Keating *v.* Coatesville VA Medical Center 1255
Kebodeaux; United States *v.* 1119,1211
Keck *v.* Virginia 943
Keeling *v.* Brunsman 839
Keeling *v.* Damiter 804
Keels *v.* United States 1185
Keen *v.* United States 999
Keenan *v.* First California Bank 1124
Keeney *v.* Ballard 953

Page
Keffer; Bell *v.* 852
Keffer; Cotton *v.* 993
Keffer; Marshall *v.* 1166
Keffer; Woodard *v.* 993
Keith; Cross *v.* 1236
Keith; Freisinger *v.* 1033
Keller; Bartlett *v.* 894
Keller; Brown *v.* 1002
Keller *v.* Crown Cork & Seal USA, Inc. 1230
Keller; Deyton *v.* 1145
Keller; Powell *v.* 877
Kelley, *In re* 812
Kelley; Blocker *v.* 807
Kelley *v.* United States 810,878,1011,1043
Kelly; Bass Pro Outdoor World, LLC *v.* 1122
Kelly; Chilton *v.* 1236
Kelly; Coulter *v.* 883,1044
Kelly; Hall *v.* 832
Kelly; Hibbert *v.* 1050
Kelly *v.* Tennessee 1015
Kelly *v.* United States 1016
Kelly; Waliyud-Din *v.* 857
Kelly *v.* Williams 1163
Kelly; Yates *v.* 1166
Kelso *v.* United States 916
Kemna; Kennedy *v.* 1012
Kemna; Walker *v.* 850
Kemppainen *v.* Texas 937,1025
Kendrick *v.* Cavanaugh 966,1117
Kendrick *v.* McLaren 848
Kendrick *v.* U. S. District Court 898
Kenemore *v.* Roy 1106
Kennedy *v.* Kemna 1012
Kennedy *v.* United States 954
Kenner *v.* Mercer 844
Kenney *v.* Japan 1213
Kenney *v.* Luc 1069
Kent Cadillac; Valdez *v.* 820
Kent Motor Co.; Valdez *v.* 820
Kentucky; Carter *v.* 860
Kentucky; Hall *v.* 998
Kentucky; Hodge *v.* 1056
Kentucky; Leatherman *v.* 843
Kentucky; Meece *v.* 828

Page
Kentucky; Pryor *v.* 908
Kentucky; Runner *v.* 820
Kentucky Bd. of Medical Licensure; Quatkemeyer *v.* 1251
Kentucky Office of Homeland Security; American Atheists, Inc. *v.* 1228
Kenworthy; Mitchell *v.* 1102
Kerestes; Parham *v.* 1178
Kerestes; Smolsky *v.* 922
Kernan; Dixon *v.* 834
Kernell *v.* United States 826
Kerns *v.* Board of Comm'rs of Bernalillo County, N. M. 809,1026
Kerns; Johnson *v.* 871
Kerns; Rogers *v.* 1033
Kerr *v.* Johns Hopkins Univ. 1124
Kessler *v.* Premo 911
Ketron *v.* United States 838
Ketterer *v.* Yellow Transportation, Inc. 817
KeyCorp *v.* Sollitt 823
K. F. *v.* Utah 962,1049
Khaksari *v.* Chairman, Broadcasting Bd. of Governors 819
Khan *v.* Normand 1085
Kia Motors of America; Davis *v.* 878,1043
Kidd *v.* Norman 838
Kidd *v.* United States 881
Kidwell *v.* Eisenhauer 963
Kieffer *v.* United States 1149
Kiehle *v.* Cortland County 1228
Kiel; Muthukumar *v.* 1248
Kiggundu *v.* Mortgage Electronic Registration Systems Inc. 824
Kilburn *v.* Spencer 923
Kim, *In re* 811,1043,1066
Kim *v.* Borgata Hotel Casino & Spa 1160
Kim *v.* Marina District Development Co., LLC 1160
Kim *v.* Ritter 1143
Kim *v.* Village at Eagle Creek Homeowners Assn. 825
Kimberly-Clark Corp. *v.* Alabama Dept. of Revenue 1138
Kimbrell *v.* Butts 1198
Kincaid *v.* Smith 1024
Kinetic Concepts, Inc.; Innovative Therapies, Inc. *v.* 818
King *v.* Florida 964
King *v.* Hedgpeth 948
King; Holmes *v.* 1071
King; Kates *v.* 1071
King; Lyons *v.* 1001
King; Maryland *v.* 1006,1152

Page
King; Nordyke *v.* 1085
King; Taylor *v.* 1195
King *v.* Texas 985
King *v.* United States 856,862,863,890,916,926,933,995,1045,1091
King; Zamiara *v.* 1150
Kirby *v.* United States 1018
Kirkegard; Ariegwe *v.* 1071
Kirkegard; Payne *v.* 995
Kirkland; Oyster Bay *v.* 1213
Kirkland; Rojas *v.* 897
Kirkland; Spencer *v.* 1035
Kirkpatrick; Ennis *v.* 875
Kirkpatrick; Jones *v.* 875
Kirkpatrick; O'Kane *v.* 830
Kirkpatrick *v.* Texas 841
Kirley; O'Brien *v.* 823
Kirshenbaum, *In re* 938,1141
Kirtsaeng *v.* John Wiley & Sons, Inc. 519,939
Kiskila *v.* United States 1084,1164
Kitchen *v.* Ballard 891
Kitzhaber; Barrett *v.* 965
Klein *v.* Jackson 998
Klein *v.* United States 1134
Klein Independent School Dist.; Hovem *v.* 1231
Klincar *v.* Illinois 967
Kline *v.* United States 1136
Kloeckner *v.* Solis 41
Kluge *v.* United States 969
Knab; Strickland *v.* 860
K'napp *v.* Cate 946
Knierman; Starr *v.* 1085
Knight *v.* Rios 850
Knight *v.* United States 1101
Knipp; Becker *v.* 1166
Knipp; Eichler *v.* 861
Knipp; Graves *v.* 987
Knipp; Johnson *v.* 862
Knipp; Ortiz Vasquez *v.* 1111
Knipp; Viet *v.* 1237
Knittel *v.* United States 1018
Knowles; Bettencourt *v.* 913
Knowles; Contreras *v.* 1236
Knowles; Jones *v.* 1168
Knowles; Nguyen *v.* 890

Page
Knowles; Standard Fire Ins. Co. *v.* 588
Knowlin *v.* Clarke 911
Knowlin; Meggs *v.* 890
Knowlin; Santamaria *v.* 1154
Knox *v.* Morgan 1101
Knox *v.* Oklahoma 1167
Knox *v.* Walker 1102
Kocaya *v.* United States 989
Koch *v.* Del City 824,1042
Koehler *v.* Pennsylvania 894
Koerner; Smith *v.* 984
Kogousek; Crownhart *v.* 874
Kogousek; Loose *v.* 874
Kohlmeyer *v.* Indiana 1053
Kolehmainen *v.* United States 1184
Kolosky *v.* Davis 1124
Koon *v.* South Carolina 1126
Koontz *v.* St. Johns River Water Management Dist. 936,1080
Kopsho *v.* Florida 854
Kordenbrock *v.* Brown 892,1044
Kormondy *v.* Tucker 1051
Koroma *v.* Astrue 1199
Koschuk *v.* United States 1111
Kosovsky; Zahl *v.* 1193
Koster; Missouri Assn. of Club Executives *v.* 813
Kotzeva *v.* Horne 1088
Kou Cha *v.* Cate 952
Kourouma *v.* Holder 1071
Kozina *v.* United States 1069
Koziol *v.* New York 1027
Kragnes; Des Moines *v.* 884
Kramer *v.* Wyoming 966
Krantz & Berman LLP; Dalal *v.* 1245
Kreisberg; HealthBridge Management, LLC *v.* 1151
Krider *v.* Conover 1199
Krikheli *v.* United States 886
Kriston *v.* Peroulis 1172,1235
Kronenberg *v.* Ohio 1000
Krug *v.* Baker 843
Krug *v.* Roberts 1248
Krukemyer *v.* Forcum 883
Krupp *v.* Missouri 831
Kuchna *v.* United States 919
Kudlis *v.* Denver 1158

Page
Kulesa *v.* Rex 979,1116
Kulpinsky *v.* Texas 1027
Kumar *v.* Pearson Ed., Inc. 1247
Kumvachirapitag *v.* Gates 890
Kurschinske *v.* Meadville Forging Co. 980
Kurtz *v.* United States 1014
K. W. *v.* New Jersey Division of Youth and Family Services 1215
Kwasnik, *In re* 1156
Kwasnik *v.* Federal National Mortgage Association 1153
Kwasnik *v.* Maine 1036
Ky Tan Le *v.* Social Security Administration 1131,1246
LaBorde *v.* Virginia 863
Labor Union. See name of trade.
Lacey *v.* Braxton 984
Lachira *v.* Sutton Land LLC 906,1117
LaCour *v.* United States 847,1026
LaCroix *v.* Green Mountain Financial Fund, LLC 984
Ladeairous *v.* Supreme Court of Va. 892,1116
Ladson *v.* United States 1183
Laeke *v.* Colorado 829
LaFarga *v.* Martel 905
Lafler; Bowler *v.* 897
Lafler; Hollis *v.* 831
Lafler; Ward *v.* 1255
Lafler; Wilkens *v.* 1001
LaFleur *v.* Texas 1165
Lafuente *v.* United States 914
Lagos *v.* United States 1203
Laguna *v.* United States 1185
LaHood; Ercole *v.* 1203
Laihben *v.* United States 955
Lair *v.* Bullock 974
Lake County; Patten *v.* 1252
Lakeland Automotive Corp.; Miceli *v.* 821
Lakey *v.* United States 921
Lallier *v.* Supreme Judicial Court of Mass. 1027,1188
Lamar *v.* United States 1100
Lamas; Faulk *v.* 1003
Lamb *v.* Crews 1170
Lamb *v.* Mendoza 1034
Lamb *v.* Michigan 898
Lambert *v.* Tennessee 1131
LaMonds *v.* United States 923
Lamons *v.* United States 824

Page
Lampert; Belden *v.* 890
Lancaster *v.* Houston 1200
Lancaster; Metrish *v.* 1140
Lancaster *v.* Reno 1146
Lancaster *v.* United States 1053
Lancaster County Corrections; Woolman *v.* 807
Lancer Ins. Co.; Lyons *v.* 1157
Lander; Romero *v.* 860
Landron-Class *v.* United States 1243
Landrum; Coleman *v.* 841
Laney *v.* Avis Rent A Car System, Inc. 1231
Langeneckert *v.* Weber 1011
Langley *v.* Louisiana 841
Lanigan; Smith *v.* 1050
LanLogistics, Corp. *v.* Holston Investments, Inc. B. V. I. 974
Lansdowne; Marcavage *v.* 1124
Lan Thi Tran Nguyen, *In re* 1227
Lao People's Democratic Republic *v.* Thai-Lao Lignite Co. 1195
Lappin; Goforth *v.* 808
Lara *v.* Raytheon Technical Services Co., LLC 1173
Lara *v.* United States 1202
Lara *v.* Yates 905
Larbie *v.* Larbie 1192
Larimer *v.* Yates 911
Laroche *v.* Fisher 1154
LaRose; Buehner *v.* 1217
LaRose *v.* Schneider 879
LaRose *v.* United States 1054
Larremore *v.* Lykes Brothers, Inc. 825
Larson *v.* California 804,868
Larson *v.* Glebe 848
Larson *v.* United States 1054
Lashinsky *v.* United States 868
Latham *v.* Anchorage 1168
Lattimore; Nourn *v.* 1095,1222
Lattimore; Perna *v.* 1215
Lau *v.* Florida 897
Laudermill *v.* California 1216
Laudermilt *v.* United States 955
Lauer *v.* Securities and Exchange Comm'n 979
Laughlin *v.* United States 925
Laurel *v.* United States 989
Laurie, *In re* 1067
LaValley; Caswell *v.* 985,1117

Page
LaValley; Villafane *v.* 983
LaVergne *v.* Blank 1161
LaVigne; Smiles *v.* 950
Law *v.* Siegel 1047
Lawhorn *v.* Ayers 806
Lawhorn *v.* Wright Bros. Properties 803
Lawlor *v.* Connelly 998
Lawlor *v.* Hartley 1253
Lawn *v.* Tucker 962,1116
Law Offices of Jennifer S. Gormley, P. C., *In re* 1084
Law Offices of Peter G. Angelos; Pfizer Inc. *v.* 1121
Law Offices of Theodore Coates, P. C. *v.* AIG Annuity Ins. Co. 932
Lawrence, *In re* 1023
Lawrence *v.* Bank of America 825
Lawrence *v.* Dormire 804
Lawrence *v.* Florida 1254
Lawrence *v.* White 947,1077
Lawson *v.* FMR LLC 939
Lawson *v.* United States 904,996
Lay; Holloway *v.* 877
Le *v.* Long 1200
Le *v.* Social Security Administration 1131,1246
Lea; Figueroa *v.* 872
Lea; Johnson *v.* 966
Leach *v.* Bickell 1239
Leader Technologies, Inc. *v.* Facebook, Inc. 1090
Leal-Campos *v.* United States 989
Leal-Pena *v.* United States 1185
Leal-Vega *v.* United States 1145
Leatherman *v.* Kentucky 843
Leavey *v.* Detroit 1087
LeBlanc; Orange *v.* 1130
LeBlanc; Shoemaker *v.* 1032
LeBlanc *v.* Thaler 906
Lebowitz *v.* United States 1212
Ledbetter *v.* Chuck's Rentals, Inc. 882
Ledezma; Esquivel *v.* 874
Lee; Ayala *v.* 1146
Lee; Bell *v.* 866
Lee; Boyd *v.* 1131,1222
Lee; Collins *v.* 842
Lee; Comfort *v.* 1177
Lee *v.* Cully 863
Lee; Folkes *v.* 855

Page
Lee; Hoffman *v.* 879,1097
Lee; Jimenez *v.* 1200
Lee *v.* Louisiana 853
Lee *v.* Louisiana Attorney Disciplinary Bd. 1086
Lee *v.* Michael 889
Lee *v.* Mississippi State Oil and Gas Bd. 964,1077
Lee; Phillips *v.* 963
Lee; Pierce *v.* 1049
Lee *v.* St. Louis 1173
Lee; Sonachansingh *v.* 1000,1188
Lee *v.* Tennessee 1049
Lee *v.* United States 882,934,1115
Lee *v.* U. S. District Court 891,1064
Lee *v.* Wetzel 827
Lee; Wiggins *v.* 844
Leebove; JP Builders, Inc. *v.* 819
Leech *v.* Holt 858
Lefemine *v.* Wideman 1
Leftwich *v.* Frazier 842
Legrand *v.* United States 1107
Lei *v.* Pelletti 887
Leinweber *v.* Cate 1035
Leitman *v.* United States 999
Lemaster *v.* United States 990
Lemelle *v.* St. Charles Gaming Co. 1141,1246
Lemke; Bland *v.* 1228
Lemons *v.* United States 1012
Lempar *v.* Livingston 856
Lempar *v.* Nicholas 833
Lempke; Eubanks *v.* 892
Lempke; Fuentes *v.* 953
Lempke; Mastowski *v.* 914
Lempke; Mercado *v.* 861
Lempke; Wallace *v.* 1002
Lenoir *v.* Florida 843
Lenoir *v.* Tucker 910
Lentz *v.* United States 1133
Leo *v.* Garmin International, Inc. 850,966
Leon *v.* Danaher Corp. 945
Leon *v.* Securaplane Technologies, Inc. 911
Leonard; Louisiana *v.* 818
Leonard *v.* Tucker 856
Leonard *v.* United States 1115,1136
Lepeska *v.* Florida Dept. of Corrections 1154

Page
Lepre *v.* Pennsylvania Public Utility Comm'n 1172
Leroy *v.* Hill 891
Leskinen *v.* Halsey 887,1044
Lester *v.* United States 957
Lester Kalmanson Agency, Inc.; Hunter *v.* 1015
Letizia, *In re* 977
Leuchtmann *v.* Russell 1252
Levenhagen; Norington *v.* 1171
Levenhagen; Swisher *v.* 982,1139
Levens; Ballard *v.* 1125
Levin; Madigan *v.* 1228
Levin *v.* United States 503,935,976
Levitan *v.* Florida 948
Levitas; Minh Dung Nguyen *v.* 1101
Lewellyn *v.* Sarasota County School Bd. 811,1009
Lewis, *In re* 1142
Lewis *v.* AAA Ins. 963
Lewis; Alexander *v.* 1123
Lewis *v.* Auto Club Family Ins. Co. 963
Lewis *v.* Broward County School Bd. 1094,1246
Lewis *v.* Caruso 945
Lewis *v.* Crews 1254
Lewis *v.* District of Columbia 1148
Lewis *v.* Holder 1159
Lewis *v.* Lewis 1132
Lewis; Moon *v.* 1132
Lewis *v.* Runnels 900
Lewis *v.* Sheriff's Dept. Bossier Parish 1099,1246
Lewis *v.* Sinclair 904,1064
Lewis *v.* Smith 1254
Lewis *v.* Suthers 1214
Lewis; Thompson *v.* 1217
Lewis *v.* United States 1030,1201,1220
Lewis *v.* Uttecht 1133
Lewis *v.* Walters 1165
Lewis *v.* Washington 975
Lewis; Williams *v.* 967
Lexington-Fayette Urban County Government; Guy *v.* 980
Leyva Pecina *v.* Texas 876
Lezama *v.* United States 911
L. F. *v.* Cuyahoga Cty. Dept. of Children and Family Services . . 853,1139
LFP, Inc. *v.* Balsley 1124
LFP, Inc. *v.* Bosley 1124
LFP Publishing Group, LLC; Toffoloni *v.* 1068

Page
Li *v.* United States 858,1064
Libert *v.* Parkersburg City Police 964,1077
Libertarian Party *v.* District of Columbia Bd. of Elections 1230
Libertarian Party of Washington *v.* Washington State Grange . . 814
Liberty Univ. *v.* Geithner 808,1022
Librojo *v.* Holder 1159
Licon, *In re* 1121,1246
Life Time Fitness, Inc.; Downing *v.* 1229
Liggins *v.* Pennsylvania 1100
Lillard *v.* United States 1164,1241
Lilly & Co.; McClamrock *v.* 1252
Lima; Bowersock *v.* 935
Limas-Caldera *v.* United States 955
Limon *v.* United States 1054
Lin *v.* United States 1184
Lindamood; Johnson *v.* 999
Lindamood; Willoughby *v.* 950
Lindensmith *v.* Berghuis 1252
Lindensmith *v.* Jerome 1146
Linder *v.* Donat 1053
Lindsay *v.* Boeing North America, Inc. 1020,1151
Lindsey *v.* Louisiana 856
Linear *v.* Vickerson 810,1068
Lin Feng *v.* Bartkowski 1106
Linglong Group Co. *v.* Alpha Mining Systems 1087
Linglong Group Co. *v.* Alpha Tyre Systems 1087
Linglong Group Co. *v.* Tire Engineering & Distribution, LLC . . . 1087
Link; Vurimindi *v.* 1160
Linsman *v.* United States 859
Lipin, *In re* 1025,1150
Lisle *v.* Nevada 967
Lithia Christian Academy; Birdette *v.* 1152
Little *v.* Tommy Guns Garage, Inc. 831,1043
Little; Walls *v.* 1035
Liu *v.* Holder 857
Liu *v.* Illinois 979
Liu *v.* Pearson Ed., Inc. 1247
Livermore *v.* Sandor 1070
Livingston *v.* California 1093
Livingston; Lempar *v.* 856
Livingston *v.* Young Again Products, Inc. 818
Li Xin Wu *v.* United States 917
Llorente *v.* Holder 1071,1209
Lloyd *v.* Astrue 1199

Page
Lloyd *v.* United States 1100
Loan Phoung *v.* Tran 824,1077
Lobato Romero *v.* Williams 1032
Lobo-Lopez *v.* United States 877
Local. For labor union, see name of trade.
Loc Huu Bui *v.* United States 1016
Locke *v.* United States 1112
Lockett; Bates *v.* 807
Lockett; Darden *v.* 916
Lockett; Green *v.* 1205
Lockett; Williams *v.* 913
Lockett; Zambrella *v.* 915
Loesel *v.* Frankenmuth 1089
Lofley *v.* Tucker 900
Logan *v.* Outlaw 919
Loggins *v.* Kansas 834
Lomax *v.* Davis 965,1117
Lomax *v.* United States 1112
Lombardo *v.* United States 1251
Long; Ballard *v.* 1032
Long; Frluckaj *v.* 1010
Long; Le *v.* 1200
Longus *v.* United States 994
Loose *v.* Kogousek 874
Lopez *v.* California 912,1217
Lopez *v.* Clark 1071
Lopez; Garcia *v.* 975
Lopez; Johnson *v.* 1013
Lopez; Jones *v.* 1013
Lopez *v.* McDonald 1253
Lopez *v.* Rudek 1174
Lopez *v.* Sanders 857
Lopez *v.* Texas 896
Lopez *v.* United States 817,1054,1187,1243
Lopez de Avilez *v.* United States 1251
Lopez-Imitola *v.* United States 856
Lopez-Lopez *v.* United States 890
Lopez-Merida *v.* United States 864
Lopez-Ramos *v.* United States 989
Lopez Vasquez *v.* United States 910
Lord Abbett Municipal Income Fund, Inc. *v.* Strange 816
Los Angeles; American Trucking Assns., Inc. *v.* 1119
Los Angeles; Glair *v.* 1197
Los Angeles; Washington *v.* 862

Page
Los Angeles; Williams *v.* 1087
Los Angeles Cty.; Christian *v.* 1234
Los Angeles Cty.; Nakamura *v.* 1099
Los Angeles Cty. Flood Control Dist. *v.* Nat. Res. Defense Coun. . . . 78,1021
Los Angeles Soc. for Prevention of Cruelty to Animals; Blakely *v.* 820
Los Angeles Unified School Dist.; Brand *v.* 976
Lotches *v.* Oregon 1012
Lott *v.* United States 1133
Louis *v.* United States 1180
Louisiana; Bourg *v.* 1096
Louisiana; Boyer *v.* 936
Louisiana; Breland *v.* 1234
Louisiana; Brown *v.* 1198
Louisiana; Carter *v.* 823
Louisiana; Colvin *v.* 889
Louisiana; Cure *v.* 988
Louisiana; Dean *v.* 861
Louisiana; El-Amin *v.* 835
Louisiana; Fish *v.* 832
Louisiana; Funes *v.* 1197
Louisiana; Hall *v.* 912
Louisiana; Hunter *v.* 875
Louisiana; Jackson *v.* 871
Louisiana; Jacobs *v.* 838
Louisiana; Langley *v.* 841
Louisiana; Lee *v.* 853
Louisiana *v.* Leonard 818
Louisiana; Lindsey *v.* 856
Louisiana; Maestri *v.* 1169
Louisiana; Martin *v.* 839
Louisiana; Maxwell *v.* 807
Louisiana; McElveen *v.* 1163
Louisiana; Miller *v.* 1157
Louisiana; Odenbaugh *v.* 829
Louisiana; Poydras *v.* 909
Louisiana; Rollins *v.* 1050
Louisiana; Rubens *v.* 1236
Louisiana; Sanders *v.* 864
Louisiana; Selders *v.* 903
Louisiana; Skipper *v.* 835
Louisiana; Sosa *v.* 1172
Louisiana; Stewart *v.* 1163
Louisiana; Stogner *v.* 830
Louisiana; Taylor *v.* 862,1077

Page
Louisiana; Watts *v.* 1001
Louisiana; Williams *v.* 1001
Louisiana Attorney Disciplinary Bd.; Lee *v.* 1086
Louisiana Bd. of Parole; Jones *v.* 1101
Louisiana Dept. of Public Safety and Corrections; Foster *v.* 873
Love *v.* Pennsylvania 1029
Love *v.* Rivard 1238
Love *v.* United States 1107
Loveless; Thomas *v.* 831,1042
Lovellette *v.* United States 877
Lovette *v.* Paul 830
Lovland *v.* Employers Mut. Casualty Co. 887
Low *v.* California 1232
Lowell *v.* United States 906
Lowery *v.* North Carolina 1133
Loya-Costillo *v.* United States 1182
Loyd *v.* Virginia 1238
Lozano *v.* Curry 945
Lozano *v.* Montoya Alvarez 1227
Lozano *v.* United States 1148
Lozano-Galvan *v.* United States 1003
Lozman *v.* Riviera Beach 115
Luc; Kenney *v.* 1069
Lucas *v.* Holder 885
Lucas *v.* Tucker 1104
Lucas *v.* United States 969
Luckert *v.* Dodge County 1089
Ludgate; Davis *v.* 949
Ludwick; Babino *v.* 1168
Ludwick; Barrett *v.* 1254
Ludwick; Drain *v.* 952
Luellen *v.* United States 989,1118
Luevano *v.* Supreme Court of U. S. 1033
Lufkin Independent School Dist.; Bryant *v.* 1083,1164
Lugo *v.* California 892
Luh *v.* Fulton State Hospital 919
Luis *v.* United States 1243
Lumpkins *v.* Tucker 833
Lumpkins *v.* United States 1241
Lunsford *v.* United States 879
Luttrell; Benson *v.* 1013,1139
Lykes Brothers, Inc.; Larremore *v.* 825
Lykos; Elam *v.* 984
Lyndoe; D. R. Horton, Inc. *v.* 1229

Page
Lyndonville Central School Dist.; Hurtgam *v.* 816
Lynn *v.* Alexander 979
Lynn *v.* Lynn 809,1009,1250
Lyon *v.* Thaler 985
Lyons *v.* Belle Glades Correctional Institution 834
Lyons *v.* Crestview Condominium Trust 1161
Lyons *v.* Florida 1100,1210
Lyons *v.* King 1001
Lyons *v.* Lancer Ins. Co. 1157
Lyons *v.* Mitchell 1212
M.; A. P. *v.* 1174
M.; C. M. H. *v.* 1028
M. *v.* Florida Dept. of Children and Families 1168
M. *v.* New Jersey Division of Youth and Family Services 988,1117
Mabie *v.* United States 829
Mabus; Bourdon *v.* 1213
Mabus; Walls *v.* 1089
MacDonald; Tilton *v.* 849
MacEntee *v.* IBM (International Business Machines) 1150
Macias-Munoz *v.* United States 853
Mack, *In re* 1009
Mack *v.* Curran 838
Mack *v.* United States 1016,1202
Mackay *v.* Plan Administrator Benefits Outsourcing 881
Mackey *v.* Graber 1139,1222
MacLaren; Moffit *v.* 1234
MacLaren; Sebastian *v.* 1096
MacLaren; Thomas *v.* 1233
MacWilliams *v.* United States 847
Madigan *v.* Levin 1228
Madison; Thomas *v.* 1019
Madison; Young *v.* 1007
Madison County *v.* Oneida Indian Nation of N. Y. 1155
Madraigal *v.* United States 923
Madriga *v.* United States 923
Madriz-Reyna *v.* United States 930
Maehr *v.* Commissioner 976,1067,1232
Maes; Johnson *v.* 1131
Maestas *v.* Nevada 890
Maestas *v.* Utah 1252
Maestri *v.* Louisiana 1169
Maga *v.* United States 889
Magana *v.* United States 1012
MaGee *v.* Wright 1254

Page
Maggiore *v.* Connecticut 942,1077
Magness; Holloway *v.* 836
Mahler, *In re* 1023
Mahmood; Husain *v.* 821
Mahncke *v.* New York 998
Mahon *v.* Oelbaum 823
Mai *v.* McGrath 1107
Mail Boxes Etc., Inc.; Samica Enterprises LLC *v.* 816
Main; Aruanno *v.* 837
Maine; DeGennaro *v.* 951
Maine; George *v.* 918
Maine; Kwasnik *v.* 1036
Maine; Patton *v.* 1035
Maine; Silva *v.* 1231
Maine State Police; Tichot *v.* 987
Maisonet *v.* Pennsylvania 832
Majeed *v.* United States 1053
Major *v.* United States 890
Mak *v.* United States 1203
Makdessi *v.* Virginia 1167
Malave *v.* United States 917
Malburg *v.* California 823
Malcolm *v.* Honeoye Falls-Lima Central School Dist. 1144
Malcomb *v.* Dietz 983
Malcomson *v.* Topps, Inc. 896
Maldonado *v.* Cartledge 867,1064
Maldonado *v.* Superior Court of Cal., San Mateo County 887
Maldonado-Aguilar *v.* Holder 878
Malede *v.* Wilson 911
Malfi; Morris *v.* 935
Malinsky *v.* United States 924
Malone *v.* Merit Systems Protection Bd. 1107,1246
Maloof *v.* Uhrich 884
Maness; Ali *v.* 846
Mangino *v.* Cameron 848
Mangone *v.* Wong 813
Mangram *v.* Virginia 1031
Mangual *v.* United States 1108
Mangum *v.* Clarke 891
Manley *v.* Wolven 1103
Mann; Congrejo Investments, LLC *v.* 1085
Mann *v.* Tucker 833,1052
Mann *v.* United States 1029,1101
Manning *v.* Epps 1251

Page
Manning *v.* United States 931
Manpower of Southern Nev., Inc.; Drew *v.* 835
Mansfield *v.* Tucker 1098
Maple *v.* Harlow 1011
Marak *v.* United States 1133
Marcavage *v.* Lansdowne 1124
Marcavage *v.* New York City 1212
Marcavage *v.* Saperstein 978
Marceau *v.* Blackfeet Housing Authority 1138
Marcello *v.* United States 1069
Marcinek *v.* Commissioner 823
Maretta; Hillman *v.* 1118
Marez *v.* California 967
Margaret B. *v.* Milwaukee County 846
Marian *v.* Socorro Electric Cooperative of N. M. 1022
Mariani *v.* Ransmeier 1186
Maricopa County *v.* Wagner 1214
Maricopa County Sheriff's Office; Hassan *v.* 1128
Marina District Development Co., LLC; Kim *v.* 1160
Marin-Castano *v.* United States 1137
Markou *v.* United States 853
Markovanovich *v.* Smith 833
Marlow *v.* Supreme Court of Tenn. 865,1043
Marlowe *v.* Fabian 810,1030
Marmolejo *v.* United States 1220
Marquez *v.* Phoenix 1194
Marquis *v.* U. S. Bank N. A. 1120
Marrero *v.* Ives 1173
Marriott *v.* United States 850
Marsh *v.* Akers 1194
Marsh *v.* United States 1038
Marshall *v.* Cartledge 832
Marshall *v.* Collier County 1196
Marshall *v.* Keffer 1166
Marshall; Morgan *v.* 1146
Marshall *v.* Nevada 1175
Marshall *v.* Rudek 1098,1246
Marshall *v.* United States 895,1110
Marshall County Sheriff Dept.; Sledge *v.* 883
Martel; Carmona *v.* 1169
Martel; LaFarga *v.* 905
Martel; Stevens *v.* 838
Martel *v.* Tuite 927
Martel; Williams *v.* 845

Page
Marten *v.* Pennsylvania 868
Marti *v.* Fairman 878
Martin *v.* Louisiana 839
Martin *v.* Obama 1046
Martin *v.* Ramberg 965
Martin *v.* Skory 1191
Martin *v.* Spring Break '83 Productions, L. L. C. 1069
Martin *v.* Texas 1026,1150
Martin *v.* United States 879,892
Martin *v.* Washington 864
Martinez *v.* Arizona 1051
Martinez *v.* California 858,1129
Martinez *v.* Georgia 1048
Martinez *v.* Pennsylvania 920
Martinez *v.* Trombley 832
Martinez *v.* United States 894,922,960,969,989,1011,1045,1149,1256
Martinez *v.* U. S. District Court 857
Martinez *v.* Yates 1050
Martinez-Castro *v.* United States 898
Martinez-Flores *v.* United States 1093
Martinez-Mata *v.* United States 955
Martinez-Mendoza *v.* United States 891
Martinez-Porta *v.* United States 1195
Martinez-Prado *v.* United States 1176
Martinez-Tavera *v.* United States 978
Martin-Matera *v.* Tennessee Dept. of Children's Services 1078
Martino *v.* United States 1029
Martuscello; Corby *v.* 1180
Marx *v.* General Revenue Corp. 371,939
Maryland; Bouchat *v.* 1191
Maryland; Buzbee *v.* 862
Maryland; Grandison *v.* 1093
Maryland; Harden *v.* 831
Maryland *v.* King 1006,1152
Maryland; Neger *v.* 1213
Maryland; Nivens *v.* 1252
Maryland; Washington *v.* 908
Maryland; Woods *v.* 1218
Mascorro *v.* United States 941
Mason *v.* Brunsman 950
Mason *v.* United States 1204
Massachusetts; Anderson *v.* 946
Massachusetts; Avilez *v.* 1147
Massachusetts; Burgos *v.* 1072

Page
Massachusetts; Charles *v.* 1238
Massachusetts; Entwistle *v.* 1129
Massachusetts; Irene *v.* 968
Massachusetts; Jean-Louis *v.* 1174
Massachusetts; Johnson *v.* 948
Massachusetts; Moe *v.* 1231
Massachusetts; Munoz *v.* 802
Massachusetts; Newball *v.* 1169
Massachusetts; Tho Minh Chau *v.* 1192
Massachusetts Dept. of Children and Families; Trefry *v.* 1183
Massengill *v.* United States 1075
Massie *v.* United States 1149
Master *v.* United States 1074
Masto; O'Guinn *v.* 904
Masto; Padron Rodriguez *v.* 951
Masto; Stinchfield *v.* 807
Mastowski *v.* Lempke 914
Mataele *v.* Nunn 988
Mata-Rosales *v.* United States 955
Matatall *v.* Hermiz 1026
Mateo-De Los Santos *v.* United States 970
Mathis *v.* Illinois 925
Mathis *v.* McCall 834
Mathis *v.* Obama 930
Mathur *v.* United States 1193
Matias *v.* United States 1220
Matthews *v.* Pennsylvania 856,881
Matthews *v.* United States 910
Matthies *v.* Mississippi 885
Mattison *v.* Michigan 910
Maurello *v.* United States 904,1044
Mauricio *v.* California 975
Mauricio *v.* Thaler 1171
Maverick Enterprises, LLC *v.* Alabaster 885
Maximov; Carter *v.* 1226
Maxwell *v.* Capozza 1096
Maxwell *v.* Louisiana 807
May *v.* Pennsylvania 854
May; Walliser *v.* 1245
Mayard *v.* Siegfried 1154
Maybee *v.* United States 991
Maye *v.* Haynes 1143
Maye; Ibarra Munoz *v.* 1074
Mayer *v.* California 1089

Page
Mayer *v.* United States 916
Mayes *v.* Graphic Packaging International 996
Maynard; Clair *v.* 963,1064
Mayo; Chambers *v.* 944
Mayor and City Council of Baltimore; McHugh *v.* 962
Mayor and City Council of Baltimore; Slaughter *v.* 1010
Mayor of New York City; Robinson *v.* 1165
Mayor of New York City; Samuel *v.* 1199
Mays *v.* United States 847
Maytubby *v.* United States 919
Mazurkiewicz; Amenuvor *v.* 1166
Mazurkiewicz; Fleming *v.* 908
Mazza *v.* Public Utility Comm'n 1032
Mazzarelli; Dibbs *v.* 1213
Mbacke *v.* North Carolina 864
MBNA America Bank, N. A.; Parks *v.* 1028
McAllister *v.* United States 992
McArty *v.* Hobbs 920
McBride *v.* California 1035
McBride *v.* Glunt 1147
McBroom *v.* Safford 1153
McBurney *v.* Young 936,1067
McCabe; Miller *v.* 1221
McCall; Coan *v.* 865
McCall; Cowan *v.* 869
McCall; Mathis *v.* 834
McCall; Ramsey *v.* 965
McCall; Sosbee *v.* 948
McCallister *v.* McCallister 1130,1222
McCann; Williams *v.* 1166
McCarthy *v.* Davis 1152
McCarthy; R. I., Inc. *v.* 963
McCarthy *v.* Scofield 894,1064
McCarthy; Seating Solutions *v.* 963
McCarthy *v.* Servitto 996,1083
McCarthy *v.* Sosnick 851,1064,1081
McCarthy *v.* Thaler 1094
McCartney *v.* West Virginia 833
McCarty; Catsiff *v.* 1194
McCarvill *v.* Premo 1201
McCaskey *v.* Henry 1214
McCaskill *v.* California 822
McClain *v.* Davis 1035
McClain *v.* United States 1003,1150

Page

McClamrock *v.* Eli Lilly & Co. 1252
McCleary *v.* ReliaStar Life Ins. Co. 1090
McClellan *v.* Jarriel 916
McClendon *v.* Mississippi 876
McCluskey; Cunningham *v.* 816,1020
McCollum; Burke *v.* 1013,1188
McCool *v.* United States 956
McCorkle *v.* Bank of America Corp. 1159
McCormick *v.* Brzezinski 1127
McCormick *v.* Idaho Dept. of Health and Welfare 1249
McCormick *v.* Schmidt 1000
McCorvey *v.* Young 1259
McCoskey *v.* Thaler 1093
McCoy, *In re* 1227
McCoy *v.* Jones 847
McCoy *v.* Mississippi State Tax Comm'n 822
McCoy *v.* Pace 1165
McCoy *v.* Thaler 861
McCoy *v.* United States 882,1109,1148
McCray *v.* Alabama 846
McCray *v.* Fidelity National Title Ins. Co. 1186
McCreary *v.* Sandoval 1051
McCreary *v.* United States 1036
McCuistion *v.* Washington 1196
McCullen *v.* United States 1136
McCullough *v.* United States 1196
McCutchen; US Airways, Inc. *v.* 1008
McCutcheon *v.* Federal Election Comm'n 1156
McDaniel; Jones *v.* 1234
McDaniel; Messick *v.* 1176
McDaniel; Neely *v.* 980
McDaniel; Perry *v.* 983
McDaniel; Schneider *v.* 1001
McDermott *v.* Georgia 985
McDonald *v.* Astrue 914
McDonald *v.* Atchison 805
McDonald *v.* Brunsman 1014
McDonald; Glica *v.* 1197
McDonald; Henderson *v.* 1175
McDonald; Lopez *v.* 1253
McDonald; Quiroz *v.* 1053
McDonald; Rutledge *v.* 1187
McDonald; Vallery *v.* 1169
McDonald; Wright *v.* 905

Page
McDonald; Zuniga *v.* 950
McDonald's; Allen *v.* 1124,1246
McDowell *v.* Nucor Building System 1248
McDuffie; Davis *v.* 875
McElveen *v.* Louisiana 1163
McEwen; Diaz *v.* 1234
McEwen; Tobar *v.* 1105
McEwen; Williams *v.* 944
McFadden; Holz *v.* 899
McFadden *v.* Missouri 999
McFalls *v.* United States 893
McFatridge *v.* Whitlock 1143
McGaha *v.* Tennessee 900
McGarity *v.* United States 921
McGee *v.* Rudek 965
McGee *v.* Superior Court of Cal., Sacramento County 937
McGee *v.* United States 853
McGhee, *In re* 976
McGough *v.* Texas 901
McGowen *v.* Thaler 1030
McGowen; Thaler *v.* 1041
McGrady; Griffin *v.* 1013
McGrath; Mai *v.* 1107
McGrath; Payne *v.* 836
McGraw *v.* United States 1101
McGraw-Hill Cos.; Gearren *v.* 962
McGruder *v.* United States 1203
McHenry *v.* Superior Court of Cal., Los Angeles County 1128
McHugh; Gladden *v.* 987
McHugh *v.* Mayor and City Council of Baltimore 962
McHugh; Rumburg *v.* 1214
McIntosh *v.* United States 1204
McIntyre *v.* McKune 1037
McIntyre *v.* United States 969
McKay *v.* Chicago Transit Authority 1123,1209
McKay *v.* United States 830,1063
McKee; National Organization for Marriage, Inc. *v.* 928
McKee; Shahideh *v.* 1236
McKeighan *v.* United States 1019
McKelvey *v.* Rivera 1126
McKesson; Ford *v.* 807,1097
McKesson Corp.; Islamic Republic of Iran *v.* 1229
McKesson Technologies, Inc. *v.* Epic Systems Corp. 1223
McKewan; Torres *v.* 1233

Page
McKinley *v.* United States 1221
McKinney *v.* Cartledge 1173
McKinney *v.* Illinois 1014
McKinney *v.* Sheets 984,1139
McKinney *v.* Villalva 1071
McKinney *v.* Washington 858
McKinnon *v.* United States 931,1145
McKnight *v.* Texas 838
McKune; McIntyre *v.* 1037
McLaren; Kendrick *v.* 848
McLaughlin; Cobble *v.* 1175
McLaughlin; Davenport *v.* 1014,1139
McLaughlin; Davis *v.* 1015,1150
McLaughlin; Wilkinson *v.* 1171
McLaughlin; Wilson *v.* 839
McLean *v.* Ray 1144,1246
McLeod *v.* Jarrett 836
McLeod *v.* PB Investment Corp. 1186
McLeod; Starnes *v.* 822
McMahen; Walters *v.* 1212
McManaman *v.* United States 1026
McMaster *v.* Small 1221
McMillan *v.* Florida 1171
McMillion *v.* United States 877
McNac *v.* Thaler 1032
McNeely *v.* Chappell 1253
McNeely; Missouri *v.* 1080
McNeil *v.* Texas 1173
McNeil *v.* United States 884
McNeil-PPC, Inc. *v.* Hutto 959
McNelton *v.* Nevada 1176
McPeters *v.* Edwards 883
McPherron *v.* Pennsylvania 1129
McPherson *v.* United States 1185
McQueen *v.* United States 864
McQuiggin; Montgomery *v.* 1148
McQuiggin *v.* Perkins 977
McReady *v.* O'Malley 998
McReynolds; Merrill Lynch, Pierce, Fenner & Smith Inc. *v.* 887
McTiernan *v.* United States 1125
McWane, Inc.; Solutia Inc. *v.* 942
Meade; Strutton *v.* 816
Meador *v.* Branson 1105,1189
Meadville Forging Co.; Kurschinske *v.* 980

Page
Medel *v.* United States 993
Medina; Brooks *v.* 945,1234
Medina; Garner *v.* 1106
Medina *v.* Hartley 1051
Medina; Mitchell *v.* 1051
Medina *v.* United States 909
Medina; Ward *v.* 1216
Medina; White *v.* 834
Medley *v.* United States 1242
Medtronic, Inc.; Walker *v.* 928
Meece *v.* Kentucky 828
Meeks *v.* United States 969
Meggs *v.* Knowlin 890
Meilleur *v.* Strong 1031
Meirick *v.* United States 916
Meirovitz *v.* United States 1166
Mejia *v.* Holder 1170
Mejia *v.* United States 992
Mejia-Nunez *v.* United States 992
Mejorado *v.* California 1173
Meko; Shelley *v.* 951
Melendez *v.* Wilson 1173
Melendez-Baez *v.* United States 848
Melendez-Rocha *v.* United States 868
Melgoza *v.* United States 892
Mellerson *v.* U. S. District Court 1200
Melrose *v.* New York State Dept. of Health 859,1043
Melton *v.* United States 954
Melvin *v.* United States 853
Memphis Housing Authority *v.* Giggers 884
Menasha Corp. *v.* Moore 1250
Menchaca *v.* Uribe 1095
Mendes *v.* United States 923
Mendez *v.* Anadarko Petroleum Corp. 1142
Mendez *v.* United States 881,889
Mendiola *v.* Hobbs 896
Mendoza; Lamb *v.* 1034
Mendoza *v.* Nevada 1132
Mendoza *v.* United States 926,1137,1193,1214,1218
Mendoza Martinez *v.* United States 1256
Mendoza-Perez *v.* United States 1241
Mental Health Bd. of Fourth Judicial Dist.; S. J. *v.* 1092
Menzena; Crosby *v.* 835
Meraz-Olivera *v.* United States 957

Page
Mercado *v.* Lempke 861
Mercado; White *v.* 822,1115
Merced County; Campbell *v.* 1128
Mercer; Johnson *v.* 1102
Mercer; Kenner *v.* 844
Mercer *v.* United States 1157,1178
Merchant; Bauer *v.* 1068
Merilien *v.* Georgia 987
Merisier *v.* Bank of America, N. A. 1212
Merit Systems Protection Bd.; Brown *v.* 887
Merit Systems Protection Bd.; Cooper *v.* 810,1091
Merit Systems Protection Bd.; Franklin *v.* 961
Merit Systems Protection Bd.; Gregory *v.* 918,1045
Merit Systems Protection Bd.; Malone *v.* 1107,1246
Merit Systems Protection Bd.; Patterson *v.* 868
Merit Systems Protection Bd.; Wright *v.* 882,1043
Merolillo; Yates *v.* 927
Merriett *v.* Arizona 1035
Merrill Community School Dist.; Pahssen *v.* 883
Merrill Lynch, Pierce, Fenner & Smith Inc. *v.* McReynolds 887
Messick *v.* McDaniel 1176
Messier; Bouchard Transportation *v.* 1229
Messmer; Taylor *v.* 1082
Meszaros *v.* United States 1180
Metcalf *v.* Sexton 1149
Methodist Healthcare System of San Antonio, Ltd.; Hampton *v.* 1250
Methvin *v.* United States 906
Metra; Harvard *v.* 814
Metrish *v.* Lancaster 1140
Metropolitan Edison Co. *v.* Pennsylvania Public Utility Comm'n 959
Metropolitan Govt. of Louisville and Jefferson County; Bruederle *v.* 1100
Metz *v.* Timet 929
Metz *v.* Titanium Metals Corp. 929
Meuler; Schmidt *v.* 1173
Meza *v.* Holder 1082,1126
Meza-Rojas *v.* United States 1185
Mezu *v.* Morgan State Univ. 1144
Mezzalingua Associates, Inc. *v.* International Trade Comm'n 940
Miccosukee Tribe of Indians of Fla.; Furry *v.* 1028
Miceli *v.* Lakeland Automotive Corp. 821
Michael; Lee *v.* 889
Michael; Wetzel *v.* 1006
Michael Motors Co. Inc. *v.* Dealer Computer Services, Inc. 1124
Michael S. *v.* California 1178

Page
Michalsky; Sadlowski *v.* 1015
Michau *v.* Warden 1097,1246
Michigan *v.* Bay Mills Indian Community 1083
Michigan; Bryant *v.* 1028
Michigan; Byars *v.* 1216
Michigan; Dobbs *v.* 1035
Michigan; Evans *v.* 313,975
Michigan; Garrett *v.* 872
Michigan; George *v.* 836
Michigan; Gioglio *v.* 1217
Michigan; Greer *v.* 1216
Michigan; Hager *v.* 855
Michigan; Holland *v.* 815
Michigan; Lamb *v.* 898
Michigan; Mattison *v.* 910
Michigan; Moore *v.* 965
Michigan; Murdock *v.* 880
Michigan; Nunley *v.* 1029
Michigan; Plummer *v.* 1131
Michigan; Richards *v.* 863
Michigan; Rowls *v.* 1215
Michigan; Shulick *v.* 1097,1209
Michigan; Thomas *v.* 1179
Michigan; Turnpaugh *v.* 913
Michigan; Wilder *v.* 1096
Michigan; Winburn *v.* 854
Michigan Dept. of Community Health *v.* Sebelius 1244
Michigan Dept. of Corrections; Dittmer *v.* 881
Michigan Dept. of Corrections; Fox *v.* 1046
Michigan Dept. of Corrections; Garrett *v.* 1097
Michigan Dept. of Corrections; Ray *v.* 822
Michigan Dept. of Corrections; Shulick *v.* 902,1064
Michigan Dept. of Licensing and Reg. Affairs *v.* Gerstenschlager 1083
Michuda *v.* Minnesota Bd. of Public Defense 1172
Mickens *v.* Tenth Judicial Circuit Court 943
Micolo *v.* New York 833
MicroAge LLC; Shields *v.* 897,1070
Micron Corp.; Anglinmatumona *v.* 1133,1246
Middlefield; Sadlowski *v.* 1015,1139
Middleton *v.* Georgia 1100
Miles, *In re* 1248
Miles *v.* Persson 907
Miles *v.* United States 955
Millbrook *v.* United States 939,1046,1151

Page
Millen *v.* Carter 847
Miller *v.* California 1122
Miller; Culgan *v.* 855
Miller *v.* Florida 1132
Miller *v.* Graham 1099
Miller *v.* Louisiana 1157
Miller *v.* McCabe 1221
Miller *v.* Motor Vehicle Division 946
Miller *v.* Patrick Henry Estates Homeowners Assn., Inc. 819
Miller; Polite *v.* 1100
Miller; Scarborough *v.* 870
Miller *v.* Thaler 844
Miller *v.* United States 924,994,1113,1115,1182
Miller; WEC Carolina Energy Solutions LLC *v.* 1079
Miller; Whitmore *v.* 870
Miller-Stout; Velasco-Hernandez *v.* 859,1064
Millis, *In re* 1084
Mills *v.* Fischer 1170
Mills; Rayner *v.* 1104
Mills; Tankesly *v.* 1098
Mills *v.* United States 1101
Millsap *v.* Arkansas 952
Millsaps *v.* United States 1185
Milovanovic *v.* United States 1126
Milton *v.* Robinson 1082
Milwaukee County; Bach *v.* 1168,1233
Milwaukee County; Margaret B. *v.* 846
Milyard; Hebert *v.* 1230
Miner *v.* United States 970
Minh Chau *v.* Massachusetts 1192
Minh Dung Nguyen *v.* Levitas 1101
Mink *v.* Arizona 1198
Minneapolis; Zorbalas *v.* 1010
Minnesota; Borg *v.* 1025
Minnesota; Brown *v.* 1072
Minnesota; Crawley *v.* 1212
Minnesota; Hughes *v.* 1097
Minnesota; Nicolaison *v.* 1031
Minnesota; Reyes Campos *v.* 1128
Minnesota *v.* Sahr 1205
Minnesota; Wiseman *v.* 1229
Minnesota Bd. of Public Defense; Michuda *v.* 1172
Minor *v.* Grabe 980
Minor *v.* United States 990,1162

Page
Minor; Wilson *v.* 864
Minora-Escarcega *v.* United States 1031
Minton; Gunn *v.* 251,936
Miralrio Rebollar *v.* United States 908
Miranda *v.* Anchondo 876
Miranda *v.* United States 1056,1258
Miranda-Lopez *v.* United States 926
Mirelez-Garcia *v.* United States 989
Mishall *v.* Warren 1051
Mississippi; Bailey *v.* 857
Mississippi; Bradley *v.* 1170
Mississippi; Bynum *v.* 1168
Mississippi; Edmond *v.* 874
Mississippi; Ford *v.* 1050
Mississippi; Foxworth *v.* 1147,1181
Mississippi; Gamage *v.* 935
Mississippi; Goree *v.* 900
Mississippi; Henderson *v.* 1198
Mississippi; Johnson *v.* 837
Mississippi; Matthies *v.* 885
Mississippi; McClendon *v.* 876
Mississippi; Mosley *v.* 966
Mississippi; Savell *v.* 867
Mississippi; Smith *v.* 1035
Mississippi; Whittington *v.* 913
Mississippi; Williams *v.* 908
Mississippi State Oil and Gas Bd.; Lee *v.* 964,1077
Mississippi State Tax Comm'n; McCoy *v.* 822
Missoula; Payne *v.* 839
Missouri *v.* Birkett 1215
Missouri; Cooper *v.* 831
Missouri; Ferdinand *v.* 1252
Missouri; Hill *v.* 1092
Missouri; Jones *v.* 1102
Missouri; Krupp *v.* 831
Missouri; McFadden *v.* 999
Missouri *v.* McNeely 1080
Missouri; Rowe *v.* 952,1065
Missouri; Tisius *v.* 868
Missouri; White *v.* 1015
Missouri; Woolsey *v.* 878
Missouri Assn. of Club Executives *v.* Koster 813
Missouri Dept. of Corrections; Jones *v.* 1014
Missouri Dept. of Corrections; Phillips *v.* 1155

Page
Missouri ex inf. Hensley; Young *v.* 942
Missouri Title Loans, Inc. *v.* Brewer 822,1042
Missud *v.* Securities and Exchange Comm'n 1211
Missud *v.* Superior Court of Cal., San Francisco County 1156
Mitchell, *In re* 996
Mitchell *v.* Alabama 829
Mitchell *v.* California Dept. of Corrections and Rehabilitation . . . 1253
Mitchell *v.* Indiana 914
Mitchell *v.* Kenworthy 1102
Mitchell; Lyons *v.* 1212
Mitchell *v.* Medina 1051
Mitchell *v.* Neven 1103
Mitchell; Parker *v.* 963
Mitchell *v.* United States 981
Mitrano *v.* JPMorgan Chase Bank, N. A. 1082
Mitrano *v.* United States 1124
Mixon *v.* Charlotte Mecklenburg Schools 1101
Mixon *v.* Corrections Medical Service 1233
Mizukami *v.* Edwards 961,1042,1067,1139,1164
Mobley *v.* Georgia 1103
Mobley *v.* United States 957,1106
Moe *v.* Massachusetts 1231
Moffit *v.* MacLaren 1234
Moghaddam-Trimble *v.* South Fla. Water Mgmt. Dist. 1160
Mohammed *v.* Virginia 1096
Mohave County Sheriff's Dept.; Parks *v.* 1198
Mohr; Freeman *v.* 843
Molette *v.* Georgia 985
Molina-Martinez *v.* United States 848
Molyneaux *v.* Florida Dept. of Corrections 1215
Moncivais *v.* United States 1181
Mondaca *v.* United States 893
Mondragon-Pineda *v.* United States 990
Monroe; Smith *v.* 947,1139
Monroe *v.* United States 115,989
Monroe County; Hardin *v.* 1154
Monroe County Children and Youth Services; Holland *v.* 1032,1188
Monsanto Co.; Bowman *v.* 936,1151
Montana; Ariegwe *v.* 1034
Montana; Hamby *v.* 832
Montana; Plott *v.* 1070
Montana; Sartain *v.* 967
Montana; Spear *v.* 999,1116
Montana Sulphur & Chemical Co. *v.* EPA 819

Page
Montejo *v.* United States 1073
Montgomery *v.* Buchanan 984
Montgomery *v.* California Worker's Comp. Appeals Bd. . . 810,1024,1144
Montgomery *v.* Kappos 1068
Montgomery *v.* McQuiggin 1148
Montgomery *v.* United States 923
Montour *v.* Clements 918
Montoya Alvarez; Lozano *v.* 1227
Montue *v.* Schwartz 916
Montue *v.* Sisto 985
Monzon *v.* United States 1178
Moon *v.* Lewis 1132
Moon *v.* Vasquez 1198
Mooney *v.* California 1176
Moore; Amr *v.* 1155
Moore *v.* Cate 911
Moore *v.* Curtin 1146
Moore *v.* Department of Ed. 884
Moore *v.* Department of Navy 864
Moore *v.* Federal Bureau of Prisons 1130,1144,1221
Moore *v.* Hollingsworth 1038,1189
Moore; Menasha Corp. *v.* 1250
Moore *v.* Michigan 965
Moore *v.* Tucker 858
Moore *v.* United States 868,956,959,1038,1054,1072,1091,1101,1244
Moore *v.* Wenerowicz 1016
Moore *v.* Woods 1094
Moorer-Bey *v.* Federal Bureau of Prisons 988
Mora *v.* Jacquez 1199
Morais *v.* United States 901
Morales *v.* Ellis 880
Morales *v.* United States 891
Morales-Aguilar *v.* United States 1178
Morales-Caballero *v.* United States 991
Moran-Elias *v.* United States 1203
Moratti; Farmers Ins. Co. of Wash. *v.* 929
Moreno-Hernandez *v.* United States 1204
Moreno-Mendoza *v.* United States 1055
Morgan *v.* Berkebile 1145
Morgan *v.* Dickhaut 951
Morgan *v.* Harry 1087
Morgan; Knox *v.* 1101
Morgan *v.* Marshall 1146
Morgan; Schmitt *v.* 1253

Page

Morgan *v.* Thaler 1168
Morgan *v.* Union Pacific R. Co. 1123
Morgan *v.* Washington 878
Morgan *v.* West Virginia 1002
Morgan Stanley; Robinson *v.* 979
Morgan State Univ.; Mezu *v.* 1144
Moriarty *v.* Pennsylvania 1239
Morozova *v.* Callow 1215,1253
Morris *v.* Chavez 847
Morris *v.* Clarke 872
Morris *v.* Cross 1015,1140
Morris *v.* Malfi 935
Morris *v.* National Football League Retirement Bd. 1090
Morris *v.* Thaler 949,1064
Morris; Thomas Petroleum, Inc. *v.* 824
Morris *v.* Tucker 976
Morris *v.* United States 803,860,1106,1107
Morrison *v.* Alabama 998
Morrison *v.* United States 909,1125
Morrow *v.* Bharara 1178
Morrow; Dyer *v.* 1217
Morrow; Guy *v.* 1240
Morrow *v.* United States 1176,1179
Morse *v.* Crews 1130
Mortgage Electronic Registration Systems Inc.; Kiggundu *v.* . . . 824
Morton *v.* Government of Virgin Islands 1253
Mosby *v.* Holmes 1199
Moser *v.* United States 897
Moses *v.* Virginia 858
Mosher; Robinson *v.* 946
Mosley, *In re* 1248
Mosley *v.* Bowden 843,1116
Mosley *v.* Mississippi 966
Moss *v.* Spartanburg County School Dist. Seven 1011
Moss *v.* Thaler 1170
Moss *v.* Tucker 1001
Mota *v.* United States 1030
Mota Reyes *v.* United States 1030
Mothershed *v.* Oklahoma *ex rel.* Oklahoma Bar Assn. 1202
Motor Vehicle Division; Miller *v.* 946
Motta *v.* United States 1163
Motten *v.* Bell 877
Mount Holly *v.* Mt. Holly Gardens Citizens in Action, Inc. 976
Mt. Holly Gardens Citizens in Action, Inc.; Mount Holly *v.* 976

Page
Mounts *v.* United States 1186
Mount Sinai Hospital; Hengjun Chao *v.* 981
Mount Vernon Recreation Center; Richardson *v.* 1032
Moya-Feliciano *v.* Tucker 1104
Moyer *v.* United States 846
Mudlock *v.* United States 1093
Mueller *v.* United States 858
Muhammad *v.* California 1101
Muhammad *v.* Cappellini 964
Muhammad *v.* Clarke 1130
Muhammad *v.* Cochrane 1173
Muhammad *v.* Shaw 823
Muhammad *v.* Stapleton 1146
Muhonen *v.* Cingular Wireless Employee Services, LLC 896
Mulero *v.* Thompson 1029,1150
Mulhall *v.* Unite Here 1121
Mulk *v.* Ohio Dept. of Job and Family Services 825
Mullinix *v.* United States 865
Mullins *v.* United States 837
Mumpower *v.* United States 989
Munchener Ruckversicherungs-Gesellschaft AG; Arzoumanian *v.* 809
Mungin *v.* United States 1138
Munn *v.* Texas 834
Munoz *v.* Massachusetts 802
Munoz *v.* Maye 1074
Munoz *v.* United States 1115
Munson *v.* United States 903
Murdock *v.* Illinois 900
Murdock *v.* Michigan 880
Murello-Gomez *v.* United States 1202
Murillo *v.* United States 996
Murphy; Cantrell *v.* 815
Murphy; Jones *v.* 1165
Murphy *v.* United States 869,1075,1101,1135,1136,1220
Murray *v.* Almager 1106
Murray *v.* Anderson 888,1077
Murray *v.* Department of Treasury 1069
Murray *v.* John D. Dingle Veterans Hospital Medical Center 1200
Murray *v.* Thaler 833,1116
Murray *v.* United States 926
Museum of Transportation; Connor *v.* 883
Musgrove *v.* Thaler 858
Mussack *v.* Hawaii Bd. of Ed. 888
Muth *v.* Fondren 895

Page
Muthukumar, *In re* 940,977,1025,1045,1142
Muthukumar *v.* Dess 905,1044
Muthukumar *v.* Kiel 1248
Muthukumar *v.* University of Tex. at Dallas 1121,1251
Mutual Pharmaceutical Co. *v.* Bartlett 1045,1211
Mutual Pharmaceutical Co.; SigmaPharm, Inc. *v.* 814
Muwwakkil; Hill *v.* 830
MV Tech Autoworks; Sandres *v.* 1253
Mycoff *v.* Florida 1130
Myers *v.* BMO Harris Bank N. A. 807
Myers *v.* South Carolina 917
Mylan Pharmaceuticals Inc. *v.* Aptalis Pharmatech, Inc. 1123
Mylan Pharmaceuticals Inc. *v.* Eurand, Inc. 1123
Myles *v.* California 876
MyMail, Ltd. *v.* Commissioner 1251
Myriad Genetics, Inc.; Association for Molecular Pathology *v.* . . . 1045
Myrie *v.* United States 1076
Nabaya, *In re* 1155
Nabours; Brown *v.* 1048
Naddi *v.* California 1225
Nails *v.* Foley 1095
Najera *v.* Wyoming 863
Najera-Gordillo *v.* United States 1072
Nakamura *v.* Los Angeles County 1099
Nali *v.* Phillips 984
Namer *v.* Federal Trade Comm'n 1195
Namer *v.* United States 1107
Nance *v.* Florida 1036
Nance *v.* United States 878
Napel; Brayboy *v.* 1097
Napel; Postell *v.* 946
N. A. P. H. Care; Acosta *v.* 912
Napolitano; Bullock *v.* 822
Napolitano; Huang *v.* 1193
Napolitano; White *v.* 962,1031
Naranjo; Chevron Corp. *v.* 958
Naranjo *v.* United States 873
Narvaez *v.* United States 829
Nasir *v.* Pennsylvania 945
Nassar; Fharmacy Records *v.* 979
Nassar; Fharmacy Records Production Co. *v.* 979
Nassar; University of Tex. Southwestern Medical Center *v.* 1140
Nassif; Green *v.* 1011
Natchitoches; Williams *v.* 1197

Page
NASA Headquarters; Zeleke *v.* 914,1045
National Assn. of Optometrists and Opticians *v.* Harris 1157
National Football League Retirement Bd.; Morris *v.* 1090
National Labor Rel. Bd.; New York New York Hotel & Casino *v.* 1244
National Labor Rel. Bd.; New York, N. Y. LLC *v.* 1244
National Labor Rel. Bd.; Teamsters *v.* 1193
National Organization for Marriage, Inc. *v.* McKee 928
National Union Fire Ins. Co. of Pittsburgh; Bayou Steel Corp. *v.* 1231
Nationwide Mut. Ins. Co.; Hill *v.* 1197
Natkunanathan *v.* Commissioner 1191
Natson *v.* United States 1220
Natural Res. Defense Coun.; L. A. Cty. Flood Control Dist. *v.* . . 78,1021
Navar *v.* United States 930
Navarro *v.* United States 925
Navarro-Garcia *v.* United States 901
Nave *v.* Nebraska 1236
Navy Federal Credit Union; Jack *v.* 1167
NBC Universal, Inc.; Brantley *v.* 998
Ndoromo *v.* United States 898
Neal *v.* Booker 1147
Neal *v.* Bridge, Inc. 1093
Neal *v.* Florida 858,1116
Neal *v.* United States 802
Nebraska; Brown *v.* 1146
Nebraska; Kansas *v.* 961
Nebraska; Nave *v.* 1236
Nebraska; Nesbitt *v.* 1201
Nebraska; Nolan *v.* 844
Nebraska; Torres *v.* 871
Nebraska; Woolman *v.* 912,1064
Nebraska Dept. of Health and Human Services; Smalley *v.* 1249
Nebraskans United for Life *v.* Planned Parenthood of Heartland 929
NECA–IBEW Health & Welfare Fund; Goldman, Sachs & Co. *v.* 1228
Neeley *v.* Haney 866
Neely *v.* McDaniel 980
Neger *v.* Maryland 1213
Negley Park Homeowners Assn. Council; Taylor *v.* 808
Nellon *v.* Cain 1170
Nelson *v.* Aeronautical Accessories, Inc. 822
Nelson *v.* Arizona 836
Nelson *v.* Crews 1235
Nelson *v.* Holder 863
Nelson *v.* Illinois 840
Nelson *v.* Rochester 1205

Page
Nelson *v.* United States 914,1004
Neng Por Yang *v.* District Court of Minn., Hennepin County 1225
Neng Por Yang *v.* Hanson 862,1020
Neng Por Yang *v.* Nutter 897,1044
Neng Por Yang *v.* Shakopee 861,1020
Neotti; Woodall *v.* 1096
Nesbitt *v.* Illinois 844
Nesbitt *v.* Nebraska 1201
Nesbitt *v.* United States 1137,1204
Nesbitt *v.* Williams 836,1077
Neshoba County General Hospital Bd. of Trustees; Soriano *v.* . . . 1250
Nestor *v.* United States 809,1143
Nettles *v.* Crews 1238
Neubauer; Gomez *v.* 912
Neumann; Rendelman *v.* 967
Nevada; Armstrong *v.* 1238
Nevada; Boston *v.* 837
Nevada; Cross *v.* 984
Nevada; Huebler *v.* 1147
Nevada; Lisle *v.* 967
Nevada; Maestas *v.* 890
Nevada; Marshall *v.* 1175
Nevada; McNelton *v.* 1176
Nevada; Mendoza *v.* 1132
Nevada; Olausen *v.* 843
Nevada; Torres *v.* 856
Nevada; Williams *v.* 1015
Nevada; Zellis *v.* 908
Nevada Bell Telephone Co.; Autotel *v.* 1159
Nevada System of Higher Ed.; Dickerson *v.* 821
Nevada System of Higher Ed.; Hussein *v.* 821
Neven; Antonetti *v.* 914
Neven; Elliott *v.* 1233
Neven; Green *v.* 1181
Neven; Hartwell *v.* 867
Neven; Mitchell *v.* 1103
Neville *v.* Taylor 964
New *v.* United States 1195
Newball *v.* Massachusetts 1169
Newburgh/Six Mile Limited Partnership II; Adlabs Films USA *v.* 963
Newell Window Furnishings Inc. *v.* Bender 943
New 49'ers, Inc. *v.* Karuk Tribe of Cal. 1228
New Hampshire; Ball *v.* 1194
New Hampshire; Glidden *v.* 854

Page
New Hampshire; Widi *v.* 901
New Horizon Dev. Ctr. *v.* Indiana Family and Social Servs. Admin. 825
New Jersey; Cagno *v.* 1104
New Jersey; Chavis *v.* 860
New Jersey; Gaitan *v.* 1192
New Jersey; Johnson *v.* 1217
New Jersey; Raisley *v.* 892
New Jersey; Smith *v.* 1217
New Jersey Dept. of Human Services; White *v.* 1024
New Jersey Dept. of Taxation; Calabrese *v.* 1089
New Jersey Division of Youth and Family Services; D. M. *v.* . . 988,1117
New Jersey Division of Youth and Family Services; K. W. *v.* 1215
New Jersey Food Council; Sidamon-Eristoff *v.* 978
New Line Productions, Inc.; Gilbert *v.* 1253
New Mexico *v.* Herring 1086
New Mexico; Texas *v.* 808
Newth; Boles *v.* 1002,1140
Newton *v.* Oklahoma 867
New West, L. P. *v.* Joliet 928
New York; Achouatte *v.* 861,1077
New York; Best *v.* 1131
New York; Burnie *v.* 1096
New York; Chevalier *v.* 1154
New York; Chuang *v.* 1162
New York; Coke *v.* 947,1117
New York; D'Antuono *v.* 1236
New York; Figueroa *v.* 1050
New York; Flemming *v.* 805
New York; Fogle *v.* 1031
New York; Francois *v.* 946
New York; Garcia *v.* 875,966
New York; Gerrara *v.* 1097
New York; Hall *v.* 855,1163
New York; Johnson *v.* 827,951
New York; Koziol *v.* 1027
New York; Mahncke *v.* 998
New York; Micolo *v.* 833
New York; O'Halloran *v.* 1216
New York; Parent *v.* 1027
New York; Prince *v.* 1096
New York; Quiles *v.* 951
New York; Robinson *v.* 1094
New York; Ruine *v.* 1133
New York; Sanchez *v.* 903

Page
New York; Shannon S. *v.* 1216
New York; Smith *v.* 1125
New York; Snyder *v.* 1070
New York; Tannis *v.* 899
New York; Walker *v.* 987
New York; Wilson *v.* 1131,1132
New York City; Elliott *v.* 1194
New York City; Jiggetts *v.* 863
New York City; Marcavage *v.* 1212
New York City; Pinter *v.* 822
New York City *v.* Southerland 1150
New York City Dept. of Corrections; Skalafuris *v.* 807
New York City Dept. of Records & Information Servs.; Harbatkin *v.* 1157
New York City Health and Hospitals Corp.; Babayeva *v.* 1097
New York City Human Resources Administration; Jiggetts *v.* . . . 1235
New York City Police Dept.; De La Rosa *v.* 914,1044
New York New York Hotel & Casino *v.* National Labor Rel. Bd. 1244
New York, N. Y. LLC *v.* National Labor Rel. Bd. 1244
New York Presbyterian Hospital; Crawford-Bey *v.* 961
New York State Bd. of Ed.; Cruz *v.* 943
New York State Bd. of Elections Comm'rs; Germalic *v.* 884,1153
New York State Bd. of Parole; Ross *v.* 844,1063
New York State Dept. of Health; Melrose *v.* 859,1043
New York State Dept. of Health; Piccone *v.* 909
New York State Division of Human Rights; Floyd *v.* 807
New York State Division of Human Rights; Panghat *v.* 943
New York State Ed. Dept.; Snyder *v.* 1041,1210
Nguyen, *In re* 1227
Nguyen *v.* Knowles 890
Nguyen *v.* Levitas 1101
Nguyen *v.* Thaler 907
Nicholas *v.* AllianceOne Receivables Management, Inc. 823
Nicholas; Lempar *v.* 833
Nichols *v.* Crews 1201
Nichols *v.* Tennessee 905
Nickels *v.* Hobbs 929,1199
Nickerson *v.* Delarosa 1173
Nicolaison *v.* Minnesota 1031
Nicolas *v.* United States 1241
Nieto-Rojas *v.* United States 898
Nike, Inc.; Already, LLC *v.* 85,961
Nike, Inc.; Yums *v.* 85,961
Ninestar Technology Co., Ltd. *v.* International Trade Comm'n . . 1249
Nitro-Lift Technologies, L. L. C. *v.* Howard 17

Page
Nitschke *v.* Premo 952
Nivens *v.* Maryland 1252
Nix *v.* Holder 1010
Nixon; Bromwell *v.* 897
Niyaz *v.* Bank of America 808
Nnaka, *In re* 938,1142
Noble *v.* Cooper 1252
Nock *v.* Roden 876
Noel *v.* Guerrero 1097
Noel *v.* United States 1185
Nolan *v.* Nebraska 844
Noling *v.* Bobby 1192
Noonan *v.* Bowen 1153
Nooth; Beck *v.* 1102
Nooth; Davis *v.* 872
Nooth; Henderson *v.* 1175
Nooth; Jones *v.* 985
Nooth; Yautentzi-Cipriano *v.* 1197
Nordstrom *v.* Arizona 1145
Nordyke *v.* King 1085
Noriega *v.* United States 1134
Noriega-Perez, *In re* 812
Noriega-Perez *v.* United States 1091
Norington *v.* Levenhagen 1171
Norita *v.* Commonwealth of Northern Mariana Islands 1028
Norman, *In re* 811
Norman; Burnett *v.* 986
Norman *v.* California 909
Norman; Caruthers *v.* 1069
Norman; Crane *v.* 986
Norman; Huck *v.* 909
Norman; Kidd *v.* 838
Normand; Khan *v.* 1085
Norris *v.* Schotten 1239
Northampton County Area Agency on Aging; Daily *v.* 889
North Carolina; Alshaif *v.* 1192
North Carolina; Bridges *v.* 1201
North Carolina; Ferguson *v.* 872
North Carolina; Hood *v.* 1030
North Carolina; Hoskins *v.* 1013
North Carolina; Hunter *v.* 1175
North Carolina; Jackson *v.* 846
North Carolina; James-Bey *v.* 1247
North Carolina; Lowery *v.* 1133

Page
North Carolina; Mbacke *v.* 864
North Carolina; Pierce *v.* 922
North Carolina; Rogers *v.* 1238
North Carolina; Sauer *v.* 862
North Carolina; Smith *v.* 1176
North Carolina; Washington *v.* 946
North Carolina Dept. of Transportation; Teague *v.* 949,1064
North Coventry Township; Tripodi *v.* 821
North Dakota; Hale *v.* 1087
Northeast Ill. Regional Commuter Railroad Corp.; Harvard *v.* . . 814
Northern Mariana Islands; Norita *v.* 1028
Northrop Corp. Emp. Ins. Ben. Plans Master Trust *v.* United States 1048
Northwest Env. Defense Ctr.; Decker *v.* 597,1008,1118
Northwest Env. Defense Ctr.; Georgia-Pacific West *v.* . . . 597,1008,1118
Norwood *v.* Thaler 910
Norwood *v.* United States 1003
Nosie *v.* Flight Attendants-CWA 982
Nourn *v.* Lattimore 1095,1222
Nova Chemicals Corp. *v.* Dow Chemical Co. 979
Novak *v.* United States 1106
Novartis Pharmaceuticals Corp.; Simmons *v.* 998
Novas *v.* United States 864
Nova Southeastern Univ., Inc.; Jallali *v.* 1250
Noyakuk *v.* Turnbull 1036
Noyes *v.* United States 1258
Nucor Building System; McDowell *v.* 1248
Nulife Pregnancy Res. Ctr. *v.* Planned Parenthood of Heartland 929
Nunes *v.* Holder 1001
Nunez *v.* United States 1204
Nunley *v.* Michigan 1029
Nunn; Mataele *v.* 988
Nutter; Neng Por Yang *v.* 897,1044
Nwaehiri *v.* United States 954
Nwankwoala *v.* United States 1111
O. *v.* C. L. S. 1156,1259
O.; Hester *v.* 854
Oakland; Rutledge *v.* 930,1020
Obaei *v.* United States 1055
Obama; Al Ghaith Suleiman *v.* 888
Obama; Hamm *v.* 803
Obama; Hedges *v.* 1153
Obama; Judy *v.* 904,1116
Obama; Martin *v.* 1046
Obama; Mathis *v.* 930

Page
Obama; Robinson *v.* 869
Obama; Sibley *v.* 1121,1160
Obama; Weldon *v.* 882
Obama; Zeleke *v.* 914,1044
Obama for America; Husted *v.* 970
O'Bay *v.* United States 810,1030
Obomighie *v.* Holder 951
O'Brien *v.* Kirley 823
O'Brien *v.* United States 991
O'Bryant *v.* Finch 949
Ocampo *v.* United States 917
Ocampo Albarran *v.* Alabama 1032
Ochoa; Jones *v.* 950
Ochoa; Ramon Ochoa *v.* 1160
Ochoa *v.* Rubin 1160
Ochoa *v.* Rubin Ochoa 1160
Ochoa *v.* Trammell 1065
Ochoa; Walker *v.* 803
Ochoa *v.* Workman 904
Ocwen Loan Servicing, LLC; Dickinson *v.* 1069,1140
Odenbaugh *v.* Louisiana 829
O'Diah *v.* Hereford Ins. Co. 1033
O'Diah *v.* Port Authority of N. Y. and N. J. 1033
Odoms *v.* Skolnik 1215
Oelbaum; Mahon *v.* 823
Office and Professional Employees; Hardine *v.* 961,1049
Office of Personnel Management; Calimlim *v.* 1172
Office of Personnel Management; Custodio *v.* 846
Office of Personnel Management; Daniel *v.* 809,1024
Officer O.; Hester *v.* 854
Ogletree, Deakins, Nash, Smoak & Stewart, P. C.; Johnson *v.* . . 1001,1188
O'Guinn *v.* Cortez Masto 904
O'Halloran *v.* New York 1216
Ohio; Bridgmon *v.* 859,1043
Ohio; Buschard *v.* 944
Ohio; Caldwell *v.* 816
Ohio; Childers *v.* 950
Ohio; Conway *v.* 967
Ohio; Dorsey *v.* 1180
Ohio; Estrada-Lopez *v.* 1217
Ohio; Gould *v.* 949
Ohio; Hawkins *v.* 981
Ohio; Johnson *v.* 1127,1222
Ohio; Kronenberg *v.* 1000

Page

Ohio; Petefish *v.* 1176
Ohio; Warmus *v.* 887
Ohio; White *v.* 1214
Ohio; Wilson *v.* 871
Ohio; Woods *v.* 1053
Ohio Dept. of Job and Family Services; Mulk *v.* 825
Ohio *ex rel.* Varnau *v.* Wenninger 823
Ohio Northern Univ. Employee Benefit Plan; Christoff *v.* 1160
Ohio Parole Authority; Williams *v.* 880
Ohio Public Employees Retirement System; Rothstein *v.* 884
O'Kane *v.* Kirkpatrick 830
Oklahoma; Allen *v.* 834
Oklahoma; Bush *v.* 1216
Oklahoma; Cleveland *v.* 907
Oklahoma; Davis *v.* 867
Oklahoma; Fleming *v.* 843
Oklahoma; Johnson *v.* 822
Oklahoma; Knox *v.* 1167
Oklahoma; Newton *v.* 867
Oklahoma; Postelle *v.* 891
Oklahoma; Rogers *v.* 1212
Oklahoma; Thomas *v.* 804
Oklahoma; West *v.* 830,1005
Oklahoma; Whitmore *v.* 1168
Oklahoma Army National Guard; Gather *v.* 1013,1139
Oklahoma Bar Assn.; Mothershed *v.* 1202
Oklahoma *ex rel.* Board of Regents of Univ. of Okla.; Elwell *v.* . . 1159
Oklahoma *ex rel.* Oklahoma Bar Assn.; Mothershed *v.* 1202
Okuwa *v.* United States 1137
Olausen *v.* Nevada 843
Olde Pink House Restaurant; Pugh *v.* 1098,1222
Oldham; Anderson *v.* 1096
O'Leary, *In re* 1122
Oliphant *v.* United States 828
Oliveira *v.* United States 1178
Olivella *v.* United States 906
Oliver; Carter *v.* 1183
Oliver; Cochran *v.* 930
Oliver; Dembry *v.* 1054
Ollison; Huerta Guillen *v.* 878
Olmos-Amador *v.* United States 921
Olvera Jimenez *v.* Texas 1085
O'Malley; McReady *v.* 998
Oman *v.* Portland Public Schools 1088

Page
On *v.* Houston 1215
O'Neal *v.* United States 924
O'Neal *v.* Williams 845
144942 Canada, Inc. *v.* Jules Jordan Video, Inc. 817
Oneida Indian Nation of N. Y.; Madison County *v.* 1155
O'Neill *v.* Clarke 893
O'Neill-Serrano *v.* United States 992
On Tai; Wen Xuan *v.* 1010
Ontiveros *v.* Cate 1070
Onyewuchi *v.* Gonzalez 963
Onyiah *v.* St. Cloud State Univ. 1213
Opiyo *v.* United States 956
Opong-Mensah *v.* Workers' Compensation Appeals Bd. 811
Orange *v.* LeBlanc 1130
Orange Cty.; Johnson *v.* 1146
Orange Cty. Assessment Appeals Bd.; William Jefferson & Co. *v.* 1213
Orange Cty. Dept. of Social Services; Valrick J. *v.* 869
Oravec *v.* Cole 1122
Ord *v.* District of Columbia 980
Ordonez *v.* Gonzalez 965
Oregon; Haugen *v.* 1132
Oregon; Lotches *v.* 1012
Oregon; Wyatt *v.* 1235
Oregon Dept. of Corrections; Hall *v.* 1050,1246
Orellana Campos *v.* Holder 839
Oriakhi *v.* Wilson 996
Orlando Health; Pierson *v.* 1123,1221
Orozco-Rios *v.* United States 1203
Orr *v.* United States 1184,1241
Orris *v.* Buchanan 1173
Orsello *v.* Gaffney 1081
Orso *v.* United States 829
Orta-Rosario *v.* United States 902
Ortega-Galvan *v.* United States 911
Ortiz, *In re* 811
Ortiz; Davis *v.* 1082
Ortiz *v.* United States 927
Ortiz-Figueroa *v.* United States 912
Ortiz-Rodriguez *v.* United States 868
Ortiz-Varela *v.* United States 848
Ortiz Vasquez *v.* Knipp 1111
Osborn; Harding *v.* 849,1116
Osborne; Sledge *v.* 1072
Osborne *v.* United States 858

Page
Osburn *v.* Arkansas 827
Osika *v.* Avazos 844
Osmond, *In re* 1023,1154
Osorio *v.* United States 1018
Otsuka Pharmaceutical Co.; Apotex, Inc. *v.* 1123
Oubre; Pyburn *v.* 1070
Ouologuem *v.* Holder 986
Ousley *v.* United States 1203
Outlaw; Logan *v.* 919
Outlaw; Ramirez-Salazar *v.* 1036
Ou-Young *v.* Donahoe 1251
Owen, *In re* 813
Owen *v.* Texas 1254
Owenga *v.* Holder 1052
Owens; Hunter *v.* 875
Owens; Jernard *v.* 1255
Owens *v.* Tucker 917
Owens *v.* United States 867,870,954,1184,1214
Owens Corning *v.* Wright 1157
Owusu, *In re* 1009
Owusu *v.* Heyns 906
Oxford Health Plans LLC *v.* Sutter 1065
Oyster Bay *v.* Kirkland 1213
P. *v.* J. M. M. 1174
Pace; McCoy *v.* 1165
Pacetti *v.* Astrue 1238
Pace-White *v.* California 1098
Pacheco *v.* California 892
Pacheco-Licona *v.* United States 1257
Pacific Rivers Council; U. S. Forest Service *v.* 1228
Packer *v.* Jones 1070
Padilla *v.* Texas 851
Padron *v.* United States 1108
Padron Rodriguez *v.* Cortez Masto 951
Padula; Scott *v.* 967
Pagan *v.* Tucker 1093
Page *v.* Texas 854
Page *v.* United States 1178
Page *v.* Warren 1179
Pahssen *v.* Merrill Community School Dist. 883
Paige *v.* Unknown Parties 898
Pak *v.* Ridgell 1162
Palacios *v.* United States 834
Palecek *v.* Jones 1131

Page
Palivoda *v.* Felix 942
Palmer; Dyer *v.* 818
Palmer; Ferguson *v.* 974
Palmer; Gray *v.* 1000
Palmer; Pardo *v.* 1078
Palmer; Westberg *v.* 1179
Palomares *v.* United States 894
Pandora Jewelry, LLC; JIA Jewelry Importers of America, Inc. *v.* 1157
Panghat, *In re* 940
Panghat *v.* New York State Division of Human Rights 943
Pantoliano *v.* United States 1185
Pappas, *In re* 1067
Pardo *v.* Florida 1078
Pardo *v.* Palmer 1078
Parent *v.* New York 1027
Parham *v.* HSBC Mortgage Corp. 1025
Parham *v.* Kerestes 1178
Parham *v.* Warren 949
Parikh *v.* United Parcel Service 1133,1222
Pariseau *v.* United States 1112
Parisi *v.* Dayton Bar Assn. 823
Parker, *In re* 809,1068
Parker; Clark *v.* 1129
Parker *v.* Fisk 1050
Parker; Hodges *v.* 1132
Parker *v.* Illinois 1253
Parker; Johnson *v.* 1174
Parker *v.* Mitchell 963
Parker; Smith *v.* 852
Parker; Thomas *v.* 806
Parker *v.* United States 958,969,1117,1136
Parker *v.* Warren 1253
Parker; Whitmore *v.* 1015
Parker; Young *v.* 814
Parkersburg City Police; Libert *v.* 964,1077
Park Lane North Owner, Inc.; Dobric *v.* 1052,1189
Parks; Book *v.* 1007
Parks *v.* Georgia Sexual Offender Registration Review Bd. . . . 997,1145
Parks *v.* MBNA America Bank, N. A. 1028
Parks *v.* Mohave County Sheriff's Dept. 1198
Parliament Paper, Inc.; Stora Enso North America *v.* 1123
Parr *v.* Thaler 1093
Parris; Stewart *v.* 914
Parrish *v.* Yates 1104

Page
Parson *v.* United States 897
Parsons *v.* Sisters of Charity of Leavenworth Health System, Inc. 1159
Parth's Inc.; Gilchrist *v.* 1254
Partin *v.* Florida 828
Pasadena Tournament of Roses Assn., Inc.; Bartholomew *v.* . . . 1103,1246
Pasicov *v.* Holder 1193
Passmore *v.* United States 1137
Pastrana; Brandau *v.* 1218
Pastrana; Davis *v.* 954
Pate *v.* Illinois 1179
Pate; Taylor *v.* 1082
Pate *v.* Tennessee 898
Patel *v.* United States 1232
Pathak; Bhardwaj *v.* 944
Patraw *v.* Groth 979
Patrick; Rossum *v.* 813
Patrick Henry Estates Homeowners Assn., Inc.; Miller *v.* 819
Patt *v.* United States 957
Patten *v.* Lake County 1252
Patterson, *In re* 1084
Patterson *v.* Arizona 1146
Patterson *v.* Clarke 804
Patterson *v.* Illinois 1214
Patterson *v.* Merit Systems Protection Bd. 868
Patterson *v.* Pennsylvania 1098
Patterson *v.* Rios 921
Patterson *v.* Small 914
Patterson *v.* United States 1148
Patton *v.* Maine 1035
Paul *v.* Americold Logistics, LLC 810
Paul; Lovette *v.* 830
Paul *v.* U. S. District Court 809
Pavlock *v.* United States 1153
Pawloski; Snelling *v.* 803
Pawlowski *v.* United States 1108
Paxson; Andrews *v.* 1174
Paxson *v.* United States 1205
Payne, *In re* 938,1142
Payne *v.* Kirkegard 995
Payne *v.* McGrath 836
Payne *v.* Missoula 839
Payne *v.* Whole Foods Market Group, Inc. 1029,1188
Paynesville Farmers Union Cooperative Oil Co.; Johnson *v.* 1159
Payton *v.* Cullen 944

Page
Payton *v.* Perry 1127
PB Investment Corp.; McLeod *v.* 1186
Peak *v.* Webb 1126
Pearl River Polymers, Inc.; ClearValue, Inc. *v.* 1010
Pearson *v.* Department of Veterans Affairs 810
Pearson; Gleason *v.* 1140
Pearson *v.* Smith 1217
Pearson *v.* Winston 1205
Pearson Ed., Inc.; Ganghua Liu *v.* 1247
Pearson Ed., Inc.; Kumar *v.* 1247
Pecina *v.* Texas 876
Peck *v.* Thomas 1180
Pecore *v.* United States 1143
Peede *v.* Florida 1099
Peer *v.* United States 935,1118
Pegese *v.* United States 1220
Pegram *v.* United States 1075
Pelham Manor; Cullen *v.* 1088,1209
Pelkey; Dan's City Auto Body *v.* 1065,1223
Pelkey; Dan's City Used Cars, Inc. *v.* 1065,1223
Pelkie; Fischer *v.* 983
Pella Window & Door Co.; Winford *v.* 1237
Pelletti; Lei *v.* 887
Pelullo *v.* United States 1138,1247
Pemberton *v.* Jones 949
Pena *v.* United States 1088
Penney; Honarmand *v.* 896,1139
Penn Foster School; Birdette *v.* 1174
Pennington *v.* HSBC Bank USA, N. A. 1161
Pennsylvania; Abraham *v.* 1213
Pennsylvania *v.* Banks 927
Pennsylvania; Bey *v.* 886
Pennsylvania; Castro *v.* 1102
Pennsylvania; Crisswalle *v.* 1201
Pennsylvania; Diehl *v.* 845,1043
Pennsylvania; Edge *v.* 834
Pennsylvania; Fulmer *v.* 815
Pennsylvania; Hanible *v.* 1091
Pennsylvania; Henderson *v.* 946
Pennsylvania; Johnson *v.* 806
Pennsylvania; Koehler *v.* 894
Pennsylvania; Liggins *v.* 1100
Pennsylvania; Love *v.* 1029
Pennsylvania; Maisonet *v.* 832

Page
Pennsylvania; Marten *v.* 868
Pennsylvania; Martinez *v.* 920
Pennsylvania; Matthews *v.* 856,881
Pennsylvania; May *v.* 854
Pennsylvania; McPherron *v.* 1129
Pennsylvania; Moriarty *v.* 1239
Pennsylvania; Nasir *v.* 945
Pennsylvania; Patterson *v.* 1098
Pennsylvania; Roman *v.* 903
Pennsylvania; Rosado *v.* 986
Pennsylvania; Sadik *v.* 944
Pennsylvania; Sanchez *v.* 833
Pennsylvania; Saunders *v.* 1109
Pennsylvania; Schiaffino *v.* 1230
Pennsylvania; Smith *v.* 1130
Pennsylvania; Strickland *v.* 879
Pennsylvania; Vey *v.* 1048
Pennsylvania; Wehrenberg *v.* 944
Pennsylvania; Wright *v.* 966
Pennsylvania; Young *v.* 896,1128
Pennsylvania Bd. of Probation and Parole; Jones *v.* 1167
Pennsylvania Bd. of Probation and Parole; Thomas *v.* 850,1043
Pennsylvania Bureau of Professional and Occ. Affairs; Glunk *v.* 979
Pennsylvania National Mut. Casualty Ins. Co.; Roberts *v.* 822
Pennsylvania Office of Inspector General; Scarnati *v.* 849
Pennsylvania Public Utility Comm'n; Lepre *v.* 1172
Pennsylvania Public Utility Comm'n; Metropolitan Edison Co. *v.* 959
Pennsylvania State Civil Service Comm'n; Daily *v.* 889
Pennsylvania State Police; J. C. B. *v.* 1191
Penske Truck Leasing Co.; Hart *v.* 1027
Peoples; Hall *v.* 881
Peoples *v.* United States 1113
Peppers *v.* United States 1202
Perdomo *v.* Hedgpeth 1217
Perea *v.* United States 1091
Pereira *v.* United States 931
Perez *v.* Dexter 1034
Perez *v.* Rozum 1123
Perez *v.* Thaler 1238
Perez *v.* United States 1025,1132,1136
Perez-Pinon *v.* United States 1204
Perkins; McQuiggin *v.* 977
Perley; Campbell *v.* 1013
Perna *v.* Lattimore 1215

Page
Peroulis; Kriston *v.* 1172,1235
Perri *v.* United States 1241
Perry; Hollingsworth *v.* 1066,1223
Perry; Houston *v.* 1052
Perry; Jackson *v.* 1001
Perry *v.* McDaniel 983
Perry; Payton *v.* 1127
Perry *v.* Reynolds 1103
Perry *v.* Texas 838,1116
Perry *v.* Yelich 1166
Personhood Okla. *v.* Barber 978
Persson; Brady *v.* 900
Persson; Miles *v.* 907
Persson; Ryel *v.* 951
Petefish *v.* Ohio 1176
Peterka *v.* Crews 1166
Peter Pan Bus Line, Inc.; Rocha *v.* 1011
Peters; Rodriguez *v.* 844,1020
Peterson *v.* Florida 1071
Peterson *v.* Seaman 1190
Peterson *v.* United States 1258
Pettigrew *v.* United States 1220
Pettis *v.* United States 803
Pettus *v.* United States 1255
Petty *v.* Rudek 1088
Peugh *v.* United States 1006,1155
Pew *v.* Folino 1034
Pew *v.* Jones 863
Peyton *v.* Holloway 1174
Pfeiffer-El *v.* United States 1205
Pfeil; State Street Bank & Trust Co. *v.* 1063
Pfister; Rodgers *v.* 879
Pfizer Inc. *v.* Law Offices of Peter G. Angelos 1121
Pfluger *v.* United States 1162
Pham *v.* United States 1242
Phernetton *v.* Crown Point Police Dept. 836
Philadelphia; Adefumi *v.* 870
Philadelphia Newspapers, LLC; Gureghian *v.* 1151
Philips *v.* Brown 963
Phillips, *In re* 812
Phillips; Allums *v.* 830,1042
Phillips *v.* Biter 1254
Phillips *v.* Cain 866
Phillips *v.* Lee 963

Page
Phillips *v.* Missouri Dept. of Corrections 1155
Phillips; Nali *v.* 984
Phillips *v.* United Parcel Service 1233
Phillips *v.* United States 876,952,1085,1105,1117
Phoebe Putney Health System, Inc.; Federal Trade Comm'n *v.* 216
Phoenix; Marquez *v.* 1194
Phoung *v.* Tran 824,1077
Piccone *v.* New York State Dept. of Health 909
Pickens *v.* Chrones 1215
Pickens *v.* Household Finance Corp., III 1158
Pickens *v.* United States 1105
Pickett *v.* United States 891
Picture Patents LLC *v.* Aeropostale, Inc. 1041
Pieczenik *v.* Bayer Corp. 959
Piekarsky *v.* United States 988
Pierce *v.* Lee 1049
Pierce *v.* North Carolina 922
Pierce *v.* United States 912,1107
Pierre *v.* Rogers 1237
Pierson *v.* Orlando Health 1123,1221
Pigee *v.* Quigley 1144
Pike *v.* Tennessee 827
Pillette *v.* Berghuis 952
Pillings *v.* United States 1243
Pillow *v.* United States 957
Pina *v.* California 840
Pineda; Post *v.* 1092
Pineda-Moreno *v.* United States 1149
Pineda-Sanchez *v.* United States 1221
Pinero; Esso Standard Oil Co. *v.* 1114
Pingel *v.* Arizona 1199
Pinter *v.* New York City 822
Pistole; Conyers *v.* 933
Pita-Mota *v.* United States 893,969
Pittmon *v.* United States 1179
Pitts *v.* United States 1139
Pizzino *v.* United States 1109
Pizzoferrato *v.* Tiberi 1130
Plan Administrator Benefits Outsourcing; Mackay *v.* 881
Plancarte *v.* Tucker 1099
Planned Parenthood of Heartland; Nebraskans United for Life *v.* 929
Planned Parenthood of Heartland; Nulife Pregnancy Res. Ctr. *v.* 929
Planned Security Services; White *v.* 947
Plasmart, Inc.; Jar Chen Wang *v.* 1144

Page
Plaza-Andrades *v.* United States 1202
Pleau *v.* United States 1122
Plotkin *v.* United States 919
Plott *v.* Montana 1070
Ploughe; Trujillo *v.* 1033
Plummer *v.* Michigan 1131
Plummer *v.* Warren 847
PNC Bank, N. A. *v.* Baptista 1114
Poblete *v.* Arizona 1192
Polar Star Alaska Housing Corp. *v.* United States 886
Polidore *v.* United States 1232
Polite *v.* Miller 1100
Pollard; Brown *v.* 896
Pollard; Thomas *v.* 917
Polypore International, Inc. *v.* Federal Trade Comm'n 1155
POM Wonderful LLC *v.* Coca-Cola Co. 1248
Ponticelli *v.* Florida 1069
Pooh Bah Enterprises, Inc. *v.* Chicago 887
Poole *v.* Florida 1033
Pope *v.* Crews 1233
Pope *v.* Florida 849
Pope *v.* United States 1018
Porta *v.* United States 940
Port Authority of N. Y. and N. J.; O'Diah *v.* 1033
Port Authority of N. Y. and N. J.; Ruiz *v.* 817
Porter, *In re* 1009
Porter *v.* Heyns 906
Porter *v.* Jewell 1046
Porter *v.* Sauve 1097
Porter; Sensing *v.* 932
Porter *v.* United States 1183
Portillo *v.* Adams 1199
Portillo *v.* United States 1109,1222
Portland Public Schools; Oman *v.* 1088
Por Yang *v.* District Court of Minn., Hennepin County 1225
Por Yang *v.* Hanson 862,1020
Por Yang *v.* Nutter 897,1044
Por Yang *v.* Shakopee 861,1020
Posados-Aguilera *v.* United States 900
Poslof *v.* Yates 1071
Post *v.* Pineda 1092
Postell *v.* Napel 946
Postelle *v.* Oklahoma 891
Postmaster General; Bak *v.* 868,1020

Page
Postmaster General; George *v.* 887,1044
Postmaster General; Haynes *v.* 1142
Postmaster General; Ou-Young *v.* 1251
Postmaster General; Triplett *v.* 1239
Postolache *v.* Postolache 831
Potter *v.* Hornbeck 832
Potter *v.* Toei Animation Inc. 1127,1210
Potts *v.* Walker 1102
Potugari *v.* Alabama 1213
Potvin *v.* California 842
Poullard *v.* St. Amant 907
Powdrill *v.* United States 1112,1222
Powell *v.* FF Acquisition, L. L. C. 1230
Powell *v.* Keller 877
Powell *v.* Thaler 946,1077
Powell *v.* United States 922,1074,1111
Powell *v.* Westgate Resorts, Inc. 857
Poydras, *In re* 812
Poydras *v.* Louisiana 909
PPC *v.* International Trade Comm'n 940
PPL Corp. *v.* Commissioner 977
Pratt *v.* Clarke 923
Pratt *v.* United States 1149,1257
Prawdzik *v.* United States 894
Pregerson; Jaffe *v.* 1211
Prelesnik; Emerick *v.* 1124
Prem, *In re* 939,1142
Premo; Cain *v.* 857
Premo; Gonzalez-Aguilera *v.* 1200
Premo; Kessler *v.* 911
Premo; McCarvill *v.* 1201
Premo; Nitschke *v.* 952
Prenatt *v.* G. W. Williams Co. 909
Prenatt *v.* Sierra Robles Apartments 909
Presbytery of South La. *v.* Carrollton Presbyterian Church 818
Prescott *v.* Department of Agriculture 1086
President of Republic of Rwanda; Habyarimana *v.* 1232
President of U. S.; Al Ghaith Suleiman *v.* 888
President of U. S.; Hamm *v.* 803
President of U. S.; Hedges *v.* 1153
President of U. S.; Judy *v.* 904,1116
President of U. S.; Martin *v.* 1046
President of U. S.; Mathis *v.* 930
President of U. S.; Robinson *v.* 869

Page
President of U. S.; Sibley *v.* 1121,1161
President of U. S.; Weldon *v.* 882
President of U. S.; Zeleke *v.* 914,1044
Presidio Trust; San Francisco Aesthetics & Laser Medicine, Inc. *v.* 823
Preska; Sims *v.* 988,1117
Presley *v.* Supreme Court of Miss. 848
Preston *v.* United States 1106,1181
Price, *In re* 810
Price; Taylor *v.* 1169
Price *v.* Thomas 1212
Price *v.* United States 988
Price *v.* Washington Metropolitan Area Transit Authority 982
Prieto *v.* United States 1037
Prieto *v.* Virginia 871
Primm *v.* United States 991
Prince *v.* New York 1096
Prince *v.* Solis 1125
Pringle *v.* United States 1219
Prison Health Services; Roulhac *v.* 895
Pritsker *v.* Sodexho, Inc. 1082,1230
Pritt *v.* United States 853
Privott *v.* United States 955
Proctor *v.* Clarke 906
Profit *v.* Frederick 847
Progressive Casualty Ins. Co.; Harris *v.* 901
Progressive Foods, LLC *v.* Dunkin' Donuts, Inc. 1161
Proskauer Rose LLP *v.* Troice 809,1140
Prudenti; Simmons *v.* 1236
Pruett *v.* Harris County Bail Bond Bd. 944,1064
Pruett *v.* Thaler 839
Pruitt *v.* Illinois 1234
Pruitt *v.* United States 1136
Pryce *v.* Jacquez 837
Pryor *v.* Kentucky 908
Prysock *v.* United States 1037
Psihos *v.* United States 1086
Pubien *v.* United States 991
Public Guardian, Office of Public Advocacy; Theresa H. *v.* 859
Public Lands for People, Inc. *v.* Department of Agriculture 1194
Public Utility Comm'n; Mazza *v.* 1032
Publishers Clearing House; Birdette *v.* 1053
Pueblo School Dist.; Ebonie S. *v.* 1229
Pugh; Gerhartz *v.* 921,1117
Pugh *v.* Huggins 1215

Page

Pugh *v.* Humphrey 1178
Pugh *v.* Olde Pink House Restaurant 1098,1222
Pulido *v.* United States 1187
Pullman Group, LLC *v.* Gold Forever Music, Inc. 1158
Pyburn *v.* Oubre 1070
QAD, Inc.; Subramanian *v.* 1214
Qamar *v.* Central Intelligence Agency 1128
QCA Health Plan, Inc.; Harris *v.* 810,1030,1150
Quada; Warren *v.* 1095
Quarterman *v.* Cullum 807,1047
Quatkemeyer *v.* Kentucky Bd. of Medical Licensure 1251
Queens County Bd. of Elections; Reynolds *v.* 829,1063
Quesada-Guerrero *v.* United States 956
Questar Capital Corp.; Hayes *v.* 1090
Quiggle *v.* Coleman 830
Quigley; Pigee *v.* 1144
Quiles *v.* New York 951
Quilimoco Rubio *v.* United States 1038
Quillar, *In re* 812
Quiller *v.* United States 1149
Quinones *v.* United States 918,1150
Quintana *v.* United States 916
Quintanar *v.* United States 1026
Quintana Solorio *v.* United States 829
Quintanilla *v.* Grounds 867
Quiroz *v.* McDonald 1053
Quiroz-Hernandez *v.* United States 1026
Quochuy Tran *v.* California 1132
Qwest Corp.; Western Radio Services Co. *v.* 1048
R. *v.* District of Columbia 918
Rabbia *v.* United States 1239
Rabinowitz; Ahlers *v.* 944
Race Tires America, Inc.; Hoosier Racing Tire Corp. *v.* 825
Rader *v.* ING Bank 1158
Radogno *v.* Illinois State Bd. of Elections 801
Raedle *v.* Credit Agricole Indosuez 1068
Rahim *v.* South Carolina 917
Rahi Real Estate Holdings LLC; Robb *v.* 1123
Rahman *v.* Foster Township 1090
Raigosa Arredondo *v.* Cate 845
Rainbow Rehabilitation Center; Fields *v.* 982
Rainey *v.* District Attorney of Philadelphia 989
Raiser *v.* U. S. District Court 1238
Raisley *v.* New Jersey 892

Page
Raisley *v.* United States 862
Raleigh *v.* Florida 1095
Ramberg; Martin *v.* 965
Ramez *v.* Glebe 897
Ramirez *v.* Herndon 1015
Ramirez *v.* United States 1016,1219
Ramirez-Almaguer *v.* United States 1255
Ramirez Bravo *v.* California 965
Ramirez Caballerio *v.* United States 1075
Ramirez-Fernandez *v.* United States 1174
Ramirez-Garcia *v.* Scutt 1015
Ramirez-Medina *v.* United States 1256
Ramirez-Salazar *v.* Outlaw 1036
Ramirez-Salazar *v.* U. S. District Court 1017
Ramon, *In re* 962
Ramon Ochoa *v.* Rubin 1160
Ramon Ochoa *v.* Rubin Ochoa 1160
Ramos *v.* CKS Packaging, Inc. 835
Ramos *v.* United States 995,1112
Ramos-Hernandez *v.* United States 865
Ramsey *v.* Curtin 1000
Ramsey *v.* McCall 965
Ramsey *v.* Runion 1239
Rana *v.* Department of Army 929,1042
Rand; Hunt *v.* 876
Randle *v.* House of Brides 1024
Randleman *v.* United States 1038,1189
Randolph *v.* Gansler 1165
Randolph *v.* Texaco Inc. 1104
Raney *v.* United States 926
Rangel *v.* Schmidt 1051,1209
Rangel *v.* United States 919,1182
Range Road Music, Inc.; East Coast Foods, Inc. *v.* 824
Rann *v.* Atchison 1030
Ransmeier; Mariani *v.* 1186
Rapelje; Buggs *v.* 948
Rapelje; Daniel *v.* 1148
Rapelje; Ervin *v.* 1236
Rapelje; Jackson *v.* 1014
Rashaw *v.* United Consumers Credit Union 1159
Rasley *v.* Tucker 871
Rasul *v.* United States 1074
Rates Technology, Inc. *v.* Speakeasy, Inc. 1122
Raupp *v.* United States 1011

Page
Ravenel *v.* Baden 845
Ray; McLean *v.* 1144,1246
Ray *v.* Michigan Dept. of Corrections 822
Ray; Richardson *v.* 1032
Ray *v.* Sun Life & Health Ins. Co. 980
Ray *v.* United States 995
Rayfield *v.* United Medical Center 983
Raymond *v.* Warren 825
Rayner *v.* Mills 1104
Raytheon Technical Services Co., LLC; Lara *v.* 1173
Rcom, *In re* 997,1156
Read *v.* Washington 822
Reading; Ciarlone *v.* 1160
Real Truth About Abortion, Inc. *v.* Federal Election Comm'n . . . 1114
Reardon *v.* Reardon 809
Reasonover *v.* Hodges 1212
Rebollar *v.* United States 908
Redding Parole Dept.; Armstrong *v.* 1128
Reddy *v.* Gilbert Medical Transcription Service, Inc. 1031
Redenius *v.* United States 993
Redzic *v.* United States 959
Reed, *In re* 807
Reed *v.* Brown 1104
Reed *v.* Florida Parole Comm'n 860,1116
Reed *v.* Grounds 1158
Reed *v.* Hense 1097
Reed *v.* Thaler 902
Reedom *v.* Vilsack 1202
Reese *v.* Tucker 905
Reeves *v.* United States 1219,1239
Refine *v.* Illinois 1094
Rega *v.* Wetzel 880
Regents of Univ. of Cal. *v.* Caldera Pharmaceuticals, Inc. 1193
Regions Financial Corp.; Hough *v.* 942
Reibel *v.* United States 1135
Reid *v.* United States 856,1137
Reilly *v.* Campbell 902
Reilly; Taylor *v.* 1147
Reilly *v.* TXU Business Services Co. 1144
Reinke; Cook *v.* 1092
Reisch; Sisney *v.* 934,1035
ReliaStar Life Ins. Co.; McCleary *v.* 1090
Remington; Alarcia *v.* 826
Rendelman *v.* Neumann 967

Page
Rendelman *v.* United States 1182
Rendon *v.* United States 920,1011
Rendon-Martinez *v.* United States 1182
Reneau, *In re* 811
Renico; Amos *v.* 1034
Reno; Lancaster *v.* 1146
Renobato *v.* Compass Bank Corp. 1090
Renteria *v.* United States 907
Renteria-Vasquez *v.* United States 907
Replogle *v.* United States 1053
Republican Nat. Committee *v.* Democratic Nat. Committee 1138
Republic of Argentina; BG Group plc *v.* 997
Republic of Argentina *v.* EM Ltd. 931
Republic of Trinidad and Tobago; Ferguson *v.* 1125
Responsible Hospitality Institute, Inc.; Uhr *v.* 1158
Restivo *v.* Illinois 965
Retanan *v.* California 986
Retanan *v.* Sacramento County Sheriff's Dept. 830
Retractable Technologies, Inc. *v.* Becton, Dickinson & Co. 1084
Retractable Technologies, Inc.; Becton, Dickinson & Co. *v.* 1085
Reviere *v.* California 1152
Revis *v.* Alabama 1174
Rex; Kulesa *v.* 979,1116
Rexus *v.* Glebe 1233
Reyes *v.* California 911
Reyes *v.* Gonzales 867
Reyes *v.* Kane 1252
Reyes *v.* Thaler 1000,1117
Reyes *v.* United States 1030
Reyes-Arguelles *v.* United States 955
Reyes-Bonilla *v.* United States 905
Reyes Campos *v.* Minnesota 1128
Reyes Mota *v.* United States 1030
Reyes-Pedroza *v.* United States 1018
Reynolds, *In re* 812
Reynolds *v.* Florida 1251
Reynolds; Hagood *v.* 914
Reynolds; Perry *v.* 1103
Reynolds *v.* Queens County Bd. of Elections 829,1063
Reynolds; Staton *v.* 1002,1118
Reynolds Tobacco Co. *v.* Clay 1027
Reynoso Avalos *v.* United States 848
RFT Management Co., LLC *v.* Tinsley & Adams, LLP 1159
Rhett *v.* Hudson County Child Support Unit 1070,1150

Page

Rhine *v.* Deaton 842
Rhines *v.* United States 856
Rhode Island; Taveras *v.* 826
Rhodes *v.* Hill 1051
Rhodes *v.* Tucker 829
Rhodes *v.* Varano 1099
Rice *v.* United States 867,1240
Rich *v.* Tamez 1210
Richards, *In re* 809
Richards *v.* Michigan 863
Richards *v.* United States 1017,1150
Richardson *v.* Branker 948
Richardson *v.* Greene 896
Richardson *v.* Mount Vernon Recreation Center 1032
Richardson *v.* Ray 1032
Richardson *v.* Schafer 1158
Richardson *v.* United States 1035,1075,1216,1219,1222,1240,1256
Richardson *v.* Varano 802
Richey *v.* Washington 880
Richland County; Carolina Chloride, Inc. *v.* 821
Richland County Sheriff's Office; Timmons *v.* 982
Richmond *v.* Colalasure 1146
Richter *v.* Advance Auto Parts, Inc. 1210
Richter *v.* Illinois 1234
Ricigliano; Steele *v.* 933,1045
Rickert *v.* United States 1240
Rico Sierra *v.* Colorado 1097
Ridgell; Hekyong Pak *v.* 1162
Riethmiller *v.* Florida 841,1043
Riggins *v.* United States 994,1135
Riggleman *v.* U. S. Court of Appeals 1098
Riggs *v.* Tucker 912
Riggs *v.* United States 1148
R. I., Inc. *v.* McCarthy 963
Rijo *v.* United States 869
Riker *v.* Benedetti 1167
Riles *v.* Illinois 1237
Riley; Clark *v.* 947
Riley *v.* Hedgpeth 864
Riley; Spencer *v.* 869
Riley *v.* United States 1073,1174
Ringgold *v.* Brown 1250
Rios; Knight *v.* 850
Rios; Patterson *v.* 921

Page
Rios; Sims *v.* 852
Rios *v.* Tucker 954
Rios *v.* United States 1075
Rios Rivera *v.* Thaler 1049
Rios-Rolon *v.* United States 1182
Ripperger; Hess *v.* 877
Risner; Black *v.* 941
Ritchie *v.* Ferriter 986
Ritter; Kim *v.* 1143
Ritz Condominium Assn., Inc.; Thomas *v.* 829
Rivard; Love *v.* 1238
Rivas *v.* United States 904
Rivera; Bradford *v.* 953
Rivera *v.* Chelsea 851,925,1236
Rivera *v.* Cuomo 856
Rivera; Deleston *v.* 1000
Rivera; McKelvey *v.* 1126
Rivera *v.* Thaler 1049
Rivera *v.* United States 927,1177
Rivera Cortes *v.* Franke 1070
Rivera-Hernandez *v.* United States 1184
Rivera-Martinez *v.* United States 860
Rivera-Moreno *v.* United States 1186,1256
Rivera-Santana *v.* United States 889
Rivera-Velez *v.* United States 867
Rivers *v.* United States 1163
Riverside; Anderson *v.* 1014,1188
Rives *v.* Virginia 1163
Riviera Beach; Lozman *v.* 115
Rizzo *v.* Connecticut 836
R. J. Reynolds Tobacco Co. *v.* Clay 1027
R&L Carriers Shared Services, L. L. C. *v.* Bennett 1011
Roach; Henneghan *v.* 845
Roach *v.* United States 953
Roach; Wheeler-Whichard *v.* 1024
Robb *v.* Rahi Real Estate Holdings LLC 1123
Roberson *v.* Astrue 1105
Roberts *v.* Cole 963
Roberts; Krug *v.* 1248
Roberts *v.* Pennsylvania National Mut. Casualty Ins. Co. 822
Roberts; Scholastic Book Clubs, Inc. *v.* 1028
Roberts *v.* Taylor 1217
Roberts *v.* Thaler 982
Roberts *v.* Thomas 1131

Page
Roberts *v.* Tifft 845
Roberts; Wallace *v.* 985
Robertson *v.* Cartinhour 951
Robertson *v.* Cree, Inc. 1084,1196
Robertson *v.* Simpson 965
Robertson; Williams *v.* 897
Robins *v.* United States 1244
Robinson, *In re* 1156,1227
Robinson *v.* Arkansas 1169
Robinson *v.* Bloomberg 1165
Robinson; Campbell *v.* 981
Robinson *v.* Connell 904,1005
Robinson *v.* Evans 1198
Robinson; Fears *v.* 941
Robinson; Hartman *v.* 1006,1007
Robinson; Jackson *v.* 1145
Robinson; Jalowiec *v.* 828
Robinson; Jamison *v.* 987
Robinson; Milton *v.* 1082
Robinson *v.* Morgan Stanley 979
Robinson *v.* Mosher 946
Robinson *v.* New York 1094
Robinson *v.* Obama 869
Robinson *v.* South Carolina Dept. of Corrections 1014
Robinson *v.* United States 920,921,924,968,1038,1138,1139,1203
Robinson; Wogenstahl *v.* 902
Robledo *v.* Jones 912
Rocco *v.* Bickell 1142
Rocha *v.* Peter Pan Bus Line, Inc. 1011
Rochester; Nelson *v.* 1205
Rochester City School Dist.; Andersen *v.* 1085
Rochin *v.* California 965
Rockefeller *v.* Chu 825
Rocky Mountain Instrumental Laboratories, Inc.; Alswager *v.* . . 888
Roden; Nock *v.* 876
Rodgers *v.* Pfister 879
Rodis *v.* Cuccinelli 1003
Rodrigues *v.* United States 888
Rodriguez *v.* Arkansas 1199
Rodriguez *v.* California 984,1052
Rodriguez *v.* Chappius 1237
Rodriguez *v.* Cortez Masto 951
Rodriguez *v.* Department of State 852
Rodriguez *v.* Peters 844,1020

Page
Rodriguez *v.* United States 917,992,993,996,1111,1196,1203,1243
Rodriguez *v.* Walker 834
Rodriguez Cardenas *v.* United States 1242
Rodriguez-Chacon *v.* United States 927
Rodriguez-Favela *v.* United States 957
Rodriguez-Garcia *v.* United States 851
Rodriguez-Hernandez *v.* United States 1109
Rodriguez-Jimenez *v.* United States 953
Rodriguez-Lopez *v.* United States 992
Rodriguez Luis *v.* United States 1243
Rodriguez-Portillo *v.* United States 1202
Rodriguez-Raga *v.* United States 1132
Rodriguez-Rios *v.* United States 1135
Rodriguez Secundino *v.* United States 1243
Rodriguez Velazquez *v.* Weinman 1126
Rodriquez *v.* United States 934
Roe *v.* Coursey 848
Roe *v.* United States 1258
Roedel *v.* Frink 890
Roeder *v.* Kansas 845,1063
Roemmele *v.* United States 1004,1110
Rogers *v.* Davis 845
Rogers *v.* Dickinson 930
Rogers *v.* Kerns 1033
Rogers *v.* North Carolina 1238
Rogers *v.* Oklahoma 1212
Rogers; Pierre *v.* 1237
Rogers *v.* United States 844,916,954
Rohr *v.* Indiana 821
Rojas *v.* Kirkland 897
Rojas-Vega *v.* Bureau of Immigration and Customs Enforcement 906
Rolan *v.* Coleman 1036
Roland, *In re* 1191
Rollins *v.* Cain 913
Rollins *v.* Louisiana 1050
Rollness *v.* United States 932,1118
Rolls-Royce Corp.; AvidAir Helicopter Supply, Inc. *v.* 817
Roman *v.* Pennsylvania 903
Roman *v.* Wenerowicz 893
Romanowski; Gardner *v.* 853
Romanowski; Thomas *v.* 1217
Romero *v.* Apker 1126,1209
Romero *v.* California 1093
Romero *v.* Goodrich 1167

Page

Romero *v.* J&M Associates, Inc. 1158
Romero *v.* Lander 860
Romero; Rouse *v.* 1133
Romero *v.* United States 903
Romero *v.* Wilks 1158
Romero *v.* Williams 1032
Romero-Corona *v.* United States 902
Romig; Worthington Cylinder Corp. *v.* 1125
Romo-Chavez *v.* United States 1149
Romo-Villalobos *v.* United States 873
Roper; Fuller *v.* 1234
Rosa, *In re* 977,1118
Rosado *v.* Pennsylvania 986
Rosales-Trujillo *v.* United States 914
Rosario *v.* United States 903
Rosas *v.* United States 968,1148
Rosas-Herrera *v.* United States 1185
Rosas-Jimenez *v.* United States 859
Rose *v.* California 965
Rose *v.* United States 889,909
Rosen; Brodie *v.* 1029
Rosenblum; Sisson *v.* 818
Rosga *v.* United States 1048
Ross *v.* Attorney Grievance Comm'n 1155
Ross *v.* Florida 871
Ross *v.* New York State Bd. of Parole 844,1063
Ross *v.* Tucker 1094
Ross *v.* United States 876
Rossova *v.* United States 1017
Rossum *v.* Patrick 813
Roszkowski *v.* United States 1177
Roth, *In re* 938,1153
Rothstein *v.* Ohio Public Employees Retirement System 884
Roulhac *v.* Prison Health Services 895
Rouse *v.* Romero 1133
Rouse; Stacy *v.* 1085
Rouse *v.* Washington 1216
Rowe; Jimenez *v.* 1131
Rowe *v.* Missouri 952,1065
Rowe *v.* United States 847
Rowls *v.* Michigan 1215
Roy; Caroon *v.* 808
Roy; Kenemore *v.* 1106
Roy *v.* Tennessee 1253

Page
Royal Family Al-Saud; Angellino *v.* 1087
Rozier *v.* United States 1196
Rozum; Davis *v.* 835,1005
Rozum; Santiago Perez *v.* 1123
Rozzelle *v.* Tucker 914
RRR Bowie, LLC; Strickland *v.* 860,1116
RSM Production Corp. *v.* Freshfields Bruckhaus Deringer U. S. 1089
Rubashkin *v.* United States 927
Rubens *v.* Louisiana 1236
Rubin; Hedges *v.* 1249
Rubin; Ramon Ochoa *v.* 1160
Rubin Ochoa; Ramon Ochoa *v.* 1160
Rubio *v.* Tennessee 867
Rubio *v.* United States 1038
Rubio Serrano *v.* Stancil 869
Rucker *v.* Curley 840
Rudaj *v.* United States 1076
Rudek; Lopez *v.* 1174
Rudek; Marshall *v.* 1098,1246
Rudek; McGee *v.* 965
Rudek; Petty *v.* 1088
Rudy *v.* Kappos 819
Rudzavice, *In re* 977
Ruelas *v.* United States 917
Ruelas Torres *v.* United States 894
Ruffin *v.* Cox 1177
Ruffin *v.* Houston Independent School Dist. 873,1064,1171
Ruffin *v.* Smith 1049
Ruffin *v.* United States 1185
Ruhbayan, *In re* 1156
Ruine *v.* New York 1133
Ruiz; Jones *v.* 911
Ruiz *v.* Port Authority of N. Y. and N. J. 817
Ruiz *v.* Texas 983
Ruiz *v.* United States 1109,1135
Ruiz Henriquez *v.* United States 1258
Ruiz-Zarate *v.* United States 953
Rumburg *v.* McHugh 1214
Runion; Ramsey *v.* 1239
Runnels; Brewer *v.* 967
Runnels; Lewis *v.* 900
Runner *v.* Kentucky 820
Ruppert *v.* Aragon 838,1043
Russ *v.* Tucker 1033,1188

Page
Russell; Leuchtmann *v.* 1252
Russell *v.* United States 1026,1219
Russell *v.* Virginia Bd. of Agriculture and Consumer Services . . . 980
Russo *v.* Atchison 838
Ruth *v.* United States 1074
Rutherford *v.* United States 958
Rutledge *v.* Allen 933,1020
Rutledge *v.* McDonald 1187
Rutledge *v.* Oakland 930,1020
Ryan; Alexander *v.* 954
Ryan; Bach *v.* 1214
Ryan; Ball *v.* 1199
Ryan; Bertanelli *v.* 848,867
Ryan; Carey *v.* 889,1044
Ryan; Figura Torrefranca *v.* 805,1024
Ryan; Gates *v.* 819
Ryan; Gomez Torres *v.* 964
Ryan; Hoffert *v.* 990
Ryan *v.* James 1224
Ryan *v.* Schad 1222
Ryan; Schad *v.* 945,1117
Ryan *v.* Scism 922
Ryan; Snow *v.* 1177
Ryan; Stokley *v.* 837,1065
Ryan *v.* United States 1162
Ryan *v.* Valencia Gonzales 57
Ryan; Veta *v.* 886,1044
Rydland *v.* United States 879
Ryel *v.* Persson 951
S. *v.* California 1178
S.; J. O. *v.* 1156,1259
S. *v.* New York 1216
S. *v.* Pueblo School Dist. 1229
S. *v.* United States 1256
S. *v.* West Virginia 1255
Saa *v.* Yates 906
Saber *v.* Bank of America 908
Sacramento County Sheriff's Dept.; Retanan *v.* 830
Saddler *v.* United States 1204
Sadik *v.* Pennsylvania 944
Sadlowski *v.* Michalsky 1015
Sadlowski *v.* Middlefield 1015,1139
Safeway Inc.; Castorillo Ibale *v.* 831
Safford; McBroom *v.* 1153

Page
Sahr; Minnesota *v.* 1205
Said *v.* United States 1145
St. Amant; Poullard *v.* 907
St. Charles Gaming Co.; Lemelle *v.* 1141,1246
St. Cloud State Univ.; Onyiah *v.* 1213
Saint-Jean *v.* United States 1054
St. Johns River Water Management Dist.; Koontz *v.* 936,1080
St. Louis; Lee *v.* 1173
St. Louis County; Connor *v.* 883
St. Martin; Van Staden *v.* 814
St. Paul; Bernini *v.* 978
St. Surin *v.* United States 1204
St. Vallier *v.* United States 919
Sakyi *v.* United States 1184
Salas *v.* Illinois 890
Salazar; Cazares Rojas *v.* 861
Salazar; Salceda *v.* 1052
Salazar; Taylor *v.* 895
Salazar *v.* United States 1241
Salceda *v.* Salazar 1052
Salcido *v.* United States 885
Salgado *v.* United States 1256
Salim *v.* United States 1115
Salinas *v.* Texas 1119
Salinas *v.* United States 1184
Salinas; Vargas *v.* 958
Salinas-Castillo *v.* United States 989
Salmon *v.* Social Security Administration 820
Salter *v.* United States 1002
Salvador Romero *v.* United States 903
Samadi *v.* Bank of America, N. A. 1008
Samica Enterprises LLC *v.* Mail Boxes Etc., Inc. 816
Samish Indian Nation; United States *v.* 936
Samonte *v.* Hawaii 1034
Sampson; Dionne *v.* 834
Samsoedien *v.* United States 879
Samson *v.* Bainbridge Island 1041
Samuel *v.* Bloomberg 1199
Samuel *v.* Terrell 1070
Samuel *v.* Texas 1253
Samuel *v.* Yenefanta 914
Samuels; Garraway *v.* 1104
Samuel S. *v.* West Virginia 1255
SanAntonio *v.* Crews 1236

Page
San Bernardino County Sheriff's Dept.; Sangster *v.* 810
Sanchez *v.* Illinois 1130
Sanchez *v.* New York 903
Sanchez *v.* Pennsylvania 833
Sanchez *v.* United States 923,964,1085,1137,1249
Sanchez-Gonzalez *v.* United States 828
Sanchez-Montes *v.* Benov 1107
Sanchez-Oxio *v.* United States 1188
Sanchez-Ramirez *v.* United States 1072
San Clemente; Avenida San Juan Partnership *v.* 819
Sandata Technologies, Inc.; Szafran *v.* 928
Sanders *v.* Astrue 810,1024
Sanders *v.* Detroit Police Dept. 1022,1121
Sanders *v.* Illinois 985
Sanders; Lopez *v.* 857
Sanders *v.* Louisiana 864
Sanders *v.* Texas 1049
Sanders *v.* Tilton 1098,1246
Sanders *v.* United States 926,1244
San Diego County; Guatay Christian Fellowship *v.* 940
Sandifer *v.* United States Steel Corp. 1156
Sandor; Calloway *v.* 1096
Sandor; Livermore *v.* 1070
Sandoval *v.* Beard 1198
Sandoval; McCreary *v.* 1051
Sandoval; Scales *v.* 838
Sandoval *v.* United States 828,925,1182
Sandres *v.* MV Tech Autoworks 1253
Sands *v.* Georgia 1052
Sandy Kaye Condominium Assn., Inc.; Jewusiak *v.* 978,1116
Sanford *v.* Thaler 1099
San Francisco Aesthetics & Laser Medicine, Inc. *v.* Presidio Trust 823
Sangalaza *v.* Wells Fargo National Bank 906,1005
San Geronimo Caribe Project, Inc. *v.* Acevedo-Vila 1228
Sangster *v.* San Bernardino County Sheriff's Dept. 810
San Nicolas *v.* Dexter 1195
Santa Cruz; Williams *v.* 1072
Santa Maria *v.* Arizona 1249
Santamaria *v.* Knowlin 1154
Santa Rosa Memorial Hospital; Haile *v.* 832
Santiago *v.* Anderson 1053
Santiago *v.* Fields 1071
Santiago *v.* United States 1016
Santiago Perez *v.* Rozum 1123

Page
Santomenno *v.* John Hancock Life Ins. Co. (U. S. A.) 978
Santone *v.* Fischer 926
Santos *v.* Florida 1239
Santos *v.* United States 1243
Saperstein; Marcavage *v.* 978
Sapong *v.* United States 1109
Saquella *v.* United States 1037
Sarasota County School Bd.; Lewellyn *v.* 811,1009
Sarcona *v.* United States 880
Sargent *v.* Tucker 1003
Sargent Mfg. Co.; Adonna *v.* 943
Saridakis *v.* South Broward Hospital Dist. 940
Sartain *v.* Montana 967
Sartain *v.* United States 1002
Sastrom *v.* Drew 903
Sattari *v.* British Airways World Cargo 818
Sattari *v.* CitiMortgage, Inc. 816
Saucedo *v.* United States 896
Sauer *v.* North Carolina 862
Sauers; Arrington *v.* 986
Saunders *v.* Pennsylvania 1109
Sauve; Porter *v.* 1097
Savell *v.* Mississippi 867
Sawyer, *In re* 1009
Sawyer *v.* Wright 1010
Saxon Mortgage; Birdette *v.* 1225
SBC Communications, Inc.; Stoffels *v.* 886
Scaccia *v.* Stamp 870
Scaggs *v.* Illinois 984
Scales *v.* Sandoval 838
Scally *v.* Texas State Bd. of Medical Examiners 1255
Scanlon *v.* Harkleroad 846
Scarborough *v.* Chase Home Finance, LLC 811
Scarborough *v.* Miller 870
Scarlato *v.* United States 914
Scarnati *v.* Federal Bureau of Investigation 1256
Scarnati *v.* Pennsylvania Office of Inspector General 849
Schad *v.* Ryan 945,1117
Schad; Ryan *v.* 1222
Schafer; Richardson *v.* 1158
Schafler *v.* Field 1250
Schiaffino *v.* Pennsylvania 1230
Schiro *v.* United States 918
Schlotzhauer *v.* United States 1074

Page
Schmidt, *In re* 1121
Schmidt; Garcia Rangel *v.* 1051,1209
Schmidt; McCormick *v.* 1000
Schmidt *v.* Meuler 1173
Schmitt *v.* Morgan 1253
Schmitz *v.* United States 1245
Schmotzer *v.* Texas 840
Schneider; LaRose *v.* 879
Schneider *v.* McDaniel 1001
Schoenecker, *In re* 937
Schofield; West *v.* 1165
Scholastic Book Clubs *v.* Connecticut Comm'r of Revenue Services 940
Scholastic Book Clubs *v.* Roberts 1028
Schottel *v.* Young 1089
Schotten; Norris *v.* 1239
Schroeder; Chaparro *v.* 1179
Schrubb *v.* Cate 1071
Schuette *v.* Coalition to Defend Affirmative Action 1249
Schuleman *v.* Union Asset Management Holding A. G. 931
Schumaker *v.* United States 926
Schwartz; Montue *v.* 916
Schwartz *v.* United States 935,1239
Schweiner *v.* Foster 1072
Scibilia *v.* Verizon Communications, Inc. 1212
Scism; Ryan *v.* 922
Scofield; McCarthy *v.* 894,1064
Scott, *In re* 811,1116
Scott; Abebe *v.* 1070
Scott *v.* Astrue 892
Scott *v.* California 1174
Scott *v.* Curry 869
Scott *v.* Illinois 1097
Scott *v.* Iowa 948
Scott *v.* Iowa Dept. of Corrections 871
Scott *v.* Padula 967
Scott *v.* Sobina 878
Scott *v.* United States 1029,1101
Scott *v.* U. S. Bank N. A. 976,1092,1246
Scrase *v.* California 949
Scribner; Aldape *v.* 1067
Scribner; Barlow *v.* 840
Scribner; Davis *v.* 1129
Scribner; Escalera *v.* 1088
Scribner; Ewell *v.* 1133

Page
Scribner; Franklin *v.* 1034
Scruggs *v.* United States 1162
Scutt; Edwards *v.* 1126,1246
Scutt; Islam *v.* 872
Scutt; Ramirez-Garcia *v.* 1015
Scutt; Swansbrough *v.* 908
Seale *v.* Holder 1171
Seaman; Peterson *v.* 1190
Searcy *v.* Florida Dept. of Corrections 1166
Sears Holding Corp.; Brush *v.* 1143
Sears, Roebuck & Co.; Brush *v.* 1143
Sease *v.* United States 827
Seating Solutions *v.* McCarthy 963
Sebastian *v.* MacLaren 1096
Sebba *v.* Arizona 1231
Sebelius; Almy *v.* 1086
Sebelius *v.* Auburn Regional Medical Center 145,1008
Sebelius; Butts *v.* 859
Sebelius *v.* Cloer 1021
Sebelius; Hall *v.* 1085
Sebelius; Hobby Lobby Stores, Inc. *v.* 1401
Sebelius; Michigan Dept. of Community Health *v.* 1244
Sebelius; Sherley *v.* 1087
Sebelius; Texas Alliance for Home Care Services *v.* 1157
Sebelius; Tucker *v.* 1132
Secretary of Agriculture; Black Farmers Assn., Inc. *v.* 1195
Secretary of Agriculture; Gladden *v.* 810,1030
Secretary of Agriculture; Reedom *v.* 1202
Secretary of Air Force; Ford *v.* 1194
Secretary of Army; Gladden *v.* 987
Secretary of Army; Rumburg *v.* 1214
Secretary of Commerce; Gladden *v.* 810,1030
Secretary of Energy; Rockefeller *v.* 825
Secretary of HHS; Almy *v.* 1086
Secretary of HHS *v.* Auburn Regional Medical Center 145,1008
Secretary of HHS; Butts *v.* 859
Secretary of HHS *v.* Cloer 1021
Secretary of HHS; Hall *v.* 1085
Secretary of HHS; Hobby Lobby Stores, Inc. *v.* 1401
Secretary of HHS; Michigan Dept. of Community Health *v.* 1244
Secretary of HHS; Sherley *v.* 1087
Secretary of HHS; Texas Alliance for Home Care Services *v.* 1157
Secretary of HHS; Tucker *v.* 1132
Secretary of Homeland Security; Bullock *v.* 822

Page
Secretary of Homeland Security; Huang *v.* 1193
Secretary of Homeland Security; White *v.* 962,1031
Secretary of Labor; Gladden *v.* 1103
Secretary of Labor; Kloeckner *v.* 41
Secretary of Labor; Prince *v.* 1125
Secretary of Labor; Telsi *v.* 961
Secretary of Navy; Bourdon *v.* 1213
Secretary of Navy; Walls *v.* 1089
Secretary of State; Dominguez-Gonzalez *v.* 838
Secretary of State of Cal.; Noonan *v.* 1153
Secretary of State of Ill.; Lawrence *v.* 947,1077
Secretary of State of Ohio *v.* Obama for America 970
Secretary of Transportation; Ercole *v.* 1203
Secretary of Treasury; Liberty Univ. *v.* 808,1022
Secretary of Treasury; Wiley *v.* 1175
Secretary of Veterans Affairs; Burghart *v.* 935
Secretary of Veterans Affairs; Butler *v.* 910,1044
Secretary of Veterans Affairs; Byron *v.* 1086
Secretary of Veterans Affairs; Delfin *v.* 852,1043
Secretary of Veterans Affairs; Frederick *v.* 1249
Secretary of Veterans Affairs; Griffin *v.* 809,1083
Secretary of Veterans Affairs; Groves *v.* 1005
Secretary of Veterans Affairs; Shaffer *v.* 1072
Secretary of Veterans Affairs; Veterans for Common Sense *v.* 1086
Secretary of Veterans Affairs; Woods *v.* 1106
Secundino *v.* United States 1243
Securaplane Technologies, Inc.; Leon *v.* 911
Securities and Exchange Comm'n; Gabelli *v.* 442,1046
Securities and Exchange Comm'n; Jasper *v.* 1212
Securities and Exchange Comm'n; Johnson *v.* 809,1083,1212
Securities and Exchange Comm'n; Lauer *v.* 979
Securities and Exchange Comm'n; Missud *v.* 1211
Seebeck *v.* United States 1242
Seideman *v.* United States 1179
Seifert; Van Hoose *v.* 1002
Seiver *v.* United States 1113
Sekhar *v.* United States 1119
Selders *v.* Louisiana 903
Selensky *v.* Alabama 864,1043
Selgas *v.* Henderson County Appraisal Dist. 884,1020
Selig; Twiggs *v.* 1159
Sellers *v.* United States 1204
Seminole Tribe of Fla.; Contour Spa at Hard Rock, Inc. *v.* 1086
Semper *v.* United States 1229

Page
Sensing *v.* Porter 932
Serfass *v.* United States 1016
Serrano *v.* Stancil 869
Serrano *v.* Ziegler 815
Servitto; McCarthy *v.* 996,1083
Sessions *v.* United States 1218
Sessoms *v.* United States 1209
Settenbrino *v.* Barroga-Hayes 997
Sexton; Cooper *v.* 1171
Sexton *v.* Cozner 1099
Sexton; Metcalf *v.* 1149
Sexton; Wersal *v.* 823
Shabazz *v.* Tucker 850
Shaffer *v.* Shinseki 1072
Shahid *v.* United States 994
Shahideh *v.* McKee 1236
Shahin *v.* Bhatt 1081
Shahin *v.* Delaware Dept. of Transportation 1119,1120
Shahin *v.* E. I. du Pont de Nemours & Co. 1120
Shahin *v.* Glen 1120
Shahin *v.* Visalli 1119
Shahin *v.* Wilmington Trust 1119
Shahly *v.* Florida 1192
Shakopee; Neng Por Yang *v.* 861,1020
Shakur *v.* United States 1219
Shallowhorn *v.* Stribling 966
Shandong Linglong Rubber Co. *v.* Alpha Mining Systems 1087
Shandong Linglong Rubber Co. *v.* Alpha Tyre Systems 1087
Shandong Linglong Rubber Co. *v.* Tire Eng. & Distribution, LLC 1087
Shannon *v.* Cate 833
Shannon S. *v.* New York 1216
Shanton *v.* United States 802
Shao *v.* California 880,1064
Shareef *v.* United States 916
Sharp *v.* Cain 1033
Sharp *v.* United States 1056
Sharpton *v.* United States 981
Shartle; Contreras *v.* 914
Shatat *v.* United States 1173
Shaw; Muhammad *v.* 823
Shaw *v.* Walker 900
Shaw Coastal, Inc. *v.* Cherry 820
Shaygan *v.* United States 1019
Sheahan; Bryant *v.* 1108

Page
Sheahan; Epps *v.* 1216
Sheahan; Williams *v.* 1016
Sheet Metal Workers; Silgan Containers Mfg. Corp. *v.* 1158
Sheets; McKinney *v.* 984,1139
Shehabeldin *v.* U. S. Postal Inspection Service 920
Shehabeldin *v.* Wilson J. 833
Shehata *v.* Cate 863
Shehata *v.* Cole 1197
Shelby County *v.* Holder 1006,1151
Shell, *In re* 1009
Shelley *v.* Meko 951
Shell Oil Products Co., LLC; Van Straaten *v.* 1143
Shelter Distribution, Inc.; General Drivers *v.* 825
Shelton, *In re* 812,1043,1047
Shepard *v.* Baker 1103
Shephard *v.* United States 1113
Shepherd *v.* Henson 818
Shepherd *v.* United States 989
Sheppard *v.* Florida 948
Sheppard *v.* Holder 882
Shere *v.* Florida 1069
Sherif *v.* United States 916
Sheriff's Dept. Bossier Parish; Lewis *v.* 1099,1246
Sherley *v.* Sebelius 1087
Sherley *v.* United States 1016
Sherman *v.* Illinois 1144
Sherman *v.* United States 1239
Sherratt *v.* Utah Bd. of Pardons and Parole 1101
Sherrod *v.* Johnson 939,1030
Sherry; Johnson *v.* 841
Sherry; Valladolid *v.* 1094
Shi Chang Huang *v.* United States 1075
Shields *v.* Frontier Technology LLC 897,1070
Shields *v.* MicroAge LLC 897,1070
Shields *v.* United States 923
Shields *v.* Virga 1165
Shifu Lin *v.* United States 1184
Shigley *v.* United States 981
Shimko; F. H. *v.* 1232
Shinefield *v.* United States 1037
Shinseki; Burghart *v.* 935
Shinseki; Butler *v.* 910,1044
Shinseki; Byron *v.* 1086
Shinseki; Delfin *v.* 852,1043

Page
Shinseki; Frederick *v.* 1249
Shinseki; Griffin *v.* 809,1083
Shinseki; Groves *v.* 1005
Shinseki; Shaffer *v.* 1072
Shinseki; Veterans for Common Sense *v.* 1086
Shinseki; Woods *v.* 1106
Shipp *v.* Illinois 1127
Shippley *v.* United States 1110
Shippy *v.* United States 914
Shlikas *v.* Arrow Financial Services 1235
Shobe *v.* United States 1241
Shoemaker *v.* LeBlanc 1032
Shong-Ching Tong *v.* Superior Court of Cal., Los Angeles County 852
Shoreline; Holmes *v.* 876
Shorter *v.* Adams 852
Shoumaker *v.* United States 803
Shoupe *v.* United States 1073
Shove, *In re* 812,1084
Showalter; Washington *v.* 1166
Shrader *v.* United States 1049,1188
Shriner *v.* Wild Jack's Casino 1226
Shulick *v.* Michigan 1097,1209
Shulick *v.* Michigan Dept. of Corrections 902,1064
Shulman *v.* Zsak 1178
Shusterman *v.* United States 872
Sibley *v.* District of Columbia Bd. of Elections and Ethics 997,1087
Sibley *v.* Obama 1121,1160
Sibley *v.* Supreme Court of U. S. 801
Sidamon-Eristoff; American Express Travel Related Services *v.* 887
Sidamon-Eristoff *v.* New Jersey Food Council 978
Sidener, *In re* 1156
Sidener *v.* United States 871
Sieber *v.* Washington Post Cos. 942
Siegel *v.* Fox & Spillane, LLP 809
Siegel; Law *v.* 1047
Siegelman, *In re* 1023
Siegfried; Mayard *v.* 1154
Siemens Energy Inc.; Chen *v.* 1076
Siemens Industry, Inc.; Controlotron Corp. *v.* 815
Sierra *v.* Colorado 1097
Sierra *v.* Florida 1133
Sierra Robles Apartments; Prenatt *v.* 909
SigmaPharm, Inc. *v.* Mutual Pharmaceutical Co. 814
Signature Pharmacy, Inc. *v.* Soares 820

Page
Silgan Containers Mfg. Corp. *v.* Sheet Metal Workers 1158
Sillah *v.* Holder 1168
Siluk, *In re* 977
Silva *v.* Maine 1231
Silva *v.* United States 914
Silvar Lopez *v.* Clark 1071
Silverstein *v.* Andover School Bd. 820
Silvio *v.* United States 906
Simmons *v.* Braverman 829,1005
Simmons *v.* Novartis Pharmaceuticals Corp. 998
Simmons *v.* Prudenti 1236
Simmons *v.* Steele 1130
Simmons *v.* United States 1219
Simms *v.* Virginia 851
Simon, *In re* 937
SIMOS; Birdette *v.* 1225
Simpson; Driggers *v.* 1170
Simpson; Robertson *v.* 965
Simpson *v.* United States 1243
Sims *v.* Preska 988,1117
Sims *v.* Rios 852
Sims *v.* United States 1074
Sinclair; Armstead *v.* 1255
Sinclair; Gomez *v.* 1175
Sinclair; Lewis *v.* 904,1064
Sinclair; Stewart *v.* 1234
Sinclair *v.* United States 1183
Singh *v.* George Washington Univ. School of Medicine 821
Singletary *v.* United States 1101,1110
Singleton, *In re* 997,1118
Singleton *v.* Eagleton 869,1043
Singleton *v.* Indiana 842
Singleton *v.* United States 806
Sinquefield, *In re* 940
Sioux Honey Assn. *v.* United States 816
Sisavath *v.* California 866
Sisney *v.* Reisch 934,1035
Sisson *v.* Rosenblum 818
Sisters of Charity of Leavenworth Health System, Inc.; Parsons *v.* 1159
Sisto; Brooks *v.* 836
Sisto; Johnson *v.* 863
Sisto; Montue *v.* 985
Siu *v.* De Alwis 942
S. J. *v.* Mental Health Bd. of Fourth Judicial Dist. 1092

Page
Skaggs *v.* Florida 864
Skalafuris *v.* New York City Dept. of Corrections 807
SKF USA, Inc.; Barnett *v.* 942
Skipper *v.* Louisiana 835
Sklyarsky *v.* ABM Janitorial Services-North Central, Inc. 1165
Skolnik; Odoms *v.* 1215
Skory; Martin *v.* 1191
Skystar Bio Pharmaceutical Co.; Chien *v.* 886
Slaughter *v.* Mayor and City Council of Baltimore 1010
Sledge *v.* Bellwood School Dist. 88 1213
Sledge *v.* Grounds 1014
Sledge *v.* Marshall County Sheriff Dept. 883
Sledge *v.* Osborne 1072
Sletten *v.* United States 852
Sloane *v.* Fischer 983
Slocum *v.* Corporate Express US Inc. 982
Small; Cooley *v.* 904
Small; Cox *v.* 948
Small; Flournoy *v.* 1105
Small; Flowers *v.* 898
Small; Garcia *v.* 900
Small; McMaster *v.* 1221
Small; Patterson *v.* 914
Small *v.* Tucker 1032
Smallenberg, *In re* 938
Smalley *v.* Nebraska Dept. of Health and Human Services 1249
Smart *v.* California 1012
Smart *v.* Hedgpeth 871
Smart; Trammell *v.* 1014,1139
Smart *v.* Wilson 902,1044
Smelosky; Jenkins *v.* 945
Smiles *v.* LaVigne 950
Smith, *In re* 1047,1122,1247
Smith; Bailey *v.* 1001
Smith *v.* Baldwin 1070
Smith *v.* Bondi 869
Smith; Carter *v.* 949
Smith *v.* Chappell 869
Smith *v.* Clarke 902
Smith *v.* CSX Transportation, Inc. 980
Smith *v.* Delaware 1172
Smith; Diver *v.* 1240
Smith *v.* Elinsky 807
Smith *v.* Entrepreneur Media, Inc. 808

Page
Smith *v.* Florida 1009
Smith *v.* Folino 895
Smith; Gato *v.* 855
Smith *v.* Gomez 960
Smith *v.* Holder 1022
Smith *v.* Illinois 838
Smith; Kincaid *v.* 1024
Smith *v.* Koerner 984
Smith *v.* Lanigan 1050
Smith; Lewis *v.* 1254
Smith; Markovanovich *v.* 833
Smith *v.* Mississippi 1035
Smith *v.* Monroe 947,1139
Smith *v.* New Jersey 1217
Smith *v.* New York 1125
Smith *v.* North Carolina 1176
Smith *v.* Parker 852
Smith; Pearson *v.* 1217
Smith *v.* Pennsylvania 1130
Smith; Ruffin *v.* 1049
Smith; Stephenson *v.* 1002
Smith *v.* Tennessee 828,852
Smith *v.* Tennessee National Guard 1195
Smith *v.* Texas 1253
Smith *v.* United States 106, 880,882,980,993,1054,1101,1135,1144,1180,1192,1201,1209, 1258,1259
Smith *v.* Verizon Washington, DC 1019
Smith *v.* Virginia 1032
Smith *v.* Walker 1176
Smith *v.* Wisconsin 1016
Smithback, *In re* 812
Smith Barney *v.* StoneMor Operating LLC 1048
Smith County Sheriff's Dept.; Creamer *v.* 966,1118
Smitherman *v.* United States 984
Smith-Jeter *v.* Columbia 1001
Smithsonian Institution; Torain *v.* 903
Smolsky *v.* Kerestes 922
Smoot *v.* United States 1135
Snard *v.* United States 1219
Sneed *v.* United States 1177
Snelling *v.* Pawloski 803
Sniezek; Cooper *v.* 808
Snow *v.* Ryan 1177

Page
SnoWizard, Inc.; Andrews Arts & Sciences Law, LLC *v.* 1232
Snyder *v.* New York 1070
Snyder *v.* New York State Ed. Dept. 1041,1210
Snyder *v.* United States 869,956
Soares; Signature Pharmacy, Inc. *v.* 820
Sobina; Scott *v.* 878
Social Security Administration; Ky Tan Le *v.* 1131,1246
Social Security Administration; Salmon *v.* 820
Society of Holy Transfiguration Monastery; Archbishop Gregory *v.* 1167
Socorro Electric Cooperative of N. M.; Marian *v.* 1022
Sodexho, Inc.; United States *ex rel.* Pritsker *v.* 1082,1230
Sodipo *v.* United States 891
Solana Beach School Dist. *v.* K. D. 1026
Solano-Moreta *v.* United States 1042
Solar Turbines Inc.; Dang *v.* 902,1020
Soler-Norona *v.* United States 968,1065
Solis *v.* California 1033,1222
Solis; Gladden *v.* 1103
Solis; Kloeckner *v.* 41
Solis; Prince *v.* 1125
Solis; Telsi *v.* 961
Solis *v.* United States 993,1036
Solis-Diaz *v.* United States 891
Sollitt; KeyCorp *v.* 823
Solomon *v.* U. S. District Court 842
Solorio *v.* United States 829
Solutia Inc. *v.* McWane, Inc. 942
Somerville *v.* Thaler 1215
Somie *v.* United States 917
Sonachansingh *v.* Lee 1000,1188
Sony Electronics, Inc.; Trans Video Electronics, Ltd. *v.* 1090
Soriano *v.* Neshoba County General Hospital Bd. of Trustees . . . 1250
Sosa *v.* Louisiana 1172
Sosbee *v.* McCall 948
Sosnick; McCarthy *v.* 851,1064,1081
Soto *v.* United States 1180
Soto-Echevarria *v.* Wenerowicz 965
Sotomayor-Teijeira *v.* United States 1182
Soto-Quinones *v.* United States 841
Souleman *v.* Holder 882
Southampton; Broich *v.* 978
SouthBank; Epperson *v.* 1090
South Broward Hospital Dist.; Saridakis *v.* 940
South Carolina; Backus *v.* 801

Page
South Carolina; Brown *v.* 1103
South Carolina; Inman *v.* 863
South Carolina; Koon *v.* 1126
South Carolina; Myers *v.* 917
South Carolina; Rahim *v.* 917
South Carolina Dept. of Corrections; Deans *v.* 1072
South Carolina Dept. of Corrections; Robinson *v.* 1014
Southeastern Gun Co.; Waugh *v.* 837
Southeastern Pa. Transportation Authority; Foye *v.* 842
Southerland; New York City *v.* 1150
South Fla. Water Mgmt. Dist.; Moghaddam-Trimble *v.* 1160
Southwest Airlines Co.; Taleff *v.* 821
Southwest Va. Regional Jail-Abingdon; Chaffins *v.* 835
Souza *v.* California 1216
Spadoni *v.* United States 961,1019
Sparks *v.* Texas 981
Spartanburg County School Dist. Seven; Moss *v.* 1011
Speakeasy, Inc.; Rates Technology, Inc. *v.* 1122
Spear *v.* Montana 999,1116
Spear *v.* Tucker 1003
Spears *v.* United States 867
Speese; Castle *v.* 807
Spence *v.* United States 1256
Spencer *v.* Arizona 851
Spencer *v.* Chrones 1098
Spencer; Kilburn *v.* 923
Spencer *v.* Kirkland 1035
Spencer *v.* Riley 869
Spencer *v.* Thaler 840
Spencer *v.* Woods 1050
Spigner *v.* United States 927
Spillman, *In re* 811
Spires *v.* Harbaugh 834
Spivey *v.* Florida 915,1045
Spokane Police Dept.; Cronin *v.* 1214
Spooner *v.* Gautreaux 976
Spring Break '83 Productions, L. L. C.; Martin *v.* 1069
Springfield; Ali *v.* 853
Springfield; Al Tawheed *v.* 853
Springfield Housing Authority; Hopkins *v.* 1052
Springs *v.* Ally Financial Inc. 1215
Springs *v.* Arkansas 981
Spry *v.* United States 893
Spurlin *v.* United States 828

Page
Spurlock *v.* Washington 902
Srivastav *v.* United States 1196
Stacy *v.* Rouse 1085
Stacy; West Virginia Coal Workers' Pneumoconiosis Fund *v.* 816
Stafford *v.* United States 1037
Stair *v.* Clerk, Circuit Court of Mich., 13th Circuit 1088
Stallnacker *v.* Hobbs 1105
Stallone; Felice *v.* 1175
Stamp; Scaccia *v.* 870
Stamps *v.* Gwinnett County School Dist. 998
Stancil; Rubio Serrano *v.* 869
Stancil; Serrano *v.* 869
Stancle *v.* Clay 1198
Standard Fire Ins. Co. *v.* Knowles 588
Standridge *v.* United States 888
Stanford *v.* United States 995
Stanley *v.* United States 824,1188
Stansberry; Baisey *v.* 896
Stantec, Inc.; Thomsen *v.* 1122
Stanton *v.* Frink 1132
Stanton; Voth *v.* 1171
Stanwyck *v.* Supreme Court of Cal. 852
Staples, *In re* 1156
Stapleton; Muhammad *v.* 1146
Starks *v.* California 1101
Starks *v.* United States 1112
Starnes *v.* McLeod 822
Starr *v.* Knierman 1085
Starr *v.* United States 999,1139
State. See name of State.
State Bar of Cal.; Artz *v.* 1231
State Bar of Cal.; Janoe *v.* 1127
State Bar of Nev.; Hafter *v.* 1010
State Farm Ins.; Aljazi *v.* 868
State Farm Ins. Co.; Arafat *v.* 910,1044
State Street Bank & Trust Co. *v.* Pfeil 1063
Staton *v.* Reynolds 1002,1118
Staunton; Thomas *v.* 1010
Steele *v.* Bongiovi 933,1045
Steele *v.* Green Tree Servicing, LLC 815
Steele *v.* Ricigliano 933,1045
Steele; Simmons *v.* 1130
Steele *v.* Tucker 1028
Steele *v.* Turner Broadcasting System, Inc. 933,1045

Page
Steele *v.* Vector Management 933,1045
Stein; Campbell *v.* 1051
Stein *v.* Florida 1034
Stenson; Washington *v.* 959
Stephen *v.* United States 1109
Stephens *v.* Bondi 952
Stephens *v.* Crews 1174
Stephens *v.* Georgia Dept. of Transportation 873
Stephens *v.* Hobbs 1238
Stephens *v.* Tucker 966
Stephens *v.* United States 1257
Stephenson *v.* Smith 1002
Sterling, *In re* 811
Stevens *v.* California 841
Stevens *v.* Martel 838
Stevens *v.* United States 933,1045,1090,1240
Stevenson *v.* United States 930
Stevenson; Woods *v.* 1171
Stewart; AVCO Corp. *v.* 884
Stewart; Boniecki *v.* 1209
Stewart *v.* Louisiana 1163
Stewart *v.* Parris 914
Stewart *v.* Sinclair 1234
Stewart *v.* Thaler 945
Stewart *v.* Tucker 919
Stewart *v.* United States 924,1075,1256
Stierhoff *v.* United States 889,998
Stilling *v.* United States 1101
Stinchfield *v.* Cortez Masto 807
Stinson *v.* Bickell 1237
Stinson *v.* United States 920,1239
Stockman *v.* United States 1257
Stoffels *v.* SBC Communications, Inc. 886
Stogner *v.* Louisiana 830
Stokes *v.* United States 1112
Stokley, *In re* 1065
Stokley *v.* Ryan 837,1065
Stone *v.* United States 1148
Stone *v.* Virginia 1198
Stone; Waldman *v.* 1231
StoneMor Operating LLC; Citigroup Global Markets Inc. *v.* 1048
StoneMor Operating LLC; Smith Barney *v.* 1048
Stoner *v.* Young Concert Artists, Inc. 1194
Stora Enso North America *v.* Parliament Paper, Inc. 1123

Page
Stork *v.* United States 1080
Stouffer, *In re* 813
Straccialini *v.* United States 1038
Strader *v.* Department of Agriculture 1029
Strain *v.* United States 1256
Strand *v.* Golden Meadows Properties, LC 1168
Strange; Lord Abbett Municipal Income Fund, Inc. *v.* 816
Strausbaugh *v.* Government Printing Office 1082,1162
Streicher; Taylor *v.* 818
Streu *v.* Dormire 895
Stribling; Shallowhorn *v.* 966
Strickland *v.* Knab 860
Strickland *v.* Pennsylvania 879
Strickland *v.* RRR Bowie, LLC 860,1116
Strong *v.* Community State Bank 813
Strong; Meilleur *v.* 1031
Strong *v.* United States 990,1187
Strother *v.* United States 929
Stroud *v.* United States 995,1232
Strutton *v.* Meade 816
Stuart *v.* Walker 818
Stulga; Hoffman *v.* 891
Sturm *v.* United States 897,1064
Sturman *v.* United States 957,1117
Suarez *v.* Felker 1036
Subia; Dickson *v.* 1054
Subramanian *v.* QAD, Inc. 1214
Suever *v.* Chiang 1157
Suggs *v.* United States 988
Suhar; Bailey *v.* 809,1009
Sullivan *v.* DeRamcy 891,1064
Sullivan *v.* United States 1101
Sumlin *v.* United States 802
Summers *v.* Summers 817
Summers *v.* United States 851
Sumpter *v.* United States 968
Sumrall *v.* United States 1108
Sunbeam Products, Inc. *v.* Chicago American Mfg., LLC 1076
Suniga *v.* United States 927
Sun Life Assurance Co. of Canada; Jimenez *v.* 1162
Sun Life & Health Ins. Co.; Ray *v.* 980
SunTrust Banks, Inc.; Buffington *v.* 942
Superintendent of penal or correctional institution. See name or title of superintendent.

Page
Superior Court of Cal., Los Angeles County; Hill *v.* 1159
Superior Court of Cal., Los Angeles County; McHenry *v.* 1128
Superior Court of Cal., Los Angeles County; Shong-Ching Tong *v.* 852
Superior Court of Cal., Los Angeles County; Tarkington *v.* 832
Superior Court of Cal., Los Angeles County; Zaga *v.* 943,1077
Superior Court of Cal., Sacramento County; Hirschfield *v.* 942
Superior Court of Cal., Sacramento County; McGee *v.* 937
Superior Court of Cal., San Francisco County; Missud *v.* 1156
Superior Court of Cal., San Mateo County; Maldonado *v.* 887
Superior Court of Cal., Santa Clara County; Hiramanek *v.* 1197
Superior Court of Ga., Douglas County; Birdette *v.* 987,1117
Supershuttle International Corp.; Akaoma *v.* 827
Supilanas; Blume *v.* 982
Supreme Court of Ala.; Veteto *v.* 895,1116
Supreme Court of Cal.; Stanwyck *v.* 852
Supreme Court of La.; Jordan *v.* 1123
Supreme Court of Miss.; Presley *v.* 848
Supreme Court of Tenn.; Marlow *v.* 865,1043
Supreme Court of U. S.; Luevano *v.* 1033
Supreme Court of U. S.; Sibley *v.* 801
Supreme Court of Va.; Ladeairous *v.* 892,1116
Supreme Judicial Court of Mass.; Lallier *v.* 1027,1188
Surgent *v.* United States 932
Surgick *v.* Arizona 1237
Susman Godfrey, L. L. P.; Grynberg Production Corp. *v.* 883
Suthers; Lewis *v.* 1214
Suthers; Warrener *v.* 860
Sutter; Oxford Health Plans LLC *v.* 1065
Sutton Land LLC; Lachira *v.* 906,1117
S. W. *v.* Florida Dept. of Children and Families 1170
Swain *v.* Thaler 964
Swanegan *v.* United States 891
Swank *v.* United States 863
Swansbrough *v.* Scutt 908
Swarthout; Audette *v.* 939
Swarthout; Ford *v.* 1053
Swarthout; Graves *v.* 899
Swarthout; Johnson *v.* 844
Sweeney *v.* United States 1181
S. W. I. F. T. SCRL; Amidax Trading Group *v.* 1229
Swisher, *In re* 976,1140
Swisher *v.* Levenhagen 982,1139
Swoboda *v.* Judicial Clerkship of Supreme Court of Mo. 1172
Sykes *v.* United States 1220

Page
Sykes *v.* Wolfenbarger 838
Sylvester *v.* United States 920,1112
Sylvin *v.* United States 952
Symczyk; Genesis HealthCare Corp. *v.* 1008
Sypher *v.* United States 1257
Szafran *v.* Sandata Technologies, Inc. 928
T. *v.* Cantil-Sakauye 963
Tabansi *v.* Jones 863
Tabb, *In re* 1142,1246
Tabb *v.* Banks 807
Tabor *v.* Terrell 1131
Tacker; Towbridge *v.* 1095,1209
Tagliaferri *v.* Winter Park Housing Authority 1215
Tai; Wen Xuan *v.* 1010
Taleff *v.* Southwest Airlines Co. 821
Talladega Community Action Agency; Williams *v.* 1046
Tamayo *v.* Thaler 1009
Tamez; Rich *v.* 1210
Tamez; Williams *v.* 1232
Tamez; Youree *v.* 1126
Tampa; Crawford *v.* 895
Tampkins; Hobbs *v.* 914
Tan Ho *v.* Thaler 1250
Tankesly *v.* Mills 1098
Tan Le *v.* Social Security Administration 1131,1246
Tannis *v.* New York 899
Tarkington *v.* Superior Court of Cal., Los Angeles County 832
Tarpley *v.* United States 849
Tarrant Regional Water Dist. *v.* Herrmann 1081
Tarver *v.* United States 919
Tate *v.* Hartley 1166
Tatum *v.* Denney 870
Tausere *v.* Holder 1082
Taveras *v.* Rhode Island 826
Tawadrous *v.* Department of Treasury 1102,1246
Taylor *v.* Averill 821
Taylor; Gaynor *v.* 819
Taylor *v.* Harbour Pointe Homeowners Assn. 1162
Taylor *v.* Holder 922
Taylor; Jackson *v.* 894
Taylor *v.* King 1195
Taylor *v.* Louisiana 862,1077
Taylor *v.* Messmer 1082
Taylor *v.* Negley Park Homeowners Assn. Council 808

Page
Taylor; Neville *v.* 964
Taylor *v.* Pate 1082
Taylor *v.* Price 1169
Taylor *v.* Reilly 1147
Taylor; Roberts *v.* 1217
Taylor *v.* Salazar 895
Taylor *v.* Streicher 818
Taylor *v.* Tennessee 924
Taylor; Thompson *v.* 878
Taylor *v.* United States 871,953,991,995,1017,1245
Taylor *v.* Utah 851
Taylor *v.* Winnecour 1082
TBC Corp.; Arias *v.* 962
T. C. L. Industries (H.K.) Holdings; Daewoo Electronics America *v.* 815
Teachers Ins. & Annuity Assn. of Am. *v.* CRIIMI MAE Services 1010
Teague *v.* North Carolina Dept. of Transportation 949,1064
Teamsters *v.* National Labor Relations Bd. 1193
Teel *v.* United States 1162
Teeuwissen; Dean *v.* 981
Teitelbaum, *In re* 1023,1154
Telemundo de P. R., Inc.; Torres *v.* 1087
Telsi *v.* Solis 961
Tenerelli *v.* United States 894,1005
Tennessee; Adams *v.* 880
Tennessee; Berry *v.* 840
Tennessee; Burgess *v.* 1254
Tennessee; Cobbins *v.* 1092
Tennessee; Davidson *v.* 1092
Tennessee; Hugueley *v.* 808,1051,1189
Tennessee; Jordan *v.* 807
Tennessee; Kelly *v.* 1015
Tennessee; Lambert *v.* 1131
Tennessee; Lee *v.* 1049
Tennessee; McGaha *v.* 900
Tennessee; Nichols *v.* 905
Tennessee; Pate *v.* 898
Tennessee; Pike *v.* 827
Tennessee; Roy *v.* 1253
Tennessee; Rubio *v.* 867
Tennessee; Smith *v.* 828,852
Tennessee; Taylor *v.* 924
Tennessee; Thomas *v.* 1092
Tennessee Dept. of Children's Services; Martin-Matera *v.* 1078
Tennessee National Guard; Smith *v.* 1195

Page
Tenth Judicial Circuit Court; Mickens *v.* 943
Termain; Derringer *v.* 847
Terranova *v.* Torres 886
Terrell; Black *v.* 1095
Terrell; Samuel *v.* 1070
Terrell; Tabor *v.* 1131
Territory. See name of Territory.
Terry; Griffin *v.* 1051
Terry *v.* United States 863
Terry *v.* Warren 1096
Teters *v.* Borst Automotive Inc. 1237
Tex; Kulesa *v.* 1116
Texaco Inc.; Randolph *v.* 1104
Texada *v.* Cain 808
Texarkana; Hall *v.* 983
Texas; Acevedo *v.* 964
Texas; Alford *v.* 815
Texas; Almendarez *v.* 1070
Texas; Alvarado *v.* 1014
Texas; Arceneaux *v.* 1099
Texas; Bender *v.* 1144
Texas; Bibbs *v.* 1234
Texas; Black *v.* 857
Texas; Boone *v.* 850
Texas; Broadnax *v.* 828
Texas; Butler *v.* 1163
Texas; Castillo *v.* 1125
Texas; Chavez *v.* 948
Texas; Conti *v.* 1025,1163
Texas; Crook *v.* 808
Texas; Dean *v.* 1130
Texas; de la Cruz *v.* 841
Texas; Duncan *v.* 1234
Texas; Estrada *v.* 861
Texas; Garrett *v.* 1129
Texas; Goains *v.* 854
Texas; Gobert *v.* 827
Texas; Godfrey *v.* 906
Texas; Green *v.* 960
Texas; Haddix *v.* 1127
Texas; Hart *v.* 815,1013
Texas; Hidrogo *v.* 855
Texas; Holmes *v.* 899
Texas; Hood *v.* 832

Page
Texas; Howell *v.* 854
Texas; Hughes *v.* 1021
Texas; Hurd *v.* 1012
Texas; Huy Troung Bui *v.* 1147
Texas; Ingram *v.* 843
Texas; Jackson *v.* 820
Texas; James *v.* 1165
Texas; Jennings *v.* 871
Texas; Jensen *v.* 1073
Texas; Jerrell *v.* 983
Texas; Johnson *v.* 834,985
Texas; Jones *v.* 889
Texas; Kemppainen *v.* 937,1025
Texas; King *v.* 985
Texas; Kirkpatrick *v.* 841
Texas; Kulpinsky *v.* 1027
Texas; LaFleur *v.* 1165
Texas; Leyva Pecina *v.* 876
Texas; Lopez *v.* 896
Texas; Martin *v.* 1026,1150
Texas; McGough *v.* 901
Texas; McKnight *v.* 838
Texas; McNeil *v.* 1173
Texas; Munn *v.* 834
Texas *v.* New Mexico 808
Texas; Olvera Jimenez *v.* 1085
Texas; Owen *v.* 1254
Texas; Padilla *v.* 851
Texas; Page *v.* 854
Texas; Perry *v.* 838,1116
Texas; Ruiz *v.* 983
Texas; Salinas *v.* 1119
Texas; Samuel *v.* 1253
Texas; Sanders *v.* 1049
Texas; Schmotzer *v.* 840
Texas; Smith *v.* 1253
Texas; Sparks *v.* 981
Texas; Thomas *v.* 1217
Texas; Waddleton *v.* 832,1116
Texas; Watkins *v.* 837
Texas; Wilson *v.* 802
Texas; Young *v.* 1093
Texas Alliance for Home Care Services *v.* Sebelius 1157
Texas State Bd. of Medical Examiners; Scally *v.* 1255

Page
Texidore *v.* United States 1109
Thacker *v.* Workman 1105
Thai Hong Doan *v.* United States 1192
Thai-Lao Lignite Co.; Government of Lao Republic *v.* 1195
Thaler; Adams *v.* 844
Thaler; Adeleke *v.* 1127
Thaler; Alonzo *v.* 1232
Thaler; Arencio Mauricio *v.* 1171
Thaler; Baez *v.* 1235
Thaler; Banks *v.* 1014
Thaler; Binford *v.* 833
Thaler; Blue *v.* 828,1189
Thaler; Boulds *v.* 841,1116
Thaler; Bowman *v.* 1096
Thaler; Broussard *v.* 1000
Thaler; Brown *v.* 1164
Thaler; Byrd *v.* 1013
Thaler; Carter *v.* 947
Thaler; Cason *v.* 874
Thaler; Chesteen *v.* 1012
Thaler; Chester *v.* 978
Thaler; Clark *v.* 850,984
Thaler; Cobb *v.* 1126
Thaler; Coleman *v.* 866
Thaler; Comeaux *v.* 1067
Thaler; Cubas *v.* 1170
Thaler; Dinh Tan Ho *v.* 1250
Thaler; Feldman *v.* 1233
Thaler; Gamble *v.* 831
Thaler; Garza *v.* 945,1167
Thaler; Green *v.* 960
Thaler; Greer *v.* 1129
Thaler; Haynes *v.* 970
Thaler; Jackson *v.* 865
Thaler; Jahanian *v.* 1082
Thaler; Jasper *v.* 1069
Thaler; Junious *v.* 1098
Thaler; Kearse *v.* 904
Thaler; LeBlanc *v.* 906
Thaler; Lyon *v.* 985
Thaler; McCarthy *v.* 1094
Thaler; McCoskey *v.* 1093
Thaler; McCoy *v.* 861
Thaler *v.* McGowen 1041

Page
Thaler; McGowen *v.* 1030
Thaler; McNac *v.* 1032
Thaler; Miller *v.* 844
Thaler; Morgan *v.* 1168
Thaler; Morris *v.* 949,1064
Thaler; Moss *v.* 1170
Thaler; Murray *v.* 833,1116
Thaler; Musgrove *v.* 858
Thaler; Norwood *v.* 910
Thaler; Parr *v.* 1093
Thaler; Perez *v.* 1238
Thaler; Powell *v.* 946,1077
Thaler; Pruett *v.* 839
Thaler; Reed *v.* 902
Thaler; Reyes *v.* 1000,1117
Thaler; Rios Rivera *v.* 1049
Thaler; Roberts *v.* 982
Thaler; Sanford *v.* 1099
Thaler; Somerville *v.* 1215
Thaler; Spencer *v.* 840
Thaler; Stewart *v.* 945
Thaler; Swain *v.* 964
Thaler; Tamayo *v.* 1009
Thaler; Torres Hernandez *v.* 851
Thaler; Trammell *v.* 969
Thaler; Trevino *v.* 977
Thaler; Tucker *v.* 1146
Thaler; Turner *v.* 1008
Thaler; Vu Hoang Nguyen *v.* 907
Thaler; Williams *v.* 1095,1100
Thames *v.* Chapman 1036
Thames *v.* United States 892
The Heights; Daugherty *v.* 1227
Theodore Coates, P. C. *v.* AIG Annuity Ins. Co. 932
Theresa H. *v.* Public Guardian, Office of Public Advocacy 859
Thirteenth Judicial Circuit of Fla.; Gillespie *v.* 1172
Thirtle *v.* Gage 1133
Thi Tran Nguyen, *In re* 1227
Thomas; Abed *v.* 1136
Thomas *v.* Alabama Bd. of Pardons and Paroles 868
Thomas *v.* Alabama Dept. of Corrections 854
Thomas *v.* California 923,1098
Thomas; Chappell *v.* 1186
Thomas *v.* Diaz 1128

Page
Thomas *v.* Florida Dept. of Corrections 1197
Thomas; Frazier *v.* 833
Thomas; Gibbs *v.* 1024,1240
Thomas *v.* Gonzalez 831
Thomas; Grindling *v.* 901
Thomas *v.* Holder 944
Thomas; Hunt *v.* 1012
Thomas *v.* Ingwerson 1072
Thomas *v.* Jones 1169
Thomas; Jones *v.* 845,1077
Thomas *v.* Loveless 831,1042
Thomas *v.* MacLaren 1233
Thomas *v.* Madison 1019
Thomas *v.* Michigan 1179
Thomas *v.* Oklahoma 804
Thomas *v.* Parker 806
Thomas; Peck *v.* 1180
Thomas *v.* Pennsylvania Bd. of Probation and Parole 850,1043
Thomas *v.* Pollard 917
Thomas; Price *v.* 1212
Thomas *v.* Ritz Condominium Assn., Inc. 829
Thomas; Roberts *v.* 1131
Thomas *v.* Romanowski 1217
Thomas *v.* Staunton 1010
Thomas *v.* Tennessee 1092
Thomas *v.* Texas 1217
Thomas; Trinidad y Garcia *v.* 1114
Thomas *v.* United States 803,897,923,1004,1018,1178
Thomas; West *v.* 1255
Thomas; Williams *v.* 1129
Thomas Petroleum, Inc. *v.* Morris 824
Thomas-Rasset *v.* Capitol Records, Inc. 1229
Tho Minh Chau *v.* Massachusetts 1192
Thompson, *In re* 1156
Thompson; Carter *v.* 1090
Thompson *v.* Connecticut 1146
Thompson *v.* Crews 1197
Thompson *v.* Danville 817
Thompson *v.* Gonzalez 1033,1188
Thompson *v.* Holder 1004
Thompson *v.* Illinois 1254
Thompson *v.* Lewis 1217
Thompson; Mulero *v.* 1029,1150
Thompson *v.* Taylor 878

Page

Thompson *v.* United States 894,899,1054,1113
Thoms *v.* United States 1195
Thomsen *v.* Stantec, Inc. 1122
Thornberg *v.* United States 1258
Thornsbury *v.* United States 856
Thornton *v.* Ives 1251
Thorpe Insulation Co.; Continental Ins. Co. *v.* 815
Threatt *v.* Arredia 937
Three-Dimensional Media Group, Ltd. *v.* Kappos 1085
Threet *v.* Howes 1099
30 River Court East Urban Renewal Co.; Capogrosso *v.* 979
Thurman *v.* United States 1183
Thurmer; Williams *v.* 1171
Thurston *v.* Yates 946
Tibbals *v.* Carter 57
Tibbals; Gorospe *v.* 1052
Tiberi; Pizzoferrato *v.* 1130
Tichot *v.* Maine State Police 987
Tierney *v.* U. S. Court of Appeals 909
Tifft; Roberts *v.* 845
Tift County Hospital Authority; Tucker *v.* 1084,1251
Tigelino Martinez *v.* United States 894
Tijo-Mota *v.* United States 869
Tilton *v.* MacDonald 849
Tilton; Sanders *v.* 1098,1246
Timbers *v.* United States 1175
Timet; Metz *v.* 929
Timmons *v.* Richland County Sheriff's Office 982
Timms *v.* United States 930
Tindall *v.* Freightquote.com, Inc. 923
Tinsley *v.* Genesis HealthCare Corp. 982
Tinsley & Adams, LLP; RFT Management Co., LLC *v.* 1159
Tire Eng. & Distribution, LLC; Linglong Group Co. *v.* 1087
Tire Eng. & Distribution, LLC; Shandong Linglong Rubber Co. *v.* 1087
Tisius *v.* Missouri 868
Tisthammer *v.* United States 1179
Titanium Metals Corp.; Metz *v.* 929
Titlow; Burt *v.* 1191
Titus *v.* United States 903
T. M. *v.* Florida Dept. of Children and Families 1167
T-Mobile Northeast LLC; City Council of Newport News *v.* 826
Tobar *v.* McEwen 1105
Tobin *v.* United States 1026
Todd *v.* Bigelow 1168

Page
Toei Animation Inc.; Potter *v.* 1127,1210
Toelupe *v.* United States 918
Toffoloni *v.* Hustler Magazine 1068
Toffoloni *v.* LFP Publishing Group, LLC 1068
Toland *v.* Futagi 826
Toledo; Bench Billboard Co. *v.* 1159
Toledo; EJS Properties, LLC *v.* 1250
Toliver *v.* Duwel 1099
Tolliver *v.* United States 828
Tomaselli *v.* Coppola & Coppola 858
Tomlin *v.* Glunt 827
Tommy Guns Garage, Inc.; Little *v.* 831,1043
Tompkins *v.* Herron 1252
Toney *v.* United States 908
Tong *v.* Superior Court of Cal., Los Angeles County 852
Tong Xiong *v.* Felker 1147
Tooley *v.* United States 861
Topps, Inc.; Malcomson *v.* 896
Torain *v.* Smithsonian Institution 903
Tormenia *v.* Contursi 810,997,1085
Tornheim *v.* Blue & White Food Products Corp. 947
Torrefranca *v.* Ryan 805,1024
Torres *v.* McKewan 1233
Torres *v.* Nebraska 871
Torres *v.* Nevada 856
Torres *v.* Ryan 964
Torres *v.* Telemundo de P. R., Inc. 1087
Torres; Terranova *v.* 886
Torres *v.* Tucker 844
Torres *v.* United States 894,924
Torres Aguilera *v.* United States 994
Torres-Duenas *v.* United States 1179
Torres Hernandez *v.* Thaler 851
Totaro *v.* U. S. District Court 1066
Totten *v.* Holloway 1071
Tovar *v.* United States 1136
Towbridge *v.* Florida Dept. of Corrections 1099,1246
Towbridge *v.* Tacker 1095,1209
Town. See name of town.
Townsel, *In re* 812,1043
Townsend; Christian *v.* 844
Townsend *v.* United States 1088,1209
Toyens-Villegas *v.* United States 897
Traffic Court of Tyler; Carr *v.* 1216

Page
Trammell; Allen *v.* 1005
Trammell; Ochoa *v.* 1065
Trammell *v.* Smart 1014,1139
Trammell *v.* Thaler 969
Tran *v.* California 1133
Tran *v.* Coty Inc. 1161
Tran; Loan Phoung *v.* 824,1077
Tran *v.* United States 826
Trancos, Inc. *v.* Balsam 979,1116
Tran Nguyen, *In re* 1227
Transaction Holdings, Ltd. *v.* Kappos 1125
Trans Video Electronics, Ltd. *v.* Sony Electronics, Inc. 1090
Traversa *v.* Educational Credit Management Corp. 817
Travillion *v.* Difenderfer 1033
Treasurer of N. J.; American Express Travel Services *v.* 887
Treasurer of N. J. *v.* New Jersey Food Council 978
Treasurer, Trustees of Drury Indus. Health Care Plan *v.* Goding 1250
Trefry *v.* Massachusetts Dept. of Children and Families 1183
Treglia *v.* California 1015
Trepal *v.* Crews 1237
Trevino *v.* Hardy 894
Trevino *v.* Thaler 977
Trilla Pinero; Esso Standard Oil Co. *v.* 1114
Tringham *v.* United States 1244
Trinidad and Tobago; Ferguson *v.* 1125
Trinidad-Cotto *v.* United States 1202
Trinidad y Garcia *v.* Thomas 1114
Triplett *v.* Donahoe 1239
Tripodi *v.* North Coventry Township 821
Tripp *v.* United States 1017
Trivedi *v.* Internal Revenue Service 845
Troice; Chadbourne & Parke LLP *v.* 809,1140
Troice; Proskauer Rose LLP *v.* 809,1140
Troice; Willis of Colo. Inc. *v.* 809,1140
Trombley; Curvan *v.* 858
Trombley; Martinez *v.* 832
Trotman *v.* United States 956
Trotter *v.* Ayres 1000
Troung Bui *v.* Texas 1147
Trudeau *v.* Federal Trade Comm'n 941
Trujillo *v.* Florida 1132
Trujillo *v.* Ploughe 1033
Truong *v.* United States 892
Trustees of Church of Apostolic Faith Inc.; Askew *v.* 1125

Page
Tschacher *v.* United States 1196
Tshiwala *v.* Hershberger 807
Tucker *v.* Atchison 1253
Tucker; Bachmann *v.* 909
Tucker; Bailey *v.* 1053
Tucker; Brown *v.* 907
Tucker; Caballero *v.* 841
Tucker; Chamberlain *v.* 1052
Tucker; Chambers *v.* 939
Tucker; Chandler *v.* 870
Tucker; Clayton *v.* 837
Tucker *v.* Commissioner 1026
Tucker; Consalvo *v.* 849
Tucker; Cordero *v.* 983
Tucker *v.* Costello 805,997
Tucker; Delgado *v.* 856
Tucker; Dennard *v.* 896
Tucker; Durr *v.* 844
Tucker; Faldas *v.* 1088
Tucker *v.* Ferguson 974
Tucker; Ferguson *v.* 974
Tucker; Fine *v.* 1052
Tucker; Frederick *v.* 1104
Tucker; Freeman *v.* 853
Tucker; Gaffney *v.* 899
Tucker; Hernandez *v.* 945
Tucker; Hitchcock *v.* 988,1117
Tucker; Holley *v.* 952
Tucker; Holston *v.* 859,1221
Tucker; Jaworski *v.* 1031
Tucker; Jones *v.* 851
Tucker; Kormondy *v.* 1051
Tucker; Lawn *v.* 962,1116
Tucker; Lenoir *v.* 910
Tucker; Leonard *v.* 856
Tucker; Lofley *v.* 900
Tucker; Lucas *v.* 1104
Tucker; Lumpkins *v.* 833
Tucker; Mann *v.* 833,1052
Tucker; Mansfield *v.* 1098
Tucker; Moore *v.* 858
Tucker; Morris *v.* 976
Tucker; Moss *v.* 1001
Tucker; Moya-Feliciano *v.* 1104

Page
Tucker; Owens *v.* 917
Tucker; Pagan *v.* 1093
Tucker; Plancarte *v.* 1099
Tucker; Rasley *v.* 871
Tucker; Reese *v.* 905
Tucker; Rhodes *v.* 829
Tucker; Riggs *v.* 912
Tucker; Rios *v.* 954
Tucker; Ross *v.* 1094
Tucker; Rozzelle *v.* 914
Tucker; Russ *v.* 1033,1188
Tucker; Sargent *v.* 1003
Tucker *v.* Sebelius 1132
Tucker; Shabazz *v.* 850
Tucker; Small *v.* 1032
Tucker; Spear *v.* 1003
Tucker; Steele *v.* 1028
Tucker; Stephens *v.* 966
Tucker; Stewart *v.* 919
Tucker *v.* Thaler 1146
Tucker *v.* Tift County Hospital Authority 1084,1251
Tucker; Torres *v.* 844
Tucker *v.* United States 1184
Tucker; Walton *v.* 853
Tucker; Washington *v.* 1104
Tucker; Watson *v.* 917
Tucker; Woodard *v.* 1053,1189
Tudor & Sons Sales, Inc.; Alphas Co. *v.* 1027
Tuite; Martel *v.* 927
Tulare Co.; Bobo *v.* 948
Tully *v.* California 1175
Turnbull; Noyakuk *v.* 1036
Turner *v.* California 842
Turner *v.* Florida 868,1105
Turner *v.* Thaler 1008
Turner *v.* United States 863,898,1018
Turner Broadcasting System, Inc.; Steele *v.* 933,1045
Turnpaugh *v.* Michigan 913
Turnquest *v.* United States 1113
Turpin *v.* United States 1009,1187
Turrubiates *v.* Family Practice Associates of Western Kansas . . . 883
Twiggs *v.* Selig 1159
Twin City Fire Ins. Co.; DS Waters of America, Inc. *v.* 1087
210 East 86th St. Corp.; Eastside Exhibition Corp. *v.* 1028

Page
TXU Business Services Co.; Reilly *v.* 1144
Tyson *v.* United States 867
Udeh *v.* United States 1042
Uhr *v.* Responsible Hospitality Institute, Inc. 1158
Uhrich; Maloof *v.* 884
Umphrey *v.* Illinois 862
Under Seal *v.* Under Seal 826,1042
Unemployment Compensation Bd. of Review; Bermudez *v.* . . 1106,1222
Unemployment Compensation Bd. of Review; Brown *v.* 911
Unified School Dist. #501; Almond *v.* 885
Union. For labor union, see name of trade.
Union Asset Management Holding A. G.; Schuleman *v.* 931
Union Carbide Corp. *v.* Commissioner 1244
Union City; Jones *v.* 1043
Union Pacific R. Co.; Cluck *v.* 1122
Union Pacific R. Co.; Huffman *v.* 1086
Union Pacific R. Co.; Morgan *v.* 1123
United. For labor union, see name of trade.
United Consumers Credit Union; Rashaw *v.* 1159
UnitedHealthcare Ins. Co. *v.* Access Mediquip L. L. C. 1194
United Medical Center; Rayfield *v.* 983
United Parcel Service; Jones *v.* 883
United Parcel Service; Parikh *v.* 1133,1222
United Parcel Service; Phillips *v.* 1233
United States. See name of other party.
U. S. Air Force; Wilson *v.* 1199
U. S. Bank N. A. *v.* Aguayo 814
U. S. Bank N. A.; Franklin *v.* 904
U. S. Bank N. A.; Marquis *v.* 1120
U. S. Bank N. A.; Scott *v.* 976,1092,1246
U. S. Court of Appeals; Crawford *v.* 933
U. S. Court of Appeals; Riggleman *v.* 1098
U. S. Court of Appeals; Tierney *v.* 909
U. S. Court of Appeals; Veale *v.* 816
U. S. Customs Agency; Ancient Coin Collectors Guild *v.* 1251
U. S. District Court; Abpikar *v.* 1218
U. S. District Court; Baldwin *v.* 911
U. S. District Court; Bernegger *v.* 1108
U. S. District Court; Bonanno *v.* 1201
U. S. District Court; Bookman *v.* 832
U. S. District Court; Brunson *v.* 846,1043
U. S. District Court; Bush *v.* 1200
U. S. District Court; Christian *v.* 945,1064
U. S. District Court; Continental Motors, Inc. *v.* 1230

Page
U. S. District Court; Coulter *v.* 835,1020
U. S. District Court; Elbey *v.* 1082
U. S. District Court; Figueroa *v.* 925
U. S. District Court; Goodrich *v.* 914
U. S. District Court; Griffin *v.* 1106
U. S. District Court; Kendrick *v.* 898
U. S. District Court; Lee *v.* 891,1064
U. S. District Court; Martinez *v.* 857
U. S. District Court; Mellerson *v.* 1200
U. S. District Court; Paul *v.* 809
U. S. District Court; Raiser *v.* 1238
U. S. District Court; Ramirez-Salazar *v.* 1017
U. S. District Court; Solomon *v.* 842
U. S. District Court; Totaro *v.* 1066
U. S. District Court; Wattleton *v.* 1141
U. S. District Court; Williams *v.* 995
U. S. District Judge; Honesto *v.* 929,1045
U. S. District Judge; Jaffe *v.* 1211
United States Fire Ins. Co. *v.* Alexander 1025
U. S. Forest Service *v.* Pacific Rivers Council 1228
U. S. Information Systems, Inc.; Electrical Workers *v.* 1154
U. S. Marshals Service; Williams *v.* 950
U. S. Postal Inspection Service; Shehabeldin *v.* 920
U. S. Postal Service; Davis *v.* 987,1117
U. S. Secret Service; James *v.* 1147
United States Steel Corp.; Cataldo *v.* 1157
United States Steel Corp.; Sandifer *v.* 1156
Unite Here *v.* Mulhall 1121
Unite Here; Mulhall *v.* 1121
University of Hawaii; Jones *v.* 885
University of Ky.; Amaechi *v.* 943
University of Rochester; Jones *v.* 1102,1222
University of Tex. at Dallas; Muthukumar *v.* 1121,1251
University of Tex. Southwestern Medical Center *v.* Nassar 1140
Unknown Clerk 1; Watson *v.* 991
Unknown Objectors; Brown *v.* 820
Unknown Parties; Paige *v.* 898
Upshaw *v.* United States 992
Uribe; Black *v.* 1082
Uribe; Dean *v.* 967
Uribe; Menchaca *v.* 1095
Uribe *v.* United States 895
Uribe-Quintero *v.* United States 1110
Urquia Lagos *v.* United States 1203

Page
US Airways, Inc. *v.* McCutchen 1008
Utah; Butt *v.* 1192
Utah; Greenwood *v.* 1160
Utah; K. F. *v.* 962,1049
Utah; Maestas *v.* 1252
Utah; Taylor *v.* 851
Utah Bd. of Pardons and Parole; Sherratt *v.* 1101
Uttecht; Lewis *v.* 1133
Vadde, *In re* 811,1064
Vaksman, *In re* 1084
Vaksman *v.* United States 1056,1189
Valdes *v.* United States 1109
Valdez *v.* Frank Kent Cadillac 820
Valdez *v.* Frank Kent Motor Co. 820
Valdez Valenzuela *v.* United States 956
Valdivia *v.* United States 994
Valencia *v.* Hedgpeth 875
Valencia *v.* United States 905
Valencia Diaz *v.* United States 1113
Valencia Gonzales; Ryan *v.* 57
Valencia Mendoza *v.* United States 1137
Valentin *v.* United States 926,1164
Valentine *v.* Cain 1130
Valenzuela; Gilmore *v.* 1034
Valenzuela *v.* United States 1112,1241
Valladolid *v.* Sherry 1094
Vallery *v.* McDonald 1169
Valrick J. *v.* Orange County Dept. of Social Services 869
Van Buren *v.* California 845
Vance *v.* Ball State Univ. 1008
Vance *v.* Wallace 1168
VandeBrake *v.* United States 1193
VanderZwaag *v.* United States 862
Vang *v.* Virga 1173
Van Hoesen *v.* United States 890
Vanhook *v.* United States 1256
Van Hoose *v.* Seifert 1002
Vann *v.* British Petroleum Oil Co. 807
Vann *v.* Gilbert 988,1117
Vanover *v.* Brunsman 1199
Van Staden *v.* St. Martin 814
Van Straaten *v.* Shell Oil Products Co., LLC 1143
VanWinkle *v.* Arizona 1094
Varano; Durham *v.* 921

Page
Varano; Rhodes *v.* 1099
Varano; Richardson *v.* 802
Varga; Johnson *v.* 1173
Vargas *v.* Hedgpeth 944
Vargas *v.* Salinas 958
Vargas *v.* United States 1075
Vargas-Lombana, *In re* 1047
Vargas-Soto *v.* United States 1204
Varnau *v.* Wenninger 823
Varnes *v.* United States 851
Vary *v.* Booker 1089
Vasque Valenzuela *v.* United States 1241
Vasquez *v.* Knipp 1111
Vasquez; Moon *v.* 1198
Vasquez *v.* United States 910,1108
Vasquez Arroyo *v.* Gross 864,1064
Vasquez-Chavez *v.* United States 1038
Vasquez Escalante *v.* Watson 1132
Vasquez-Gutierrez *v.* United States 918
Vasquez-Hernandez *v.* United States 1106
Vasquez-Olea *v.* United States 892
Vasquez-Rojas *v.* United States 851
Vaughn; De La Cerda *v.* 892
Vaughn; Williams *v.* 907
Vaught *v.* United States 1219
Veale *v.* U. S. Court of Appeals 816
Vector Management; Steele *v.* 933,1045
Vector Marketing, Inc.; Birdette *v.* 1224
Vega *v.* United States 828,878
Vega Padron *v.* United States 1108
Velasco-Hernandez *v.* Miller-Stout 859,1064
Velasquez-Maldonado *v.* United States 854
Velasquez-Otero *v.* Holder 977
Velasquez-Penuelas *v.* United States 1137
Velazquez *v.* Weinman 1126
Velez *v.* United States 991
Venta *v.* United States 913,1077
VerBurg *v.* United States 923
Verdun *v.* Cain 1015
Verizon Communications, Inc.; Scibilia *v.* 1212
Verizon Washington, DC; Smith *v.* 1019
Vermont; Burke *v.* 1072
Versatile *v.* Johnson 1172
Veta *v.* Ryan 886,1044

Page
Veterans for Common Sense *v.* Shinseki 1086
Veteto *v.* Supreme Court of Ala. 895,1116
Vey *v.* Pennsylvania 1048
Vickerman *v.* Bixler 907,1020
Vickerson; Linear *v.* 810,1068
Victor *v.* United States 953
Viet *v.* Knipp 1237
Villa, *In re* 940
Villabona-Alvarado *v.* United States 1106
Villafane *v.* LaValley 983
Village. See also name of village.
Village at Eagle Creek Homeowners Assn.; Kim *v.* 825
Villalon *v.* Indiana 1047
Villalva; McKinney *v.* 1071
Villa-Madrigal *v.* United States 1016
Villanueva Sanchez *v.* United States 964
Villasenor *v.* United States 859,969
Villegas *v.* Galloway 911
Vilsack; Black Farmers Assn., Inc. *v.* 1195
Vilsack; Gladden *v.* 810,1030
Vilsack; Reedom *v.* 1202
Virga; Arreygue *v.* 866
Virga; Hall *v.* 987
Virga; Shields *v.* 1165
Virga; Vang *v.* 1173
Virga; Washington *v.* 1094,1222
Virginia; Ecklin *v.* 1098
Virginia; Enriquez *v.* 942
Virginia; Gamble *v.* 873
Virginia; Gardner *v.* 855
Virginia; Honey *v.* 989
Virginia; Hunter *v.* 1252
Virginia; Jenkins *v.* 839
Virginia; Keck *v.* 943
Virginia; LaBorde *v.* 863
Virginia; Loyd *v.* 1238
Virginia; Makdessi *v.* 1167
Virginia; Mangram *v.* 1031
Virginia; Mohammed *v.* 1096
Virginia; Moses *v.* 858
Virginia; Prieto *v.* 871
Virginia; Rives *v.* 1163
Virginia; Simms *v.* 851
Virginia; Smith *v.* 1032

Page
Virginia; Stone *v.* 1198
Virginia Bd. of Agriculture and Consumer Services; Russell *v.* . . 980
Virginia Bd. of Bar Examiners; Bolls *v.* 817
Virginia Employment Comm'n; Adams *v.* 1235
Virgin Islands; Morton *v.* 1253
Visalli; Shahin *v.* 1119
Vititoe *v.* United States 1180
Vogel *v.* Evans 1029
Volk *v.* Glebe 1169
Vondal *v.* Frink 965,1117
Voneida *v.* United States 1179
Vontress *v.* Eighth Judicial District Court of Nev., Clark County 1046
Voorhies; Alston *v.* 984
Voorhies; Freeman *v.* 843
Voth *v.* Stanton 1171
Vreeland *v.* United States 994
Vu Hoang Nguyen *v.* Thaler 907
Vurimindi *v.* Link 1160
W. *v.* Florida Dept. of Children 1170
W. *v.* Illinois 827
W. *v.* New Jersey Division of Youth and Family Services 1215
Wabno *v.* Derby 1086
Wackenhut Corp.; Chandler *v.* 824
Waddell *v.* Jackson 952
Waddleton *v.* Texas 832,1116
Wade *v.* Bank of America, N. A. 1172
Wadman *v.* United States 1185
Wagenfeald *v.* Gusman 886
Waggoner *v.* United States 1074
Wagner; Maricopa County *v.* 1214
Wainwright *v.* United States 919
Walden *v.* Fiore 1211
Walden *v.* United States 999
Waldman *v.* Stone 1231
Waliyud-Din *v.* Kelly 857
Walizer *v.* United States 1243
Walker; Baker *v.* 1167
Walker *v.* Cain 1121
Walker *v.* Curley 866
Walker *v.* Federal Express Corp. 1114
Walker *v.* Grounds 903
Walker *v.* Kemna 850
Walker; Knox *v.* 1102
Walker *v.* Medtronic, Inc. 928

Page
Walker *v.* New York 987
Walker *v.* Ochoa 803
Walker; Potts *v.* 1102
Walker; Rodriguez *v.* 834
Walker; Shaw *v.* 900
Walker; Smith *v.* 1176
Walker; Stuart *v.* 818
Walker *v.* United States 854,952,1074,1201
Walker *v.* Wisconsin 846
Wall; Johnson *v.* 917
Wallace *v.* Cohen 880
Wallace *v.* Crews 1169
Wallace *v.* Lempke 1002
Wallace *v.* Roberts 985
Wallace *v.* United States 849,952
Wallace; Vance *v.* 1168
Walliser *v.* May 1245
Walls *v.* Little 1035
Walls *v.* Mabus 1089
Walls *v.* United States 1201
Walsh; Hartman *v.* 1007
Walsh; Hill *v.* 1157
Walt Disney World Co.; Gupta *v.* 1175
Walters; Lewis *v.* 1165
Walters *v.* McMahen 1212
Waltner *v.* United States 886,1044
Walton; Bess *v.* 939
Walton; Infante-Cabrera *v.* 903
Walton *v.* Tucker 853
Walton *v.* United States 1085
Wands; Brakeman *v.* 968
Wang *v.* Plasmart, Inc. 1144
Wanninger, *In re* 1226
Ward; Embody *v.* 1048
Ward *v.* Florida 988
Ward *v.* Lafler 1255
Ward *v.* Medina 1216
Warden. See also name of warden.
Warden; Michau *v.* 1097,1246
Ware *v.* Force 1178
Ware *v.* United States 848
Warmus *v.* Ohio 887
Warren; Cadogan *v.* 1141
Warren *v.* California 1102

Page
Warren; Conner *v.* 1234
Warren; Delgado *v.* 893
Warren; Echols *v.* 1105
Warren; Jackson *v.* 903
Warren; Mishall *v.* 1051
Warren; Page *v.* 1179
Warren; Parham *v.* 949
Warren; Parker *v.* 1253
Warren; Plummer *v.* 847
Warren *v.* Quada 1095
Warren; Raymond *v.* 825
Warren; Terry *v.* 1096
Warrener *v.* Suthers 860
Washam *v.* United States 1072
Washington, *In re* 812
Washington; Belitz *v.* 847
Washington; Brown *v.* 967
Washington; Carter *v.* 1183
Washington; Codiga *v.* 874
Washington; Croneberger *v.* 947
Washington; Deer *v.* 1148
Washington *v.* East Baton Rouge Parish 1226
Washington; Hilton *v.* 914
Washington *v.* Hirsch 1233
Washington *v.* Illinois 985
Washington; Johnson *v.* 1166
Washington; Jones *v.* 1216
Washington; Lewis *v.* 975
Washington *v.* Los Angeles 862
Washington; Martin *v.* 864
Washington *v.* Maryland 908
Washington; McCuistion *v.* 1196
Washington; McKinney *v.* 858
Washington; Morgan *v.* 878
Washington *v.* North Carolina 946
Washington; Read *v.* 822
Washington; Richey *v.* 880
Washington; Rouse *v.* 1216
Washington *v.* Showalter 1166
Washington; Spurlock *v.* 902
Washington *v.* Stenson 959
Washington *v.* Tucker 1104
Washington *v.* United States 1107,1220,1242,1243
Washington *v.* Virga 1094,1222

Page
Washington; Wiggin *v.* 1129
Washington Dept. of Social and Health Services; Campbell *v.* . . . 883
Washington Hospital Center; Bell *v.* 1159
Washington Metropolitan Area Transit Authority; Price *v.* 982
Washington Post Cos.; Sieber *v.* 942
Washington State Democratic Comm. *v.* Washington State Grange 814
Washington State Grange; Libertarian Party of Washington *v.* 814
Washington State Grange; Washington State Democratic Comm. *v.* 814
Wasson *v.* United States 1228
Waters *v.* United States 1029
Watford; Jackson *v.* 984
Watkins *v.* Hobbs 1035
Watkins *v.* Texas 837
Watkins *v.* United States 1221
Watson *v.* Coakley 1071
Watson *v.* Tucker 917
Watson *v.* United States 821
Watson *v.* Unknown Clerk 1 991
Watson; Vasquez Escalante *v.* 1132
Watson *v.* Wright 1215
Watson-El *v.* United States 1237
Watson Laboratories, Inc.; Allergan, Inc. *v.* 970
Watson, P. C. *v.* United States 888
Watson Pharmaceuticals, Inc.; Federal Trade Comm'n *v.* 1066
Wattleton *v.* U. S. District Court 1141
Watts *v.* Louisiana 1001
Waugh *v.* Southeastern Gun Co. 837
Waukegan; White *v.* 824,1115
Wayne County Dept. of Human Services; Brent *v.* 1095
W. B. H. *v.* United States 978
Weatherby *v.* Federal Express Corp. 1090
Weatherspoon *v.* United States 1188,1256
Weaver *v.* California 1095
Weaver *v.* Harris 1232
Webb *v.* International Business Machines Corp. 932
Webb; Peak *v.* 1126
Webb *v.* United States 895,1075,1201
Webb *v.* Webb 1094
Weber, *In re* 938
Weber *v.* Delaware 865
Weber; Langeneckert *v.* 1011
Webster; Jones-El *v.* 1165
Webster *v.* United States 821
WEC Carolina Energy Solutions LLC *v.* Miller 1079

Page
Wedderburn *v.* United States 1004
Weekley *v.* Crews 1169
Weeks *v.* Illinois 876
Wegmann *v.* United States 992
Wehrenberg *v.* Pennsylvania 944
Wehrle; Gordon *v.* 1028
Weigel, *In re* 1154
Weinman; Rodriguez Velazquez *v.* 1126
Weinstein *v.* Berger 1088
Weir *v.* United States 1240
Weisshaus *v.* Fagan 816
Welch *v.* United States 1112
Weldon *v.* Obama 882
Wellington *v.* United States 989
Wells *v.* United States 829,858,957
Wells Fargo Bank; Edmiston *v.* 1216
Wells Fargo National Bank; Sangalaza *v.* 906,1005
Wenerowicz; Ashford *v.* 1014,1034,1140,1188
Wenerowicz; Moore *v.* 1016
Wenerowicz; Roman *v.* 893
Wenerowicz; Soto-Echevarria *v.* 965
Wenerowicz; Williams *v.* 1171
Wenninger; Ohio *ex rel.* Varnau *v.* 823
Wen Xuan *v.* On Tai 1010
Werlinger; Duronio *v.* 811,1186
Wersal *v.* Sexton 823
Werth *v.* Brazelton 1147
Werth *v.* Curtin 1230
Wesley; Adams *v.* 1175
West, *In re* 1084
West; Hardy *v.* 842,1221
West *v.* Oklahoma 830,1005
West *v.* Schofield 1165
West *v.* Thomas 1255
Westberg *v.* Palmer 1179
Westbrook *v.* United States 1017
Westchester Fire Ins. Co.; Brooksville *v.* 980
Westereng; Gates *v.* 1049,1189
Westerlund *v.* United States 914
Western Radio Services Co. *v.* CenturyTel of Eastern Oregon, Inc. 1231
Western Radio Services Co. *v.* Qwest Corp. 1048
Westgate Resorts, Inc.; Powell *v.* 857
West Memphis; Chatt *v.* 860
West Virginia; Forney *v.* 854

Page
West Virginia; Gillispie *v.* 1091
West Virginia; Gorbey *v.* 898,1044,1129
West Virginia; McCartney *v.* 833
West Virginia; Morgan *v.* 1002
West Virginia; Samuel S. *v.* 1255
West Virginia Coal Workers' Pneumoconiosis Fund *v.* Stacy 816
West Virginia Dept. of Health and Human Resources; C. B. *v.* . . . 1121
West Virginia Dept. of Health and Human Resources; C. F. *v.* . . . 808,1035
Wetmore *v.* United States 1257
Wetzel; Barros *v.* 1237
Wetzel; Champney *v.* 1091
Wetzel; Cicchiello *v.* 820
Wetzel; Lee *v.* 827
Wetzel *v.* Michael 1006
Wetzel; Rega *v.* 880
Wetzel; Williams *v.* 843
Whalen; Cunningham *v.* 1158
Whealen; Wood *v.* 1122
Wheaten *v.* United States 897
Wheeler-Whichard *v.* Roach 1024
Whetstone *v.* Ellers 840
Whipple *v.* United States 990
Whirlpool Corp.; Garcia *v.* 885
Whirlpool Corp.; Wurzel *v.* 887
Whitaker; Whitesell International Corp. *v.* 888
White, *In re* 1227
White *v.* Epps 1200
White *v.* Heyns 1180
White; Hill *v.* 836,1246
White *v.* Hoyle 1168
White; Johnson *v.* 1168
White; Lawrence *v.* 947,1077
White *v.* Medina 834
White *v.* Mercado 822,1115
White *v.* Missouri 1015
White *v.* Napolitano 962,1031
White *v.* New Jersey Dept. of Human Services 1024
White *v.* Ohio 1214
White *v.* Planned Security Services 947
White *v.* United States 898,1030,1179,1219
White *v.* Waukegan 824,1115
White Plains Hospital Medical Center; Doe *v.* 884
Whiters *v.* Alabama 1130
Whitesell International Corp. *v.* Whitaker 888

Page
Whitfield *v.* United States 1109,1196
Whitlock; McFatridge *v.* 1143
Whitman *v.* Berghuis 1218
Whitman; Bruner *v.* 928
Whitmore *v.* Hill 863,881,1116
Whitmore *v.* Jones 1172
Whitmore *v.* Miller 870
Whitmore *v.* Oklahoma 1168
Whitmore *v.* Parker 1015
WhitServe, LLC; Computer Packages, Inc. *v.* 1162
Whittington *v.* Mississippi 913
Whole Foods Market Group, Inc.; Payne *v.* 1029,1188
Wideman; Columbia Christians for Life *v.* 1
Wideman; Lefemine *v.* 1
Widi *v.* New Hampshire 901
Widi *v.* United States 1108,1246
Wigenton *v.* United States 1113
Wiggin *v.* Washington 1129
Wiggins; Carlson *v.* 885
Wiggins *v.* Lee 844
Wiggins *v.* United States 968,1135
Wilbourn *v.* United States 970
Wilder *v.* Michigan 1096
Wild Jack's Casino; Shriner *v.* 1226
Wiles *v.* Ford Motor Co. 1161
Wiley *v.* Geithner 1175
Wiley *v.* Grimmer 880
Wiley *v.* Illinois *ex rel.* Illinois Dept. of Human Rights 998
Wiley; Jordan *v.* 920
Wiley & Sons, Inc.; Bluechristine99 *v.* 519,939
Wiley & Sons, Inc.; Kirtsaeng *v.* 519,939
Wilke *v.* United States 862
Wilkens *v.* Lafler 1001
Wilkins *v.* Freitas 868
Wilkins *v.* United States 1134
Wilkinson; Black *v.* 1235
Wilkinson *v.* Commission for Lawyer Discip. of State Bar of Tex. 1169
Wilkinson *v.* Holland 1128,1222
Wilkinson *v.* McLaughlin 1171
Wilks; Romero *v.* 1158
Willacy *v.* Florida 1147
Willemsen; China Terminal & Electric Corp. *v.* 975,1143
William Jefferson & Co. *v.* Orange Cty. Assessment Appeals Bd. 1213
Williams, *In re* 811,1009,1156

Page
Williams *v.* Alabama 1095
Williams *v.* Beltran 967
Williams *v.* Bentley Motors, Inc. 883
Williams *v.* Booker 817,1077
Williams *v.* Bowersox 921
Williams *v.* Brown 839
Williams *v.* California 840,1032,1169
Williams *v.* Cate 990
Williams *v.* Center State Bank 1165
Williams *v.* City Univ. of N. Y., Brooklyn College 902,1044
Williams *v.* Clarke 899,1077,1233
Williams *v.* Coursey 949
Williams *v.* Danforth 1034,1140
Williams *v.* Darden 1034
Williams; Duke Energy International, Inc. *v.* 1123
Williams *v.* Edenfield 880,1005
Williams *v.* Felker 948
Williams *v.* Graham 843,1077
Williams *v.* Heath 1200
Williams; Herron *v.* 1160
Williams *v.* Hobbs 846,871
Williams *v.* Humphrey 982
Williams *v.* Jackson 948
Williams *v.* Jacquez 922
Williams; Johnson *v.* 289
Williams *v.* JPMorgan Chase Bank 959,1118
Williams; Kelly *v.* 1163
Williams *v.* Lewis 967
Williams; Lobato Romero *v.* 1032
Williams *v.* Lockett 913
Williams *v.* Los Angeles 1087
Williams *v.* Louisiana 1001
Williams *v.* Martel 845
Williams *v.* McCann 1166
Williams *v.* McEwen 944
Williams *v.* Mississippi 908
Williams *v.* Natchitoches 1197
Williams; Nesbitt *v.* 836,1077
Williams *v.* Nevada 1015
Williams *v.* Ohio Parole Authority 880
Williams; O'Neal *v.* 845
Williams *v.* Robertson 897
Williams *v.* Santa Cruz 1072
Williams *v.* Sheahan 1016

Page
Williams *v.* Talladega Community Action Agency 1046
Williams *v.* Tamez 1232
Williams *v.* Thaler 1095,1100
Williams *v.* Thomas 1129
Williams *v.* Thurmer 1171
Williams *v.* United States 870, 895,903,908,917,919,935,957,962,990,992,1004,1017,1045,1054, 1065,1112,1148,1153,1187,1214
Williams *v.* U. S. District Court 995
Williams *v.* U. S. Marshals Service 950
Williams *v.* Vaughn 907
Williams *v.* Wenerowicz 1171
Williams *v.* Wetzel 843
Williams *v.* Woods 1050
Williams Co.; Prenatt *v.* 909
Williamson; Columbus Exploration, L. L. C. *v.* 963
Willis *v.* Court of Appeals of Tex., Second District 1083
Willis *v.* United States 1030
Willis of Colo. Inc. *v.* Troice 809,1140
Willits Charter School; Doe *v.* 1088
Willoughby *v.* Horne 899
Willoughby *v.* Lindamood 950
Wilmington Trust; Shahin *v.* 1119
Wilson *v.* Arkansas 1200
Wilson; Booker-El *v.* 836
Wilson; Bush *v.* 890
Wilson *v.* Cate 850
Wilson *v.* Crews 1218
Wilson *v.* Gavagni 1000
Wilson; Guy *v.* 881
Wilson; Malede *v.* 911
Wilson *v.* McLaughlin 839
Wilson; Melendez *v.* 1173
Wilson *v.* Minor 864
Wilson *v.* New York 1131,1132
Wilson *v.* Ohio 871
Wilson; Oriakhi *v.* 996
Wilson; Smart *v.* 902,1044
Wilson *v.* Texas 802
Wilson *v.* United States 923,995,1103,1115,1221
Wilson *v.* U. S. Air Force 1199
Wilson *v.* Wisconsin 1242
Wilson J.; Shehabeldin *v.* 833
Winburn *v.* Michigan 854

Page
Winbush *v.* United States 924
Windsor *v.* United States 1211,1223
Windsor; United States *v.* 1066,1078
Wines *v.* United States 1108
Winfield *v.* United States 1018
Winford *v.* Pella Window & Door Co. 1237
Wingard; Jones *v.* 904
Wingo *v.* United States 933
Winkelman *v.* United States 956,957,1054
Winnecour; Taylor *v.* 1082
Winston; Pearson *v.* 1205
Winter Park Housing Authority; Tagliaferri *v.* 1215
Winterroth *v.* Commissioner 999
Wisconsin; Gilbert *v.* 992
Wisconsin; Smith *v.* 1016
Wisconsin; Walker *v.* 846
Wisconsin; Wilson *v.* 1242
Wise, *In re* 1156
Wise *v.* Hill 949,1064
Wiseman *v.* Minnesota 1229
Wiwo *v.* United States 1163
W. L. Gore & Associates, Inc. *v.* C. R. Bard, Inc. 1138
Wogenstahl *v.* Robinson 902
Wojtowicz; Heath *v.* 860
Wolcott *v.* Diaz 950
Woldegiorgise *v.* Holder 984
Wolfe; Collins *v.* 946
Wolfe; Fleming *v.* 1110,1246
Wolfe *v.* United States 862
Wolfenbarger; Annabel *v.* 1000
Wolfenbarger; Carter *v.* 950
Wolfenbarger *v.* Foster 1228
Wolfenbarger; Johnson *v.* 880
Wolfenbarger; Sykes *v.* 838
Woltz *v.* Federal Correctional Institution at Beckley 840
Woltz *v.* United States 806
Wolven; Manley *v.* 1103
Womack *v.* United States 1145
Wong; Mangone *v.* 813
Wood; Bambic *v.* 862,1043
Wood *v.* Biter 836,1233
Wood *v.* United States 908
Wood *v.* Whealen 1122
Woodall *v.* Neotti 1096

Page
Woodard *v.* Keffer 993
Woodard *v.* Tucker 1053,1189
Woodard *v.* United States 894,934
Woodfield *v.* United States 1072
Woodfin *v.* Clarke 900,1044
Wood, Herron & Evans, LLP; Byrne *v.* 1190
Woodland, *In re* 1156
Woodland *v.* United States 1201
Woodruff *v.* Indiana Family and Social Services Administration 825
Woods; Hollmon *v.* 832
Woods *v.* Maryland 1218
Woods; Moore *v.* 1094
Woods *v.* Ohio 1053
Woods *v.* Shinseki 1106
Woods; Spencer *v.* 1050
Woods *v.* Stevenson 1171
Woods *v.* United States 1136
Woods; United States *v.* 1248
Woods; Williams *v.* 1050
Woodward *v.* Cline 1036
Woolman *v.* Lancaster County Corrections 807
Woolman *v.* Nebraska 912,1064
Woolsey *v.* Missouri 878
Wootten *v.* Fisher Investments, Inc. 1089
Word *v.* United States 1179
Workers' Compensation Appeals Bd.; Opong-Mensah *v.* 811
Workman; DeRosa *v.* 1255
Workman; Ochoa *v.* 904
Workman; Thacker *v.* 1105
Worth *v.* United States 1242
Worthington Cylinder Corp. *v.* Romig 1125
Worthy *v.* United States 1218,1243
Wos *v.* E. M. A. 627
WPIX, Inc.; ivi, Inc. *v.* 1245
W. R. *v.* District of Columbia 918
Wright, *In re* 812
Wright *v.* Hamrick 997
Wright *v.* Hobbs 1171
Wright *v.* Jackson 1237
Wright; MaGee *v.* 1254
Wright *v.* McDonald 905
Wright *v.* Merit Systems Protection Bd. 882,1043
Wright; Owens Corning *v.* 1157
Wright *v.* Pennsylvania 966

Page
Wright; Sawyer *v.* 1010
Wright *v.* United States 821,919,1205
Wright; Watson *v.* 1215
Wright *v.* Yates 913
Wright Bros. Properties; Lawhorn *v.* 803
Wright El *v.* Jackson 1237
Wurzel *v.* Whirlpool Corp. 887
Wyatt *v.* Oregon 1235
Wyoming; Bear Cloud *v.* 802
Wyoming *v.* Department of Agriculture 928
Wyoming; Diaz *v.* 941
Wyoming; Kramer *v.* 966
Wyoming; Najera *v.* 863
Wyoming; Yellowbear *v.* 848,1077
Wyre *v.* United States 865
Xerox Corp.; Hylind *v.* 1160
Xiang Li *v.* United States 858,1064
Xiong *v.* Felker 1147
Xuan *v.* On Tai 1010
Yacaman Meza *v.* Holder 1126
Yakubu *v.* Holder 826
Yang *v.* District Court of Minn., Hennepin County 1225
Yang *v.* Hanson 862,1020
Yang *v.* Nutter 897,1044
Yang *v.* Shakopee 861,1020
Yarns *v.* Florida 841
Yates; Ballejos *v.* 859
Yates; Clemans *v.* 834
Yates; Garcia *v.* 893
Yates; Hunt *v.* 905
Yates *v.* Kelly 1166
Yates; Lara *v.* 905
Yates; Larimer *v.* 911
Yates; Martinez *v.* 1050
Yates *v.* Merolillo 927
Yates; Parrish *v.* 1104
Yates; Poslof *v.* 1071
Yates; Saa *v.* 906
Yates; Thurston *v.* 946
Yates; Wright *v.* 913
Yautentzi-Cipriano *v.* Nooth 1197
Ybarra *v.* Baker 959
Ybarra-Johnson *v.* Arizona 1128
Yelich; Perry *v.* 1166

Page
Yellowbear *v.* Wyoming 848,1077
Yellow Transportation, Inc.; Ketterer *v.* 817
Yelverton *v.* District of Columbia Office of Bar Counsel 908
Yenefanta; Samuel *v.* 914
Yepez *v.* United States 887
Yepiz *v.* United States 1055
Yokely *v.* Hedgpeth 1218
Yoshimoto *v.* United States 1017
Young *v.* Addison 1160
Young *v.* Arizona 1255
Young *v.* California *ex rel.* Parker 814
Young *v.* Fitzpatrick 809
Young *v.* Fraker 1199
Young *v.* Georgia 837
Young *v.* Hobbs 1172
Young *v.* Madison 1007
Young; McBurney *v.* 936,1067
Young; McCorvey *v.* 1259
Young *v.* Missouri ex inf. Hensley 942
Young *v.* Pennsylvania 896,1128
Young; Schottel *v.* 1089
Young *v.* Texas 1093
Young *v.* United States 889,957,990,1111,1133
Young *v.* Zappos.com, Inc. 808
Young Again Products, Inc.; Acord *v.* 818
Young Again Products, Inc.; Livingston *v.* 818
Young Concert Artists, Inc.; Stoner *v.* 1194
Younge *v.* United States 935
Youree *v.* Tamez 1126
Yu; Cornick *v.* 810,997
Yuan *v.* California 1232
Yuma; Cummins *v.* 1023
Yums *v.* Nike, Inc. 85,961
Zachary *v.* Aramark Correctional Services, LLC 948
Zackery *v.* United States 856
Zaga *v.* Superior Court of Cal., Los Angeles County 943,1077
Zahl *v.* Kosovsky 1193
Zajrael *v.* Harmon 966,1065
Zakaib; Gardner *v.* 899
Zakaria *v.* United States 829
Zakat *v.* Bureau of Administrative Adjudication 949,1064
Zaleski *v.* United States 990
Zambrella *v.* Lockett 915
Zamiara *v.* King 1150

Page
Zapatero *v.* United States 1256
Zappos.com, Inc.; Young *v.* 808
Zarr *v.* Crews 1198
Zavaras; Allen *v.* 1031,1096
Zebrowski *v.* United States 1056
Zeleke *v.* NASA Headquarters 914,1045
Zeleke *v.* Obama 914,1044
Zeleke *v.* Zenawi 945,1045
Zellis *v.* Nevada 908
Zemeckis *v.* Global Credit & Collection Corp. 999
Zenawi; Zeleke *v.* 945,1045
Zhang *v.* Federation of State Medical Bds. 1068
Zhenghao Liu *v.* Holder 857
Zhou Chen *v.* United States 1219
Ziegler; Ashworth *v.* 850
Ziegler; Serrano *v.* 815
Zimmer; Johnson *v.* 1087
Zimmerman *v.* United States 1109
Zions First National Bank; Dhillon *v.* 819
Zorbalas *v.* Minneapolis 1010
Zorn *v.* United States 803
Zosa Calvano *v.* Hedgepath 1170
Zsak; Shulman *v.* 1178
Zuniga *v.* McDonald 950
Zuniga-Alcala *v.* United States 1026
Zych; Boone *v.* 858

CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 2012

LEFEMINE, DBA COLUMBIA CHRISTIANS FOR LIFE *v.* WIDEMAN ET AL.

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

No. 12–168. Decided November 5, 2012

Petitioner Lefemine and other members of Columbia Christians for Life disbanded their antiabortion demonstration at a busy intersection in Greenwood County, South Carolina, when a police officer, who had received complaints that the protesters' signs contained graphic depictions of aborted fetuses, threatened Lefemine with criminal sanctions if the signs were not discarded. A year later, Lefemine warned the Greenwood County sheriff that the group intended to return to the same site carrying the same signs. After a deputy in the sheriff's office informed Lefemine that the protesters would again be asked to stop or face criminal sanctions, the group chose not to protest. Lefemine then filed suit against several Greenwood County police officers under 42 U. S. C. § 1983, alleging First Amendment violations, and seeking nominal damages, a declaratory judgment, a permanent injunction, and attorney's fees. The District Court held that the officers had infringed Lefemine's rights and permanently enjoined the officers from forbidding him to display the signs during lawful protests. The court did not award any damages because it found the officers were entitled to qualified immunity. The court also denied Lefemine's request for attorney's fees. The Fourth Circuit affirmed the denial of attorney's fees, finding that the District Court's judgment did not make Lefemine a "prevailing

Per Curiam

party" under § 1988's fee-shifting provision because the only relief he obtained was an injunction ordering the officers to comply with the law.

Held: Lefemine was a "prevailing party" for § 1988 purposes. A plaintiff "'prevails' when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." *Farrar* v. *Hobby*, 506 U. S. 103, 111–112. An injunction or declaratory judgment, like a damages award, will usually satisfy that test. Here, the District Court's ruling worked the requisite material alteration in the parties' relationship. Before that ruling, the police intended to stop Lefemine from protesting with his signs; after the ruling, the police could not prevent him from doing so. The District Court's order that the officers comply with the law thus supported the award of attorney's fees. As a "prevailing party," Lefemine "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Hensley* v. *Eckerhart*, 461 U. S. 424, 429. Whether any such special circumstances exist in this case was not addressed by the courts below and is not a question before this Court.

Certiorari granted; 672 F. 3d 292, vacated and remanded.

PER CURIAM.

This case concerns the award of attorney's fees in a suit alleging unconstitutional conduct by government officials. The United States Court of Appeals for the Fourth Circuit held that a plaintiff who secured a permanent injunction but no monetary damages was not a "prevailing party" under 42 U. S. C. § 1988, and so could not receive fees. That was error. Because the injunction ordered the defendant officials to change their behavior in a way that directly benefited the plaintiff, we vacate the Fourth Circuit's decision and remand for further proceedings.

* * *

Petitioner Steven Lefemine and members of Columbia Christians for Life (CCL) engage in demonstrations in which they carry pictures of aborted fetuses to protest the availability of abortions. On November 3, 2005, Lefemine and about 20 other CCL members conducted such a demonstration at a busy intersection in Greenwood County, South Car-

olina. Citing complaints about the graphic signs, a Greenwood County police officer informed Lefemine that if the signs were not discarded, he would be ticketed for breach of the peace. Lefemine objected, asserting that the officer was violating his First Amendment rights, but the threat eventually caused him to disband the protest. See *Lefemine* v. *Davis*, 732 F. Supp. 2d 614, 617–619 (SC 2010).

A year later, an attorney for Lefemine sent a letter to Dan Wideman, the sheriff of Greenwood County, informing him that the group intended to return to the same site with the disputed signs. The letter cautioned that further interference would cause Lefemine "'to pursue all available legal remedies.'" *Id.*, at 619. Chief Deputy Mike Frederick responded that the police had not previously violated Lefemine's rights, and warned that "'should we observe any protester or demonstrator committing the same act, we will again conduct ourselves in exactly the same manner: order the person(s) to stop or face criminal sanctions.'" *Ibid.* Out of fear of those sanctions, the group chose not to protest in the county for the next two years. See *ibid.*

On October 31, 2008, Lefemine filed a complaint under 42 U. S. C. §1983 against several Greenwood County police officers alleging violations of his First Amendment rights. Lefemine sought nominal damages, a declaratory judgment, a permanent injunction, and attorney's fees. See 732 F. Supp. 2d, at 620. Ruling on the parties' dueling motions for summary judgment, the District Court determined that the defendants had infringed Lefemine's rights. See *id.*, at 620–625. The court therefore permanently enjoined the defendants "from engaging in content-based restrictions on [Lefemine's] display of graphic signs" under similar circumstances. *Id.*, at 627. The court, however, refused Lefemine's request for nominal damages, finding that the defendants were entitled to qualified immunity because the illegality of their conduct was not clearly established at the time. See *ibid.* The court as well denied Lefemine's re-

quest for attorney's fees under § 1988, stating that "[u]nder the totality of the facts in this case the award of attorney's fees is not warranted." *Ibid.*

The Fourth Circuit affirmed the denial of attorney's fees on the ground that the District Court's judgment did not make Lefemine a "prevailing party" under § 1988. 672 F. 3d 292, 302–303 (2012).* The court reasoned that the relief awarded did not "'alte[r] the relative positions of the parties'": The injunction prohibited only "unlawful, but not legitimate, conduct by the defendant[s]," and merely "ordered [d]efendants to comply with the law and safeguard [Lefemine's] constitutional rights in the future. No other damages were awarded." *Ibid.* Lefemine sought a writ of certiorari to review the Fourth Circuit's determination that he was not a prevailing party under § 1988.

The Civil Rights Attorney's Fees Awards Act of 1976, 90 Stat. 2641, 42 U. S. C. § 1988, allows "the prevailing party" in certain civil rights actions, including suits brought under § 1983, to recover "a reasonable attorney's fee." A plaintiff "prevails," we have held, "when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." *Farrar* v. *Hobby*, 506 U. S. 103, 111–112 (1992). And we have repeatedly held that an injunction or declaratory judgment, like a damages award, will usually satisfy that test. See, *e. g.*, *Rhodes* v. *Stewart*, 488 U. S. 1, 4 (1988) (*per curiam*).

Under these established standards, Lefemine was a prevailing party. Lefemine desired to conduct demonstrations in Greenwood County with signs that the defendant police officers had told him he could not carry. He brought this suit in part to secure an injunction to protect himself from the defendants' standing threat of sanctions. And he suc-

*The defendants did not appeal the District Court's judgment that they had violated Lefemine's First Amendment rights, so the Court of Appeals took as a given that a violation had occurred. See 672 F. 3d, at 299, n. 5.

ceeded in removing that threat. The District Court held that the defendants had violated Lefemine's rights and enjoined them from engaging in similar conduct in the future. Contrary to the Fourth Circuit's view, that ruling worked the requisite material alteration in the parties' relationship. Before the ruling, the police intended to stop Lefemine from protesting with his signs; after the ruling, the police could not prevent him from demonstrating in that manner. So when the District Court "ordered [d]efendants to comply with the law," 672 F. 3d, at 303, the relief given—as in the usual case involving such an injunction—supported the award of attorney's fees.

Because Lefemine is a "prevailing party," he "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." *Hensley* v. *Eckerhart*, 461 U. S. 424, 429 (1983) (internal quotation marks omitted). Neither of the courts below addressed whether any special circumstances exist in this case, and we do not do so; whether there may be other grounds on which the police officers could contest liability for fees is not a question before us. Accordingly, the petition for certiorari is granted, the judgment of the Fourth Circuit is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

UNITED STATES *v.* BORMES

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

No. 11–192. Argued October 2, 2012—Decided November 13, 2012

Respondent Bormes, an attorney, filed suit against the Federal Government, alleging that the electronic receipt he received when paying his client's federal-court filing fee on Pay.gov included the last four digits of his credit card number and the card's expiration date, in willful violation of the Fair Credit Reporting Act (FCRA), 15 U. S. C. § 1681 *et seq.* He sought damages under § 1681n and asserted jurisdiction under § 1681p, as well as under the Little Tucker Act, which grants district courts "original jurisdiction, concurrent with the United States Court of Federal Claims, of . . . [a]ny . . . civil action or claim against the United States, not exceeding $10,000 in amount, founded . . . upon . . . any Act of Congress," 28 U. S. C. § 1346(a)(2). In dismissing the suit, the District Court held that FCRA did not explicitly waive the Federal Government's sovereign immunity. Bormes appealed to the Federal Circuit, which vacated the District Court's decision, holding that the Little Tucker Act provided the Government's consent to suit because the underlying statute—FCRA—could fairly be interpreted as mandating a right of recovery in damages.

Held: The Little Tucker Act does not waive the Government's sovereign immunity with respect to FCRA damages actions. Pp. 9–16.

(a) The Little Tucker Act and its companion statute, the Tucker Act, provide the Federal Government's consent to suit for certain money-damages claims "premised on other sources of law," *United States* v. *Navajo Nation*, 556 U. S. 287, 290. The general terms of the Tucker Acts are displaced, however, when a law imposing monetary liability has its own judicial remedies. In that event, the specific remedial scheme establishes the exclusive framework for determining the scope of liability under the statute. See, *e. g.*, *Hinck* v. *United States*, 550 U. S. 501. Pp. 9–15.

(b) FCRA is such a statute. Its detailed remedial scheme sets "out a carefully circumscribed, time-limited, plaintiff-specific" cause of action, and "also precisely define[s] the appropriate forum," 550 U. S., at 507. FCRA authorizes aggrieved consumers to hold "any person" who "willfully" or "negligent[ly]" fails to comply with the Act's requirements liable for specified damages, 15 U. S. C. §§ 1681n(a), 1681*o*; requires enforcement claims to be brought within a specified limitations period,

§ 1681p; and provides that jurisdiction will lie "in any appropriate United States district court, without regard to the amount in controversy," *ibid.* Because FCRA enables claimants to pursue monetary relief in court without resort to the Tucker Act, only *its own* text can determine whether Congress unequivocally intended to impose the statute's damages liability on the Federal Government. Pp. 15–16.

626 F. 3d 574, vacated and remanded.

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

Deputy Solicitor General Srinivasan argued the cause for the United States. On the briefs were *Solicitor General Verrilli*, *Acting Assistant Attorney General Delery*, *Deputy Solicitor General Kneedler*, *Eric J. Feigin*, *Mark B. Stern*, and *Henry C. Whitaker*.

John G. Jacobs argued the cause for respondent. With him on the brief were *Gregory A. Beck* and *Allison M. Zieve*.

JUSTICE SCALIA delivered the opinion of the Court.

The Little Tucker Act, 28 U. S. C. § 1346(a)(2), provides that "[t]he district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of . . . [a]ny . . . civil action or claim against the United States, not exceeding $10,000 in amount, founded . . . upon . . . any Act of Congress." We consider whether the Little Tucker Act waives the sovereign immunity of the United States with respect to damages actions for violations of the Fair Credit Reporting Act (FCRA or Act), 15 U. S. C. § 1681 *et seq.*

I

FCRA has as one of its purposes to "protect consumer privacy." *Safeco Ins. Co. of America* v. *Burr*, 551 U. S. 47, 52 (2007); see 84 Stat. 1128, 15 U. S. C. § 1681. To that end, FCRA provides, among other things, that "no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number *or* the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction."

§ 1681c(g)(1) (emphasis added). The Act defines "person" as "any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity." § 1681a(b).

FCRA imposes civil liability for willful or negligent noncompliance with its requirements: "Any person who willfully fails to comply" with the Act "with respect to any consumer" "is liable to that consumer" for actual damages or damages "of not less than $100 and not more than $1,000," as well as punitive damages, attorney's fees, and costs. § 1681n(a); see also § 1681*o* (civil liability for negligent noncompliance). The Act includes a jurisdictional provision, which provides that "[a]n action to enforce any liability created under this subchapter may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction" within the earlier of "2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability" or "5 years after the date on which the violation that is the basis for such liability occurs." § 1681p.

Respondent James X. Bormes is an attorney who filed a putative class action against the United States in the United States District Court for the Northern District of Illinois seeking damages under FCRA. Bormes alleged that he paid a $350 federal-court filing fee for a client using his own credit card on Pay.gov, an Internet-based system used by federal courts and dozens of federal agencies to process online payment transactions. According to Bormes, his Pay.gov electronic receipt included the last four digits of his credit card, *in addition to* its expiration date, in willful violation of § 1681c(g)(1). He claimed that he and thousands of similarly situated persons were entitled to recover damages under § 1681n, and asserted jurisdiction under § 1681p, as well as under the Little Tucker Act, 28 U. S. C. § 1346(a)(2).

The District Court dismissed the suit, holding that FCRA does not contain the explicit waiver of sovereign immunity

necessary to permit a damages suit against the United States. 638 F. Supp. 2d 958, 962 (ND Ill. 2009). The court did not address the Little Tucker Act as an asserted basis for jurisdiction. Respondent appealed to the Federal Circuit, which has exclusive jurisdiction "of an appeal from a final decision of a district court of the United States . . . if the jurisdiction of that court was based, in whole or in part, on" the Little Tucker Act. 28 U. S. C. § 1295(a)(2). Arguing that the Little Tucker Act's jurisdictional grant did not apply to respondent's suit, the Government moved to transfer the appeal to the Seventh Circuit.

The Federal Circuit denied the transfer motion and went on to vacate the District Court's decision. Without deciding whether FCRA itself contained the requisite waiver of sovereign immunity, the court held that the Little Tucker Act provided the Government's consent to suit for violation of FCRA. The court explained that the Little Tucker Act applied because FCRA "'can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained.'" 626 F. 3d 574, 578 (2010) (quoting *United States* v. *White Mountain Apache Tribe*, 537 U. S. 465, 472 (2003)). This "fair interpretation" rule, the court explained, "demands a showing 'demonstrably lower' than the initial waiver of sovereign immunity" contained in the Little Tucker Act itself. 626 F. 3d, at 578. The court reasoned that FCRA satisfied the "fair interpretation" rule because its damages provision applies to "any person" who willfully violates its requirements, 15 U. S. C. § 1681n(a), and the Act elsewhere defines "person" to include "any . . . government," § 1681a(b). 626 F. 3d, at 580. The Federal Circuit remanded to the District Court for further proceedings. We granted certiorari, 565 U. S. 1153 (2012).

II

Sovereign immunity shields the United States from suit absent a consent to be sued that is "'unequivocally ex-

pressed.'" *United States* v. *Nordic Village, Inc.*, 503 U. S. 30, 33–34 (1992) (quoting *Irwin* v. *Department of Veterans Affairs*, 498 U. S. 89, 95 (1990); some internal quotation marks omitted). The Little Tucker Act is one statute that unequivocally provides the Federal Government's consent to suit for certain money-damages claims. *United States* v. *Mitchell*, 463 U. S. 206, 216 (1983) (*Mitchell II*). Subject to exceptions not relevant here, the Little Tucker Act provides that "district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims," of a "civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." 28 U. S. C. § 1346(a)(2).[1] The Little Tucker Act and its companion statute, the Tucker Act, § 1491(a)(1),[2] do not themselves "creat[e] substantive rights," but "are simply jurisdictional provisions that operate to waive sovereign immunity for claims premised on other sources of law." *United States* v. *Navajo Nation*, 556 U. S. 287, 290 (2009).

Bormes argues that whether or not FCRA itself unambiguously waives sovereign immunity, the Little Tucker Act

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[1] It is undisputed that this class action satisfied the Little Tucker Act's amount-in-controversy limitation. We have held that to require only that the "claims of individual members of the clas[s] do not exceed $10,000." *United States* v. *Will*, 449 U. S. 200, 211, n. 10 (1980).

[2] Whereas the Little Tucker Act creates jurisdiction in the district courts concurrent with the Court of Federal Claims for covered claims of $10,000 or less, the Tucker Act assigns jurisdiction to the Court of Federal Claims regardless of monetary amount. As relevant here, the scope of the two statutes is otherwise the same. The third statute in the Tucker Act trio, the Indian Tucker Act, 28 U. S. C. § 1505, "confers a like waiver for Indian tribal claims that 'otherwise would be cognizable in the Court of Federal Claims if the claimant were not an Indian tribe.'" *United States* v. *White Mountain Apache Tribe*, 537 U. S. 465, 472 (2003) (quoting § 1505).

authorizes his FCRA damages claim against the United States. The question, then, is whether a damages claim under FCRA "falls within the terms of the Tucker Act," so that "the United States has presumptively consented to suit." *Mitchell II*, *supra*, at 216. It does not. Where, as in FCRA, a statute contains its own self-executing remedial scheme, we look only to that statute to determine whether Congress intended to subject the United States to damages liability.

A

The Court of Claims was established, and the Tucker Act enacted, to open a judicial avenue for certain monetary claims against the United States. Before the creation of the Court of Claims in 1855, see Act of Feb. 24, 1855 (1855 Act), ch. 122, § 1, 10 Stat. 612, it was not uncommon for statutes to impose monetary obligations on the United States without specifying a means of judicial enforcement.[3] As a result, claimants routinely petitioned Congress for private bills to recover money owed by the Federal Government. See *Mitchell II*, *supra*, at 212 (citing P. Bator, P. Mishkin, D. Shapiro & H. Wechsler, Hart and Wechsler's The Federal Courts and the Federal System 98 (2d ed. 1973)). As this individualized legislative process became increasingly burdensome for Congress, the Court of Claims was created "to relieve the pressure on Congress caused by the volume of private bills." *Glidden Co.* v. *Zdanok*, 370 U. S. 530, 552 (1962) (plurality opinion). The 1855 Act authorized the Court of Claims to hear claims against the United States "founded

[3] For example, the Act of March 30, 1814, provided that every noncommissioned U. S. army officer who "may be captured by the enemy, shall be entitled to receive during his captivity . . . the same pay, subsistence, and allowance to which he may be entitled whilst in the actual service of the United States." § 14, 3 Stat. 115, repealed in 1962 by Pub. L. 87–649, § 14, 76 Stat. 498. The 1814 Act clearly "command[ed] the payment of a specified amount of money by the United States," *Bowen* v. *Massachusetts*, 487 U. S. 879, 923 (1988) (SCALIA, J., dissenting), but did not designate a means of judicial relief in the event the Government failed to pay.

upon any law of Congress," § 1, 10 Stat. 612, and thus allowed claimants to sue the Federal Government for monetary relief premised on other sources of law. (Specialized legislation remained necessary to authorize the payments approved by the Court of Claims until 1863, when Congress empowered the court to enter final judgments. See Act of Mar. 3, 1863 (1863 Act), ch. 92, 12 Stat. 765; *Mitchell II*, *supra*, at 212–214 (recounting the history of the Court of Claims).)

Enacted in 1887, the Tucker Act was the successor statute to the 1855 and 1863 Acts and replaced most of their provisions. See Act of Mar. 3, 1887 (1887 Act), ch. 359, 24 Stat. 505; *Mitchell II*, *supra*, at 213–214. Like the 1855 Act before it, the Tucker Act provided the Federal Government's consent to suit in the Court of Claims for claims "founded upon . . . any law of Congress." 1887 Act § 1, 24 Stat. 505. Section 2 of the 1887 Act created concurrent jurisdiction in the district courts for claims of up to $1,000. The Tucker Act's jurisdictional grant, and accompanying immunity waiver, supplied the missing ingredient for an action against the United States for the breach of monetary obligations not otherwise judicially enforceable.[4]

B

The Tucker Act is displaced, however, when a law assertedly imposing monetary liability on the United States contains its own judicial remedies. In that event, the specific remedial scheme establishes the exclusive framework for the liability Congress created under the statute. Because a "precisely drawn, detailed statute pre-empts more general

[4] For purposes of this case, the current versions of the Tucker Act and Little Tucker Act resemble the 1887 Act. Compare 28 U. S. C. § 1491(a)(1) (permitting suits "founded . . . upon . . . any Act of Congress") with Tucker Act § 1, 24 Stat. 505 (permitting suits "founded upon . . . any law of Congress, except for pensions"). The prior functions of the Court of Claims are now divided between the Court of Federal Claims at the trial level and the Federal Circuit at the appellate.

remedies," *Hinck* v. *United States*, 550 U. S. 501, 506 (2007) (quoting *EC Term of Years Trust* v. *United States*, 550 U. S. 429, 434 (2007); internal quotation marks omitted), FCRA's self-executing remedial scheme supersedes the gap-filling role of the Tucker Act.

We have long recognized that an additional remedy in the Court of Claims is foreclosed when it contradicts the limits of a precise remedial scheme. In *Nichols* v. *United States*, 7 Wall. 122, 131 (1869), the issue was whether the 1855 Act authorized suit in the Court of Claims for improper assessment of duties on imported liquor that had already been paid without protest. The Court held that it did not. The revenue laws already provided a remedy: An aggrieved merchant could sue to recover the tax, but only after paying the duty under protest. Act of Feb. 26, 1845, ch. 22, 5 Stat. 727. The Court rejected the supposition that "Congress, after having carefully constructed a revenue system, with ample provisions to redress wrong, intended to give to the taxpayer and importer a further and different remedy." 7 Wall., at 131. Permitting suit under the 1855 Act, the Court concluded, would frustrate congressional intent with respect to the specific remedial scheme already in place. The 1855 Act was confined to a gap-filling role. As we said in a later case, "the general laws which govern the Court of Claims may be resorted to for relief" only because "[n]o special remedy has been provided" to enforce a payment to which the claimant was entitled. *United States* v. *Kaufman*, 96 U. S. 567, 569 (1878). Where the "liability is one created by statute," the "special remedy provided by the same statute is exclusive." *Ibid.*

Our more recent cases have consistently held that statutory schemes with their own remedial framework exclude alternative relief under the general terms of the Tucker Act. See, *e. g.*, *Hinck*, *supra*; *United States* v. *Fausto*, 484 U. S. 439 (1988); *United States* v. *Erika, Inc.*, 456 U. S. 201 (1982). Respondent contends that in each of those cases Congress

had unambiguously demonstrated its intent to foreclose additional review by the Court of Federal Claims—whereas here, no similar intent to preclude Tucker Act jurisdiction is apparent. See Brief for Respondent 27–28. But our precedents collectively stand for a more basic proposition: Where a specific statutory scheme provides the accoutrements of a judicial action, the metes and bounds of the liability Congress intended to create can only be divined from the text of the statute itself.[5]

In *Hinck*, for example, we held that the Tax Court provides the exclusive forum for suits under 26 U. S. C. § 6404(h), which authorizes judicial review of the Treasury Secretary's decision not to abate interest under § 6404(e)(1). We relied on "our past recognition that when Congress enacts a specific remedy when no remedy was previously recognized . . . the remedy provided is generally regarded as exclusive." 550 U. S., at 506. Section 6404(h), we concluded, "fits the bill": It "provides a forum for adjudication, a limited class of potential plaintiffs, a statute of limitations, a standard of review, and authorization for judicial relief." *Ibid.* It did not matter that Congress "fail[ed] explicitly to define the Tax Court's jurisdiction as exclusive." *Ibid.* We found it "quite plain that the terms of § 6404(h)—a 'precisely drawn, detailed statute' filling a perceived hole in the law—

[5] We therefore need not resolve the parties' disagreement about whether certain inconsistencies between the Little Tucker Act and FCRA can be reconciled. Compare 28 U. S. C. § 1346(a)(2) (no claims in district court "exceeding $10,000 in amount") with 15 U. S. C. § 1681p (claims may be brought in district court "without regard to the amount in controversy"); compare 28 U. S. C. § 2501 (claims must be filed in the Court of Federal Claims within six years of accrual) with 15 U. S. C. § 1681p (claims under FCRA must be filed within the earlier of two years after discovery or five years after the alleged violation). Reconcilable or not, FCRA governs. The Government also contends that the Tucker Act does not apply because §§ 1681n and 1681*o* sound in tort. We do not decide the merits of that alternative argument.

control all requests for review of § 6404(e)(1) determinations." *Ibid.*

Like § 6404(h), FCRA creates a detailed remedial scheme. Its provisions "set out a carefully circumscribed, time-limited, plaintiff-specific" cause of action, and "also precisely define the appropriate forum." *Id.*, at 507. It authorizes aggrieved consumers to hold "any person" who "willfully" or "negligent[ly]" fails to comply with the Act's requirements liable for specified damages. 15 U. S. C. §§ 1681n(a), 1681*o*. Claims to enforce liability must be brought within a specified limitations period, § 1681p, and jurisdiction will lie "in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction," *ibid.* Without resort to the Tucker Act, FCRA enables claimants to pursue in court the monetary relief contemplated by the statute.

Plaintiffs cannot, therefore, mix and match FCRA's provisions with the Little Tucker Act's immunity waiver to create an action against the United States. Since FCRA is a detailed remedial scheme, only *its own* text can determine whether the damages liability Congress crafted extends to the Federal Government. To hold otherwise—to permit plaintiffs to remedy the absence of a waiver of sovereign immunity in specific, detailed statutes by pleading general Tucker Act jurisdiction—would transform the sovereign-immunity landscape.

The Federal Circuit was therefore wrong to conclude that the Tucker Act justified applying a "less stringent" sovereign-immunity analysis to FCRA than our cases require. 626 F. 3d, at 582. It distorted our case law in applying to FCRA the immunity-waiver standard we expressed in *White Mountain Apache Tribe*, 537 U. S., at 472: whether the statute "'can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained.'" 626 F. 3d, at 578. That is the test for determin-

ing whether a statute that imposes an obligation but does not provide the elements of a cause of action qualifies for suit under the Tucker Act—more specifically, whether the failure to perform an obligation undoubtedly imposed on the Federal Government creates a right to monetary relief. See *White Mountain Apache Tribe*, *supra*; *Mitchell II*, 463 U. S. 206. That test is not relevant when a "mandate of compensation" is contained in a statute that provides a detailed judicial remedy against those who are subject to its requirements. FCRA is such a statute. By using the "fair interpretation" test to determine whether FCRA's civil liability provisions apply to the United States, the Federal Circuit directed the test to a purpose for which it was not designed and leapfrogged the threshold concern that the Tucker Act cannot be superimposed on an existing remedial scheme.

* * *

We do not decide here whether FCRA itself waives the Federal Government's immunity to damages actions under § 1681n. That question is for the Seventh Circuit to consider once this case is transferred to it on remand. But whether or not FCRA contains the necessary waiver of immunity, any attempt to append a Tucker Act remedy to the statute's existing remedial scheme interferes with its intended scope of liability.

The judgment of the Court of Appeals is vacated, and the case is remanded with instructions to transfer the case to the United States Court of Appeals for the Seventh Circuit for further proceedings consistent with this opinion.

It is so ordered.

Per Curiam

NITRO-LIFT TECHNOLOGIES, L. L. C. *v.* HOWARD ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA

No. 11–1377. Decided November 26, 2012

After respondents left petitioner Nitro-Lift Technologies, L. L. C., to work for one of its competitors, Nitro-Lift demanded arbitration pursuant to the parties' confidentiality and noncompetition agreements. Respondents sought to have the agreements declared null and void and their enforcement enjoined. An Oklahoma trial court dismissed their complaint, finding that the agreements contained valid arbitration clauses and that the parties' disagreement must therefore be settled by an arbitrator. But the Oklahoma Supreme Court viewed the arbitration clauses as no obstacle to its review and held the underlying agreements void under a state law that limits the enforceability of noncompetition agreements.

Held: Because the Oklahoma Supreme Court's decision disregards this Court's Federal Arbitration Act precedents, its judgment must be vacated. It is a mainstay of the Act's substantive law that attacks on a contract's validity are to be resolved "by the arbitrator in the first instance, not by a federal or state court," *Preston* v. *Ferrer*, 552 U. S. 346, 349, while the validity of an arbitration provision is subject to initial trial court determination. Here, the trial court found that the agreements contained valid arbitration clauses. The Oklahoma Supreme Court did not hold otherwise, but reasoned, on the basis of the interpretative principle that the specific governs the general, that Oklahoma's statute must govern over the federal statute favoring arbitration. That principle applies only to conflicts between laws of equivalent dignity. Where a specific state statute conflicts with a general federal statute, the Supremacy Clause dictates that the latter governs.

Certiorari granted; 273 P. 3d 20, vacated and remanded.

PER CURIAM.

State courts rather than federal courts are most frequently called upon to apply the Federal Arbitration Act (FAA or Act), 9 U. S. C. §1 *et seq.*, including the Act's national policy favoring arbitration. It is a matter of great importance, therefore, that state supreme courts adhere to a

correct interpretation of the legislation. Here, the Oklahoma Supreme Court failed to do so. By declaring the noncompetition agreements in two employment contracts null and void, rather than leaving that determination to the arbitrator in the first instance, the state court ignored a basic tenet of the Act's substantive arbitration law. The decision must be vacated.

* * *

This dispute arises from a contract between petitioner Nitro-Lift Technologies, L. L. C., and two of its former employees. Nitro-Lift contracts with operators of oil and gas wells to provide services that enhance production. Respondents Eddie Lee Howard and Shane D. Schneider entered a confidentiality and noncompetition agreement with Nitro-Lift that contained the following arbitration clause:

> "'Any dispute, difference or unresolved question between Nitro-Lift and the Employee (collectively the "Disputing Parties") shall be settled by arbitration by a single arbitrator mutually agreeable to the Disputing Parties in an arbitration proceeding conducted in Houston, Texas in accordance with the rules existing at the date hereof of the American Arbitration Association.'" Pet. for Cert. 5.

After working for Nitro-Lift on wells in Oklahoma, Texas, and Arkansas, respondents quit and began working for one of Nitro-Lift's competitors. Claiming that respondents had breached their noncompetition agreements, Nitro-Lift served them with a demand for arbitration. Respondents then filed suit in the District Court of Johnston County, Oklahoma, asking the court to declare the noncompetition agreements null and void and to enjoin their enforcement. The court dismissed the complaint, finding that the contracts contained valid arbitration clauses under which an arbitrator, and not the court, must settle the parties' disagreement.

The Oklahoma Supreme Court retained respondents' appeal and ordered the parties to show cause why the matter should not be resolved by application of Okla. Stat., Tit. 15, §219A (West 2011), which limits the enforceability of noncompetition agreements. Nitro-Lift argued that any dispute as to the contracts' enforceability was a question for the arbitrator. It relied for support— as it had done before the trial court—upon several of this Court's cases interpreting the FAA, and noted that under *Buckeye Check Cashing, Inc.* v. *Cardegna*, 546 U. S. 440, 446 (2006), "this arbitration law applies in both state and federal courts." Record in No. 109,003 (Okla.), p. 273.

The Oklahoma Supreme Court was not persuaded. It held that despite the "[U. S.] Supreme Court cases on which the employers rely," the "existence of an arbitration agreement in an employment contract does not prohibit judicial review of the underlying agreement." 2011 OK 98, ¶15, n. 20, ¶16, 273 P. 3d 20, 26, n. 20, 27. For that proposition, the court relied on the "exhaustive overview of the United States Supreme Court decisions construing the Federal Arbitration Act" in *Bruner* v. *Timberlane Manor Ltd. Partnership*, 2006 OK 90, 155 P. 3d 16, which found Supreme Court jurisprudence "not to inhibit our review of the underlying contract's validity." 273 P. 3d, at 26. Finding the arbitration clauses no obstacle to its review, the court held that the noncompetition agreements were "void and unenforceable as against Oklahoma's public policy," expressed in Okla. Stat., Tit. 15, §219A. 273 P. 3d, at 27.

The Oklahoma Supreme Court declared that its decision rests on adequate and independent state grounds. *Id.*, at 23–24, n. 5. If that were so, we would have no jurisdiction over this case. See *Michigan* v. *Long*, 463 U. S. 1032, 1037–1044 (1983). It is not so, however, because the court's reliance on Oklahoma law was not "independent"—it necessarily depended upon a rejection of the federal claim, which was both "'properly presented to'" and "'addressed by'" the

state court. *Howell* v. *Mississippi*, 543 U. S. 440, 443 (2005) (*per curiam*) (quoting *Adams* v. *Robertson*, 520 U. S. 83, 86 (1997) (*per curiam*)). Nitro-Lift claimed that the arbitrator should decide the contract's validity, and raised a federal-law basis for that claim by relying on Supreme Court cases construing the FAA. "'[A] litigant wishing to raise a federal issue can easily indicate the federal law basis for his claim in a state-court petition or brief . . . by citing in conjunction with the claim the federal source of law on which he relies *or a case deciding such a claim on federal grounds . . . .*'" *Howell*, *supra*, at 444 (quoting *Baldwin* v. *Reese*, 541 U. S. 27, 32 (2004); emphasis added). The Oklahoma Supreme Court acknowledged the cases on which Nitro-Lift relied, as well as their relevant holdings, but chose to discount these controlling decisions. Its conclusion that, despite this Court's jurisprudence, the underlying contract's validity is purely a matter of state law for state-court determination is all the more reason for this Court to assert jurisdiction.

The Oklahoma Supreme Court's decision disregards this Court's precedents on the FAA. That Act, which "declare[s] a national policy favoring arbitration," *Southland Corp.* v. *Keating*, 465 U. S. 1, 10 (1984), provides that a "written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U. S. C. §2. It is well settled that "the substantive law the Act created [is] applicable in state and federal courts." *Southland Corp.*, *supra*, at 12; see also *Buckeye*, *supra*, at 446. And when parties commit to arbitrate contractual disputes, it is a mainstay of the Act's substantive law that attacks on the validity of the contract, as distinct from attacks on the validity of the arbitration clause itself, are to be resolved "by the arbitrator in the first instance, not by a fed-

eral or state court." *Preston* v. *Ferrer*, 552 U. S. 346, 349 (2008); see also *Prima Paint Corp.* v. *Flood & Conklin Mfg. Co.*, 388 U. S. 395 (1967). For these purposes, an "arbitration provision is severable from the remainder of the contract," *Buckeye*, *supra*, at 445, and its validity is subject to initial court determination; but the validity of the remainder of the contract (if the arbitration provision is valid) is for the arbitrator to decide.

This principle requires that the decision below be vacated. The trial court found that the contract contained a valid arbitration clause, and the Oklahoma Supreme Court did not hold otherwise. It nonetheless assumed the arbitrator's role by declaring the noncompetition agreements null and void. The state court insisted that its "[own] jurisprudence controls this issue" and permits review of a "contract submitted to arbitration where one party assert[s] that the underlying agreement [is] void and unenforceable." 273 P. 3d, at 26. But the Oklahoma Supreme Court must abide by the FAA, which is "the supreme Law of the Land," U. S. Const., Art. VI, cl. 2, and by the opinions of this Court interpreting that law. "It is this Court's responsibility to say what a statute means, and once the Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law." *Rivers* v. *Roadway Express, Inc.*, 511 U. S. 298, 312 (1994). Our cases hold that the FAA forecloses precisely this type of "judicial hostility towards arbitration." *AT&T Mobility LLC* v. *Concepcion*, 563 U. S. 333, 342 (2011).

The state court reasoned that Oklahoma's statute "addressing the validity of covenants not to compete, must govern over the more general statute favoring arbitration." 273 P. 3d, at 26, n. 21. But the ancient interpretive principle that the specific governs the general (*generalia specialibus non derogant*) applies only to conflict between laws of equivalent dignity. Where a specific statute, for example, conflicts with a general constitutional provision, the latter governs. And the same is true where a specific state stat-

ute conflicts with a general federal statute. There is no general-specific exception to the Supremacy Clause, U. S. Const., Art. VI, cl. 2. "'[W]hen state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA.'" *Marmet Health Care Center, Inc.* v. *Brown*, 565 U. S. 530, 533 (2012) (*per curiam*) (quoting *AT&T Mobility LLC, supra*, at 341). Hence, it is for the arbitrator to decide in the first instance whether the covenants not to compete are valid as a matter of applicable state law. See *Buckeye*, 546 U. S., at 445–446.

For the foregoing reasons, the petition for certiorari is granted. The judgment of the Supreme Court of Oklahoma is vacated, and the case is remanded for proceedings not inconsistent with this opinion.

It is so ordered.

Syllabus

ARKANSAS GAME AND FISH COMMISSION *v.* UNITED STATES

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

No. 11–597. Argued October 3, 2012—Decided December 4, 2012

Petitioner, Arkansas Game and Fish Commission (Commission), owns and manages the Dave Donaldson Black River Wildlife Management Area (Management Area or Area), which comprises 23,000 acres along the Black River that are forested with multiple hardwood oak species and serve as a venue for recreation and hunting. In 1948, the U. S. Army Corps of Engineers (Corps) constructed the Clearwater Dam (Dam) upstream from the Management Area and adopted a plan known as the Water Control Manual (Manual), which sets seasonally varying rates for the release of water from the Dam. Periodically from 1993 until 2000, the Corps, at the request of farmers, authorized deviations from the Manual that extended flooding into the Management Area's peak timber-growing season. The Commission objected to the deviations on the ground that they adversely impacted the Management Area, and opposed the Corps' proposal to make the temporary deviations part of the Manual's permanent water-release plan. After testing the effect of the deviations, the Corps abandoned the proposed Manual revision and ceased its temporary deviations.

The Commission sued the United States, alleging that the temporary deviations constituted a taking of property that entitled the Commission to compensation. The Commission maintained that the deviations caused sustained flooding during tree-growing season, and that the cumulative impact of the flooding caused the destruction of timber in the Area and a substantial change in the character of the terrain, necessitating costly reclamation measures. The Court of Federal Claims' judgment in favor of the Commission was reversed by the Federal Circuit. The Court of Appeals acknowledged that temporary government action may give rise to a takings claim if permanent action of the same character would constitute a taking. It held, however, that government-induced flooding can give rise to a takings claim only if the flooding is "permanent or inevitably recurring." The Federal Circuit understood this conclusion to be dictated by *Sanguinetti* v. *United States*, 264 U. S. 146, 150, and *United States* v. *Cress*, 243 U. S. 316, 328.

Held: Government-induced flooding temporary in duration gains no automatic exemption from Takings Clause inspection. Pp. 31–40.

(a) No magic formula enables a court to judge, in every case, whether a given government interference with property is a taking. This Court has drawn some bright lines, but in the main, takings claims turn on situation-specific factual inquiries. See *Penn Central Transp. Co.* v. *New York City*, 438 U. S. 104, 124.

As to the question whether temporary flooding can ever give rise to a takings claim, this Court has ruled that government-induced flooding, *Pumpelly* v. *Green Bay Co.*, 13 Wall. 166, and seasonally recurring flooding, *Cress*, 243 U. S., at 328, can constitute takings. The Court has also ruled that takings temporary in duration can be compensable. *E. g.*, *United States* v. *Causby*, 328 U. S. 256, 266. This Court's precedent thus indicates that government-induced flooding of limited duration may be compensable. None of the Court's decisions authorizes a blanket temporary-flooding exception to the Court's Takings Clause jurisprudence, and the Court declines to create such an exception in this case. Pp. 31–34.

(b) In advocating a temporary-flooding exception, the Government relies primarily on *Sanguinetti*, 264 U. S. 146, which held that no taking occurred when a government-constructed canal overflowed onto the claimant's land. In its opinion, the Court summarized prior flooding cases as standing for the proposition that "in order to create an enforceable liability against the Government, it is, at least, necessary that the overflow be the direct result of the structure, and constitute an actual, permanent invasion of the land." *Id.*, at 149. The Government urges the Court to extract from the quoted words a definitive rule that there can be no temporary taking caused by floods. But the Court does not read the passing reference to permanence in *Sanguinetti* as having done so much work. *Sanguinetti* was decided in 1924, well before the World War II-era cases and *First English Evangelical Lutheran Church of Glendale* v. *County of Los Angeles*, 482 U. S. 304, in which the Court first homed in on the matter of compensation for temporary takings. There is no suggestion in *Sanguinetti* that flooding cases should be set apart from the mine run of takings claims.

The Court thus finds no solid grounding in precedent for setting flooding apart from other government intrusions on property. And the Government has presented no other persuasive reason to do so. Its primary argument is that reversing the Federal Circuit's decision risks disrupting public works dedicated to flood control. While the public interests here are important, they are not categorically different from the interests at stake in myriad other Takings Clause cases in which this Court has rejected similar arguments when deployed to urge blanket exemptions from the Fifth Amendment's instruction.

Syllabus

The Government argues in the alternative that damage to downstream property, however foreseeable, is collateral or incidental; it is not aimed at any particular landowner and therefore is not compensable under the Takings Clause. The Court expresses no opinion on this claim, which was first tendered at oral argument and not aired in the courts below. For the same reason, the Court declines to address the bearing, if any, of Arkansas water-rights law on this case. Pp. 34–38.

(c) When regulation or temporary physical invasion by government interferes with private property, time is a factor in determining the existence *vel non* of a compensable taking. See, *e. g.*, *Loretto* v. *Teleprompter Manhattan CATV Corp.*, 458 U. S. 419, 435, n. 12. Also relevant to the takings inquiry is the degree to which the invasion is intended or is the foreseeable result of authorized government action. See, *e. g.*, *John Horstmann Co.* v. *United States*, 257 U. S. 138, 146. So, too, are the character of the land at issue and the owner's "reasonable investment-backed expectations" regarding the land's use, *Palazzolo* v. *Rhode Island*, 533 U. S. 606, 618, as well as the severity of the interference, see, *e. g.*, *Penn Central*, 438 U. S., at 130–131. In concluding that the flooding was foreseeable in this case, the Court of Federal Claims noted the Commission's repeated complaints to the Corps about the destructive impact of the successive planned deviations and determined that the interference with the Commission's property was severe. The Government, however, challenged several of the trial court's factfindings, including those relating to causation, foreseeability, substantiality, and the amount of damages. Because the Federal Circuit rested its decision entirely on the temporary duration of the flooding, it did not address those challenges, which remain open for consideration on remand. Pp. 38–40.

637 F. 3d 1366, reversed and remanded.

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

James F. Goodhart argued the cause for petitioner. With him on the briefs were *Julie DeWoody Greathouse*, *Matthew N. Miller*, *Kimberly D. Logue*, and *John P. Marks*.

Deputy Solicitor General Kneedler argued the cause for the United States. With him on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Moreno*, *Ben-*

jamin J. Horwich, *William B. Lazarus*, *Katherine J. Barton*, *Robert J. Lundman*, and *Earl H. Stockdale, Jr.**

JUSTICE GINSBURG delivered the opinion of the Court.

Periodically from 1993 until 2000, the U. S. Army Corps of Engineers (Corps) authorized flooding that extended into the peak growing season for timber on forest land owned and managed by petitioner, Arkansas Game and Fish Commission (Commission). Cumulative in effect, the repeated flooding damaged or destroyed more than 18 million board feet of timber and disrupted the ordinary use and enjoyment of the Commission's property. The Commission sought compensation from the United States pursuant to the Fifth Amendment's instruction: "[N]or shall private property be taken for public use, without just compensation." The question presented is whether a taking may occur, within the meaning of the Takings Clause, when government-induced flood invasions, although repetitive, are temporary.

Ordinarily, this Court's decisions confirm, if government action would qualify as a taking when permanently continued, temporary actions of the same character may also qualify as a taking. In the instant case, the parties and the courts below divided on the appropriate classification of temporary flooding. Reversing the judgment of the Court of

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*Briefs of *amici curiae* urging reversal were filed for the National Federation of Independent Business Small Business Legal Center et al. by *Karen R. Harned*, *Christopher M. Whitcomb*, *Thomas J. Ward*, *Amy C. Chai*, *Ellen Steen*, *Scott Horngren*, *John C. Eastman*, and *Anthony T. Caso*; for the Owners' Counsel of America by *Robert H. Thomas*; for the Pacific Legal Foundation et al. by *R. S. Radford*, *Brian T. Hodges*, *Ilya Shapiro*, and *Martin S. Kaufman*; for the Washington Legal Foundation et al. by *Richard A. Samp*; and for the Wolfsen Land and Cattle Co. et al. by *Nancie G. Marzulla* and *Roger Marzulla*.

Briefs of *amici curiae* urging affirmance were filed for the International Municipal Lawyers Association et al. by *John D. Echeverria*; and for Professors of Law Teaching in the Property Law and Water Rights Fields by *Robert H. Abrams, pro se*.

Federal Claims, which awarded compensation to the Commission, the Federal Circuit held, 2 to 1, that compensation may be sought only when flooding is "a permanent or inevitably recurring condition, rather than an inherently temporary situation." 637 F. 3d 1366, 1378 (2011). We disagree and conclude that recurrent floodings, even if of finite duration, are not categorically exempt from Takings Clause liability.

I

A

The Commission owns the Dave Donaldson Black River Wildlife Management Area (Management Area or Area), which comprises 23,000 acres along both banks of the Black River in northeast Arkansas. The Management Area is forested with multiple hardwood timber species that support a variety of wildlife habitats. The Commission operates the Management Area as a wildlife and hunting preserve, and also uses it as a timber resource, conducting regular harvests of timber as part of its forest-management efforts. Three types of hardwood oak species—nuttall, overcup, and willow—account for 80 percent of the trees in the Management Area. The presence of these hardwood oaks is essential to the Area's character as a habitat for migratory birds and as a venue for recreation and hunting.

The Clearwater Dam (Dam) is located 115 miles upstream from the Management Area. The Corps constructed the Dam in 1948, and shortly thereafter adopted a plan known as the Water Control Manual (Manual) to determine the rates at which water would be released from the Dam. The Manual sets seasonally varying release rates, but permits planned deviations from the prescribed rates for agricultural, recreational, and other purposes.

In 1993, the Corps approved a planned deviation in response to requests from farmers. From September to December 1993, the Corps released water from the Dam at a

slower rate than usual, providing downstream farmers with a longer harvest time. As a result, more water than usual accumulated in Clearwater Lake behind the Dam. To reduce the accumulation, the Corps extended the period in which a high amount of water would be released. The Commission maintained this extension yielded downstream flooding in the Management Area, above historical norms, during the tree-growing season, which runs from April to October. If the Corps had released the water more rapidly in the fall of 1993, in accordance with the Manual and with past practice, there would have been short-term waves of flooding which would have receded quickly. The lower rate of release in the fall, however, extended the period of flooding well into the following spring and summer. While the deviation benefited farmers, it interfered with the Management Area's tree-growing season.

The Corps adopted similar deviations each year from 1994 through 2000. The record indicates that the decision to deviate from the Manual was made independently in each year and that the amount of deviation varied over the span of years. Nevertheless, the result was an unbroken string of annual deviations from the Manual. Each deviation lowered the rate at which water was released during the fall, which necessitated extension of the release period into the following spring and summer. During this span of years the Corps proposed Manual revisions that would have made its temporary deviations part of the permanent water-release plan. On multiple occasions between 1993 and 2000, the Commission objected to the temporary deviations and opposed any permanent revision to the Manual, on the ground that the departures from the traditional water-release plan adversely impacted the Management Area. Ultimately, the Corps tested the effect of the deviations on the Management Area. It thereupon abandoned the proposal to permanently revise the Manual and, in 2001, ceased its temporary deviations.

B

In 2005, the Commission filed the instant lawsuit against the United States, claiming that the temporary deviations from the Manual constituted a taking of property that entitled the Commission to compensation. The Commission maintained that the deviations caused sustained flooding of its land during the tree-growing season. The cumulative impact of this flooding over a six-year period between 1993 and 1999, the Commission alleged, resulted in the destruction of timber in the Management Area and a substantial change in the character of the terrain, which necessitated costly reclamation measures. Following a trial, the Court of Federal Claims ruled in favor of the Commission and issued an opinion and order containing detailed findings of fact. 87 Fed. Cl. 594 (2009).

The Court of Federal Claims found that the forests in the Management Area were healthy and flourishing before the flooding that occurred in the 1990's, and that the forests had been sustainably managed for decades under the water-release plan contained in the Manual. *Id.*, at 631. It further found that the Commission repeatedly objected to the deviations from the Manual and alerted the Corps to the detrimental effect the longer period of flooding would have on the hardwood timber in the Management Area. *Id.*, at 604.

As found by the Court of Federal Claims, the flooding caused by the deviations contrasted markedly with historical flooding patterns. Between 1949 and 1992, the river level near the Management Area reached six feet an average of 64.7 days per year during the growing season; the number of such days had been even lower on average before the Clearwater Dam was built. Between 1993 and 1999, however, the river reached the same level an average of 91.14 days per year, an increase of more than 40 percent over the historic average. Although the Management Area lies in a flood plain, in no previously recorded timespan did comparable flooding patterns occur. *Id.*, at 607–608. Evidence at

trial indicated that half of the nuttall oaks in the Management Area were saturated with water when the river level was at six feet, *id.*, at 608; the evidence further indicated that the saturation of the soil around the trees' root systems could persist for weeks even after the flooding had receded, *id.*, at 627.

The court concluded that the Corps' deviations caused six consecutive years of substantially increased flooding, which constituted an appropriation of the Commission's property, albeit a temporary rather than a permanent one. Important to this conclusion, the court emphasized the deviations' cumulative effect. The trees were subject to prolonged periods of flooding year after year, which reduced the oxygen level in the soil and considerably weakened the trees' root systems. The repeated annual flooding for six years altered the character of the property to a much greater extent than would have been shown if the harm caused by one year of flooding were simply multiplied by six. When a moderate drought occurred in 1999 and 2000, the trees did not have the root systems necessary to sustain themselves; the result, in the court's words, was "catastrophic mortality." *Id.*, at 632. More than 18 million board feet of timber were destroyed or degraded. *Id.*, at 638–640.

This damage altered the character of the Management Area. The destruction of the trees led to the invasion of undesirable plant species, making natural regeneration of the forests improbable in the absence of reclamation efforts. *Id.*, at 643. To determine the measure of just compensation, the Court of Federal Claims calculated the value of the lost timber and the projected cost of the reclamation and awarded the Commission $5.7 million.

The Federal Circuit reversed. It acknowledged that in general, temporary government action may give rise to a takings claim if permanent action of the same character would constitute a taking. But it held that "cases involving flooding and [flowage] easements are different." 637 F. 3d,

at 1374. Government-induced flooding can give rise to a takings claim, the Federal Circuit concluded, only if the flooding is "permanent or inevitably recurring." *Id.*, at 1378. The Court of Appeals understood this conclusion to be dictated by this Court's decisions in *Sanguinetti* v. *United States*, 264 U. S. 146, 150 (1924), and *United States* v. *Cress*, 243 U. S. 316, 328 (1917). We granted certiorari to resolve the question whether government actions that cause repeated floodings must be permanent or inevitably recurring to constitute a taking of property. 566 U. S. 920 (2012).

II

The Takings Clause is "designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong* v. *United States*, 364 U. S. 40, 49 (1960). See also *First English Evangelical Lutheran Church of Glendale* v. *County of Los Angeles*, 482 U. S. 304, 318–319 (1987); *Penn Central Transp. Co.* v. *New York City*, 438 U. S. 104, 123–125 (1978). And "[w]hen the government physically takes possession of an interest in property for some public purpose, it has a categorical duty to compensate the former owner." *Tahoe-Sierra Preservation Council, Inc.* v. *Tahoe Regional Planning Agency*, 535 U. S. 302, 322 (2002) (citing *United States* v. *Pewee Coal Co.*, 341 U. S. 114, 115 (1951)). These guides are fundamental in our Takings Clause jurisprudence. We have recognized, however, that no magic formula enables a court to judge, in every case, whether a given government interference with property is a taking. In view of the nearly infinite variety of ways in which government actions or regulations can affect property interests, the Court has recognized few invariable rules in this area.

True, we have drawn some bright lines, notably, the rule that a permanent physical occupation of property authorized by government is a taking. *Loretto* v. *Teleprompter Man-*

hattan CATV Corp., 458 U. S. 419, 426 (1982). So, too, is a regulation that permanently requires a property owner to sacrifice all economically beneficial uses of his or her land. *Lucas* v. *South Carolina Coastal Council*, 505 U. S. 1003, 1019 (1992). But aside from the cases attended by rules of this order, most takings claims turn on situation-specific factual inquiries. See *Penn Central*, 438 U. S., at 124. With this in mind, we turn to the question presented here—whether temporary flooding can ever give rise to a takings claim.

The Court first ruled that government-induced flooding can constitute a taking in *Pumpelly* v. *Green Bay Co.*, 13 Wall. 166 (1872). The Wisconsin Legislature had authorized the defendant to build a dam which led to the creation of a lake, permanently submerging the plaintiff's land. The defendant argued that the land had not been taken because the government did not exercise the right of eminent domain to acquire title to the affected property. Moreover, the defendant urged, the damage was merely "a consequential result" of the dam's construction near the plaintiff's property. *Id.*, at 177. Rejecting that crabbed reading of the Takings Clause, the Court held that "where real estate is actually invaded by superinduced additions of water, earth, sand, or other material . . . so as to effectually destroy or impair its usefulness, it is a taking, within the meaning of the Constitution." *Id.*, at 181.

Following *Pumpelly*, the Court recognized that seasonally recurring flooding could constitute a taking. *United States* v. *Cress*, 243 U. S. 316 (1917), involved the Government's construction of a lock and dam, which subjected the plaintiff's land to "intermittent but inevitably recurring overflows." *Id.*, at 328. The Court held that the regularly recurring flooding gave rise to a takings claim no less valid than the claim of an owner whose land was continuously kept under water. *Id.*, at 328–329.

Furthermore, our decisions confirm that takings temporary in duration can be compensable. This principle was

solidly established in the World War II era, when "[c]ondemnation for indefinite periods of occupancy [took hold as] a practical response to the uncertainties of the Government's needs in wartime." *United States* v. *Westinghouse Elec. & Mfg. Co.*, 339 U. S. 261, 267 (1950). In support of the war effort, the Government took temporary possession of many properties. These exercises of government authority, the Court recognized, qualified as compensable temporary takings. See *Pewee Coal Co.*, 341 U. S. 114; *Kimball Laundry Co.* v. *United States*, 338 U. S. 1 (1949); *United States* v. *General Motors Corp.*, 323 U. S. 373 (1945). Notably in relation to the question before us, the takings claims approved in these cases were not confined to instances in which the Government took outright physical possession of the property involved. A temporary takings claim could be maintained as well when government action occurring outside the property gave rise to "a direct and immediate interference with the enjoyment and use of the land." *United States* v. *Causby*, 328 U. S. 256, 266 (1946) (frequent overflights from a nearby airport resulted in a taking, for the flights deprived the property owner of the customary use of his property as a chicken farm); cf. *United States* v. *Dickinson*, 331 U. S. 745, 751 (1947) (flooding of claimant's land was a taking even though claimant successfully "reclaimed most of his land which the Government originally took by flooding").

Ever since, we have rejected the argument that government action must be permanent to qualify as a taking. Once the government's actions have worked a taking of property, "no subsequent action by the government can relieve it of the duty to provide compensation for the period during which the taking was effective." *First English*, 482 U. S., at 321. See also *Tahoe-Sierra*, 535 U. S., at 337 ("[W]e do not hold that the temporary nature of a land-use restriction precludes finding that it effects a taking; we simply recognize that it should not be given exclusive significance one way or the other.").

Because government-induced flooding can constitute a taking of property, and because a taking need not be permanent to be compensable, our precedent indicates that government-induced flooding of limited duration may be compensable. No decision of this Court authorizes a blanket temporary-flooding exception to our Takings Clause jurisprudence, and we decline to create such an exception in this case.

III

In advocating a temporary-flooding exception, the Government relies primarily on *Sanguinetti*, 264 U. S. 146. That case involved a canal constructed by the Government connecting a slough and a river. The claimant's land was positioned between the slough and the river above the canal. The year after the canal's construction, a "flood of unprecedented severity" caused the canal to overflow onto the claimant's land; less severe flooding and overflow occurred in later years. *Id.*, at 147.

The Court held there was no taking on these facts. This outcome rested on settled principles of foreseeability and causation. The Court emphasized that the Government did not intend to flood the land or have "any reason to expect that such [a] result would follow" from construction of the canal. *Id.*, at 148. Moreover, the property was subject to seasonal flooding prior to the construction of the canal, and the landowner failed to show a causal connection between the canal and the increased flooding, which may well have been occasioned by changes in weather patterns. See *id.*, at 149 (characterizing the causal relationship asserted by the landowner as "purely conjectural"). These case-specific features were more than sufficient to dispose of the property owner's claim.

In the course of the *Sanguinetti* decision, however, the Court summarized prior flooding cases as standing for the proposition that "in order to create an enforceable liability against the Government, it is, at least, necessary that the

overflow be the direct result of the structure, and constitute an actual, permanent invasion of the land." *Ibid.* The Government would have us extract from this statement a definitive rule that there can be no temporary taking caused by floods.

We do not read so much into the word "permanent" as it appears in a nondispositive sentence in *Sanguinetti*. That case, we note, was decided in 1924, well before the World War II-era cases and *First English*, in which the Court first homed in on the matter of compensation for temporary takings. That time factor, we think, renders understandable the Court's passing reference to permanence. If the Court indeed meant to express a general limitation on the Takings Clause, that limitation has been superseded by subsequent developments in our jurisprudence.

There is certainly no suggestion in *Sanguinetti* that flooding cases should be set apart from the mine run of takings claims. The sentence in question was composed to summarize the flooding cases the Court had encountered up to that point, which had unexceptionally involved permanent, rather than temporary, government-induced flooding. 264 U. S., at 149. See *Cress*, 243 U. S., at 328; *United States* v. *Lynah*, 188 U. S. 445, 469 (1903). But as just explained, no distinction between permanent and temporary flooding was material to the result in *Sanguinetti*. We resist reading a single sentence unnecessary to the decision as having done so much work. In this regard, we recall Chief Justice Marshall's sage observation that "general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision." *Cohens* v. *Virginia*, 6 Wheat. 264, 399 (1821).

The Government also asserts that the Court in *Loretto* interpreted *Sanguinetti* the same way the Federal Circuit did in this case. That assertion bears careful inspection. A

section of the Court's opinion in *Loretto* discussing permanent physical occupations parenthetically quotes *Sanguinetti*'s statement that flooding is a taking if it constitutes an "actual, permanent invasion of the land." 458 U. S., at 428 (internal quotation marks omitted). But the first rule of case law as well as statutory interpretation is: Read on. Later in the *Loretto* opinion, the Court clarified that it scarcely intended to adopt a "flooding-is-different" rule by the obscure means of quoting parenthetically a fragment from a 1924 opinion. The Court distinguished permanent physical occupations from temporary invasions of property, expressly including flooding cases, and said that "temporary limitations are subject to a more complex balancing process to determine whether they are a taking." *Id.*, at 435, n. 12.

There is thus no solid grounding in precedent for setting flooding apart from all other government intrusions on property. And the Government has presented no other persuasive reason to do so. Its primary argument is of the in for a penny, in for a pound genre: reversing the decision below, the Government worries, risks disruption of public works dedicated to flood control. "[E]very passing flood attributable to the government's operation of a flood-control project, no matter how brief," the Government hypothesizes, might qualify as a compensable taking. Brief for United States 29. To reject a categorical bar to temporary-flooding takings claims, however, is scarcely to credit all, or even many, such claims. It is of course incumbent on courts to weigh carefully the relevant factors and circumstances in each case, as instructed by our decisions. See *infra*, at 39.

The slippery slope argument, we note, is hardly novel or unique to flooding cases. Time and again in Takings Clause cases, the Court has heard the prophecy that recognizing a just compensation claim would unduly impede the government's ability to act in the public interest. *Causby*, 328 U. S., at 275 (Black, J., dissenting); *Loretto*, 458 U. S., at 455

(Blackmun, J., dissenting). We have rejected this argument when deployed to urge blanket exemptions from the Fifth Amendment's instruction. While we recognize the importance of the public interests the Government advances in this case, we do not see them as categorically different from the interests at stake in myriad other Takings Clause cases. The sky did not fall after *Causby*, and today's modest decision augurs no deluge of takings liability.

Tellingly, the Government qualifies its defense of the Federal Circuit's exclusion of flood invasions from temporary takings analysis. It sensibly acknowledges that a taking might be found where there is a "sufficiently prolonged series of nominally temporary but substantively identical deviations." Brief for United States 21. This concession is in some tension with the categorical rule adopted by the Court of Appeals. Indeed, once it is recognized that at least some repeated nonpermanent flooding can amount to a taking of property, the question presented to us has been essentially answered. Flooding cases, like other takings cases, should be assessed with reference to the "particular circumstances of each case," and not by resorting to blanket exclusionary rules. *United States* v. *Central Eureka Mining Co.*, 357 U. S. 155, 168 (1958) (citing *Pennsylvania Coal Co.* v. *Mahon*, 260 U. S. 393, 416 (1922)). See *Penn Central*, 438 U. S., at 124.

At oral argument, the Government tendered a different justification for the Federal Circuit's judgment, one not aired in the courts below, and barely hinted at in the brief the Government filed in this Court: Whether the damage is permanent or temporary, damage to downstream property, however foreseeable, is collateral or incidental; it is not aimed at any particular landowner and therefore does not qualify as an occupation compensable under the Takings Clause. Tr. of Oral Arg. 30–39; Brief for United States 26–27. "[M]indful that we are a court of review, not of first view," *Cutter* v.

Wilkinson, 544 U. S. 709, 718, n. 7 (2005), we express no opinion on the proposed upstream/downstream distinction and confine our opinion to the issue explored and decided by the Federal Circuit.

For the same reason, we are not equipped to address the bearing, if any, of Arkansas water-rights law on this case.[1] The determination whether a taking has occurred includes consideration of the property owner's distinct investment-backed expectations, a matter often informed by the law in force in the State in which the property is located. *Lucas*, 505 U. S., at 1027–1029; *Phillips* v. *Washington Legal Foundation*, 524 U. S. 156, 164 (1998). But Arkansas law was not examined by the Federal Circuit, and therefore is not properly pursued in this Court. Whether arguments for an upstream/downstream distinction and on the relevance of Arkansas law have been preserved and, if so, whether they have merit, are questions appropriately addressed to the Court of Appeals on remand. See *Glover* v. *United States*, 531 U. S. 198, 205 (2001).

IV

We rule today, simply and only, that government-induced flooding temporary in duration gains no automatic exemption from Takings Clause inspection. When regulation or temporary physical invasion by government interferes with private property, our decisions recognize, time is indeed a factor in determining the existence *vel non* of a compensable taking. See *Loretto*, 458 U. S., at 435, n. 12 (temporary physical invasions should be assessed by case-specific factual inquiry); *Tahoe-Sierra*, 535 U. S., at 342 (duration of regulatory restriction is a factor for court to consider); *National Bd. of YMCA* v. *United States*, 395 U. S. 85, 93 (1969) ("temporary,

[1] Arkansas water law is barely discussed in the parties' briefs, see Brief for United States 43, but has been urged at length in a friend-of-the-Court brief. See Professors of Law Teaching in the Property Law and Water Rights Fields as *Amicus Curiae*.

unplanned occupation" of building by troops under exigent circumstances is not a taking).

Also relevant to the takings inquiry is the degree to which the invasion is intended or is the foreseeable result of authorized government action. See *supra*, at 34; *John Horstmann Co.* v. *United States*, 257 U. S. 138, 146 (1921) (no takings liability when damage caused by government action could not have been foreseen). See also *Ridge Line, Inc.* v. *United States*, 346 F. 3d 1346, 1355–1356 (CA Fed. 2003); *In re Chicago, Milwaukee, St. Paul & Pacific R. Co.*, 799 F. 2d 317, 325–326 (CA7 1986). So, too, are the character of the land at issue and the owner's "reasonable investment-backed expectations" regarding the land's use. *Palazzolo* v. *Rhode Island*, 533 U. S. 606, 618 (2001). For example, the Management Area lies in a flood plain below a dam, and had experienced flooding in the past. But the trial court found the Area had not been exposed to flooding comparable to the 1990's accumulations in any other timespan either prior to or after the construction of the Dam. See *supra*, at 29–30. Severity of the interference figures in the calculus as well. See *Penn Central*, 438 U. S., at 130–131; *Portsmouth Harbor Land & Hotel Co.* v. *United States*, 260 U. S. 327, 329–330 (1922) ("[W]hile a single act may not be enough, a continuance of them in sufficient number and for a sufficient time may prove [a taking]. Every successive trespass adds to the force of the evidence.").

The Court of Federal Claims found that the flooding the Commission assails was foreseeable. In this regard, the court noted the Commission's repeated complaints to the Corps about the destructive impact of the successive planned deviations from the Manual. Further, the court determined that the interference with the Commission's property was severe: The Commission had been deprived of the customary use of the Management Area as a forest and wildlife preserve, as the bottomland hardwood forest turned, over time,

into a "headwater swamp." 87 Fed. Cl., at 610 (internal quotation marks omitted); see *supra*, at 30.[2]

The Government, however, challenged several of the trial court's factfindings, including those relating to causation, foreseeability, substantiality, and the amount of damages. Because the Federal Circuit rested its decision entirely on the temporary duration of the flooding, it did not address those challenges. As earlier noted, see *supra*, at 38, preserved issues remain open for consideration on remand.

* * *

For the reasons stated, the judgment of the Court of Appeals for the Federal Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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

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[2] The Commission is endeavoring to reclaim the land through a restoration program. The prospect of reclamation, however, does not disqualify a landowner from receipt of just compensation for a taking. *United States* v. *Dickinson*, 331 U. S. 745, 751 (1947).

Syllabus

KLOECKNER *v.* SOLIS, SECRETARY OF LABOR

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

No. 11–184. Argued October 2, 2012—Decided December 10, 2012

The Civil Service Reform Act of 1978 (CSRA) permits a federal employee subjected to a particularly serious personnel action such as a discharge or demotion to appeal her agency's decision to the Merit Systems Protection Board (MSPB or Board). Such an appeal may allege that the agency had insufficient cause for taking the action under the CSRA itself; but the appeal may also or instead charge the agency with discrimination prohibited by a federal statute. See 5 U. S. C. § 7702(a)(1). When an employee alleges that a personnel action appealable to the MSPB was based on discrimination, her case is known as a "mixed case." See 29 CFR § 1614.302. Mixed cases are governed by special procedures set out in the CSRA and regulations of the MSPB and Equal Employment Opportunity Commission (EEOC).

Under those procedures, an employee may initiate a mixed case by filing a discrimination complaint with the agency. If the agency decides against the employee, she may either appeal the agency's decision to the MSPB or sue the agency in district court. Alternatively, the employee can bypass the agency and bring her mixed case directly to the MSPB. If the MSPB upholds the personnel action, whether in the first instance or after the agency has done so, the employee is entitled to seek judicial review.

Section 7703(b)(1) of the CSRA provides that petitions for review of MSPB decisions "shall be filed in the . . . Federal Circuit," except as provided in § 7703(b)(2). Section 7703(b)(2) instructs that "[c]ases of discrimination subject to the provisions of [§ 7702] shall be filed under [the enforcement provision of a listed antidiscrimination statute]." Those enforcement provisions all authorize suit in federal district court. The "cases of discrimination subject to the provisions of section 7702" are those in which an employee "(A) has been affected by an action which [she] may appeal to the [MSPB], and (B) alleges that a basis for the action was discrimination prohibited by" a listed federal statute; in other words, "mixed cases."

In 2005, while an employee of the Department of Labor (DOL or agency), petitioner Carolyn Kloeckner filed a complaint with the agency's civil rights office, alleging that DOL had engaged in unlawful

sex and age discrimination by subjecting her to a hostile work environment. Following applicable EEOC regulations, DOL completed an internal investigation and report, and Kloeckner requested a hearing before an EEOC administrative judge. While the EEOC case was pending, Kloeckner was fired. Because Kloeckner believed that DOL's decision to fire her was based on unlawful discrimination, she now had a "mixed case." Kloeckner originally brought her mixed case directly to the MSPB. Concerned about duplicative discovery expenses between her EEOC and MSPB cases, she moved to amend her EEOC complaint to include her claim of discriminatory removal and asked the MSPB to dismiss her case without prejudice for four months to allow the EEOC process to go forward. Both motions were granted. In September 2006, the MSPB dismissed her appeal without prejudice to her right to refile by January 18, 2007. The EEOC case, however, continued until April 2007, when the EEOC judge terminated the proceeding as a sanction for Kloeckner's bad-faith discovery conduct and returned the case to DOL for a final decision. In October, DOL ruled against Kloeckner on all of her claims. Kloeckner appealed to the Board in November 2007. The Board dismissed Kloeckner's appeal as untimely, viewing it as an effort to reopen her old MSPB case months after the January 18 deadline.

Kloeckner then brought this action against DOL in Federal District Court, alleging unlawful discrimination. The court dismissed the complaint for lack of jurisdiction. It held that, because the MSPB dismissed Kloeckner's claims on procedural grounds, she should have sought review in the Federal Circuit under § 7703(b)(1); in the court's view, the only discrimination cases that could go to district court pursuant to § 7703(b)(2) were those the MSPB had decided on the merits. The Eighth Circuit affirmed.

Held: A federal employee who claims that an agency action appealable to the MSPB violates an antidiscrimination statute listed in § 7702(a)(1) should seek judicial review in district court, not the Federal Circuit, regardless whether the MSPB decided her case on procedural grounds or on the merits. Pp. 49–56.

(a) Two sections of the CSRA, read naturally, direct employees like Kloeckner to district court. Begin with § 7703, which governs judicial review of MSPB rulings. Section 7703(b)(1) provides that petitions to review the Board's final decisions should be filed in the Federal Circuit—"[e]xcept as provided in paragraph (2) of this subsection." Section 7703(b)(2) then provides that "[c]ases of discrimination subject to the provisions of [§ 7702]" "shall be filed under" the enforcement provision of a listed antidiscrimination statute. Each of the referenced enforcement provisions authorizes an action in federal district court.

Thus, "[c]ases of discrimination subject to the provisions of [§ 7702]" shall be filed in district court. Turn next to § 7702, which provides that the cases "subject to [its] provisions" are cases in which a federal employee "has been affected by an action which [she] may appeal to the [MSPB]," and "alleges that a basis for the action was discrimination prohibited by" a listed federal statute. The "cases of discrimination subject to" § 7702 are therefore mixed cases. Putting § 7703 and § 7702 together, mixed cases shall be filed in district court. That is where Kloeckner's case should have been, and indeed was, filed. Regardless whether the MSPB dismissed her claim on the merits or threw it out as untimely, she brought the kind of case that the CSRA routes to district court. Pp. 49–50.

(b) The Government's alternative view—that the CSRA directs the MSPB's merits decisions to district court, while channeling its procedural rulings to the Federal Circuit—is not supported by the statute. According to the Government, that bifurcated scheme, though not specifically prescribed in the CSRA, lies hidden in the statute's timing requirements. But the Government cannot explain why Congress would have constructed such an obscure path to such a simple result. And taking the Government's analysis one step at a time makes it no more plausible. Pp. 50–55.

639 F. 3d 834, reversed and remanded.

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

Eric Schnapper argued the cause for petitioner. With him on the briefs were *Larry J. Stein*, *Anthony J. Franze*, and *R. Reeves Anderson*.

Sarah E. Harrington argued the cause for respondent. With her on the brief were *Solicitor General Verrilli*, *Acting Assistant Attorney General Delery*, *Deputy Solicitor General Srinivasan*, *Marleigh D. Dover*, and *Stephanie R. Marcus*.

JUSTICE KAGAN delivered the opinion of the Court.

A federal employee subjected to an adverse personnel action such as a discharge or demotion may appeal her agency's decision to the Merit Systems Protection Board (MSPB or Board). See 5 U. S. C. §§ 7512, 7701. In that challenge, the employee may claim, among other things, that the agency

discriminated against her in violation of a federal statute. See § 7702(a)(1). The question presented in this case arises when the MSPB dismisses an appeal alleging discrimination not on the merits, but on procedural grounds. Should an employee seeking judicial review then file a petition in the Court of Appeals for the Federal Circuit, or instead bring a suit in district court under the applicable antidiscrimination law? We hold she should go to district court.

I

A

The Civil Service Reform Act of 1978 (CSRA), 5 U. S. C. § 1101 *et seq.*, establishes a framework for evaluating personnel actions taken against federal employees. That statutory framework provides graduated procedural protections depending on an action's severity. If (but only if) the action is particularly serious—involving, for example, a removal from employment or a reduction in grade or pay—the affected employee has a right to appeal the agency's decision to the MSPB, an independent adjudicator of federal employment disputes.[1] See §§ 1204, 7512, 7701. Such an appeal may merely allege that the agency had insufficient cause for taking the action under the CSRA; but the appeal may also or instead charge the agency with discrimination prohibited by another federal statute, such as Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.*, or the Age Discrimination in Employment Act of 1967, 29 U. S. C. § 621 *et seq.* See 5 U. S. C. § 7702(a)(1). When an employee complains of a personnel action serious enough to appeal to the MSPB *and* alleges that the action was based on discrimination, she is said (by pertinent regulation) to have brought a "mixed case." See 29 CFR § 1614.302 (2012). The CSRA and regu-

[1] The actions entitling an employee to appeal a case to the MSPB include "(1) a removal; (2) a suspension for more than 14 days; (3) a reduction in grade; (4) a reduction in pay; and (5) a furlough." 5 U. S. C. § 7512.

lations of the MSPB and Equal Employment Opportunity Commission (EEOC) set out special procedures to govern such a case—different from those used when the employee either challenges a serious personnel action under the CSRA alone or attacks a less serious action as discriminatory. See 5 U. S. C. §§ 7702, 7703(b)(2) (2006 ed. and Supp. V); 5 CFR pt. 1201, subpt. E (2012); 29 CFR pt. 1614, subpt. C.

A federal employee bringing a mixed case may proceed in a variety of ways. She may first file a discrimination complaint with the agency itself, much as an employee challenging a personnel practice not appealable to the MSPB could do. See 5 CFR § 1201.154(a); 29 CFR § 1614.302(b). If the agency decides against her, the employee may then either take the matter to the MSPB or bypass further administrative review by suing the agency in district court. See 5 CFR § 1201.154(b); 29 CFR § 1614.302(d)(1)(i). Alternatively, the employee may initiate the process by bringing her case directly to the MSPB, forgoing the agency's own system for evaluating discrimination charges. See 5 CFR § 1201.154(a); 29 CFR § 1614.302(b). If the MSPB upholds the personnel action (whether in the first instance or after the agency has done so), the employee again has a choice: She may request additional administrative process, this time with the EEOC, or else she may seek judicial review. See 5 U. S. C. §§ 7702(a)(3), (b); 5 CFR § 1201.161; 29 CFR § 1614.303. The question in this case concerns where that judicial review should take place.

Section 7703 of the CSRA governs judicial review of the MSPB's decisions. Section 7703(b)(1) gives the basic rule: "Except as provided in paragraph (2) of this subsection, a petition to review a . . . final decision of the Board shall be filed in the United States Court of Appeals for the Federal Circuit." Section 7703(b)(2) then spells out the exception:

> "Cases of discrimination subject to the provisions of section 7702 of this title shall be filed under [the enforcement sections of the Civil Rights Act, Age Discrimina-

> tion in Employment Act, and Fair Labor Standards Act], as applicable. Notwithstanding any other provision of law, any such case filed under any such section must be filed within 30 days after the date the individual filing the case received notice of the judicially reviewable action under such section 7702."

The enforcement provisions of the antidiscrimination statutes listed in this exception all authorize suit in federal district court. See 42 U. S. C. §§ 2000e–16(c), 2000e–5(f); 29 U. S. C. § 633a(c); § 216(b); see also *Elgin* v. *Department of Treasury*, 567 U. S. 1, 13 (2012).

Section 7702 describes and provides for the "cases of discrimination" referenced in § 7703(b)(2)'s exception. In relevant part, § 7702(a)(1) states:

> "[I]n the case of any employee . . . who—
>
> "(A) has been affected by an action which the employee . . . may appeal to the Merit Systems Protection Board, and
>
> "(B) alleges that a basis for the action was discrimination prohibited by [specified antidiscrimination statutes],
>
> "the Board shall, within 120 days of the filing of the appeal, decide both the issue of discrimination and the appealable action in accordance with the Board's appellate procedures."

The "cases of discrimination" in § 7703(b)(2)'s exception, in other words, are mixed cases, in which an employee challenges as discriminatory a personnel action appealable to the MSPB.

The parties here dispute whether, in light of these interwoven statutory provisions, an employee should go to the Federal Circuit (pursuant to the general rule of § 7703(b)(1)), or instead to a district court (pursuant to the exception in § 7703(b)(2)), when the MSPB has dismissed her mixed case on procedural grounds.

B

Petitioner Carolyn Kloeckner used to work at the Department of Labor (DOL or agency). In June 2005, while still an employee, she filed a complaint with the agency's civil rights office, alleging that DOL had engaged in unlawful sex and age discrimination by subjecting her to a hostile work environment. At that point, Kloeckner's case was not appealable to the MSPB because she had not suffered a sufficiently serious personnel action (*e. g.*, a removal or demotion). See *supra*, at 44. Her claim thus went forward not under the special procedures for mixed cases, but under the EEOC's regulations for all other charges of discrimination. See 29 CFR pt. 1614, subpts. A, D. In line with those rules, the agency completed an internal investigation and report in June 2006, and Kloeckner requested a hearing before an EEOC administrative judge.

The next month, DOL fired Kloeckner. A removal from employment is appealable to the MSPB, see *supra*, at 44, and Kloeckner believed the agency's action was discriminatory; she therefore now had a mixed case. As permitted by regulation, see *supra*, at 45, she initially elected to file that case with the MSPB. Her claim of discriminatory removal, however, raised issues similar to those in her hostile work environment case, now pending before an EEOC judge; as a result, she became concerned that she would incur duplicative discovery expenses. To address that problem, she sought leave to amend her EEOC complaint to include her claim of discriminatory removal, and she asked the MSPB to dismiss her case without prejudice for four months to allow the EEOC process to go forward. See App. 13, 50–51. Both of those motions were granted. The EEOC judge accepted the amendment,[2] and on September 18, 2006, the

[2] Neither the CSRA nor any regulation explicitly authorizes an EEOC judge to consider the legality of a removal or other serious personnel action before the Board has done so. See *supra*, at 44–45. Nonetheless, the EEOC has approved that approach when the issues the personnel action

MSPB dismissed her appeal "without prejudice to [her] right to refile . . . either (A) within 30 days after a decision is rendered in her EEOC case; or (B) by January 18, 2007—*whichever occurs first*." *Id.*, at 5.

Discovery continued in the EEOC proceeding well past the MSPB's January 18 deadline. In April, the EEOC judge found that Kloeckner had engaged in bad-faith conduct in connection with discovery. As a sanction, the judge terminated the EEOC proceeding and returned Kloeckner's case to DOL for a final decision. Six months later, in October 2007, DOL issued a ruling rejecting all of Kloeckner's claims. See *id.*, at 10–49.

Kloeckner appealed DOL's decision to the Board in November 2007. That appeal was filed within 30 days, the usual window for seeking MSPB review of an agency's determination of a mixed case. See 5 CFR § 1201.154(a); 29 CFR § 1614.302(d)(1)(ii). But the MSPB declined to treat Kloeckner's filing as an ordinary appeal of such an agency decision. Instead, the Board viewed it as an effort to reopen her old MSPB case—many months after the January 18 deadline for doing so had expired. The Board therefore dismissed Kloeckner's appeal as untimely. See App. 53–57.

Kloeckner then brought this action against DOL in Federal District Court, alleging unlawful discrimination. The District Court dismissed the complaint for lack of jurisdiction. See *Kloeckner* v. *Solis*, Civ. Action No. 4:09CV804 (ED Mo., Feb. 18, 2010). Relying on the Eighth Circuit's ruling in *Brumley* v. *Levinson*, 991 F. 2d 801 (1993) (*per curiam*), the court held that because the MSPB had dismissed Kloeckner's claims on procedural grounds, she should have

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raises are "firmly enmeshed" in an ongoing EEOC proceeding in order to avoid "delay[ing] justice and creat[ing] unnecessary procedural complications." *Burton* v. *Espy*, Appeal No. 01932449, 1994 WL 748214, *12 (EEOC, Oct. 28, 1994); see also *Myvett* v. *Poteat*, Appeal No. 0120103671, 2011 WL 6122516, *2 (EEOC, Nov. 21, 2011). We express no view on the propriety of this practice.

sought review in the Federal Circuit under § 7703(b)(1); in the court's view, the only discrimination cases that could go to district court pursuant to § 7703(b)(2) were those the MSPB had decided on the merits. The Eighth Circuit affirmed on the same reasoning. See 639 F. 3d 834 (2011).

We granted certiorari, 565 U. S. 1152 (2012), to resolve a Circuit split on whether an employee seeking judicial review should proceed in the Federal Circuit or in a district court when the MSPB has dismissed her mixed case on procedural grounds.[3] We now reverse the Eighth Circuit's decision.

II

As the above account reveals, the intersection of federal civil rights statutes and civil service law has produced a complicated, at times confusing, process for resolving claims of discrimination in the federal workplace. But even within the most intricate and complex systems, some things are plain. So it is in this case, where two sections of the CSRA, read naturally, direct employees like Kloeckner to district court.

Begin with § 7703, which governs judicial review of the MSPB's rulings. As already noted, see *supra*, at 45–46, § 7703(b)(1) provides that petitions to review the Board's final decisions should be filed in the Federal Circuit—"[e]xcept as provided in paragraph (2) of this subsection." Paragraph (2), *i. e.*, § 7703(b)(2), then sets out a different rule for one category of cases—"[c]ases of discrimination subject to the provisions of section 7702 of this title." Such a case, paragraph (2) instructs, "shall be filed under" the enforcement provision of an enumerated antidiscrimination statute. And each of those enforcement provisions authorizes an action in federal district court. See *supra*, at 46. So

[3] Compare 639 F. 3d 834 (CA8 2011) (case below) (Federal Circuit); *Ballentine* v. *MSPB*, 738 F. 2d 1244 (CA Fed. 1984) (same), with *Harms* v. *IRS*, 321 F. 3d 1001 (CA10 2003) (district court); *Downey* v. *Runyon*, 160 F. 3d 139 (CA2 1998) (same).

"[c]ases of discrimination subject to the provisions of section 7702" shall be filed in district court.

Turn next to § 7702, which identifies the cases "subject to [its] provisions." As also stated earlier, § 7702(a)(1) describes cases in which a federal employee "(A) has been affected by an action which [she] may appeal to the Merit Systems Protection Board, and (B) alleges that a basis for the action was discrimination prohibited by" a listed federal statute. The subsection thus describes what we (adopting the lingo of the applicable regulations) have called "mixed cases." See 29 CFR § 1614.302. Those are the "cases of discrimination subject to" the rest of § 7702's provisions.

Now just put § 7703 and § 7702 together—say, in the form of a syllogism, to make the point obvious. Under § 7703(b)(2), "cases of discrimination subject to [§ 7702]" shall be filed in district court. Under § 7702(a)(1), the "cases of discrimination subject to [§ 7702]" are mixed cases—those appealable to the MSPB and alleging discrimination. Ergo, mixed cases shall be filed in district court.

And so that is where Kloeckner's case should have been filed (as indeed it was). No one here contests that Kloeckner brought a mixed case—that she was affected by an action (*i. e.*, removal) appealable to the MSPB and that she alleged discrimination prohibited by an enumerated federal law. And under the CSRA's terms, that is all that matters. Regardless whether the MSPB dismissed her claim on the merits or instead threw it out as untimely, Kloeckner brought the kind of case that the CSRA routes, in crystalline fashion, to district court.

III

The Government offers an alternative view (as did the Eighth Circuit)—that the CSRA directs the MSPB's merits decisions to district court, while channeling its procedural rulings to the Federal Circuit. According to the Government, that bifurcated scheme, though not prescribed in the CSRA in so many words, lies hidden in the statute's timing

requirements. But we return from the Government's maze-like tour of the CSRA persuaded only that the merits-procedure distinction is a contrivance, found nowhere in the statute's provisions on judicial review.

The Government's argument has two necessary steps. First, the Government claims that § 7703(b)(2)'s exception to Federal Circuit jurisdiction applies only when the MSPB's decision in a mixed case is a "judicially reviewable action" under § 7702. Second, the Government asserts that the Board's dismissal of a mixed case on procedural grounds does not qualify as such a "judicially reviewable action." We describe in turn the way the Government arrives at each of these conclusions.

The first step of the Government's argument derives from § 7703(b)(2)'s second sentence. Right after stating that "cases of discrimination subject to [§ 7702]" shall be filed under specified antidiscrimination statutes (*i. e.*, shall be filed in district court), § 7703(b)(2) provides: "Notwithstanding any other provision of law, any such case filed under any such [statute] must be filed within 30 days after the date the individual filing the case received notice of the judicially reviewable action under section 7702." The Government reads that sentence to establish an additional prerequisite for taking a case to district court, instead of to the Federal Circuit. To fall within the § 7703(b)(2) exception, the Government says, it is not enough that a case qualify as a "case of discrimination subject to [§ 7702]"; in addition, the MSPB's decision must count as a "judicially reviewable action." See Brief for Respondent 20–21. If the MSPB's decision is *not* a "judicially reviewable action"—a phrase the Government characterizes as a "term of art in this context," Tr. of Oral Arg. 28—the ruling still may be subject to judicial review (*i. e.*, "judicially reviewable" in the ordinary sense), but only in the Federal Circuit.

The Government's second step—that the Board's procedural rulings are not "judicially reviewable actions"—begins

with the language of § 7702(a)(3). That provision, the Government states, "defines for the most part which MSPB decisions qualify as 'judicially reviewable actions[s]' " by "providing that '[a]ny decision of the Board *under paragraph (1)* of this subsection shall be a judicially reviewable action as of' the date of the decision." Brief for Respondent 21 (quoting § 7702(a)(3); emphasis and brackets added by Government). From there, the Government moves on to the cross-referenced paragraph—§ 7702(a)(1)—which states, among other things, that the Board "shall, within 120 days of [the employee's filing], decide both the issue of discrimination and the appealable action in accordance with the Board's appellate procedures." According to the Government, the Board only "decide[s] . . . the issue of discrimination" when it rules on the merits, rather than on procedural grounds. On that view, a procedural decision is not in fact a "decision of the Board under paragraph (1)," which means that it also is not a "judicially reviewable action" under § 7702(a)(3). See Brief for Respondent 21–22. And so (returning now to the first step of the Government's argument), judicial review of a procedural decision can occur only in the Federal Circuit, and not in district court.

If you need to take a deep breath after all that, you're not alone. It would be hard to dream up a more roundabout way of bifurcating judicial review of the MSPB's rulings in mixed cases. If Congress had wanted to send merits decisions to district court and procedural dismissals to the Federal Circuit, it could just have said so. The Government has offered no reason for Congress to have constructed such an obscure path to such a simple result.

And taking the Government's analysis one step at a time makes it no more plausible than as a gestalt. The Government's initial move is to read § 7703(b)(2)'s second sentence as adding a requirement for a case to fall within the exception to Federal Circuit jurisdiction. But that sentence does no such thing; it is nothing more than a filing deadline. Con-

sider each sentence of § 7703(b)(2) in turn. The first sentence defines *which* cases should be brought in district court, rather than in the Federal Circuit; here, the full description is "[c]ases of discrimination subject to the provisions of section 7702"—to wit, mixed cases. The second sentence then states *when* those cases should be brought: "[A]ny such case . . . must be filed within 30 days" of the date the employee "received notice of the judicially reviewable action." The reference to a "judicially reviewable action" in that sentence does important work: It sets the clock running for *when* a case that belongs in district court must be filed there. What it does not do is to further define *which* timely-brought cases belong in district court instead of in the Federal Circuit. Describing those cases is the first sentence's role.

Proof positive that the Government misreads § 7703(b)(2) comes from considering what the phrase "judicially reviewable action" would mean under its theory. In normal legal parlance, to say that an agency action is not "judicially reviewable" is to say simply that it is not subject to judicial review—that, for one or another reason, it cannot be taken to a court. But that ordinary understanding will not work for the Government here, because it wants to use the phrase to help determine which of two courts should review a decision, rather than whether judicial review is available at all. In the Government's alternate universe, then, to say that an agency action is not "judicially reviewable" is to say that it *is* subject to judicial review in the Federal Circuit (even though not in district court). Small wonder that the Government must call the phrase "judicially reviewable action" a "term of art," *supra*, at 51: On a natural reading, the phrase defines cases amenable to judicial review, rather than routes those cases as between two courts.

And even were we to indulge the Government that far, we could not accept the second step of its analysis. At that stage, remember, the Government contends that under § 7702 only decisions on the merits qualify as "judicially re-

viewable actions." The language on which the Government principally relies, stated again, is as follows: "[T]he Board shall, within 120 days of [the employee's filing], decide both the issue of discrimination and the appealable action." But that provision, too, is only a timing requirement; it is designed to ensure that the Board act promptly on employees' complaints. We see no reason to think that embedded within that directive is a limitation on the class of "judicially reviewable actions." Nor (even were we to indulge the Government on that point as well) can we find the particular restriction the Government urges. According to the Government, the MSPB does not "decide . . . the issue of discrimination" when it dismisses a mixed case on procedural grounds. But that phrase cannot bear the weight the Government places on it. All the phrase signifies is that the Board should dispose of the issue in some way, whether by actually adjudicating it or by holding that it was not properly raised. Indeed, were the Government right, § 7702(a)'s statement that the Board "shall" decide the issue of discrimination would appear to bar procedural dismissals, requiring the Board to resolve on the merits even untimely complaints. No one (least of all the Government, which here is defending a procedural ruling) thinks that a plausible congressional command.

Another section of the statute—§ 7702(e)(1)(B)—puts the final nail in the coffin bearing the Government's argument. That section states: "[I]f at any time after . . . the 120th day following [an employee's filing] with the Board . . . , there is no judicially reviewable action[,] . . . an employee shall be entitled to file a civil action" in district court under a listed antidiscrimination statute. That provision, as the Government notes, is designed "to save employees from being held in perpetual uncertainty by Board inaction." Brief for Respondent 28. But if, as the Government insists, a procedural ruling is not a "judicially reviewable action," then the provision would have another, surprising effect—essentially blow-

ing up the Government's argument from the inside. In that event, an employee whose suit the Board had dismissed on procedural grounds *could* bring suit in district court under § 7702(e)(1)(B) (so long as 120 days had elapsed from her Board filing), because she would have received "no judicially reviewable action." And what's more, she could do so even many years later, because the statute's usual 30-day filing deadline begins to run only upon "notice of [a] judicially reviewable action." § 7703(b)(2). So an argument intended to keep employees like Kloeckner out of district court would paradoxically, and nonsensically, result in giving them all the time in the world to file suit there.

Responding to this unwelcome outcome, the Government offers us an exit route: We should avoid "absurd results," the Government urges, by applying § 7702(e)(1)(B) only to "cases over which the Board continues to exert jurisdiction." Brief for Respondent 27, 28, n. 4. But as the Government admits, that "gloss on the statute is not found in the text," Tr. of Oral Arg. 50; the Government's remedy requires our reading new words into the statute. We think a better option lies at hand. If we reject the Government's odd view of "judicially reviewable actions," then no absurdity arises in the first place: § 7702(e)(1)(B) would have no bearing on any case the MSPB dismissed within 120 days, whatever the grounds. It is the Government's own misreading that creates the need to "fix" § 7702(e)(1)(B); take that away and the provision serves, as it was intended, only as a remedy for Board inaction.[4]

[4] The Government supplements its tortuous reading of the CSRA's text with an appeal to one of the statute's purposes—in its words, "ensuring that the Federal Circuit would develop a uniform body of case law governing federal personnel issues." Brief for Respondent 32. We have previously recognized that Congress, through the CSRA, sought to avoid "unnecessary layer[s] of judicial review in lower federal courts, and encourag[e] more consistent judicial decisions." *United States* v. *Fausto*, 484 U. S. 439, 449 (1988) (internal quotation marks and some bracketing omitted). But in this case, the Government's argument about the neces-

IV

A federal employee who claims that an agency action appealable to the MSPB violates an antidiscrimination statute listed in § 7702(a)(1) should seek judicial review in district court, not in the Federal Circuit. That is so whether the MSPB decided her case on procedural grounds or instead on the merits. Kloeckner therefore brought her suit in the right place. We reverse the contrary judgment of the Court of Appeals for the Eighth Circuit, and remand the case for further proceedings consistent with this opinion.

It is so ordered.

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sity of Federal Circuit review runs into an inconvenient fact: When Congress passed the CSRA, the Federal Circuit did not exist, and § 7703(b)(1) thus provided, as the general rule, that a federal employee should appeal a Board decision to 1 of the 12 Courts of Appeals or the Court of Claims. See Civil Service Reform Act of 1978, 92 Stat. 1143. Moreover, the Government's own approach would leave many cases involving federal employment issues in district court. If the MSPB rejects on the merits a complaint alleging that an agency violated the CSRA as well as an antidiscrimination law, the suit will come to district court for a decision on both questions. See *Williams* v. *Department of Army*, 715 F. 2d 1485, 1491 (CA Fed. 1983) (en banc). In any event, even the most formidable argument concerning the statute's purposes could not overcome the clarity we find in the statute's text.

Syllabus

RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS *v.* VALENCIA GONZALES

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

No. 10–930. Argued October 9, 2012—Decided January 8, 2013*

Respondent Ernest Valencia Gonzales, a death row inmate in Arizona, sought federal habeas relief. His counsel moved to stay the proceedings, contending that Gonzales' mental incompetence prevented him from rationally communicating with or assisting counsel, and that Gonzales was thus entitled to a stay because, under the Ninth Circuit's *Rohan* decision, what is now 18 U. S. C. § 3599(a)(2) requires a stay when a petitioner is adjudged incompetent. The District Court denied a stay, finding that the claims before it were record based or resolvable as a matter of law and thus would not benefit from Gonzales' input. Gonzales thereafter sought a writ of mandamus in the Ninth Circuit. Applying *Rohan* and its recent decision in *Nash*—which gave habeas petitioners a right to competence even on record-based appeals—the court granted the writ, concluding that § 3599 gave Gonzales the right to a stay pending a competency determination.

Respondent Sean Carter, a death row inmate in Ohio, initiated federal habeas proceedings but eventually moved for a competency determination and stay of the proceedings. The District Court granted the motion and found Carter incompetent to assist counsel. Applying the Ninth Circuit's *Rohan* test, it determined that Carter's assistance was required to develop four of his exhausted claims. It thus dismissed his habeas petition without prejudice and prospectively tolled the statute of limitations. On appeal, the Sixth Circuit, relying in part on *Rees* v. *Peyton*, 384 U. S. 312 (*Rees I*), located a statutory right to competence in 18 U. S. C. § 4241, and found that a court could employ that provision whenever a capital habeas petitioner seeks to forgo his petition. It thus ordered that Carter's petition be stayed indefinitely with respect to any claims requiring his assistance.

Held:

1. Section 3599 does not provide a state prisoner a right to suspension of his federal habeas proceedings when he is adjudged incompetent. Pp. 64–71.

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*Together with No. 11–218, *Tibbals, Warden* v. *Carter*, on certiorari to the United States Court of Appeals for the Sixth Circuit.

Syllabus

(a) The assertion of such a right lacks any basis in the provision's text. Section 3599 guarantees federal habeas petitioners on death row the right to federally funded counsel, § 3599(a)(2), and sets out various requirements that appointed counsel must meet, §§ 3599(b)–(e), but it does not direct district courts to stay proceedings when petitioners are found incompetent. The assertion is also difficult to square with the Court's constitutional precedents. If the Sixth Amendment right carried with it an implied right to competence, the right to competence at trial would flow from that Amendment, not from the right to due process, see *Cooper* v. *Oklahoma*, 517 U. S. 348, 354. But while the benefits flowing from the right to counsel *at trial* could be affected if an incompetent defendant is unable to communicate with his attorney, this Court has never said that the right to competence *derives from* the right to counsel. And the Court will not assume or infer that Congress intended to depart from such precedent and locate a right to competence in federal habeas proceedings within the right to counsel. See *Merck & Co.* v. *Reynolds*, 559 U. S. 633, 648. Pp. 64–66.

(b) The Ninth Circuit identified its rule in *Rohan*, concluding there that a petitioner's mental incompetency could "eviscerate the statutory right to counsel" in federal habeas proceedings. But given the backward-looking, record-based nature of § 2254 proceedings, counsel can generally provide effective representation to a habeas petitioner regardless of the petitioner's competence. *Rees I*, *supra*, *Rees* v. *Peyton*, 386 U. S. 989, and *Rees* v. *Superintendent of Va. State Penitentiary*, 516 U. S. 802, which involved an incompetent death row inmate's attempt to withdraw his certiorari petition, offer no support for federal habeas petitioners seeking to stay district court proceedings or for the Ninth Circuit's opinions in *Rohan*, *Nash*, or this case. The Ninth Circuit's interpretation is also not supported by *McFarland* v. *Scott*, 512 U. S. 849, 858, in which this Court held that a district court could stay an execution after a capital prisoner had invoked his right to counsel but before he had filed his habeas petition. In contrast, Gonzales is seeking to stay the District Court's proceedings, and he sought a stay more than six years after initiating his habeas petition, certainly ample time for his attorney to research and present the claims. Pp. 66–71.

2. Section 4241 also does not provide a statutory right to competence during federal habeas proceedings. The Sixth Circuit based its conclusion largely on a misreading of *Rees I*, which did not recognize such a right. Moreover, § 4241 does not even apply to habeas proceedings. By its terms, it applies only to trial proceedings prior to sentencing and "at any time after the commencement of probation or supervised release." Federal habeas proceedings, however, commence after sentenc-

ing, and federal habeas petitioners are incarcerated, not on probation. Furthermore, § 4241, like the rest of Title 18 generally, applies exclusively to federal defendants, not to state prisoners like Carter. Finally, § 4241(a) authorizes a district court to grant a motion for a competency determination if there is reasonable cause to believe that the defendant's mental incompetence renders him "unable to understand . . . the proceedings against him or to assist properly in his defense," while a § 2254 habeas proceeding is a civil action *against* a state-prison warden, in which the petitioner collaterally attacks his conviction in an earlier state trial. Pp. 71–73.

3. For purposes of resolving these cases, it is sufficient to address the outer limits of the district court's discretion to issue stays; it is unnecessary to determine the precise contours of that discretion. In Gonzales' case, the District Court did not abuse its discretion in denying a stay after finding that Gonzales' claims were all record based or resolvable as a matter of law, regardless of his competence. Review of a petitioner's record-based claims subject to § 2254(d) is limited to the record before the state court that heard the case on the merits. Any evidence that Gonzales might have would be inadmissible. In Carter's case, three of his claims do not warrant a stay because they were adjudicated on the merits in state postconviction proceedings and thus subject to review under § 2254(d). Thus, extrarecord evidence that he might have concerning these claims would be inadmissible. It is unclear from the record whether he exhausted his fourth claim. If it was exhausted, it too would be record based. But even if it was both unexhausted and not procedurally defaulted, an indefinite stay would be inappropriate, since such a stay would permit petitioners to "frustrate [the Antiterrorism and Effective Death Penalty Act of 1996's] goal of finality by dragging out indefinitely their federal habeas review." *Rhines* v. *Weber*, 544 U. S. 269, 277–278. Pp. 73–77.

No. 10–930, 623 F. 3d 1242, reversed; No. 11–218, 644 F. 3d 329, vacated and remanded.

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

Thomas C. Horne, Attorney General of Arizona, argued the cause for petitioner in No. 10–930. With him on the briefs were *David R. Cole*, Solicitor General, *Kent E. Cattani*, *Jeffrey A. Zick*, and *John Pressley Todd*, Assistant Attorney General. *Alexandra T. Schimmer*, Solicitor General of Ohio, argued the cause for petitioner in No. 11–218. With her on the briefs were *Michael DeWine*, Attorney General,

David M. Lieberman, Deputy Solicitor, and *Holly LeClair Welch*, Assistant Attorney General.

Ann O'Connell argued the cause for the United States as *amicus curiae* in support of petitioners in both cases. With her on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Breuer*, *Deputy Solicitor General Dreeben*, and *Deborah Watson*.

Leticia Marquez argued the cause for respondent in No. 10–930. With her on the brief were *Jon M. Sands*, *Dale A. Baich*, *Jeffrey T. Green*, and *Quin M. Sorenson*. *Scott Michelman*, by appointment of the Court, 566 U. S. 1020, argued the cause for respondent in No. 11–218. With him on the brief were *Scott L. Nelson*, *Allison M. Zieve*, *Linda Prucha*, and *Rachel Troutman*.†

JUSTICE THOMAS delivered the opinion of the Court.

These two cases present the question whether the incompetence of a state prisoner requires suspension of the prison-

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†A brief of *amici curiae* urging reversal in both cases was filed for the State of Utah by *Mark L. Shurtleff*, Attorney General of Utah, and *Thomas B. Brunker*, Assistant Attorney General, by *Daniel Domenico*, Solicitor General of Colorado, and by the Attorneys General for their respective States as follows: *Luther Strange* of Alabama, *Dustin McDaniel* of Arkansas, *Joseph R. Biden III* of Delaware, *Samuel S. Olens* of Georgia, *Catherine Cortez Masto* of Nevada, *Gary King* of New Mexico, *E. Scott Pruitt* of Oklahoma, *Alan Wilson* of South Carolina, *Marty J. Jackley* of South Dakota, *Robert E. Cooper, Jr.*, of Tennessee, *Robert M. McKenna* of Washington, and *Gregory A. Phillips* of Wyoming.

Todd Feltus, *William T. Luzader III*, and *Steven J. Twist* filed a brief for Arizona Voice for Crime Victims Inc. as *amicus curiae* urging reversal in No. 10–930.

Briefs of *amici curiae* urging affirmance in both cases were filed for the American Bar Association by *William T. Robinson III*, *Kevin M. Bolan*, and *Katherine A. H. Dyson*; for the American Civil Liberties Union et al. by *Brian W. Stull*, *Denise LeBoeuf*, *Steven R. Shapiro*, and *Sarah S. Gannett*; for the American Psychiatric Association et al. by *Aaron M. Panner* and *Gregory G. Rapawy*; and for Retired Federal Judges by *Elaine J. Goldenberg* and *Matthew S. Hellman*.

er's federal habeas corpus proceedings. We hold that neither 18 U. S. C. § 3599 nor 18 U. S. C. § 4241 provides such a right and that the Courts of Appeals for the Ninth and Sixth Circuits both erred in holding that district courts must stay federal habeas proceedings when petitioners are adjudged incompetent.

I

A

Ernest Valencia Gonzales was convicted by an Arizona jury of felony murder, armed robbery, aggravated assault, first-degree burglary, and theft. The convictions arose from Gonzales' repeated stabbing of Darrel and Deborah Wagner in front of their 7-year-old son during a burglary of the Wagners' home. Darrel Wagner died from the stabbing, while Deborah Wagner survived but spent five days in intensive care. The trial court sentenced Gonzales to death on the murder charge and to various prison terms for the other crimes.

After exhausting state remedies, Gonzales filed a petition for a writ of habeas corpus in Federal District Court on November 15, 1999. While the petition was pending, Gonzales' appointed counsel moved to stay the proceedings, contending that Gonzales was no longer capable of rationally communicating with or assisting counsel. He argued that mental incompetence entitled Gonzales to a stay under Ninth Circuit precedent. See *Rohan* v. *Woodford*, 334 F. 3d 803 (2003). In *Rohan*, the Ninth Circuit held that the federal statute guaranteeing state capital prisoners a right to counsel in federal habeas proceedings, 21 U. S. C. § 848(q)(4)(B) (2000 ed.) (now codified as 18 U. S. C. § 3599(a)(2)), could not "be faithfully enforced unless courts ensure that a petitioner is competent," 334 F. 3d, at 813. *Rohan* thus concluded that "where an incompetent capital habeas petitioner raises claims that could potentially benefit from his ability to communicate rationally, refusing to stay proceedings pending

restoration of competence denies him his statutory right to assistance of counsel, whether or not counsel can identify with precision the information sought." *Id.*, at 819.

Applying *Rohan*, the District Court denied a stay after concluding that the claims properly before it were record based or resolvable as a matter of law and thus would not benefit from Gonzales' input. The court found it unnecessary to determine whether Gonzales was incompetent, though it did find that he possessed "at least a limited capacity for rational communication." *Gonzales* v. *Schriro*, 617 F. Supp. 2d 849, 863 (Ariz. 2008).

Gonzales thereafter filed an emergency petition for a writ of mandamus in the Ninth Circuit. While Gonzales' petition was pending, the Ninth Circuit decided *Nash* v. *Ryan*, 581 F. 3d 1048 (2009), which held that habeas petitioners have a right to competence on appeal, even though appeals are entirely record based. *Id.*, at 1050 ("While an appeal is record-based, that does not mean that a habeas petitioner in a capital case is relegated to a nonexistent role. Meaningful assistance of appellate counsel may require rational communication between counsel and a habeas petitioner"). Applying *Nash* and *Rohan*, the court granted the writ of mandamus, concluding that even though Gonzales' "exhausted claims are record-based or legal in nature, he is entitled to a stay pending a competency determination" under 18 U. S. C. § 3599. *In re Gonzales*, 623 F. 3d 1242, 1244 (2010).

We granted certiorari to determine whether § 3599 provides a statutory right to competence in federal habeas proceedings. 565 U. S. 1259 (2012).

B

Sean Carter was convicted by an Ohio jury of aggravated murder, aggravated robbery, and rape, and sentenced to death for anally raping his adoptive grandmother, Veader Prince, and stabbing her to death. After exhausting his state-court appeals, Carter initiated federal habeas proceed-

ings on March 19, 2002, in the Northern District of Ohio. Carter eventually filed a third amended petition, along with a motion requesting a competency determination and a stay of the proceedings. The District Court granted the motion.

Following several psychiatric evaluations and a competency determination, the District Court found Carter incompetent to assist counsel. Applying the Ninth Circuit's test in *Rohan*, it determined that Carter's assistance was required to develop four of his exhausted claims. As a result, the court dismissed his habeas petition without prejudice and prospectively tolled the statute of limitations. *Carter* v. *Bradshaw*, 583 F. Supp. 2d 872, 884 (2008). The State appealed.

The Sixth Circuit acknowledged that "[f]ederal habeas petitioners facing the death penalty for state criminal convictions do not enjoy a constitutional right to competence." *Carter* v. *Bradshaw*, 644 F. 3d 329, 332 (2011). It nevertheless located a statutory right to competence in § 4241, relying, in part, on this Court's decision in *Rees* v. *Peyton*, 384 *I*, U. S. 312 (1966) (*per curiam*) (*Rees I*).[1] 644 F. 3d, at 332. The Sixth Circuit explained:

> "By applying section 4241 to habeas actions, *Rees* addresses the situation where a habeas petitioner awaiting the death penalty may seek to forego any collateral attacks on his conviction or sentence, and defines a statutory right for the petitioner to be competent enough to (1) understand the nature and consequences of the proceedings against him, and (2) assist properly in his defense." *Id.*, at 333.

The court concluded that "[a]nytime a capital habeas petitioner affirmatively seeks to forego his habeas petition,

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[1] In *Rees I*, we held indefinitely a petition for certiorari after an incompetent capital inmate sought to withdraw his petition prior to our review. 384 U. S., at 313–314. See *infra*, at 69–70.

whether by action or inaction, . . . a district court may employ section 4241." *Id.*, at 334.

The court therefore amended the District Court's judgment and ordered that Carter's petition be stayed indefinitely with respect to any claims that required his assistance. *Id.*, at 336–337. Judge Rogers dissented, arguing that there was no constitutional or statutory basis for the court's decision. *Id.*, at 337–342.

We granted certiorari to determine whether § 4241 provides a statutory right to competence in federal habeas proceedings. 565 U. S. 1259 (2012).

II

Both the Ninth and Sixth Circuits have concluded that death row inmates pursuing federal habeas are entitled to a suspension of proceedings when found incompetent. The Ninth Circuit located this right in § 3599, while the Sixth Circuit located it in § 4241. Neither section provides such a right.

A

Section 3599(a)(2) guarantees federal habeas petitioners on death row the right to federally funded counsel.[2] The statute provides that petitioners who are "financially unable to obtain adequate representation . . . shall be entitled to the appointment of one or more attorneys." Appointed attorneys are required to have experience in death penalty litigation, §§ 3599(b)–(d), and, once appointed, are directed to "represent the defendant throughout every subsequent stage of available judicial proceedings," § 3599(e). The statute also

[2] "In any post conviction proceeding under [28 U. S. C. § 2254 or § 2255], seeking to vacate or set aside a death sentence, any defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services shall be entitled to the appointment of one or more attorneys and the furnishing of such other services in accordance with subsections (b) through (f)." 18 U. S. C. § 3599(a)(2).

gives district courts the power to authorize funding for "investigative, expert, or other services" as are "reasonably necessary for the representation of the defendant." § 3599(f). But § 3599 does not direct district courts to stay proceedings when habeas petitioners are found incompetent.[3]

In addition to lacking any basis in the statutory text, the assertion that the right to counsel implies a right to competence is difficult to square with our constitutional precedents. The right to counsel is located in the Sixth Amendment. ("In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.") If the right to counsel carried with it an implied right to competence, the right to competence at trial would flow from the Sixth Amendment. But "[w]e have repeatedly and consistently recognized that 'the criminal trial of an incompetent defendant violates *due process*,'" not the Sixth Amendment. *Cooper* v. *Oklahoma*, 517 U. S. 348, 354 (1996) (quoting *Medina* v. *California*, 505 U. S. 437, 453 (1992); emphasis added); see also *Drope* v. *Missouri*, 420 U. S. 162, 172 (1975) ("[T]he failure to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial" (citing *Pate* v. *Robinson*, 383 U. S. 375, 385 (1966))).

It stands to reason that the benefits flowing from the right to counsel *at trial* could be affected if an incompetent defendant is unable to communicate with his attorney. For example, an incompetent defendant would be unable to assist counsel in identifying witnesses and deciding on a trial strat-

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[3] In fact, § 3599(e), which contains the section's sole reference to "competency," cuts against the Ninth Circuit's conclusion. That section provides that appointed attorneys "shall also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant." We doubt that Congress would have authorized counsel to represent inmates in postconviction competency proceedings *only* if the inmates were competent.

egy. For this reason, "[a] defendant may not be put to trial unless he '"has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding . . . [and] a rational as well as factual understanding of the proceedings against him."'" *Cooper*, *supra*, at 354 (quoting *Dusky* v. *United States*, 362 U. S. 402 (1960) (*per curiam*)). Notwithstanding the connection between the right to competence at trial and the right to counsel at trial, we have never said that the right to competence *derives from* the right to counsel. We will not assume or infer that Congress intended to depart from our precedents and locate a right to competence in federal habeas proceedings within the right to counsel. "We normally assume that, when Congress enacts statutes, it is aware of relevant judicial precedent." *Merck & Co.* v. *Reynolds*, 559 U. S. 633, 648 (2010).

The Ninth Circuit located a statutory right to competence in § 3599. 623 F. 3d, at 1245 (citing *Rohan*, 334 F. 3d 803, and *Nash*, 581 F. 3d 1048). Because *Rohan* is the Ninth Circuit's controlling precedent, we briefly address that decision.

In *Rohan*, a habeas petitioner asserted a right to competency based both on the Due Process Clause and on 21 U. S. C. § 848(q)(4)(B) (2000 ed.). After discussing the history of the common law, which prohibited the indictment, trial, and execution of mentally incompetent defendants,[4] the Court of Appeals stated that the petitioner's due proc-

[4] Blackstone explained the common-law rule as follows:

"[I]f a man in his sound memory commits a capital offence, and before arraignment for it, he becomes mad, he ought not to be arraigned for it; because he is not able to plead to it with that advice and caution that he ought. And if, after he has pleaded, the prisoner becomes mad, he shall not be tried; for how can he make his defence? If, after he be tried and found guilty, he loses his senses before judgment, judgment shall not be pronounced; and if, after judgment, he becomes of nonsane memory, execution shall be stayed: for peradventure, says the humanity of the English law, had the prisoner been of sound memory, he might have alleged something in stay of judgment or execution." 4 W. Blackstone, Commentaries on the Laws of England 24–25 (1769).

ess claim raised "substantial" "constitutional questions." 334 F. 3d, at 814. This conclusion is puzzling in light of the Ninth Circuit's acknowledgment that there is "no constitutional right to counsel on habeas," *id.*, at 810 (citing *Murray* v. *Giarratano*, 492 U. S. 1, 10 (1989) (plurality opinion)), and that "there is no due process right to collateral review at all," 334 F. 3d, at 810 (citing *United States* v. *MacCollom*, 426 U. S. 317, 323 (1976) (plurality opinion)). The Ninth Circuit was simply incorrect in suggesting that, in this case, there might be a constitutional concern—much less a "substantial" one—raised by the petitioner's due process claim.

Invoking the canon of constitutional avoidance, the Ninth Circuit gave the petitioner the practical benefit of a due process right to competence in federal habeas proceedings through its interpretation of § 848(q)(4)(B).[5] 334 F. 3d, at 814. In analyzing that statute, the *Rohan* court relied on a Ninth Circuit en banc opinion in *Calderon* v. *United States Dist. Court for Central Dist. of Cal.*, 163 F. 3d 530 (1998) (*Kelly V*), overruled in unrelated part, *Woodford* v. *Garceau*, 538 U. S. 202 (2003), which held that a prisoner's incompetence is grounds for equitably tolling the Antiterrorism and Effective Death Penalty Act of 1996's (AEDPA) 1-year statute of limitations for filing habeas petitions. The *Rohan* court purported to be bound by the "rationale" of *Kelly V*—that a prisoner's incompetence could "eviscerate the statutory right to counsel,"[6] *Kelly V*, *supra*, at 541—and con-

[5] As noted *supra*, at 61, § 848(q)(4)(B) has been superseded by 18 U. S. C. § 3599(a)(2).

[6] It is unclear how *Kelly V*'s determination that mental incompetence is grounds for AEDPA equitable tolling could possibly control the outcome in *Rohan*, which had nothing to do with AEDPA's statute of limitations. The relevant questions for equitable tolling purposes are whether the petitioner has " 'been pursuing his rights diligently' " and whether " 'some extraordinary circumstance stood in his way.' " *Holland* v. *Florida*, 560 U. S. 631, 649 (2010) (quoting *Pace* v. *DiGuglielmo*, 544 U. S. 408, 418 (2005)). But the propriety of equitably tolling AEDPA's statute of limita-

cluded that "[i]f a petitioner's statutory rights depend on his ability to communicate rationally, compelling him to pursue relief while incompetent is no less an infringement than dismissing his late petition." 334 F. 3d, at 814.

We are not persuaded by the Ninth Circuit's assertion that a habeas petitioner's mental incompetency could "eviscerate the statutory right to counsel" in federal habeas proceedings. Given the backward-looking, record-based nature of most federal habeas proceedings, counsel can generally provide effective representation to a habeas petitioner regardless of the petitioner's competence. Indeed, where a claim is "adjudicated on the merits in State court proceedings," 28 U. S. C. § 2254(d) (2006 ed.), counsel should, in most circumstances, be able to identify whether the "adjudication . . . resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," § 2254(d)(1), without any evidence outside the record. See *Cullen* v. *Pinholster*, 563 U. S. 170, 181 (2011) ("[R]eview under [28 U. S. C.] § 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits. . . . This backward-looking language requires an examination of the state-court decision at the time it was made. It follows that the record under review is limited to the record in existence at that same time—*i. e.*, the record before the state court"). Attorneys are quite capable of reviewing the state-court record, identifying legal errors, and marshaling relevant arguments, even without their clients' assistance.

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tions in the case of a mentally incompetent petitioner has nothing to do with the statutory right to counsel. The Ninth Circuit has held that habeas petitioners who do *not* have a statutory right to counsel (*i. e.*, all habeas petitioners other than those on death row) may still avail themselves of equitable tolling if they are mentally incompetent. See, *e. g.*, *Bills* v. *Clark*, 628 F. 3d 1092, 1097 (2010) (establishing standard for deciding equitable tolling claims predicated on mental incompetence); *Laws* v. *Lamarque*, 351 F. 3d 919, 924–925 (2003) (recognizing that mental incompetence can give rise to equitable tolling for AEDPA's statute of limitations).

Rohan also cited *Rees I*, 384 U. S. 312, in support of its conclusion. 334 F. 3d, at 815. In *Rees I*, a state inmate on death row filed a petition for a writ of habeas corpus in District Court, alleging that the state-court conviction violated his constitutional rights. 384 U. S., at 313. The District Court denied his petition, and the Court of Appeals affirmed. *Ibid.* Shortly after Rees' counsel filed a petition for certiorari with this Court, Rees directed his counsel to withdraw the petition and to forgo any further proceedings. Counsel advised the Court that he could not accede to these instructions without a psychiatric evaluation of Rees, because there was some doubt as to Rees' mental competency. *Ibid.* In response, the Court directed the District Court to determine Rees' mental competence. *Id.*, at 313–314. After the District Court conducted a hearing and found Rees incompetent, the Court issued a one-sentence order directing that the petition for certiorari be "held without action." *Rees* v. *Peyton*, 386 U. S. 989 (1967) (*Rees II*).[7] When Rees died several decades later, the Court dismissed the petition. *Rees* v. *Superintendent of Va. State Penitentiary*, 516 U. S. 802 (1995) (*Rees III*).

The Ninth Circuit concluded that "[t]he record in *Rees II* shows that incompetence is grounds for staying habeas proceedings." *Rohan*, *supra*, at 815. This conclusion is un-

[7] This order was issued after the Clerk of the Court spoke with the attorneys for Virginia and for the petitioner and proposed that the Court hold the petition indefinitely. See Memorandum from John F. Davis, Clerk of Court, to The Chief Justice (Mar. 31, 1967); see also Crocker, Not To Decide Is To Decide: The U. S. Supreme Court's Thirty-Year Struggle With One Case About Competency To Waive Death Penalty Appeals, 49 Wayne L. Rev. 885, 916 (2004). Although Virginia originally opposed the idea of an indefinite stay, see Memorandum for Respondent in *Rees* v. *Peyton*, O. T. 1966, No. 9, Misc., pp. 2–3 (Mar. 14, 1967), it eventually accepted the proposal, see Memorandum from John F. Davis, *supra*, at 2 ("In summary, counsel for both parties do not really present any objection to the procedure proposed in the case, but neither of them accepts it with enthusiasm").

warranted. *Rees I* concerned whether an incompetent habeas petitioner may withdraw his certiorari petition, and it provides no clear answer even to that question. Likewise, the unique, one-sentence order in *Rees II* offered no rationale for the decision to hold Rees' petition. As a result, *Rees* offers no support for federal habeas petitioners seeking to stay district court proceedings or for the Ninth Circuit's opinions in *Rohan*, *Nash*, or this case.[8]

Gonzales barely defends the Ninth Circuit's interpretation of § 3599.[9] He offers a single, halfhearted argument in support of the Ninth Circuit's opinion based on our statement in *McFarland* v. *Scott*, 512 U. S. 849, 858 (1994), that "the right to counsel necessarily includes a right for that counsel meaningfully to research and present a defendant's habeas claims." But *McFarland* was addressing whether a district court could issue a *stay of execution* after a capital prisoner had filed a request for counsel but before he had filed his habeas petition. *Id.*, at 854–858. We held that a district court may stay a capital prisoner's execution once the pris-

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[8] Moreover, we note that *Rees* is a pre-AEDPA case. To whatever extent *Rees* can be read to provide guidance in the habeas context, that guidance must pass muster under AEDPA.

[9] See Brief for Respondent in No. 10–930, p. 13 ("The State and the Solicitor General argue that the federal habeas right-to-counsel provision, 18 U. S. C. § 3599(a)(2), should not be interpreted to create a 'right to competence' . . . . However, that is not the question presented in this case. The issue is whether courts have authority to issue a stay, not whether capital habeas petitioners enjoy a freestanding 'right to competence,' or what the contours of such a right may be. The Court need not reach that question in order to uphold the discretionary, and temporary, stay of proceedings issued in this case"). Notwithstanding Gonzales' attempt to rewrite the question presented, we granted certiorari on the following question:

"Did the Ninth Circuit err when it held that 18 U. S. C. § 3599(a)(2)—which provides that an indigent capital state inmate pursuing federal habeas relief 'shall be entitled to the appointment of one or more attorneys'—impliedly entitles a death row inmate to stay the federal habeas proceedings he initiated if he is not competent to assist counsel?" Pet. for Cert. in No. 10–930, p. i.

oner has invoked his statutory right to counsel. *Id.*, at 859. *McFarland* has no relevance here where Gonzales is not seeking a stay of execution, but rather a stay of the District Court's proceedings. Moreover, Gonzales moved for a stay more than six years after initiating his habeas petition. This was certainly ample time for his attorney to research and present the claims.

For the foregoing reasons, we hold that § 3599 does not provide federal habeas petitioners with a "statutory right" to competence.[10]

B

The Sixth Circuit reached the same conclusion as the Ninth Circuit but located the statutory right to competence during habeas proceedings in 18 U. S. C. § 4241. Relying largely on *Rees I*, the Sixth Circuit concluded that § 4241 provides a statutory right to competence. 644 F. 3d, at 333. But as discussed, Part II–A, *supra*, *Rees I* did not recognize a statutory right to competence in federal habeas proceedings.[11] Moreover, § 4241 does not even apply to such proceedings. Section 4241(a) provides:

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[10] Gonzales suggests that 28 U. S. C. § 2251 supports the Ninth Circuit's decision. But § 2251 merely provides district courts with the statutory authority to stay *state-court proceedings* pending the resolution of federal habeas proceedings. Section 2251 says nothing about whether a habeas petitioner is entitled to a stay of the *district court's* proceedings pending his return to competence.

[11] The Sixth Circuit made much of the fact that *Rees I* cited 18 U. S. C. §§ 4244–4245, the predecessors of § 4241. But that citation provides no support for a statutory right to competence. In *Rees I*, as part of our direction to the District Court, we said that it would "be appropriate for the District Court to subject Rees to psychiatric and other appropriate medical examinations and, so far as necessary, to temporary federal hospitalization for this purpose. Cf. 18 U. S. C. §§ 4244–4245 (1964 ed.)." 384 U. S., at 314. The citation to §§ 4244–4245 did nothing more than point the District Court to those sections of the Criminal Code that set forth the proper procedures for conducting a competency hearing. There would have been little point in this Court's directing the District Court to reinvent the wheel when § 4244 already provided a rubric for conducting such a hearing.

> "At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, or at any time after the commencement of probation or supervised release and prior to the completion of the sentence, the defendant or the attorney for the Government may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense."

By its own terms, § 4241 applies only to trial proceedings prior to sentencing and "at any time after the commencement of probation or supervised release." Federal habeas proceedings, however, commence after sentencing, and federal habeas petitioners, by definition, are incarcerated, not on probation.

Furthermore, § 4241, like the rest of Title 18 generally, applies exclusively to *federal* defendants and probationers subject to prosecution by the United States. Carter is not, and does not claim to be, a federal defendant. Rather, he is a *state* prisoner challenging the basis of his conviction in a federal civil action. See *Blair* v. *Martel*, 645 F. 3d 1151, 1155 (CA9 2011) ("By its own terms, § 4241 does not apply unless a federal criminal defendant is on trial or is released on probation").

Finally, § 4241(a) authorizes the district court to grant a motion for a competency determination if there is reasonable cause to believe that the defendant's mental incompetence renders him "unable to understand the nature and consequences of the *proceedings against* him or to assist properly in his *defense*." (Emphasis added.) See also § 4241(d).[12]

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[12] Section 4241(d) provides, in relevant part:

"If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect

A habeas proceeding under § 2254, however, is not a "proceedin[g] against" the habeas petitioner; this, on the other hand, is a civil action *against* the warden of the state prison. And, a federal habeas petitioner does not mount a "defense" to the government's prosecution. Rather, the petitioner collaterally attacks his conviction at an earlier state trial. Accordingly, the statutory right to competence provided in § 4241 is simply inapplicable to federal habeas proceedings.

We would address Carter's arguments in defense of the Sixth Circuit's decision, but, there are none. Carter's brief informed us that "[t]his Court need not consider the statutory argument with which the [petitioner's] brief begins—i. e., that there is no 'statutory right' under 18 U. S. C. § 4241 to be competent in habeas proceedings." Brief for Respondent in No. 11–218, p. 15. Apparently, Carter found the Sixth Circuit's reasoning indefensible. We agree.

III

Both Gonzales and Carter argued at length in their briefs and at oral argument that district courts have the equitable power to stay proceedings when they determine that habeas petitioners are mentally incompetent.[13] Neither petitioner disputes that "[d]istrict courts . . . ordinarily have authority to issue stays, where such a stay would be a proper exercise of discretion." *Rhines* v. *Weber*, 544 U. S. 269, 276 (2005) (citation omitted); see also *Enelow* v. *New York Life Ins. Co.*,

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rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences *of the proceedings against him* or to assist properly in his *defense*, the court shall commit the defendant to the custody of the Attorney General." (Emphasis added.)

[13] This argument is especially curious coming from Gonzales, because the District Court *denied* his request for a stay. For Gonzales to prevail on his "equitable discretion" theory, Tr. of Oral Arg. in No. 10–930, p. 33, we would have to conclude that the District Court abused its discretion in *denying* the stay. But Gonzales has not argued that the District Court abused its discretion by denying his stay motion. Gonzales' arguments, thus, have little to do with the facts of his case.

293 U. S. 379, 382 (1935) (explaining that a district court may stay a case "pending before it by virtue of its inherent power to control the progress of the cause so as to maintain the orderly processes of justice"). Similarly, both petitioners agree that "AEDPA does not deprive district courts of [this] authority." *Rhines*, *supra*, at 276. Petitioners and respondents disagree, however, about the types of situations in which a stay would be appropriate and about the permissible duration of a competency-based stay. We do not presume that district courts need unsolicited advice from us on how to manage their dockets. Rather, the decision to grant a stay, like the decision to grant an evidentiary hearing, is "generally left to the sound discretion of district courts." *Schriro* v. *Landrigan*, 550 U. S. 465, 473 (2007). For purposes of resolving these cases, it is unnecessary to determine the precise contours of the district court's discretion to issue stays. We address only its outer limits.

A

In Gonzales' case, the District Court correctly found that all of Gonzales' properly exhausted claims were record based or resolvable as a matter of law, irrespective of Gonzales' competence.[14] 617 F. Supp. 2d, at 863; see also *State* v. *Gonzales*, 181 Ariz. 502, 509–515, 892 P. 2d 838, 845–851 (1995) (adjudicating Gonzales' claims on the merits). The court therefore denied Gonzales' motion for a stay. The District Court did not abuse its discretion in so holding, because a stay is not generally warranted when a petitioner raises only record-based claims subject to 28 U. S. C. § 2254(d). As

[14] Gonzales alleges that the trial judge refused to recuse himself; that he was prejudiced by the presence of the victim's wife in the courtroom during jury selection and following her testimony; that the wife's in-court identification was tainted; that there was insufficient evidence to support two aggravating factors found by the judge; and that Arizona's statutory death penalty scheme unconstitutionally precludes the sentencer from considering all mitigating evidence.

previously noted, review of such claims "is limited to the record that was before the state court that adjudicated the claim on the merits." *Pinholster*, 563 U. S., at 181. Accordingly, any evidence that a petitioner might have would be inadmissible. *Ibid.* ("[T]he record under review is limited to the record in existence at that same time—*i. e.*, the record before the state court"). Because federal habeas is "a 'guard against extreme malfunctions in the state criminal justice systems,' not a substitute for ordinary error correction through appeal," the types of errors redressable under § 2254(d) should be apparent from the record. *Harrington* v. *Richter*, 562 U. S. 86, 102 (2011) (quoting *Jackson* v. *Virginia*, 443 U. S. 307, 332, n. 5 (1979) (Stevens, J., concurring in judgment)). Counsel can read the record.

B

In Carter's case, the District Court concluded that four of Carter's claims could potentially benefit from Carter's assistance.[15] However, three of these claims were adjudicated on the merits in state postconviction proceedings and, thus, were subject to review under § 2254(d). See *State* v. *Carter*, No. 99–T–0133, 2000 Ohio App. LEXIS 5935, *5–*13 (Dec. 15, 2000). Any extrarecord evidence that Carter might have concerning these claims would therefore be inadmissible. *Pinholster*, *supra*, at 181. Consequently, these claims do not warrant a stay.

It is unclear from the record whether Carter exhausted the fourth claim.[16] If that claim was exhausted, it too

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[15] Claim one alleges that Carter was incompetent to stand trial and was unlawfully removed from the trial proceedings. Claims two, five, and six are ineffective-assistance-of-counsel claims.

[16] The fourth claim alleges ineffective assistance of appellate counsel for not raising trial counsel's failure to pursue the competency-at-trial issue. It is unclear from the record whether Carter presented this claim to the Ohio Court of Appeals on state postconviction review, and there is no mention of this claim in that court's opinion. In the District Court, the

would be record based. But even if Carter could show that the claim was both unexhausted and not procedurally defaulted,[17] an indefinite stay would be inappropriate. "AEDPA's acknowledged purpose" is to "'reduc[e] delays in the execution of state and federal criminal sentences.'" *Schriro*, *supra*, at 475 (quoting *Woodford*, 538 U. S., at 206). "Staying a federal habeas petition frustrates AEDPA's objective of encouraging finality by allowing a petitioner to delay the resolution of the federal proceedings." *Rhines*, 544 U. S., at 277. In the context of discussing stay and abeyance procedures, we observed:

> "[N]ot all petitioners have an incentive to obtain federal relief as quickly as possible. In particular, capital petitioners might deliberately engage in dilatory tactics to prolong their incarceration and avoid execution of the sentence of death. Without time limits [on stays], petitioners could frustrate AEDPA's goal of finality by dragging out indefinitely their federal habeas review." *Id.*, at 277–278.

The same principle obtains in the context of competency-based stays. At some point, the State must be allowed to defend its judgment of conviction.[18]

If a district court concludes that the petitioner's claim could substantially benefit from the petitioner's assistance,

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State argued that certain claims were procedurally defaulted, see *Carter* v. *Bradshaw*, 583 F. Supp. 2d 872, 880 (ND Ohio 2008), but the court deferred ruling on this argument. The State was likely referring to claim four. We, therefore, leave the resolution of this claim to the District Court on remand.

[17] In *Cullen* v. *Pinholster*, 563 U. S. 170, 186, n. 10 (2011), we did "not decide where to draw the line between new claims and claims adjudicated on the merits."

[18] Our opinion today does not implicate the prohibition against "'carrying out a sentence of death upon a prisoner who is insane.'" *Panetti* v. *Quarterman*, 551 U. S. 930, 934 (2007) (quoting *Ford* v. *Wainwright*, 477 U. S. 399, 409–410 (1986)).

the district court should take into account the likelihood that the petitioner will regain competence in the foreseeable future. Where there is no reasonable hope of competence, a stay is inappropriate and merely frustrates the State's attempts to defend its presumptively valid judgment.

IV

The judgment of the Ninth Circuit is reversed. We vacate the judgment of the Sixth Circuit and remand the case for proceedings consistent with this opinion.

It is so ordered.

Syllabus

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT *v.* NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL.

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

No. 11–460. Argued December 4, 2012—Decided January 8, 2013

Petitioner Los Angeles County Flood Control District (District) operates a "municipal separate storm sewer system" (MS4), a drainage system that collects, transports, and discharges storm water. Because storm water is often heavily polluted, the Clean Water Act (CWA) and its implementing regulations require certain MS4 operators to obtain a National Pollutant Discharge Elimination System (NPDES) permit before discharging storm water into navigable waters. The District has such a permit for its MS4. Respondents Natural Resources Defense Council, Inc. (NRDC) and Santa Monica Baykeeper (Baykeeper) filed a citizen suit against the District and others under § 505 of the CWA, 33 U. S. C. § 1365, alleging, among other things, that water-quality measurements from monitoring stations within the Los Angeles and San Gabriel Rivers demonstrated that the District was violating the terms of its permit. The District Court granted summary judgment to the District on these claims, concluding that the record was insufficient to warrant a finding that the MS4 had discharged storm water containing the standards-exceeding pollutants detected at the downstream monitoring stations. The Ninth Circuit reversed in relevant part. The court held that the District was liable for the discharge of pollutants that, in the court's view, occurred when the polluted water detected at the monitoring stations flowed out of the concrete-lined portions of the rivers, where the monitoring stations are located, into lower, unlined portions of the same rivers.

Held: The flow of water from an improved portion of a navigable waterway into an unimproved portion of the same waterway does not qualify as a "discharge of a pollutant" under the CWA. See *South Fla. Water Management Dist.* v. *Miccosukee Tribe*, 541 U. S. 95, 109–112 (holding that the transfer of polluted water between "two parts of the same water body" does not constitute a discharge of pollutants under the CWA). The Ninth Circuit's decision cannot be squared with this holding.

The NRDC and Baykeeper alternatively argue that, based on the terms of the District's NPDES permit, the exceedances detected at the

monitoring stations sufficed to establish the District's liability under the CWA for its upstream discharges. This argument, which failed below, is not embraced within the narrow question on which certiorari was granted. The Court therefore does not address it. Pp. 82–84.

673 F. 3d 880, reversed and remanded.

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

Timothy T. Coates argued the cause for petitioner. With him on the briefs were *Judith A. Fries* and *Howard Gest.*

Pratik A. Shah argued the cause for the United States as *amicus curiae* urging vacatur. With him on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Moreno*, *Deputy Solicitor General Stewart*, and *Ellen J. Durkee.*

Aaron Colangelo argued the cause for respondents. With him on the brief were *Mitchell S. Bernard*, *Catherine Marlantes Rahm*, *Steven Fleischli*, *Richard J. Lazarus*, and *Daniel Cooper.**

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*Briefs of *amici curiae* urging reversal were filed for the City of New York et al. by *Michael A. Cardozo*, *Leonard J. Koerner*, and *Hilary Meltzer*; for the Albuquerque Metropolitan Arroyo Flood Control Authority by *Luis Robles*; for the International Municipal Lawyers Association by *Charles W. Thompson, Jr.*, and *Sarah M. Shalf*; for the League of California Cities et al. by *Melissa A. Thorme*; for the National Association of Flood and Stormwater Management Agencies et al. by *David W. Burchmore* and *John D. Lazzaretti*; for the National Governors Association et al. by *Roderick E. Walston* and *Lisa E. Soronen*; for the National Hydropower Association et al. by *Michael A. Swiger*, *James H. Hancock, Jr.*, *Susan N. Kelly*, and *Charles R. Sensiba*; for the Nationwide Public Projects Coalition et al. by *Lawrence R. Liebesman* and *Jerrold J. Ganzfried*; for the Western Coalition of Arid States by *Lawrence S. Bazel*; and for the Western Urban Water Coalition et al. by *Peter D. Nichols*, *Guy R. Martin*, *Paul B. Smyth*, and *Shawn Draney.* *Thomas J. Ward* filed a brief for the National Association of Home Builders as *amicus curiae* urging vacatur.

Briefs of *amici curiae* urging affirmance were filed for Douglas Emmett, Inc., by *Jerome C. Muys, Jr.*; for Friends of the Everglades by *David*

JUSTICE GINSBURG delivered the opinion of the Court.

The Court granted review in this case limited to a single question: Under the Clean Water Act (CWA), 86 Stat. 816, as amended, 33 U. S. C. § 1251 *et seq.*, does the flow of water out of a concrete channel within a river rank as a "discharge of a pollutant"? In this Court, the parties and the United States as *amicus curiae* agree that the answer to this question is "no." They base this accord on *South Fla. Water Management Dist.* v. *Miccosukee Tribe*, 541 U. S. 95, 109–112 (2004), in which we accepted that pumping polluted water from one part of a water body into another part of the same body is not a discharge of pollutants under the CWA. Adhering to the view we took in *Miccosukee*, we hold that the parties correctly answered the sole question presented in the negative. The decision in this suit rendered by the Court of Appeals for the Ninth Circuit is inconsistent with our determination. We therefore reverse that court's judgment.

Petitioner Los Angeles County Flood Control District (District) operates a "municipal separate storm sewer system" (MS4)—a drainage system that collects, transports, and discharges storm water. See 40 CFR § 122.26(b)(8) (2012). See also § 122.26(b)(13) ("*Storm water* means storm water runoff, snow melt runoff, and surface runoff and drainage."). Because storm water is often heavily polluted, see 64 Fed. Reg. 68724–68727 (1999), the CWA and its implementing regulations require the operator of an MS4 serving

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G. Guest; for Heal the Bay by *James M. Dowd* and *James L. Quarles III*; for the National Wildlife Federation et al. by *Karl S. Coplan* and *Daniel E. Estrin*; for Alexandria Boehm et al. by *Deborah A. Sivas* and *Leah J. Russin*; and for Derek B. Booth by *Elizabeth J. Hubertz*.

Briefs of *amici curiae* were filed for Friends of the Los Angeles River et al. by *Sean B. Hecht*; for Law Professors on the "Addition of a Pollutant" Question by *Allison M. LaPlante*; for Law Professors on Deference to Permit Terms by *Amanda C. Leiter*, *pro se*; and for Linwood Pendleton by *Amy E. Pickle*.

a population of at least 100,000 to obtain a National Pollutant Discharge Elimination System (NPDES) permit before discharging storm water into navigable waters. See 33 U. S. C. §§ 1311(a), 1342(p)(2)(C), and (D); 40 CFR §§ 122.26(a)(3), (b)(4), (b)(7). The District first obtained an NPDES permit for its MS4 in 1990; thereafter, the permit was several times renewed. *Natural Resources Defense Council, Inc.* v. *County of Los Angeles*, 673 F. 3d 880, 886 (CA9 2011).

Respondents Natural Resources Defense Council, Inc. (NRDC) and Santa Monica Baykeeper (Baykeeper) filed a citizen suit against the District and several other defendants under § 505 of the CWA, 33 U. S. C. § 1365. They alleged, among other things, that water-quality measurements from monitoring stations located within the Los Angeles and San Gabriel Rivers demonstrated that the District was violating the terms of its permit.

The District Court granted summary judgment to the District on these claims. It was undisputed, the District Court acknowledged, that "data from the Los Angeles River and San Gabriel River [monitoring] stations indicate[d] that water quality standards ha[d] repeatedly been exceeded for a number of pollutants, including aluminum, copper, cyanide, fecal coliform bacteria, and zinc." App. to Pet. for Cert. 108. But numerous entities other than the District, the court added, discharge into the rivers upstream of the monitoring stations. See *id.*, at 115–116. See also 673 F. 3d, at 889 (observing that the pollutants of "thousands of permitted dischargers" reach the rivers). The record was insufficient, the District Court concluded, to warrant a finding that the District's MS4 had discharged storm water containing the standards-exceeding pollutants detected at the downstream monitoring stations.

The Ninth Circuit reversed in relevant part. The monitoring stations for the Los Angeles and San Gabriel Rivers, the Court of Appeals said, are located in "concrete channels" constructed for flood-control purposes. *Id.*, at 900. See

also *id.*, at 889 (describing the monitoring stations' location). Based on this impression, the Court of Appeals held that a discharge of pollutants occurred under the CWA when the polluted water detected at the monitoring stations "flowed out of the concrete channels" and entered downstream portions of the waterways lacking concrete linings. *Id.*, at 900. Because the District exercises control over the concrete-lined portions of the rivers, the Court of Appeals held, the District is liable for the discharges that, in the appellate court's view, occur when water exits those concrete channels. See *id.*, at 899–901.

We granted certiorari on the following question: Under the CWA, does a "discharge of pollutants" occur when polluted water "flows from one portion of a river that is navigable water of the United States, through a concrete channel or other engineered improvement in the river," and then "into a lower portion of the same river?" Pet. for Cert. i. See 567 U. S. 933 (2012). As noted above, see *supra*, at 80, the parties, as well as the United States as *amicus curiae*, agree that the answer to this question is "no."

That agreement is hardly surprising, for we held in *Miccosukee* that the transfer of polluted water between "two parts of the same water body" does not constitute a discharge of pollutants under the CWA. 541 U. S., at 109–112. We derived that determination from the CWA's text, which defines the term "discharge of a pollutant" to mean "any *addition* of any pollutant to navigable waters from any point source." 33 U. S. C. § 1362(12) (emphasis added). Under a common understanding of the meaning of the word "add," no pollutants are "added" to a water body when water is merely transferred between different portions of that water body. See Webster's Third New International Dictionary 24 (2002) ("add" means "to join, annex, or unite (as one thing to another) so as to bring about an increase (as in number, size, or importance) or so as to form one aggregate"). "As the Second Circuit [aptly] put it . . . , '[i]f one takes a ladle of

soup from a pot, lifts it above the pot, and pours it back into the pot, one has not "added" soup or anything else to the pot.'" *Miccosukee*, 541 U. S., at 109–110 (quoting *Catskill Mountains Chapter of Trout Unlimited, Inc.* v. *New York*, 273 F. 3d 481, 492 (CA2 2001)).

In *Miccosukee*, polluted water was removed from a canal, transported through a pump station, and then deposited into a nearby reservoir. 541 U. S., at 100. We held that this water transfer would count as a discharge of pollutants under the CWA only if the canal and the reservoir were "meaningfully distinct water bodies." *Id.*, at 112. It follows, *a fortiori*, from *Miccosukee* that no discharge of pollutants occurs when water, rather than being removed and then returned to a water body, simply flows from one portion of the water body to another. We hold, therefore, that the flow of water from an improved portion of a navigable waterway into an unimproved portion of the very same waterway does not qualify as a discharge of pollutants under the CWA. Because the decision below cannot be squared with that holding, the Court of Appeals' judgment must be reversed.[1]

The NRDC and Baykeeper urge that the Court of Appeals reached the right result, albeit for the wrong reason. The monitoring system proposed by the District and written

[1] The NRDC, Baykeeper, and the United States contend—contrary to the District—that the Court of Appeals understood that no discharge of pollutants occurs when water flows from an improved into an unimproved portion of a navigable waterway. They suggest that the Court of Appeals misperceived the facts, erroneously believing that the monitoring stations for the Los Angeles and San Gabriel Rivers "were sampling water from a portion of the MS4 that was distinct from the rivers themselves and from which discharges through an outfall to the rivers subsequently occurred." Brief for United States as *Amicus Curiae* 18. See also Brief for Respondents 30–31 ("The court of appeals' statements suggest it believed the monitoring stations sampled polluted stormwater from the District's MS4 before, not after, discharge to the Los Angeles and San Gabriel Rivers."). Whatever the source of the Court of Appeals' error, all parties agree that the court's analysis was erroneous.

into its permit showed numerous instances in which water-quality standards were exceeded. Under the permit's terms, the NRDC and Baykeeper maintain, the exceedances detected at the instream monitoring stations are by themselves sufficient to establish the District's liability under the CWA for its upstream discharges. See Brief for Respondents 33–62.[2] This argument failed below. See 673 F. 3d, at 898, 901; App. to Pet. for Cert. 100–102. It is not embraced within, or even touched by, the narrow question on which we granted certiorari. We therefore do not address, and indicate no opinion on, the issue the NRDC and Baykeeper seek to substitute for the question we took up for review.

* * *

For the reasons stated, the judgment of the Court of Appeals for the Ninth Circuit is reversed, and the case is remanded.

It is so ordered.

JUSTICE ALITO concurs in the judgment.

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[2] Shortly before oral argument in this case, a renewed permit was approved for the District's MS4. Unlike the District's prior permit, which required only instream monitoring, the renewed permit requires end-of-pipe monitoring at individual MS4 discharge points. See *id.*, at 20–21; Reply Brief 5, n. 2.

Syllabus

ALREADY, LLC, DBA YUMS *v.* NIKE, INC.

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

No. 11–982. Argued November 7, 2012—Decided January 9, 2013

Nike filed this suit, alleging that two of Already's athletic shoes violated Nike's Air Force 1 trademark. Already denied the allegations and filed a counterclaim challenging the validity of Nike's Air Force 1 trademark. While the suit was pending, Nike issued a "Covenant Not to Sue," promising not to raise any trademark or unfair competition claims against Already or any affiliated entity based on Already's existing footwear designs, or any future Already designs that constituted a "colorable imitation" of Already's current products. Nike then moved to dismiss its claims with prejudice, and to dismiss Already's counterclaim without prejudice on the ground that the covenant had extinguished the case or controversy. Already opposed dismissal of its counterclaim, contending that Nike had not established that its covenant had mooted the case. In support, Already presented an affidavit from its president, stating that Already planned to introduce new versions of its lines into the market; affidavits from three potential investors, asserting that they would not consider investing in Already until Nike's trademark was invalidated; and an affidavit from an Already executive, stating that Nike had intimidated retailers into refusing to carry Already's shoes. The District Court dismissed Already's counterclaim, concluding that there was no longer a justiciable controversy. The Second Circuit affirmed. It explained that the covenant was broadly drafted; that the court could not conceive of a shoe that would infringe Nike's trademark yet not fall within the covenant; and that Already had not asserted any intent to market such a shoe.

Held: This case is moot. Pp. 90–102.

(a) A case becomes moot—and therefore no longer a "Case" or "Controversy" for Article III purposes—"when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Murphy* v. *Hunt*, 455 U. S. 478, 481. A defendant cannot, however, automatically moot a case simply by ending its unlawful conduct once sued. *City of Mesquite* v. *Aladdin's Castle, Inc.*, 455 U. S. 283, 289. Instead, "a defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected

to recur." *Friends of the Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 190. Pp. 90–91.

(b) Nike has the burden to show that it "could not reasonably be expected" to resume its enforcement efforts against Already. The voluntary cessation doctrine was not disavowed in *Deakins* v. *Monaghan*, 484 U. S. 193. There, the Court employed precisely the analysis the test requires, finding a case moot because the challenged action—pursuing a claim in court—could not be resumed in "this or any subsequent action" and because it was entirely " 'speculative' " that any similar claim would arise in the future. *Id.*, at 201, n. 4. Pp. 91–92.

(c) Application of the voluntary cessation doctrine shows that this case is moot. Pp. 93–100.

(1) The breadth of the covenant suffices to meet the burden imposed by the doctrine. The covenant is unconditional and irrevocable. It prohibits Nike from filing suit or making any claim or demand; protects both Already and Already's distributors and customers; and covers not just current or previous designs, but also colorable imitations. Once Nike demonstrated that the covenant encompasses all of Already's allegedly unlawful conduct, it became incumbent on Already to indicate that it engages in or has sufficiently concrete plans to engage in activities that would arguably infringe Nike's trademark yet not be covered by the covenant. But Already failed to do so in the courts below or in this Court. The case is thus moot because the challenged conduct cannot reasonably be expected to recur. *Cardinal Chemical Co.* v. *Morton Int'l, Inc.*, 508 U. S. 83, and *Altvater* v. *Freeman*, 319 U. S. 359, distinguished. Pp. 93–96.

(2) Already's alternative theories of Article III injuries do not save the case from mootness, because none of those injuries suffices to support Article III standing in the first place. Already argues that as long as Nike is free to assert its trademark, investors will hesitate to invest in Already. But once it is "absolutely clear" that challenged conduct cannot "reasonably be expected to recur," *Friends of the Earth*, *supra*, at 190, the fact that some individuals may base decisions on conjectural or hypothetical speculation does not give rise to the sort of concrete and actual injury necessary to establish Article III standing, *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560. Already worries about its retailers, but even if a plaintiff may bring an invalidity claim based on a reasonable expectation that a trademark holder will take action against the plaintiff's retailers, the covenant here extends protection to Already's distributors and customers. Already also complains that Nike's decision to sue in the first place has led Already to fear another suit. But, since Nike has met its burden to demonstrate that there is no reasonable risk of such a suit, this concern is unfounded.

Syllabus

Already falls back on the sweeping argument that, as one of Nike's competitors, it inherently has standing because no covenant can eradicate the effects of a registered but invalid trademark. The logical conclusion of this theory seems to be that a market participant is injured for Article III purposes whenever a competitor benefits from something allegedly unlawful—*e. g.*, a trademark or the awarding of a contract—but this Court has never accepted such a boundless theory of standing.

Already's policy objection that dismissing this case allows Nike to bully small innovators does not support adoption of this broad theory. Granting covenants not to sue may be a risky long-term strategy for a trademark holder. And while accepting Already's theory may benefit the small competitor in this case, it also lowers the gates for larger companies with more resources, who may challenge the intellectual property portfolios of more humble rivals simply because they are competitors in the same market. This would further encourage parties to employ litigation as a weapon against their competitors rather than as a last resort for settling disputes. Pp. 96–100.

(d) No purpose would be served by remanding the case. Already has had every opportunity and incentive to submit evidence in the proceedings below. It has refused, at every stage of the proceedings, to suggest that it has any plans to design a shoe that violates the Air Force 1 trademark yet falls outside the covenant. And while the courts below did not expressly invoke the voluntary cessation standard, their analysis addressed the same questions this Court addresses here under that standard. Pp. 100–102.

663 F. 3d 89, affirmed.

ROBERTS, C. J., delivered the opinion for a unanimous Court. KENNEDY, J., filed a concurring opinion, in which THOMAS, ALITO, and SOTOMAYOR, JJ., joined, *post*, p. 102.

James W. Dabney argued the cause for petitioner. With him on the briefs were *Stephen S. Rabinowitz*, *Victoria J. B. Doyle*, *Randy C. Eisensmith*, and *John F. Duffy*.

Ginger D. Anders argued the cause for the United States as *amicus curiae* supporting vacatur and remand. With her on the brief were *Solicitor General Verrilli*, *Acting Assistant Attorney General Delery*, *Deputy Solicitor General Stewart*, *Scott R. McIntosh*, *Raymond T. Chen*, *Thomas L. Casagrande*, and *Scott C. Weidenfeller*.

Thomas C. Goldstein argued the cause for respondent. With him on the brief were *Kevin K. Russell*, *Amy Howe*, *Christopher J. Renk*, and *Erik S. Maurer.**

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

The question is whether a covenant not to enforce a trademark against a competitor's existing products and any future "colorable imitations" moots the competitor's action to have the trademark declared invalid.

I

Respondent Nike designs, manufactures, and sells athletic footwear, including a line of shoes known as Air Force 1s. Petitioner Already also designs and markets athletic footwear, including shoe lines known as "Sugars" and "Soulja Boys." Nike, alleging that the Soulja Boys infringed and diluted the Air Force 1 trademark, demanded that Already cease and desist its sale of those shoes. When Already refused, Nike filed suit in federal court alleging that the Soulja Boys as well as the Sugars infringed and diluted its Air Force 1 trademark. Already denied these allegations and filed a counterclaim contending that the Air Force 1 trademark is invalid.

In March 2010, eight months after Nike filed its complaint, and four months after Already counterclaimed, Nike issued

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*Briefs of *amici curiae* urging reversal were filed for Intellectual Property Professors by *David C. Frederick* and *Michael J. Burstein, pro se*; and for the Public Patent Foundation by *Daniel B. Ravicher.*

Briefs of *amici curiae* urging affirmance were filed for the American Intellectual Property Law Association by *Edward Reines*, *Gregory Silbert*, and *William G. Barber*; and for Levi Strauss & Co. et al. by *Gregory S. Gilchrist* and *Gregory D. Phillips.*

Briefs of *amici curiae* were filed for the Intellectual Property Owners Association by *John A. Dragseth*, *Richard F. Phillips, Jr.*, and *Kevin H. Rhodes*; and for the International Trademark Association by *David H. Bernstein*, *Marc Lieberstein*, *Claudia Ray*, and *Vijay K. Toke.*

a "Covenant Not to Sue." App. 95a. Its preamble stated that "Already's actions . . . no longer infringe or dilute the NIKE Mark at a level sufficient to warrant the substantial time and expense of continued litigation." *Id.*, at 96a. The covenant promised that Nike would not raise against Already or any affiliated entity any trademark or unfair competition claim based on any of Already's existing footwear designs, or any future Already designs that constituted a "colorable imitation" of Already's current products. *Id.*, at 96a–97a.

After issuing this covenant, Nike moved to dismiss its claims with prejudice, and to dismiss Already's invalidity counterclaim without prejudice on the ground that the covenant had extinguished the case or controversy. Already opposed dismissal of its counterclaim, arguing that Nike had not established that its voluntary cessation had mooted the case. In support, Already presented an affidavit from its president, stating that Already had plans to introduce new versions of its shoe lines into the market; affidavits from three potential investors, asserting that they would not consider investing in Already until Nike's trademark was invalidated; and an affidavit from one of Already's executives, stating that Nike had intimidated retailers into refusing to carry Already's shoes.

The District Court dismissed Already's counterclaim, stating that because Already sought "to invoke the Court's declaratory judgment jurisdiction, it bears the burden of demonstrating that the Court has subject matter jurisdiction over its counterclaim[ ]." Civ. No. 09–6366 (SDNY, Jan. 20, 2011), App. to Pet. for Cert. 25a. The court read the covenant "broad[ly]," concluding that "any of [Already's] future products that arguably infringed the Nike Mark would be 'colorable imitations' " of Already's current footwear and therefore protected by the covenant. *Id.*, at 29a–30a, n. 2. Finding no evidence that Already sought to develop any shoes not covered by the covenant, the court held there was

no longer "a substantial controversy . . . of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Id.*, at 34a (quoting *MedImmune, Inc.* v. *Genentech, Inc.*, 549 U. S. 118, 127 (2007); internal quotation marks omitted).

The Second Circuit affirmed. It held that in determining whether a covenant not to sue "eliminates a justiciable case or controversy," courts should look to the totality of the circumstances, including "(1) the language of the covenant, (2) whether the covenant covers future, as well as past, activity and products, and (3) evidence of intention . . . on the part of the party asserting jurisdiction" to engage in conduct not covered by the covenant. 663 F. 3d 89, 96 (2011) (footnote omitted). Noting that the covenant covers "both past sales and future sales of both existing products and colorable imitations," the Second Circuit found it hard to conceive of a shoe that would infringe the Air Force 1 trademark yet not fall within the covenant. *Id.*, at 97. Given that Already "ha[d] not asserted any intention to market any such shoe," the court concluded that Already could not show any continuing injury, and that therefore no justiciable controversy remained. *Ibid.* We granted certiorari. 567 U. S. 933 (2012).

II

Article III of the Constitution grants the Judicial Branch authority to adjudicate "Cases" and "Controversies." In our system of government, courts have "no business" deciding legal disputes or expounding on law in the absence of such a case or controversy. *DaimlerChrysler Corp.* v. *Cuno*, 547 U. S. 332, 341 (2006). That limitation requires those who invoke the power of a federal court to demonstrate standing—a "personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen* v. *Wright*, 468 U. S. 737, 751 (1984). We have repeatedly held that an "actual contro-

versy" must exist not only "at the time the complaint is filed," but through "all stages" of the litigation. *Alvarez* v. *Smith*, 558 U. S. 87, 92 (2009) (internal quotation marks omitted); *Arizonans for Official English* v. *Arizona*, 520 U. S. 43, 67 (1997) ("To qualify as a case fit for federal-court adjudication, 'an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed'" (quoting *Preiser* v. *Newkirk*, 422 U. S. 395, 401 (1975))).

A case becomes moot—and therefore no longer a "Case" or "Controversy" for purposes of Article III—"when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Murphy* v. *Hunt*, 455 U. S. 478, 481 (1982) (*per curiam*) (some internal quotation marks omitted). No matter how vehemently the parties continue to dispute the lawfulness of the conduct that precipitated the lawsuit, the case is moot if the dispute "is no longer embedded in any actual controversy about the plaintiffs' particular legal rights." *Alvarez*, *supra*, at 93.

We have recognized, however, that a defendant cannot automatically moot a case simply by ending its unlawful conduct once sued. *City of Mesquite* v. *Aladdin's Castle, Inc.*, 455 U. S. 283, 289 (1982). Otherwise, a defendant could engage in unlawful conduct, stop when sued to have the case declared moot, then pick up where he left off, repeating this cycle until he achieves all his unlawful ends. Given this concern, our cases have explained that "a defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 190 (2000).

III

At the outset of this litigation, both parties had standing to pursue their competing claims in court. Nike had stand-

ing to sue because Already's activity was allegedly infringing its rights under trademark law. Already had standing to file its counterclaim because Nike was allegedly pressing an invalid trademark to halt Already's legitimate business activity. See *MedImmune*, *supra*, at 126–137 (a genuine threat of enforcement of intellectual property rights that inhibits commercial activity may support standing). But then Nike dismissed its claims with prejudice and issued its covenant, calling into question the existence of any continuing case or controversy.

Under our precedents, it was Nike's burden to show that it "could not reasonably be expected" to resume its enforcement efforts against Already. *Friends of the Earth*, *supra*, at 190. Nike makes a halfhearted effort to avoid this test. Relying on *Deakins* v. *Monaghan*, 484 U. S. 193 (1988), it argues that "when a defendant makes a judicially enforceable commitment to avoid the conduct that forms the basis for an Article III controversy, there is no reason to apply a special rule premised on the defendant's unfettered ability to 'return to [its] old ways.' " Brief for Respondent 42.

Nike's reliance on *Deakins* is misplaced. In *Deakins*, the Court did not disavow the voluntary cessation doctrine; the Court employed precisely the analysis required by that test. It found the case was moot because the challenged action—pursuing a claim in court—could not be resumed in "this or any subsequent action" and because it was entirely "speculative" that any similar claim would arise in the future. 484 U. S., at 201, n. 4 (internal quotation marks omitted). It distinguished that situation from one in which a defendant is "free to return to his old ways." *Ibid.* (internal quotation marks omitted). That is the question the voluntary cessation doctrine poses: Could the allegedly wrongful behavior reasonably be expected to recur? Nike cannot avoid its "formidable burden" by assuming the answer to that question. *Friends of the Earth*, *supra*, at 190.

IV

A

Having determined that the voluntary cessation doctrine applies, we begin our analysis with the terms of the covenant:

> "[Nike] unconditionally and irrevocably covenants to refrain from making *any* claim(s) or demand(s) . . . against Already or *any* of its . . . related business entities . . . [including] distributors . . . and employees of such entities and *all* customers . . . on account of any *possible* cause of action based on or involving trademark infringement, unfair competition, or dilution, under state or federal law . . . relating to the NIKE Mark based on the appearance of *any* of Already's current and/or previous footwear product designs, and *any* colorable imitations thereof, regardless of whether that footwear is produced . . . or otherwise used in commerce before or after the Effective Date of this Covenant." App. 96a–97a (emphasis added).

The breadth of this covenant suffices to meet the burden imposed by the voluntary cessation test. The covenant is unconditional and irrevocable. Beyond simply prohibiting Nike from filing suit, it prohibits Nike from making any claim *or* any demand. It reaches beyond Already to protect Already's distributors and customers. And it covers not just current or previous designs, but any colorable imitations.

In addition, Nike originally argued that the Sugars and Soulja Boys infringed its trademark; in other words, Nike believed those shoes were "colorable imitations" of the Air Force 1s. See Trademark Act of 1946 (Lanham Act), §32, 60 Stat. 437, as amended, 15 U. S. C. §1114. Nike's covenant now allows Already to produce all of its existing footwear designs—including the Sugar and Soulja Boy—and any "colorable imitation" of those designs. We agree with the Court

of Appeals that "it is hard to imagine a scenario that would potentially infringe [Nike's trademark] and yet not fall under the Covenant."* 663 F. 3d, at 97. Nike, having taken the position in court that there is no prospect of such a shoe, would be hard pressed to assert the contrary down the road. See *New Hampshire* v. *Maine*, 532 U. S. 742, 749 (2001) ("'[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him'" (quoting *Davis* v. *Wakelee*, 156 U. S. 680, 689 (1895))). If such a shoe exists, the parties have not pointed to it, there is no evidence that Already has dreamt of it, and we cannot conceive of it. It sits, as far as we can tell, on a shelf between Dorothy's ruby slippers and Perseus's winged sandals.

Given Nike's demonstration that the covenant encompasses all of its allegedly unlawful conduct, it was incumbent on Already to indicate that it engages in or has sufficiently concrete plans to engage in activities not covered by the covenant. After all, information about Already's business activities and plans is uniquely within its possession. The case is moot if the court, considering the covenant's language and the plaintiff's anticipated future activities, is satisfied that it

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*Nike has "acknowledged that if [Already] were to manufacture an exact copy of the Air Force 1 shoe . . . Nike could claim that the Covenant permits an infringement suit on the ground that a counterfeit differs from a colorable imitation under the Lanham Act." 663 F. 3d, at 97, n. 5. Already, however, has never asserted any intent to make counterfeit Air Force 1s. *Ibid.* Moreover, because a counterfeit would presumably include Nike's swoosh, an independently registered trademark not at issue here, invalidating the Air Force 1 trademark may not be sufficient to allow Already to proceed to make counterfeits. See 15 U. S. C. § 1127 (defining a counterfeit as a "spurious mark which is identical with, or substantially indistinguishable from, a registered mark").

is "absolutely clear" that the allegedly unlawful activity cannot reasonably be expected to recur.

But when given the opportunity before the District Court, Already did not assert any intent to design or market a shoe that would expose it to any prospect of infringement liability. See App. to Pet. for Cert. 31a (finding that there was "no indication" of any such intent); 663 F. 3d, at 97, n. 5 (noting the "absence of record evidence that [Already] intends to make any arguably infringing shoe that is not unambiguously covered by the Covenant"). The only affidavit it submitted to the District Court on that question was from its president, saying little more than that Already currently has plans to introduce new shoe lines and make modifications to existing shoe lines. It never stated that these shoes would arguably infringe Nike's trademark yet fall outside the scope of the covenant. Nor did it do so on appeal to the Second Circuit. And again, it failed to do so here, even when counsel for Already was asked at oral argument whether his client had any intention to design or market a shoe that would even arguably fall outside the covenant. Tr. of Oral Arg. 6–8. Given the covenant's broad language, and given that Already has asserted no concrete plans to engage in conduct not covered by the covenant, we can conclude the case is moot because the challenged conduct cannot reasonably be expected to recur.

The authorities on which Already relies are not on point. In *Cardinal Chemical Co.* v. *Morton Int'l, Inc.*, we affirmed the unremarkable proposition that a court's "decision to rely on one of two possible alternative grounds (noninfringement rather than invalidity) did not strip it of *power* to decide the second question, particularly when its decree was subject to review by this Court." 508 U. S. 83, 98 (1993). In essence, when a court has jurisdiction to review a case, and decides the issue on two independent grounds, the first half of its opinion does not moot the second half, or vice versa. Here the issue is whether the District Court had jurisdiction to consider the claim in the first place.

This case is also unlike *Altvater* v. *Freeman*, 319 U. S. 359 (1943). There, patent holders brought suit against licensees for specific performance of a license. The licensees counterclaimed, seeking a declaratory judgment that the patents were invalid. The Court of Appeals, after finding that the license was no longer in force and the devices at issue did not infringe, dismissed the licensees' counterclaim as moot. We reversed, finding the controversy still live because the licensees continued to "manufactur[e] and sell[ ] additional articles claimed to fall under the patents," and the patent holders continued to "demand[ ] . . . royalties" for those products. *Id.*, at 364–365. Here of course the whole point is that Already is free to sell its shoes without any fear of a trademark claim.

B

Already argues, however, that there are alternative theories of Article III injuries that save the case from mootness. First, it argues that so long as Nike remains free to assert its trademark, investors will be apprehensive about investing in Already. Second, it argues that given Nike's decision to sue in the first place, Nike's trademarks will now hang over Already's operations like a Damoclean sword. Finally, and relatedly, Already argues that, as one of Nike's competitors, it inherently has standing to challenge Nike's intellectual property.

The problem for Already is that none of these injuries suffices to support Article III standing. Although the voluntary cessation standard requires the defendant to show that the challenged behavior cannot reasonably be expected to recur, we have never held that the doctrine—by imposing this burden on the defendant—allows the plaintiff to rely on theories of Article III injury that would fail to establish standing in the first place.

We begin with Already's argument that Nike's trademark registration "gives false color to state and federal trademark claims which expose [Already's] business to substantial and

unpredictable risks," deterring investors. Brief for Petitioner 31. To demonstrate this, Already presented affidavits from potential investors stating that Nike's lawsuit dissuaded them from investing in Already or prompted them to withdraw prior investments, and that they would "consider" investing in Already only if Nike's trademark were struck down. App. to Pet. for Cert. 33a. Already argues that like the plaintiffs in *Village of Euclid* v. *Ambler Realty Co.*, 272 U. S. 365 (1926)—who had standing to challenge an ordinance because it reduced their property value—Already should have standing to challenge the trademark because its mere existence hampers its ability to attract capital.

But once it is "absolutely clear" that challenged conduct cannot "reasonably be expected to recur," *Friends of the Earth*, 528 U. S., at 190, the fact that some individuals may base decisions on "conjectural or hypothetical" speculation does not give rise to the sort of "concrete" and "actual" injury necessary to establish Article III standing, *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560 (1992) (internal quotation marks omitted). In *Euclid*, we reasoned that, assuming the merits of plaintiff's claim, "the ordinance, in effect, constitutes a present invasion of [plaintiff's] property rights." 272 U. S., at 386. Here there is no such present invasion; in fact there is a covenant promising no invasion. In addition, unlike the plaintiffs in *Euclid*, Already does not claim that Nike's Air Force 1 infringes any of its property rights.

Already has also pointed to an affidavit from a vice president stating that Nike has "suggested" to Already's retailers that they refrain from carrying Already's shoes, lest "Nike . . . cancel its account or take other actions against the retailer, e. g., delay shipment of the retailer's Nike order or 'lose' the retailer's Nike order." App. 177a. Even if a plaintiff may bring an invalidity claim based on a reasonable expectation that a trademark holder will take action against the plaintiff's retailers, the covenant here extends protection to Already's distributors and customers. And even if Nike

were engaging in harassment or unfair trade practices, Already has not explained how invalidating Nike's trademark would do anything to stop it.

Already also complains that it can no longer "just blithely go about its shoe business as if there were no risk of being sued again." Reply Brief 14. As counsel told us at oral argument: "once bitten, twice shy." Tr. of Oral Arg. 8. But we have never held that a plaintiff has standing to pursue declaratory relief merely on the basis of being "once bitten." Quite the opposite. See, *e. g.*, *Los Angeles* v. *Lyons*, 461 U. S. 95, 109 (1983) (holding there is no justiciable controversy where plaintiff had once been subjected to a chokehold). Given our conclusion that Nike has met its burden of demonstrating there is no reasonable risk that Already will be sued again, there is no reason for Already to be so shy. It is the only one of Nike's competitors with a judicially enforceable covenant protecting it from litigation relating to the Air Force 1 trademark. Insofar as the injury is a threat of Air Force 1 trademark litigation, Already is Nike's least injured competitor.

Already falls back on a sweeping argument: In the context of registered trademarks, "[n]o covenant, no matter how broad, can eradicate the effects" of a registered but invalid trademark. Brief for Petitioner 33–34. According to Already, allowing Nike to unilaterally moot the case "subverts" the important role federal courts play in the administration of federal patent and trademark law. *Id.*, at 40. It allows companies like Nike to register and brandish invalid trademarks to intimidate smaller competitors, avoiding judicial review by issuing covenants in the rare case where the little guy fights back. Already and its *amici* thus contend that Already, "[a]s a company engaged in the business of designing and marketing athletic shoes," has standing to challenge Nike's trademark. See *id.*, at 21; see also Brief for Intellectual Property Professors as *Amici Curiae* 3 (suggesting that standing extends to all "participants in that field"); Brief for

Public Patent Foundation as *Amicus Curiae* 12 ("[T]he public has standing to challenge the validity of any issued patent or registered trademark in court").

Under this approach, Nike need not even have threatened to sue first. Already, even with no plans to make anything resembling the Air Force 1, could sue to invalidate the trademark simply because Already and Nike both compete in the athletic footwear market. Taken to its logical conclusion, the theory seems to be that a market participant is injured for Article III purposes whenever a competitor benefits from something allegedly unlawful—whether a trademark, the awarding of a contract, a landlord-tenant arrangement, or so on. We have never accepted such a boundless theory of standing. The cases Already cites for this remarkable proposition stand for no such thing. In each of those cases, standing was based on an injury more particularized and more concrete than the mere assertion that something unlawful benefited the plaintiff's competitor. *Northeastern Fla. Chapter, Associated Gen. Contractors of America* v. *Jacksonville*, 508 U. S. 656 (1993); *Super Tire Engineering Co.* v. *McCorkle*, 416 U. S. 115 (1974).

Already's arguments boil down to a basic policy objection that dismissing this case allows Nike to bully small innovators lawfully operating in the public domain. This concern cannot compel us to adopt Already's broad theory of standing.

First of all, granting covenants not to sue may be a risky long-term strategy for a trademark holder. See, *e. g.*, 3 J. McCarthy, Trademarks & Unfair Competition § 18:48, p. 18–112 (4th ed. 2012) ("[U]ncontrolled and 'naked' licensing can result in such a loss of significance of a trademark that a federal registration should be cancelled"); *Sun Banks of Fla., Inc.* v. *Sun Fed. Sav. & Loan Assn.*, 651 F. 2d 311, 316 (CA5 1981) (finding that "extensive third-party use of the [mark was] impressive evidence that there would be *no* likelihood of confusion"). In addition, the Lanham Act provides

some check on abusive litigation practices by providing for an award of attorney's fees in "exceptional cases." 15 U. S. C. § 1117(a); cf., *e. g.*, *Gwaltney of Smithfield, Ltd.* v. *Chesapeake Bay Foundation, Inc.*, 484 U. S. 49, 67, n. 6 (1987) (explaining that an award of litigation costs can protect "from the suddenly repentant defendant").

Accepting Already's theory may benefit the small competitor in this case. But lowering the gates for one party lowers the gates for all. As a result, larger companies with more resources will have standing to challenge the intellectual property portfolios of their more humble rivals—not because they are threatened by any particular patent or trademark, but simply because they are competitors in the same market. This would further encourage parties to employ litigation as a weapon against their competitors rather than as a last resort for settling disputes.

Already's only legally cognizable injury—the fact that Nike took steps to enforce its trademark—is now gone and, given the breadth of the covenant, cannot reasonably be expected to recur. There being no other basis on which to find a live controversy, the case is clearly moot.

V

The Solicitor General asks us to "remand the case for further proceedings in which the parties can develop the record on both the scope of the covenant and petitioner's business activities, and the courts below can apply the proper standard to the record." Brief for United States as *Amicus Curiae* 28.

Such a remand would serve no purpose. The scope of the covenant is clear. Already's argument is not that the covenant could be drafted more broadly, but instead that no covenant would ever do. See Tr. of Oral Arg. 12–13.

As for business activities, it is plain that Already has said all it has to say. The District Court held a hearing on whether the case was mooted by the covenant. There, and

at every stage of the proceedings thereafter, Already steadfastly refused to suggest that it has any plans to create any arguably infringing shoe that does not unambiguously fall within the scope of the covenant—this despite every incentive, opportunity, and invitation to do so. As noted, the District Court expressly found "no indication" that Already had any such plans, App. to Pet. for Cert. 31a, and Already never challenged this finding. It did not challenge that finding on appeal to the Second Circuit, even though its significance was clear. The Court of Appeals expressly found that Already "has not asserted any intention to market any such shoe." 663 F. 3d, at 97. Already declined to challenge these conclusions before us, despite questions from the bench addressing that particular issue. Tr. of Oral Arg. 7–8.

The courts below did not expressly invoke the voluntary cessation standard, as articulated in our cases. But the analysis in their opinions addressed the same questions we have addressed today under that standard. In determining the case was moot, they relied, as we have, on the breadth of the covenant and the absence of any indication that Already would produce an infringing shoe. The District Court explained that "[w]hether a covenant not to sue will divest the trial court of jurisdiction depends on what is covered by the covenant." App. to Pet. for Cert. 29a (internal quotation marks omitted). It read the covenant "broadly," *id.*, at 34a, and found "no indication that any of [Already's] forthcoming models would extend beyond this broad language," *id.*, at 31a. It even concluded that from Already's perspective, there was "little difference" between invalidating the trademark and the scope of protection already afforded by the covenant. *Id.*, at 34a.

Likewise, the Court of Appeals asked "whether the covenant covers future, as well as past, activity and products," and inquired into "evidence of intention or lack of intention, on the part of the party asserting jurisdiction, to engage in new activity or to develop new potentially infringing prod-

ucts that arguably are not covered by the covenant." 663 F. 3d, at 96. It concluded that "[t]he breadth of the Covenant renders the threat of litigation remote or nonexistent" because it could not envision a shoe that would be within Nike's trademark yet not protected by the covenant, noting that Already "has not asserted any intention to market any such shoe." *Id.*, at 97.

Under such circumstances, a remand would serve no purpose. Cf., *e. g.*, *Global-Tech Appliances, Inc.* v. *SEB S. A.*, 563 U. S. 754, 766–771 (2011) (announcing new standard and directly applying standard to affirm the jury verdict); *Thornburg* v. *Gingles*, 478 U. S. 30 (1986) (announcing and applying new standard). The uncontested findings made by the District Court, and confirmed by the Second Circuit, make it "absolutely clear" this case is moot.

The judgment of the Court of Appeals is affirmed.

It is so ordered.

JUSTICE KENNEDY, with whom JUSTICE THOMAS, JUSTICE ALITO, and JUSTICE SOTOMAYOR join, concurring.

As the Court now holds and as the precedents instruct, when respondent Nike invoked the covenant not to sue to show the case is moot, it had the burden to establish that proposition. The burden was not on Already to show that a justiciable controversy remains. Under the voluntary cessation doctrine, Nike bears the "formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 190 (2000). In the circumstances here, then, Nike must demonstrate that the covenant not to sue is of sufficient breadth and force that Already can have no reasonable anticipation of a future trademark infringement claim from Nike.

Both the District Court and the Court of Appeals issued their rulings on the erroneous premise that it was for Al-

ready to make the relevant showing. When a court has imposed the burden to establish a certain proposition on the wrong party, remand from a reviewing court is often appropriate to determine whether the outcome would have been different had the proper rule been applied. Here, however, the Court concludes the case must be deemed moot in all events, based on the terms and scope of the covenant and on Already's seeming insistence that no matter how it might be worded, a covenant drawn by the trademark holder cannot moot the case. Brief for Petitioner 33–34; Tr. of Oral Arg. 10–13. For reasons the Court states, this goes too far. Already appears also to disclaim any need to determine whether there is a real likelihood it will produce a new product that, first, is not a colorable imitation of its existing product line, and, second, might be thought to infringe Nike's trademark.

This brief, separate concurrence is written to underscore that covenants like the one Nike filed here ought not to be taken as an automatic means for the party who first charged a competitor with trademark infringement suddenly to abandon the suit without incurring the risk of an ensuing adverse adjudication. Courts should be well aware that charges of trademark infringement can be disruptive to the good business relations between the manufacturer alleged to have been an infringer and its distributors, retailers, and investors. The mere pendency of litigation can mean that other actors in the marketplace may be reluctant to have future dealings with the alleged infringer. Nike appears to have been well aware of that dynamic in this case. In referring to Already it stated at one point: "[O]ver the past eight months, Nike has cleared out the worst offending infringers. Now Already remains as one of the last few companies that was identified on that top ten list of infringers." App. 114a.

Any demonstrated reluctance by investors, distributors, and retailers to maintain good relations with the alleged infringer might, in an appropriate case, be an indication that

the market itself anticipates that a new line of products could be outside the covenant not to sue yet still within a zone of alleged infringement. And, as noted at the outset, it is the trademark holder who has the burden to show that this is not the case. It is not the burden of the alleged infringer to prove that the covenant not to sue is inadequate to protect its current and future products from a trademark enforcement action.

In later cases careful consideration must be given to the consequences of using a covenant not to sue as the basis for a motion to dismiss as moot. If the holder of an alleged trademark can commence suit against a competitor; in midcourse file a covenant not to sue; and then require the competitor and its business network to engage in costly, satellite proceedings to demonstrate that future production or sales might still be compromised, it would seem that the trademark holder's burden to show the case is moot may fall well short of being formidable. The very suit the trademark holder initiated and later seeks to declare moot may still cause disruption and costs to the competition. The formidable burden to show the case is moot ought to require the trademark holder, at the outset, to make a substantial showing that the business of the competitor and its supply network will not be disrupted or weakened by satellite litigation over mootness or by any threat latent in the terms of the covenant itself. It would be most unfair to allow the party who commences the suit to use its delivery of a covenant not to sue as an opportunity to force a competitor to expose its future business plans or to otherwise disadvantage the competitor and its business network, all in aid of deeming moot a suit the trademark holder itself chose to initiate.

There are relatively few cases that have discussed the meaning and effect of covenants not to sue in the context of ongoing litigation. See, *e. g.*, *Revolution Eyewear, Inc.* v. *Aspex Eyewear, Inc.*, 556 F. 3d 1294 (CA Fed. 2009); *Caraco Pharmaceutical Labs., Ltd.* v. *Forest Labs., Inc.*, 527 F. 3d

1278 (CA Fed. 2008). Courts should proceed with caution before ruling that they can be used to terminate litigation. An insistence on the proper allocation of the formidable burden on the party asserting mootness is one way to ensure that covenants are not automatic mechanisms for trademark holders to use courts to intimidate competitors without, at the same time, assuming the risk that their trademark will be found invalid and unenforceable.

While there still may be some doubts that Nike's showing below would suffice in other circumstances, here Already's litigation stance does seem to have made further proceedings on the mootness issue unnecessary. In addition, as the Court notes, in any future trademark proceeding Nike will be bound by the lower courts' broad reading of this particular covenant, thus barring suit against Already for any shoe that is not an exact copy or counterfeit version of the Air Force 1 shoe. See *ante*, at 93–94, and n. (citing *New Hampshire* v. *Maine*, 532 U. S. 742, 749 (2001)).

With these observations, I join the opinion and judgment of the Court.

Syllabus

SMITH *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11–8976. Argued November 6, 2012—Decided January 9, 2013

Petitioner Smith claimed that conspiracy charges brought against him for his role in an illegal drug business, see 21 U. S. C. § 846 and 18 U. S. C. § 1962(d), were barred by 18 U. S. C. § 3282's 5-year statute of limitations. The District Court instructed the jury to convict Smith of each conspiracy count if the Government had proved beyond a reasonable doubt that the conspiracies existed, that Smith was a member of those conspiracies, and that the conspiracies continued within the applicable statute-of-limitations period. As to the affirmative defense of withdrawal from the conspiracy, the court instructed the jury that once the Government proved that Smith was a member of the conspiracy, Smith had the burden to prove withdrawal outside the statute of limitations by a preponderance of the evidence. Smith was convicted, and the D. C. Circuit affirmed.

Held: A defendant bears the burden of proving a defense of withdrawal. Pp. 109–114.

(a) Allocating to the defendant the burden of proving withdrawal does not violate the Due Process Clause. Unless an affirmative defense negates an element of the crime, the Government has no constitutional duty to overcome the defense beyond a reasonable doubt. See *Dixon* v. *United States*, 548 U. S. 1, 6. Withdrawal does not negate an element of the conspiracy crimes charged here, but instead presupposes that the defendant committed the offense. Withdrawal terminates a defendant's liability for his co-conspirators' postwithdrawal acts, but he remains guilty of conspiracy.

Withdrawal that occurs beyond the statute-of-limitations period provides a complete defense to prosecution, but does not render the underlying conduct noncriminal. Thus, while union of withdrawal with a statute-of-limitations defense can free a defendant of criminal liability, it does not place upon the prosecution a constitutional responsibility to prove that he did not withdraw. As with other affirmative defenses, the burden is on him. Pp. 109–112.

(b) Although Congress may assign the Government the burden of proving the nonexistence of withdrawal, it did not do so here. Because Congress did not address the burden of proof for withdrawal in 21 U. S. C. § 846 or 18 U. S. C. § 1962(d), it is presumed that Congress in-

tended to preserve the common-law rule that affirmative defenses are for the defendant to prove. *Dixon*, *supra*, at 13–14. The analysis does not change when withdrawal is the basis for a statute-of-limitations defense. In that circumstance, the Government need only prove that the conspiracy continued past the statute-of-limitations period. A conspiracy continues until it is terminated or, as to a particular defendant, until that defendant withdraws. And the burden of establishing withdrawal rests upon the defendant. Pp. 112–114.

651 F. 3d 30, affirmed.

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

A. J. Kramer argued the cause for petitioner. With him on the briefs was *Rosanna M. Taormina.*

Sarah E. Harrington argued the cause for the United States. With her on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Breuer*, and *Deputy Solicitor General Dreeben.**

JUSTICE SCALIA delivered the opinion of the Court.

Upon joining a criminal conspiracy, a defendant's membership in the ongoing unlawful scheme continues until he withdraws. A defendant who withdraws outside the relevant statute-of-limitations period has a complete defense to prosecution. We consider whether, when the defendant produces some evidence supporting such a defense, the Government must prove beyond a reasonable doubt that he did not withdraw outside the statute-of-limitations period.

I

Petitioner Calvin Smith was indicted for crimes connected to his role in an organization that distributed cocaine, crack cocaine, heroin, and marijuana in Washington, D. C., for about a decade. The 158-count indictment charged Smith and 16 alleged co-conspirators with conspiring to run, and

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**Timothy P. O'Toole* and *Jeffrey Hahn* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae* urging reversal.

actually running, an illegal drug business, as well as with committing acts of violence, including 31 murders, to further their goals. Smith was tried alongside five codefendants. A jury of the United States District Court for the District of Columbia convicted him of (1) conspiracy to distribute narcotics and to possess narcotics with the intent to distribute them, in violation of 21 U. S. C. § 846; (2) Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy, in violation of 18 U. S. C. § 1962(d); (3) murder in connection with a continuing criminal enterprise, in violation of 21 U. S. C. § 848(e)(1)(A); and (4) four counts of murder while armed, in violation of D. C. Code §§ 22–2401 and 22–3202 (1996).[1]

At issue here are Smith's conspiracy convictions. Before trial, Smith moved to dismiss the conspiracy counts as barred by the applicable 5-year statute of limitations, 18 U. S. C. § 3282, because he had spent the last six years of the charged conspiracies in prison for a felony conviction. The court denied his motion, and Smith renewed his statute-of-limitations defense at trial. In the final jury charge, the court instructed the jury to convict Smith of each conspiracy count if the Government had proved beyond a reasonable doubt that the conspiracies existed, that Smith was a member of those conspiracies, *and* that the conspiracies "continued in existence within five years" before the indictment. App. 289a, 300a.

After it began deliberations, the jury asked the court what to do in the event that a defendant withdrew from the conspiracies outside the relevant limitations period.[2] Smith

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[1] On appeal, the D. C. Circuit remanded two of the murder counts for the District Court to conduct an evidentiary hearing regarding whether Smith received ineffective assistance of counsel as to those convictions. *United States* v. *Moore*, 651 F. 3d 30, 89 (2011) (*per curiam*).

[2] The note to the judge inquired: "'If we find that the Narcotics or RICO conspiracies continued after the relevant date under the statute of limitations, but that a particular defendant left the conspiracy before the rele-

had not yet raised an affirmative defense of withdrawal, so the court for the first time instructed the jury on the defense. The court explained that "[t]he relevant date for purposes of determining the statute of limitations is the date, if any, on which a conspiracy concludes or a date on which that defendant withdrew from that conspiracy." *Id.*, at 328a. It defined withdrawal as "affirmative acts inconsistent with the goals of the conspiracy" that "were communicated to the defendant's coconspirators in a manner reasonably calculated to reach those coconspirators." "Withdrawal," the court instructed, "must be unequivocal." *Ibid.* Over the defense's objection, the court told the jury that "[o]nce the government has proven that a defendant was a member of a conspiracy, the burden is on the defendant to prove withdrawal from a conspiracy by a preponderance of the evidence." *Ibid.* The jury then convicted Smith of the conspiracy crimes.

As relevant here, the Court of Appeals affirmed Smith's conspiracy convictions. Recognizing that the Circuits are divided on which party bears the burden of proving or disproving a defense of withdrawal prior to the limitations period, the court concluded that the defendant bears the burden of proof and that such a disposition does not violate the Due Process Clause. *United States* v. *Moore*, 651 F. 3d 30, 89–90 (CADC 2011) (*per curiam*). We granted certiorari. 567 U. S. 916 (2012).

II

Petitioner's claim lies at the intersection of a withdrawal defense and a statute-of-limitations defense. He asserts that once he presented evidence that he ended his membership in the conspiracy prior to the statute-of-limitations period, it became the Government's burden to prove that his individual participation in the conspiracy persisted within the applicable 5-year window. This position draws support

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vant date under the statute of limitations, must we find that defendant not guilty?'" App. 174a.

neither from the Constitution (as discussed in this Part II), nor from the conspiracy and limitations statutes at issue (as discussed in Part III, *infra*). Establishing individual withdrawal was a burden that rested firmly on the defendant regardless of when the purported withdrawal took place.

Allocating to a defendant the burden of proving withdrawal does not violate the Due Process Clause. While the Government must prove beyond a reasonable doubt "every fact necessary to constitute the crime with which [the defendant] is charged," *In re Winship*, 397 U. S. 358, 364 (1970), "[p]roof of the nonexistence of all affirmative defenses has never been constitutionally required," *Patterson* v. *New York*, 432 U. S. 197, 210 (1977). The State is foreclosed from shifting the burden of proof to the defendant only "when an affirmative defense *does* negate an element of the crime." *Martin* v. *Ohio*, 480 U. S. 228, 237 (1987) (Powell, J., dissenting). Where instead it "excuse[s] conduct that would otherwise be punishable," but "does not controvert any of the elements of the offense itself," the Government has no constitutional duty to overcome the defense beyond a reasonable doubt. *Dixon* v. *United States*, 548 U. S. 1, 6 (2006).

Withdrawal does not negate an element of the conspiracy crimes charged here. The essence of conspiracy is "the combination of minds in an unlawful purpose." *United States* v. *Hirsch*, 100 U. S. 33, 34 (1879). To convict a defendant of narcotics or RICO conspiracy, the Government must prove beyond a reasonable doubt that two or more people agreed to commit a crime covered by the specific conspiracy statute (that a conspiracy existed) and that the defendant knowingly and willfully participated in the agreement (that he was a member of the conspiracy).[3] Far from contradicting an ele-

[3] Narcotics conspiracy under 21 U. S. C. § 846 criminalizes "conspir[ing] to commit any offense" under the Controlled Substances Act, including the knowing distribution of, or possession with intent to distribute, controlled substances, § 841(a)(1). Section 1962(d) of Title 18 makes it unlawful to "conspire to violate" RICO, which makes it unlawful, among other things,

ment of the offense, withdrawal presupposes that the defendant committed the offense. Withdrawal achieves more modest ends than exoneration. Since conspiracy is a continuing offense, *United States* v. *Kissel*, 218 U. S. 601, 610 (1910), a defendant who has joined a conspiracy continues to violate the law "through every moment of [the conspiracy's] existence," *Hyde* v. *United States*, 225 U. S. 347, 369 (1912), and he becomes responsible for the acts of his co-conspirators in pursuit of their common plot, *Pinkerton* v. *United States*, 328 U. S. 640, 646 (1946). Withdrawal terminates the defendant's liability for postwithdrawal acts of his co-conspirators, but he remains guilty of conspiracy.

Withdrawal also starts the clock running on the time within which the defendant may be prosecuted, and provides a complete defense when the withdrawal occurs beyond the applicable statute-of-limitations period.[4] A complete defense, however, is not necessarily one that establishes the defendant's innocence. For example, we have held that although self-defense may entirely excuse or justify aggravated murder, "the elements of aggravated murder and self-defense [do not] overlap in the sense that evidence to prove the latter will often tend to negate the former." *Martin*, *supra*, at 234; see *Leland* v. *Oregon*, 343 U. S. 790, 794–796 (1952) (same for insanity defense). Likewise, although the statute of limitations may inhibit prosecution, it does not

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"for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity," § 1962(c).

[4] The conspiracy statutes at issue here do not contain their own limitations periods, but are governed by § 3282(a), which provides: "Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed." At the time petitioner was indicted, § 3282 contained no subsections; what was the full text of the section is now subsection (a).

render the underlying conduct noncriminal. Commission of the crime *within the statute-of-limitations period* is not an element of the conspiracy offense. See *United States* v. *Cook*, 17 Wall. 168, 180 (1872). The Government need not allege the time of the offense in the indictment, *id.*, at 179–180, and it is up to the defendant to raise the limitations defense, *Biddinger* v. *Commissioner of Police of City of New York*, 245 U. S. 128, 135 (1917). A statute-of-limitations defense does not call the criminality of the defendant's conduct into question, but rather reflects a policy judgment by the legislature that the lapse of time may render criminal acts ill suited for prosecution. See, *e. g.*, *Toussie* v. *United States*, 397 U. S. 112, 114–115 (1970). Thus, although union of withdrawal with a statute-of-limitations defense can free the defendant of criminal liability, it does not place upon the prosecution a constitutional responsibility to prove that he did not withdraw. As with other affirmative defenses, the burden is on him.

III

Of course, Congress may choose to assign the Government the burden of proving the nonexistence of withdrawal, even if that is not constitutionally required. It did not do so here. "[T]he common-law rule was that affirmative defenses . . . were matters for the defendant to prove." *Martin*, *supra*, at 235; see 4 W. Blackstone, Commentaries on the Laws of England 201 (1769). Because Congress did not address in 21 U. S. C. § 846 or 18 U. S. C. § 1962(d) the burden of proof for withdrawal, we presume that Congress intended to preserve the common-law rule. *Dixon*, 548 U. S., at 13–14.

That Congress left the traditional burden of proof undisturbed is both practical and fair. "'[W]here the facts with regard to an issue lie peculiarly in the knowledge of a party,'" that party is best situated to bear the burden of proof. *Id.*, at 9. On the matter of withdrawal, the informational asymmetry heavily favors the defendant. Passive nonparticipation in the continuing scheme is not enough to

sever the meeting of minds that constitutes the conspiracy. "[T]o avert a continuing criminality" there must be "affirmative action . . . to disavow or defeat the purpose" of the conspiracy. *Hyde*, *supra*, at 369. The defendant knows what steps, if any, he took to dissociate from his confederates. He can testify to his act of withdrawal or direct the court to other evidence substantiating his claim.[5] It would be nearly impossible for the Government to prove the negative that an act of withdrawal never happened. See 9 J. Wigmore, Evidence § 2486, p. 288 (J. Chadbourn rev. 1981) ("It is often said that the burden is upon the *party having in form the affirmative allegation*"). Witnesses with the primary power to refute a withdrawal defense will often be beyond the Government's reach: The defendant's co-conspirators are likely to invoke their right against self-incrimination rather than explain their unlawful association with him.

Here again, the analysis does not change when withdrawal is the basis for a statute-of-limitations defense. To be sure, we have held that the Government must prove the time of the conspiracy offense if a statute-of-limitations defense is raised. *Grunewald* v. *United States*, 353 U. S. 391, 396 (1957). But the Government satisfied that burden here when it proved that the conspiracy continued past the statute-of-limitations period. For the offense in these conspiracy prosecutions was not the initial act of agreement, but the banding together against the law effected by that act, which continues until termination of the conspiracy or, as to a particular defendant, until that defendant's withdrawal. And as we have discussed, the burden of establishing that withdrawal rests upon the defendant.

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[5] Here, Smith introduced a stipulation of his dates spent incarcerated, as well as "testimonial evidence showing that he was no longer a member of the charged conspiracies during his incarceration." Brief for Petitioner 3. The jury found that this did not establish by a preponderance of the evidence an affirmative act of withdrawal.

Petitioner's claim that assertion of a statute-of-limitations defense shifts that burden is incompatible with the established proposition that a defendant's membership in the conspiracy, and his responsibility for its acts, endures even if he is entirely *inactive* after joining it. ("As he has started evil forces he must withdraw his support from them or incur the guilt of their continuance." *Hyde*, 225 U. S., at 369–370.) For as a practical matter, the only way the Government would be able to establish a failure to withdraw would be to show active participation in the conspiracy during the limitations period.

* * *

Having joined forces to achieve collectively more evil than he could accomplish alone, Smith tied his fate to that of the group. His individual change of heart (assuming it occurred) could not put the conspiracy genie back in the bottle. We punish him for the havoc wreaked by the unlawful scheme, whether or not he remained actively involved. It is his withdrawal that must be active, and it was his burden to show that.

The judgment of the Court of Appeals is affirmed.

It is so ordered.

Syllabus

LOZMAN *v.* CITY OF RIVIERA BEACH, FLORIDA

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

No. 11–626. Argued October 1, 2012—Decided January 15, 2013

Petitioner Lozman's floating home was a house-like plywood structure with empty bilge space underneath the main floor to keep it afloat. He had it towed several times before deciding on a marina owned by the city of Riviera Beach (City). After various disputes with Lozman and unsuccessful efforts to evict him from the marina, the City brought a federal admiralty lawsuit *in rem* against the floating home, seeking a lien for dockage fees and damages for trespass. Lozman moved to dismiss the suit for lack of admiralty jurisdiction. The District Court found the floating home to be a "vessel" under the Rules of Construction Act, which defines a "vessel" as including "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water," 1 U. S. C. §3, concluded that admiralty jurisdiction was proper, and awarded the City dockage fees and nominal damages. The Eleventh Circuit affirmed, agreeing that the home was a "vessel" since it was "capable" of movement over water despite petitioner's subjective intent to remain moored indefinitely.

Held:

1. This case is not moot. The District Court ordered the floating home sold, and the City purchased the home at auction and had it destroyed. Before the sale, the court ordered the City to post a bond to ensure Lozman could obtain monetary relief if he prevailed. P. 120.

2. Lozman's floating home is not a §3 "vessel." Pp. 120–131.

(a) The Eleventh Circuit found the home "capable of being used . . . as a means of transportation on water" because it could float and proceed under tow and its shore connections did not render it incapable of transportation. This interpretation is too broad. The definition of "transportation," the conveyance of persons or things from one place to another, must be applied in a practical way. *Stewart* v. *Dutra Constr. Co.*, 543 U. S. 481, 496. Consequently, a structure does not fall within the scope of the statutory phrase unless a reasonable observer, looking to the home's physical characteristics and activities, would consider it designed to a practical degree for carrying people or things over water. Pp. 120–121.

(b) But for the fact that it floats, nothing about Lozman's home suggests that it was designed to any practical degree to transport

persons or things over water. It had no steering mechanism, had an unraked hull and rectangular bottom 10 inches below the water, and had no capacity to generate or store electricity. It also lacked self-propulsion, differing significantly from an ordinary houseboat. Pp. 121–122.

(c) This view of the statute is consistent with its text, precedent, and relevant purposes. The statute's language, read naturally, lends itself to that interpretation: The term "contrivance" refers to something "employed in contriving to effect a purpose"; "craft" explains that purpose as "water carriage and transport"; the addition of "water" to "craft" emphasizes the point; and the words, "used, or capable of being used, as a means of transportation on water," drive the point home. Both *Evansville & Bowling Green Packet Co.* v. *Chero Cola Bottling Co.*, 271 U. S. 19, and *Stewart*, *supra*, support this conclusion. *Evansville* involved a wharfboat floated next to a dock, used to transfer cargo, and towed to harbor each winter; and *Stewart* involved a dredge used to remove silt from the ocean floor, which carried a captain and crew and could be navigated only by manipulating anchors and cables or by being towed. Water transportation was not the primary purpose of either structure; neither was in motion at relevant times; and both were sometimes attached to the ocean bottom or to land. However, *Stewart*'s dredge, which was regularly, but not primarily, used to transport workers and equipment over water, fell within the statutory definition while *Evansville*'s wharfboat, which was not designed to, and did not, serve a transportation function, did not. Lower court cases, on balance, also tend to support this conclusion. Further, the purposes of major federal maritime statutes—*e. g.*, admiralty provisions provide special attachment procedures lest a vessel avoid liability by sailing away, recognize that sailors face special perils at sea, and encourage shipowners to engage in port-related commerce—reveal little reason to classify floating homes as "vessels." Finally, this conclusion is consistent with state laws in States where floating homeowners have congregated in communities. Pp. 122–127.

(d) Several important arguments made by the City and its *amici* are unavailing. They argue that a purpose-based test may introduce a subjective element into "vessel" determinations. But the Court has considered only objective evidence, looking to the views of a reasonable observer and the physical attributes and behavior of the structure. They also argue against using criteria that are too abstract, complex, or open-ended. While this Court's approach is neither perfectly precise nor always determinative, it is workable and consistent and should offer guidance in a significant number of borderline cases. And contrary to the dissent's suggestion, the Court sees nothing to be gained by a remand. Pp. 127–130.

Syllabus

(e) The City's additional argument that Lozman's floating home was *actually* used for transportation over water is similarly unpersuasive. Pp. 130–131.

649 F. 3d 1259, reversed.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, THOMAS, GINSBURG, ALITO, and KAGAN, JJ., joined. SOTOMAYOR, J., filed a dissenting opinion, in which KENNEDY, J., joined, *post*, p. 134.

Jeffrey L. Fisher argued the cause for petitioner. With him on the briefs were *Kerri L. Barsh*, *Edward M. Mullins*, *Annette C. Escobar*, *Robert Taylor Bowling*, and *Philip J. Nathanson*.

Curtis E. Gannon argued the cause for the United States as *amicus curiae* urging vacatur. With him on the briefs were *Solicitor General Verrilli*, *Acting Assistant Attorney General Delery*, *Deputy Solicitor General Kneedler*, *Thomas M. Bondy*, and *Michael E. Robinson*.

David C. Frederick argued the cause for respondent. With him on the briefs were *Pamala A. Ryan*, *Michael F. Sturley*, *Lynn E. Blais*, *Robert B. Birthisel*, *Jules V. Massee*, and *Erin Glenn Busby*.*

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*Briefs of *amici curiae* urging reversal were filed for the American Gaming Association by *David Overlock Stewart*; for Maritime Law Professors by *Richard T. Robol*, *Steven Friedell*, *pro se*, and *Thomas J. Schoenbaum*, *pro se*; and for the Seattle Floating Homes Association et al. by *Michelle T. Friedland*.

Briefs of *amici curiae* urging affirmance were filed for the Maritime Law Association of the United States by *Francis X. Nolan III*, *John C. Cleary*, *Joshua S. Force*, *Kevin M. McGlone*, and *Robert B. Parrish*; for the National Marine Bankers Association by *Dennis K. Egan*; for Thirty-Six Admiralty and Maritime Law Professors by *David W. Robertson*, *Richard C. Broussard*, *Lawrence N. Curtis*, *John W. deGravelles*, *Michael C. Palmintier*, *Thomas M. Discon*, *Russ M. Herman*, *Stephen J. Herman*, *R. Scott Ramsey, Jr.*, *James P. Roy*, *Scott E. Silbert*, *Conrad S. P. Williams III*, and *Timothy J. Young*; for the United Brotherhood of Carpenters and Joiners of America by *John R. Hillsman* and *John T. DeCarlo*; and for Kevin M. Clermont by *Michael C. Dorf*.

JUSTICE BREYER delivered the opinion of the Court.

The Rules of Construction Act defines a "vessel" as including "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water." 1 U. S. C. § 3. The question before us is whether petitioner's floating home (which is not self-propelled) falls within the terms of that definition.

In answering that question we focus primarily upon the phrase "capable of being used." This term encompasses "practical" possibilities, not "merely . . . theoretical" ones. *Stewart* v. *Dutra Constr. Co.*, 543 U. S. 481, 496 (2005). We believe that a reasonable observer, looking to the home's physical characteristics and activities, would not consider it to be designed to any practical degree for carrying people or things on water. And we consequently conclude that the floating home is not a "vessel."

I

In 2002 Fane Lozman, petitioner, bought a 60- by 12-foot floating home. App. 37, 71. The home consisted of a house-like plywood structure with French doors on three sides. *Id.*, at 38, 44. It contained a sitting room, bedroom, closet, bathroom, and kitchen, along with a stairway leading to a second level with office space. *Id.*, at 45–66. An empty bilge space underneath the main floor kept it afloat. *Id.*, at 38. (See Appendix, *infra*, for a photograph.) After buying the floating home, Lozman had it towed about 200 miles to North Bay Village, Florida, where he moored it and then twice more had it towed between nearby marinas. In 2006 Lozman had the home towed a further 70 miles to a marina owned by the city of Riviera Beach (City), respondent, where he kept it docked. Brief for Respondent 5.

After various disputes with Lozman and unsuccessful efforts to evict him from the marina, the City brought this federal admiralty lawsuit *in rem* against the floating home. It sought a maritime lien for dockage fees and damages

for trespass. See Federal Maritime Lien Act, 46 U. S. C. § 31342 (authorizing federal maritime lien against vessel to collect debts owed for the provision of "necessaries to a vessel"); 28 U. S. C. § 1333(1) (civil admiralty jurisdiction). See also *Leon* v. *Galceran*, 11 Wall. 185 (1871); *The Rock Island Bridge*, 6 Wall. 213, 215 (1867).

Lozman, acting *pro se*, asked the District Court to dismiss the suit on the ground that the court lacked admiralty jurisdiction. See 2 Record, Doc. 64. After summary judgment proceedings, the court found that the floating home was a "vessel" and concluded that admiralty jurisdiction was consequently proper. Pet. for Cert. 42a. The judge then conducted a bench trial on the merits and awarded the City $3,039.88 for dockage along with $1 in nominal damages for trespass. *Id.*, at 49a.

On appeal the Eleventh Circuit affirmed. *Riviera Beach* v. *That Certain Unnamed Gray, Two-Story Vessel Approximately Fifty-Seven Feet in Length*, 649 F. 3d 1259 (2011). It agreed with the District Court that the home was a "vessel." In its view, the home was "capable" of movement over water and the owner's subjective intent to remain moored "indefinitely" at a dock could not show the contrary. *Id.*, at 1267–1269.

Lozman sought certiorari. In light of uncertainty among the Circuits about application of the term "capable" we granted his petition. Compare *De La Rosa* v. *St. Charles Gaming Co.*, 474 F. 3d 185, 187 (CA5 2006) (structure is not a "vessel" where "physically," but only "theoretical[ly]," "capable of sailing," and owner intends to moor it indefinitely as floating casino), with *Board of Comm'rs of Orleans Levee Dist.* v. *M/V Belle of Orleans*, 535 F. 3d 1299, 1311–1312 (CA11 2008) (structure is a "vessel" where capable of moving over water under tow, "albeit to her detriment," despite intent to moor indefinitely). See also 649 F. 3d, at 1267 (rejecting views of Circuits that "'focus on the intent of the shipowner'").

II

At the outset we consider one threshold matter. The District Court ordered the floating home sold to satisfy the City's judgment. The City bought the home at public auction and subsequently had it destroyed. And, after the parties filed their merits briefs, we ordered further briefing on the question of mootness in light of the home's destruction. 567 U. S. 962 (2012). The parties now have pointed out that, prior to the home's sale, the District Court ordered the City to post a $25,000 bond "to secure Mr. Lozman's value in the vessel." 1 Record, Doc. 20, p. 2. The bond ensures that Lozman can obtain monetary relief if he ultimately prevails. We consequently agree with the parties that the case is not moot.

III

A

We focus primarily upon the statutory phrase "capable of being used . . . as a means of transportation on water." 1 U. S. C. § 3. The Court of Appeals found that the home was "capable" of transportation because it could float, it could proceed under tow, and its shore connections (power cable, water hose, rope lines) did not "'rende[r]'" it "'practically incapable of transportation or movement.'" 649 F. 3d, at 1266 (quoting *Belle of Orleans*, *supra*, at 1312, in turn quoting *Stewart*, *supra*, at 494). At least for argument's sake we agree with the Court of Appeals about the last-mentioned point, namely, that Lozman's shore connections did not "'render'" the home "'practically incapable of transportation.'" But unlike the Eleventh Circuit, we do not find these considerations (even when combined with the home's other characteristics) sufficient to show that Lozman's home was a "vessel."

The Court of Appeals recognized that it had applied the term "capable" broadly. 649 F. 3d, at 1266. Indeed, it pointed with approval to language in an earlier case, *Burks*

v. *American River Transp. Co.*, 679 F. 2d 69 (1982), in which the Fifth Circuit said:

> "'No doubt the three men in a tub would also fit within our definition, and one probably could make a convincing case for Jonah inside the whale.'" 649 F. 3d, at 1269 (quoting *Burks*, *supra*, at 75; brackets omitted).

But the Eleventh Circuit's interpretation is too broad. Not *every* floating structure is a "vessel." To state the obvious, a wooden washtub, a plastic dishpan, a swimming platform on pontoons, a large fishing net, a door taken off its hinges, or Pinocchio (when inside the whale) are not "vessels," even if they are "artificial contrivance[s]" capable of floating, moving under tow, and incidentally carrying even a fair-sized item or two when they do so. Rather, the statute applies to an "artificial contrivance . . . capable of being used . . . *as a means of transportation on water*." 1 U. S. C. § 3 (emphasis added). "[T]ransportation" involves the "conveyance (of things or persons) from one place to another." 18 Oxford English Dictionary 424 (2d ed. 1989) (OED). Accord, N. Webster, An American Dictionary of the English Language 1406 (C. Goodrich & N. Porter eds. 1873) ("[t]he act of transporting, carrying, or conveying from one place to another"). And we must apply this definition in a "practical," not a "theoretical," way. *Stewart*, 543 U. S., at 496. Consequently, in our view a structure does not fall within the scope of this statutory phrase unless a reasonable observer, looking to the home's physical characteristics and activities, would consider it designed to a practical degree for carrying people or things over water.

B

Though our criterion is general, the facts of this case illustrate more specifically what we have in mind. But for the fact that it floats, nothing about Lozman's home suggests that it was designed to any practical degree to transport persons or things over water. It had no rudder or other

steering mechanism. 649 F. 3d, at 1269. Its hull was unraked, *ibid.*, and it had a rectangular bottom 10 inches below the water, Brief for Petitioner 27; App. 37. It had no special capacity to generate or store electricity but could obtain that utility only through ongoing connections with the land. *Id.*, at 40. Its small rooms looked like ordinary nonmaritime living quarters. And those inside those rooms looked out upon the world, not through watertight portholes, but through French doors or ordinary windows. *Id.*, at 44–66.

Although lack of self-propulsion is not dispositive, *e. g.*, *The Robert W. Parsons*, 191 U. S. 17, 31 (1903), it may be a relevant physical characteristic. And Lozman's home differs significantly from an ordinary houseboat in that it has no ability to propel itself. Cf. 33 CFR § 173.3 (2012) ("Houseboat means a *motorized* vessel . . . designed primarily for multi-purpose accommodation spaces with low freeboard and little or no foredeck or cockpit" (emphasis added)). Lozman's home was able to travel over water only by being towed. Prior to its arrest, that home's travel by tow over water took place on only four occasions over a period of seven years. *Supra*, at 118. And when the home was towed a significant distance in 2006, the towing company had a second boat follow behind to prevent the home from swinging dangerously from side to side. App. 104.

The home has no other feature that might suggest a design to transport over water anything other than its own furnishings and related personal effects. In a word, we can find nothing about the home that could lead a reasonable observer to consider it designed to a practical degree for "transportation on water."

C

Our view of the statute is consistent with its text, precedent, and relevant purposes. For one thing, the statute's language, read naturally, lends itself to that interpretation. We concede that the statute uses the word "every," referring to "*every* description of watercraft or other artificial contriv-

ance." 1 U. S. C. § 3 (emphasis added). But the term "contrivance" refers to "something contrived for, or employed in contriving to effect a purpose." 3 OED 850 (def. 7). The term "craft" explains that purpose as "water carriage and transport." *Id.*, at 1104 (def. V(9)(*b*)) (defining "craft" as a "vesse[l] . . . for" that purpose). The addition of the word "water" to "craft," yielding the term "watercraft," emphasizes the point. And the next few words, "used, or capable of being used, as a means of transportation on water," drive the point home.

For another thing, the bulk of precedent supports our conclusion. In *Evansville & Bowling Green Packet Co.* v. *Chero Cola Bottling Co.*, 271 U. S. 19 (1926), the Court held that a wharfboat was *not* a "vessel." The wharfboat floated next to a dock; it was used to transfer cargo from ship to dock and ship to ship; and it was connected to the dock with cables, utility lines, and a ramp. *Id.*, at 21. At the same time, it was capable of being towed. And it was towed each winter to a harbor to avoid river ice. *Id.*, at 20–21. The Court reasoned that, despite the annual movement under tow, the wharfboat "was not used to carry freight from one place to another," nor did it "encounter perils of navigation to which craft used for transportation are exposed." *Id.*, at 22. (See Appendix, *infra*, for photograph of a period wharfboat.)

The Court's reasoning in *Stewart* also supports our conclusion. We there considered the application of the statutory definition to a dredge. 543 U. S., at 494. The dredge was "a massive floating platform" from which a suspended clamshell bucket would "remov[e] silt from the ocean floor," depositing it "onto one of two scows" floating alongside the dredge. *Id.*, at 484. Like more traditional "seagoing vessels," the dredge had, *e. g.*, "a captain and crew, navigational lights, ballast tanks, and a crew dining area." *Ibid.* Unlike more ordinary vessels, it could navigate only by "manipulating its anchors and cables" or by being towed. *Ibid.* Nonetheless

it did move. In fact it moved over water "every couple of hours." *Id.*, at 485.

We held that the dredge was a "vessel." We wrote that § 3's definition "merely codified the meaning that the term 'vessel' had acquired in general maritime law." *Id.*, at 490. We added that the question of the "watercraft's use 'as a means of transportation on water' is . . . practical," and not "merely . . . theoretical." *Id.*, at 496. And we pointed to cases holding that dredges ordinarily "served a waterborne transportation function," namely, that "in performing their work they carried machinery, equipment, and crew over water." *Id.*, at 491–492 (citing, *e. g.*, *Butler* v. *Ellis*, 45 F. 2d 951, 955 (CA4 1930)).

As the Court of Appeals pointed out, in *Stewart* we also wrote that § 3 "does not require that a watercraft be used *primarily* for that [transportation] purpose," 543 U. S., at 495; that a "watercraft need not be in motion to qualify as a vessel," *ibid.*; and that a structure may qualify as a vessel even if attached—but not "permanently" attached—to the land or ocean floor, *id.*, at 493–494. We did not take these statements, however, as implying a universal set of sufficient conditions for application of the definition. Rather, they say, and they mean, that the statutory definition *may* (or may not) apply—not that it *automatically must* apply—where a structure has some other *primary* purpose, where it is stationary at relevant times, and where it is attached—but not permanently attached—to land.

After all, a washtub is normally not a "vessel" though it does not have water transportation as its primary purpose, it may be stationary much of the time, and it might be attached—but not permanently attached—to land. More to the point, water transportation was not the *primary purpose* of either *Stewart*'s dredge or *Evansville*'s wharfboat; neither structure was "in motion" at relevant times; and both were sometimes attached (though not permanently attached) to the ocean bottom or to land. Nonetheless *Stewart*'s dredge

fell within the statute's definition while *Evansville*'s wharfboat did not.

The basic difference, we believe, is that the dredge was regularly, but not primarily, used (and designed in part to be used) to transport workers and equipment over water while the wharfboat was not designed (to any practical degree) to serve a transportation function and did not do so. Compare *Cope* v. *Vallette Dry Dock Co.*, 119 U. S. 625 (1887) (floating drydock not a "vessel" because permanently fixed to wharf), with *Jerome B. Grubart, Inc.* v. *Great Lakes Dredge & Dock Co.*, 513 U. S. 527, 535 (1995) (barge sometimes attached to river bottom to use as a work platform remains a "vessel" when "at other times it was used for transportation"). See also *ibid.* (citing *Great Lakes Dredge & Dock Co.* v. *Chicago*, 3 F. 3d 225, 229 (CA7 1993) ("[A] craft is a 'vessel' if its purpose is to some reasonable degree 'the transportation of passengers, cargo, or equipment from place to place across navigable waters' ")); *Cope*, *supra*, at 630 (describing "hopper-barge" as potentially a "vessel" because it is a "navigable structure[,] used for the purpose of transportation"); cf. 1 S. Friedall, Benedict on Admiralty § 164, p. 10–6 (rev. 7th ed. 2012) (maritime jurisdiction proper if "the craft is a navigable structure intended for maritime transportation").

Lower court cases also tend, on balance, to support our conclusion. See, *e. g.*, *Bernard* v. *Binnings Constr. Co.*, 741 F. 2d 824, 828, n. 13, 832, n. 25 (CA5 1984) (work punt lacking features objectively indicating a transportation function not a "vessel," for "our decisions make clear that the mere capacity to float or move across navigable waters does not necessarily make a structure a vessel"); *Ruddiman* v. *A Scow Platform*, 38 F. 158 (SDNY 1889) (scow, though "capable of being towed . . . though not without some difficulty, from its clumsy structure" just a floating box, not a "vessel," because "it was not designed or used for the purpose of navigation," not engaged "in the transportation of persons or cargo," and had "no motive power, no rudder, no sails"). See also

1 T. Schoenbaum, Admiralty and Maritime Law § 3–6, p. 155 (5th ed. 2011) (courts have found that "floating dry-dock[s]," "floating platforms, barges, or rafts used for construction or repair of piers, docks, bridges, pipelines, and other" similar facilities are not "vessels"); E. Benedict, American Admiralty § 215, p. 116 (rev. 3d ed. 1898) (defining "vessel" as a " 'machine adapted to transportation over rivers, seas, and oceans' ").

We recognize that some lower court opinions can be read as endorsing the "anything that floats" approach. See *Miami River Boat Yard, Inc.* v. *60' Houseboat*, 390 F. 2d 596, 597 (CA5 1968) (so-called "houseboat" lacking self-propulsion); *Sea Village Marina, LLC* v. *A 1980 Carlcraft Houseboat*, No. 09–3292, 2009 WL 3379923, *5–*6 (D NJ, Oct. 19, 2009) (following *Miami River Boat Yard*); *Hudson Harbor 79th Street Boat Basin, Inc.* v. *Sea Casa*, 469 F. Supp. 987, 989 (SDNY 1979) (same). Cf. *Holmes* v. *Atlantic Sounding Co.*, 437 F. 3d 441 (CA5 2006) (floating dormitory); *Summerlin* v. *Massman Constr. Co.*, 199 F. 2d 715 (CA4 1952) (derrick anchored in the river engaged in building a bridge is a vessel). For the reasons we have stated, we find such an approach inappropriate and inconsistent with our precedents.

Further, our examination of the purposes of major federal maritime statutes reveals little reason to classify floating homes as "vessels." Admiralty law, for example, provides special attachment procedures lest a vessel avoid liability by sailing away. 46 U. S. C. §§ 31341–31343 (2006 ed. and Supp. IV). Liability statutes such as the Jones Act recognize that sailors face the special " 'perils of the sea.' " *Chandris, Inc.* v. *Latsis*, 515 U. S. 347, 354, 373 (1995) (referring to " 'vessel[s] in navigation' "). Certain admiralty tort doctrines can encourage shipowners to engage in port-related commerce. *E. g.*, 46 U. S. C. § 30505; *Executive Jet Aviation, Inc.* v. *Cleveland*, 409 U. S. 249, 269–270 (1972). And maritime safety statutes subject vessels to U. S. Coast Guard inspections. *E. g.*, 46 U. S. C. § 3301.

Lozman, however, cannot easily escape liability by sailing away in his home. He faces no special sea dangers. He does not significantly engage in port-related commerce. And the Solicitor General tells us that to adopt a version of the "anything that floats" test would place unnecessary and undesirable inspection burdens upon the Coast Guard. Brief for United States as *Amicus Curiae* 29, n. 11.

Finally, our conclusion is consistent with state laws in States where floating homeowners have congregated in communities. See Brief for Seattle Floating Homes Association et al. as *Amici Curiae* 1 (Seattle Brief). A Washington State environmental statute, for example, defines a floating home (for regulatory purposes) as "a single-family dwelling unit constructed on a float, that is moored, anchored, or otherwise secured in waters, and is not a vessel, even though it may be capable of being towed." Wash. Rev. Code Ann. § 90.58.270(5)(b)(ii) (West Supp. 2012). A California statute defines a floating home (for tax purposes) as "a floating structure" that is "designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling," and which (unlike a typical houseboat), has no independent power generation, and is dependent on shore utilities. Cal. Health & Safety Code Ann. § 18075.55(d) (West 2006). These States, we are told, treat structures that meet their "floating home" definitions like ordinary land-based homes rather than like vessels. Seattle Brief 2. Consistency of interpretation of related state and federal laws is a virtue in that it helps to create simplicity making the law easier to understand and to follow for lawyers and for nonlawyers alike. And that consideration here supports our conclusion.

D

The City and supporting *amici* make several important arguments that warrant our response. First, they argue against use of any purpose-based test lest we introduce into "vessel" determinations a subjective element—namely, the

owner's intent. That element, they say, is often "unverifiable" and too easily manipulated. Its introduction would "foment unpredictability and invite gamesmanship." Brief for Respondent 33.

We agree with the City about the need to eliminate the consideration of evidence of subjective intent. But we cannot agree that the need requires abandonment of all criteria based on "purpose." Cf. *Stewart*, 543 U. S., at 495 (discussing transportation purpose). Indeed, it is difficult, if not impossible, to determine the use of a human "contrivance" without some consideration of human purposes. At the same time, we have sought to avoid subjective elements, such as owner's intent, by permitting consideration only of objective evidence of a waterborne transportation purpose. That is why we have referred to the views of a reasonable observer. *Supra*, at 118. And it is why we have looked to the physical attributes and behavior of the structure, as objective manifestations of any relevant purpose, and not to the subjective intent of the owner. *Supra*, at 121–122. We note that various admiralty treatises refer to the use of purpose-based tests without any suggestion that administration of those tests has introduced too much subjectivity into the vessel-determination process. 1 Friedall, Benedict on Admiralty § 164; 1 Schoenbaum, Admiralty and Maritime Law § 3–6.

Second, the City, with support of *amici*, argues against the use of criteria that are too abstract, complex, or open-ended. Brief for Respondent 28–29. A court's jurisdiction, *e. g.*, admiralty jurisdiction, may turn on application of the term "vessel." And jurisdictional tests, often applied at the outset of a case, should be "as simple as possible." *Hertz Corp.* v. *Friend*, 559 U. S. 77, 80 (2010).

We agree with the last-mentioned sentiment. And we also understand that our approach is neither perfectly precise nor always determinative. Satisfaction of a design-based or purpose-related criterion, for example, is not always

sufficient for application of the statutory word "vessel." A craft whose physical characteristics and activities objectively evidence a waterborne transportation purpose or function may still be rendered a nonvessel by later physical alterations. For example, an owner might take a structure that is otherwise a vessel (even the *Queen Mary*) and connect it permanently to the land for use, say, as a hotel. See *Stewart*, *supra*, at 493–494. Further, changes over time may produce a new form, *i. e.*, a newly designed structure—in which case it may be the new design that is relevant. See *Kathriner* v. *Unisea, Inc.*, 975 F. 2d 657, 660 (CA9 1992) (floating processing plant was no longer a vessel where a "large opening [had been] cut into her hull").

Nor is satisfaction of the criterion always a necessary condition, see Part IV, *infra*. It is conceivable that an owner might *actually use* a floating structure not designed to any practical degree for transportation as, say, a ferry boat, regularly transporting goods and persons over water.

Nonetheless, we believe the criterion we have used, taken together with our example of its application here, should offer guidance in a significant number of borderline cases where "capacity" to transport over water is in doubt. Moreover, borderline cases will always exist; they require a method for resolution; we believe the method we have used is workable; and, unlike, say, an "anything that floats" test, it is consistent with statutory text, purpose, and precedent. Nor do we believe that the dissent's approach would prove any more workable. For example, the dissent suggests a relevant distinction between an owner's "clothes and personal effects" and "large appliances (like an oven or a refrigerator)." *Post,* at 140 (opinion of SOTOMAYOR, J.). But a transportation function need not turn on the size of the items in question, and we believe the line between items being transported from place to place (*e. g.*, cargo) and items that are mere appurtenances is the one more likely to be relevant. Cf. Benedict, American Admiralty §222, at 121 ("A ship is

usually described as consisting of the ship, her tackle, apparel, and furniture . . . ").

Finally, the dissent and the Solicitor General (as *amicus* for Lozman) argue that a remand is warranted for further factfinding. See *post*, at 143–144; Brief for United States as *Amicus Curiae* 29–31. But neither the City nor Lozman makes such a request. Brief for Respondent 18, 49, 52. And the only potentially relevant factual dispute the dissent points to is that the home suffered serious damage during a tow. *Post*, at 143. But this would add support to our ultimate conclusion that this floating home was not a vessel. We consequently see nothing to be gained by a remand.

IV

Although we have focused on the phrase "*capable* of being used" for transportation over water, the statute also includes as a "vessel" a structure that is *actually* "used" for that transportation. 1 U. S. C. § 3 (emphasis added). And the City argues that, irrespective of its design, Lozman's floating home was *actually* so used. Brief for Respondent 32. We are not persuaded by its argument.

We are willing to assume for argument's sake that sometimes it is possible actually to use for water transportation a structure that is in no practical way designed for that purpose. See *supra*, at 129. But even so, the City cannot show the actual use for which it argues. Lozman's floating home moved only under tow. Before its arrest, it moved significant distances only twice in seven years. And when it moved, it carried, not passengers or cargo, but at the very most (giving the benefit of any factual ambiguity to the City) only its own furnishings, its owner's personal effects, and personnel present to ensure the home's safety. 649 F. 3d, at 1268; Brief for Respondent 32; Tr. of Oral Arg. 37–38. This is far too little *actual* "use" to bring the floating home within the terms of the statute. See *Evansville*, 271 U. S., at 20–21 (wharfboat not a "vessel" even though "[e]ach winter" it

"was towed to [a] harbor to protect it from ice"); see also *Roper* v. *United States*, 368 U. S. 20, 23 (1961) ("Unlike a barge, the S. S. *Harry Lane* was not moved in order to transport commodities from one location to another"). See also *supra*, at 122–127.

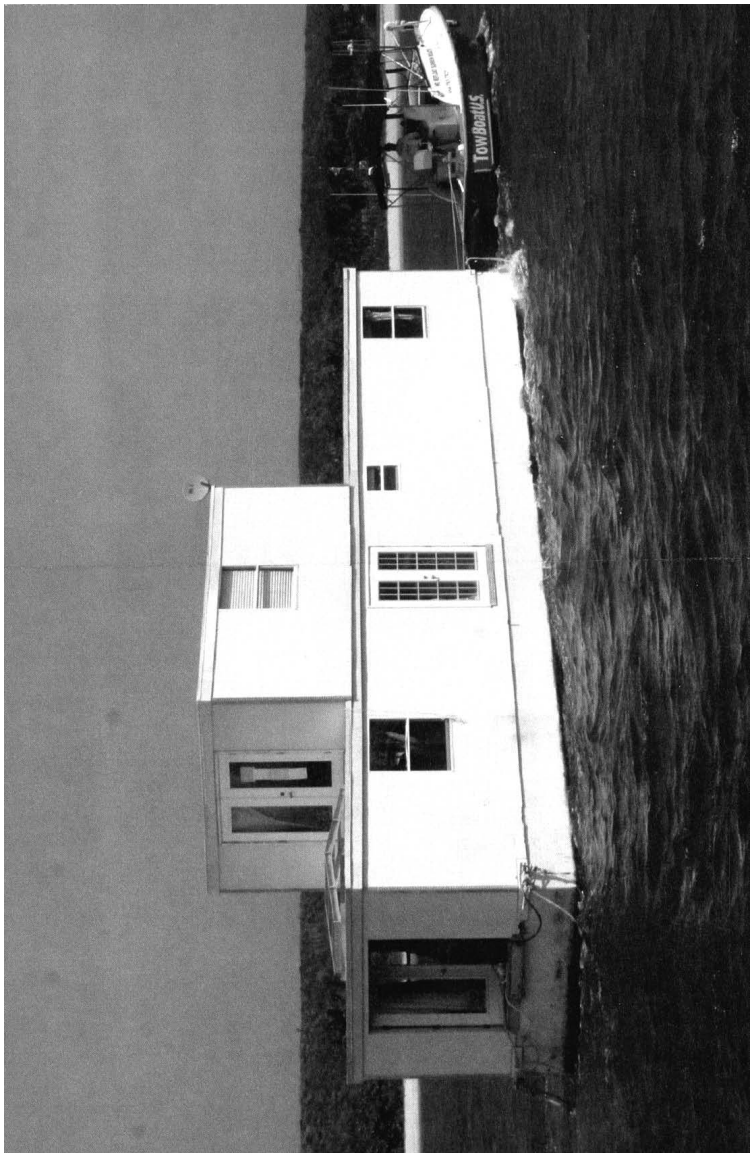
V

For these reasons, the judgment of the Court of Appeals is reversed.

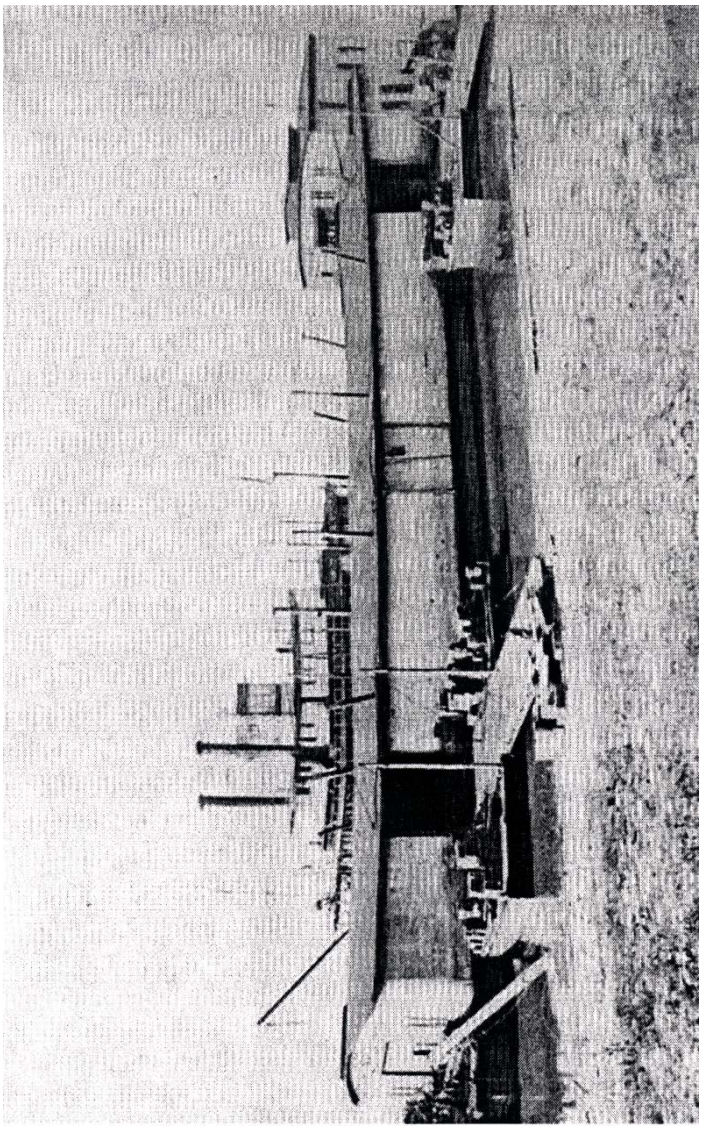
It is so ordered.

[Appendix to opinion of the Court begins on p. 132.]

APPENDIX



Petitioner's floating home. App. 69.



50- by 200-foot wharfboat in Evansville, Indiana, on Nov. 13, 1918. H. R. Doc. No. 1521, 65th Cong., 3d Sess., Illustration No. 13 (1918).

JUSTICE SOTOMAYOR, with whom JUSTICE KENNEDY joins, dissenting.

I agree with much of the Court's reasoning. Our precedents fully support the Court's reasoning that the Eleventh Circuit's test is overinclusive; that the subjective intentions of a watercraft's owner or designer play no role in the vessel analysis of 1 U. S. C. §3; and that an objective assessment of a watercraft's purpose or function governs whether that structure is a vessel. The Court, however, creates a novel and unnecessary "reasonable observer" reformulation of these principles and errs in its determination, under this new standard, that the craft before us is not a vessel. Given the underdeveloped record below, we should remand. Therefore, I respectfully dissent.

I

The relevant statute, 1 U. S. C. §3, "sweeps broadly." *Stewart* v. *Dutra Constr. Co.*, 543 U. S. 481, 494 (2005). It provides that "[t]he word 'vessel' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water." This broad phrasing flows from admiralty law's long recognition that vessels come in many shapes and sizes. See E. Benedict, American Admiralty §218, p. 121 (1870 ed.) (" '[V]essel, is a general word, many times used for any kind of navigation' "); M. Cohen, Admiralty Jurisdiction, Law, and Practice 232 (1883) (" '[T]he term "vessel" shall be understood to comprehend every description of vessel navigating on any sea or channel, lake or river . . . ' ").

Our test for vessel status has remained the same for decades: "Under §3, a 'vessel' is any watercraft practically capable of maritime transportation . . . ." *Stewart*, 543 U. S., at 497; see also *Evansville & Bowling Green Packet Co.* v. *Chero Cola Bottling Co.*, 271 U. S. 19, 22 (1926); *Cope* v. *Vallette Dry Dock Co.*, 119 U. S. 625, 627 (1887). At its core, vessel status has always rested upon the objective physical characteristics of a vessel (such as its structure, shape, and

materials of construction), as well as its usage history. But over time, several important principles have guided both this Court and the lower courts in determining what kinds of watercraft fall properly within the scope of admiralty jurisdiction.

Consider the most basic of requirements. For a watercraft to be "practically capable" of maritime transportation, it must first be "capable" of such transportation. Only those structures that can simultaneously float and carry people or things over water are even presumptively within § 3's reach. Stopping here, as the Eleventh Circuit essentially did, results in an overinclusive test. Section 3, after all, does not drag every bit of floating and towable flotsam and jetsam into admiralty jurisdiction. Rather, the terms "capable of being used" and "practical" have real significance in our maritime jurisprudence.

"[A] water craft is not 'capable of being used' for maritime transport in any meaningful sense if it has been permanently moored." *Stewart*, 543 U. S., at 494. So, to take an obvious example, a floating bridge over water does not constitute a vessel; such mooring is clearly permanent. Cf. *The Rock Island Bridge*, 6 Wall. 213, 216 (1867). Less dramatically, a watercraft whose objective physical connections to land "evidence a permanent location" does not fall within § 3's ambit. See, *e. g.*, *Evansville*, 271 U. S., at 22 ("[The wharfboat] served at Evansville as an office, warehouse and wharf, and was not taken from place to place. The connections with the water, electric light and telephone systems of the city evidence a permanent location"); *Dunklin* v. *Louisiana Riverboat Gaming Partnership*, No. 00–31455, 2001 WL 650209, *1, n. 1 (CA5, May 22, 2001) (*per curiam*) (describing a fully functional casino boat placed "in an enclosed pond in a cofferdam"). Put plainly, structures "permanently affixed to shore or resting on the ocean floor," *Stewart*, 543 U. S., at 493–494, have never been treated as vessels for the purposes of § 3.

Our precedents have also excluded from vessel status those watercraft "rendered practically incapable of transportation or movement." *Id.*, at 494. Take the easiest case, a vessel whose physical characteristics have been so altered as to make waterborne transportation a practical impossibility. *Ibid.* (explaining that a "floating processing plant was no longer a vessel where a 'large opening [had been] cut into her hull,' rendering her incapable of moving over the water" (quoting *Kathriner* v. *UNISEA, Inc.*, 975 F. 2d 657, 660 (CA9 1992))). The longstanding admiralty exception for "dead ships," those watercraft that "require a major overhaul" for their "reactivation," also falls into this category. See *Roper* v. *United States*, 368 U. S. 20, 21 (1961) (finding that a liberty ship "deactivated from service and 'mothballed'" is not a "vessel in navigation"); see generally Rutherglen, Dead Ships, 30 J. Maritime L. & Comm. 677 (1999).[1] Likewise, ships that "have been withdrawn from the water for extended periods of time" in order to facilitate repairs and reconstruction may lose their status as vessels until they are rendered capable of maritime transport. *Stewart*, 543 U. S., at 496. Cf. *West* v. *United States*, 361 U. S. 118, 120, 122 (1959) (noting: "[T]he *Mary Austin* was withdrawn from any operation whatever while in storage with the 'moth-ball fleet'" and that "[t]he *Mary Austin*, as anyone could see, was not in maritime service. She was undergoing major repairs and complete renovation . . . ").

Finally, our maritime jurisprudence excludes from vessel status those floating structures that, based on their physical characteristics, do not "transport people, freight, or cargo

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[1] The converse category of ships "not yet born" is another historical exclusion from vessel status. See *Tucker* v. *Alexandroff*, 183 U. S. 424, 438 (1902) ("A ship is born when she is launched, and lives so long as her identity is preserved. Prior to her launching she is a mere congeries of wood and iron—an ordinary piece of personal property—as distinctly a land structure as a house, and subject only to mechanics' liens created by state law and enforceable in the state courts").

from place to place" as one of their purposes. *Stewart*, 543 U. S., at 493. "Purpose," in this context, is determined solely by an objective inquiry into a craft's function. "[N]either size, form, equipment nor means of propulsion are determinative factors upon the question of [vessel status]," though all may be considered. *The Robert W. Parsons*, 191 U. S. 17, 30 (1903). Moreover, in assessing a particular structure's function, we have consistently examined its past and present activities. *Stewart*, 543 U. S., at 495; *Cope*, 119 U. S., at 627. Of course, a seaborne craft is not excluded from vessel status simply because its "primary purpose" is not maritime transport. *Stewart*, 543 U. S., at 497. We held as much in *Stewart* when we concluded that a dredge was a vessel notwithstanding that its "primary purpose" was "dredging rather than transportation." *Id.*, at 486, 495. So long as one purpose of a craft is transportation, whether of cargo or people or both, § 3's practical capability requirement is satisfied.

Certainly, difficult and marginal cases will arise. Fortunately, courts do not consider each floating structure anew. So, for example, when we were confronted in *Stewart* with the question whether a dredge is a § 3 vessel, we did not commence with a clean slate; we instead sought guidance from previous cases that had confronted similar structures. See *id.*, at 490, and n. 5; see also *Norton* v. *Warner Co.*, 321 U. S. 565, 571–572 (1944) (likewise surveying earlier cases).

In sum, our precedents offer substantial guidance for how objectively to determine whether a watercraft is practically capable of maritime transport and thus qualifies as a § 3 vessel. First, the capacity to float and carry things or people is an obvious prerequisite to vessel status. Second, structures or ships that are permanently moored or fixed in place are not § 3 vessels. Likewise, structures that are practically incapable of maritime transport are not vessels, whether they are ships that have been altered so that they may no longer be put to sea, dead ships, or ships removed from navigation for extended periods of time. Third, those water-

craft whose physical characteristics and usage history reveal no maritime transport purpose or use are not § 3 vessels.

II

The majority does not appear to disavow the legal principles described above. The majority apparently accepts that permanent mooring suffices to take a ship out of vessel status, *ante*, at 125, 129,[2] and that "[a] craft whose physical characteristics and activities objectively evidence a waterborne transportation purpose or function may still be rendered a nonvessel by later physical alterations," *ante*, at 129.[3] No one argues that Lozman's craft was permanently moored, see App. 32 (describing the "deteriorated" ropes holding the craft in place), or that it had undergone physical alterations sufficient to take it out of vessel status, see Tr. of Oral Arg. 13 (Lozman's counsel arguing that the craft was never a vessel in the first place). Our precedents make clear that the Eleventh Circuit's "anything that floats" test is overinclusive and ignores that purpose is a crucial factor in determining whether a particular craft is or is not a vessel. Accordingly, the majority is correct that determining whether Lozman's craft is a vessel hinges on whether that craft had any maritime transportation purpose or function.

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[2] In discussing permanent mooring, as well as *Stewart*'s rejection of primary-purpose and state-of-transit tests for vessel status, *Stewart* v. *Dutra Constr. Co.*, 543 U. S. 481, 495 (2005), the majority states that our holdings "say, and they mean, that the statutory definition [given by § 3] *may* (or may not) apply—not that it *automatically must* apply—where a structure has some other *primary* purpose, where it is stationary at relevant times, and where it is attached—but not permanently attached—to land." *Ante*, at 124. This must mean, by negative implication, that a permanently moored structure never falls within § 3's definition.

[3] Presumably, this encompasses those kinds of ships "otherwise rendered practically incapable of transportation or movement." *Stewart*, 543 U. S., at 494. That is, ships which have been altered so they cannot travel the seas, dead ships, and ships removed from the water for an extended period of time. *Supra*, at 135–136.

The majority errs, though, in concluding that the purpose component of the § 3 test is whether "a reasonable observer, looking to the [craft]'s physical characteristics and activities, would not consider it to be designed to any practical degree for carrying people or things on water." *Ante*, at 118. This phrasing has never appeared in any of our cases and the majority's use of it, despite its seemingly objective gloss, effectively (and erroneously) introduces a subjective component into the vessel-status inquiry.

For one thing, in applying this test the majority points to some characteristics of Lozman's craft that have no relationship to maritime transport, such as the style of the craft's rooms or that "those inside those rooms looked out upon the world, not through watertight portholes, but through French doors or ordinary windows." *Ante*, at 122. The majority never explains why it believes these particular esthetic elements are important for determining vessel status. In fact, they are not. Section 3 is focused on whether a structure is "used, or capable of being used, as a means of transportation on water." By importing windows, doors, room style, and other esthetic criteria into the § 3 analysis, the majority gives our vessel test an "I know it when I see it" flavor. *Jacobellis* v. *Ohio*, 378 U. S. 184, 197 (1964) (Stewart, J., concurring). But that has never been nor should it be the test: A badly designed and unattractive vessel is different from a structure that lacks any "practical capacity" for maritime transport. In the majority's eyes, the two appear to be one and the same.

The majority's treatment of the craft's past voyages is also strange. The majority notes that Lozman's craft could be and was, in fact, towed over long distances, including over 200 miles at one point. *Ante*, at 118. But the majority determines that, given the design of Lozman's craft, this is "far too little *actual* 'use' to bring the floating home within the terms of the statute." *Ante*, at 130. This is because "when it moved, it carried, not passengers or cargo, but at the very

most (giving the benefit of any factual ambiguity to the City) only its own furnishings, its owner's personal effects, and personnel present to ensure the home's safety." *Ibid.*

I find this analysis confusing. The majority accepts that the record indicates that Lozman's craft traveled hundreds of miles while "carrying people or things." *Ante*, at 118. But then, in the same breath, the majority concludes that a "reasonable observer" would nonetheless conclude that the craft was not "designed to any practical degree for carrying people or things on water." *Ibid.* The majority fails to explain how a craft that apparently did carry people and things over water for long distances was not "practically capable" of maritime transport.

This is not to say that a structure capable of such feats is necessarily a vessel. A craft like Lozman's might not be a vessel, for example, if it could only carry its owner's clothes and personal effects, or if it is only capable of transporting itself and its appurtenances. *Jerome B. Grubart, Inc.* v. *Great Lakes Dredge & Dock Co.*, 513 U. S. 527, 535 (1995) ("[M]aritime law . . . ordinarily treats an 'appurtenance' attached to a vessel in navigable waters as part of the vessel itself"). But if such a craft can carry large appliances (like an oven or a refrigerator) and all of the other things we might find in a normal home in addition to the occupants of that home, as the existing record suggests Lozman's craft may have done, then it would seem to be much more like a mobile home (and therefore a vessel) than a firmly rooted residence. The simple truth is that we know very little about the craft's capabilities and what did or did not happen on its various trips. By focusing on the little we do know for certain about this craft (*i. e.*, its windows, doors, and the style of its rooms) in determining whether it is a vessel, the majority renders the §3 inquiry opaque and unpredictable.

Indeed, the little we do know about Lozman's craft suggests only that it was an unusual structure. A surveyor was

unable to find any comparable craft for sale in the State of Florida. App. 43. Lozman's home was neither obviously a houseboat, as the majority describes such ships, *ante*, at 122, nor clearly a floating home, *ante*, at 126–127. See App. 13, 31, 79 (sale, lease, and surveying documents describing Lozman's craft as a "houseboat"). The only clear difference that the majority identifies between these two kinds of structures is that the former are self-propelled, while the latter are not. *Ante*, at 122. But even the majority recognizes that self-propulsion has never been a prerequisite for vessel status. *Ibid.* (citing *The Robert W. Parsons*, 191 U. S., at 31); see *Norton*, 321 U. S., at 571. Consequently, it is unclear why Lozman's craft is a floating home, why all floating homes are not vessels,[4] or why Lozman's craft is not a vessel. If windows, doors, and other esthetic attributes are what take Lozman's craft out of vessel status, then the majority's test is completely malleable. If it is the craft's lack of self-propulsion, then the majority's test is unfaithful to our long-standing precedents. See *The Robert W. Parsons*, 191 U. S., at 30–31. If it is something else, then that something is not apparent from the majority's opinion.

Worse still, in straining to find that Lozman's craft was a floating home and therefore not a vessel, the majority calls into question the conclusions of numerous lower courts that have found houseboats that lacked self-propulsion to be § 3 vessels. See *ante*, at 126 (citing *Miami River Boat Yard*,

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[4] To be clear, some floating homes are obviously not vessels. For example, some floating homes are structures built upon a large inverted pyramid of logs. Brief for Seattle Floating Homes Association et al. as *Amici Curiae* 14. Cf. App. 38 (Lozman's craft was buoyed by an empty bilge space). These kinds of floating homes can measure 4,000 or 5,000 square feet, see Brief for Seattle Floating Homes Association et al. as *Amici Curiae* 4, and may have connections to land that require the aid of divers and electricians to remove, *ibid.* These large, immobile structures are not vessels and have physical attributes directly connected to their lack of navigational abilities that suggest as much. But these structures are not before us; Lozman's craft is.

Inc. v. *60' Houseboat*, 390 F. 2d 596, 597 (CA5 1968); *Sea Village Marina, LLC* v. *A 1980 Carlcraft Houseboat*, No. 09–3292, 2009 WL 3379923, *5–*6 (D NJ, Oct. 19, 2009); *Hudson Harbor 79th Street Boat Basin, Inc.* v. *Sea Casa*, 469 F. Supp. 987, 989 (SDNY 1979)). The majority incorrectly suggests that these cases applied an "'anything that floats'" test. *Ante*, at 126. These cases suggest something different. Many of these decisions in assessing the crafts before them looked carefully at these crafts' structure and function, and determined that these ships had capabilities similar to other long-established vessels, suggesting a significant maritime transportation function. See *Miami River Boat Yard*, 390 F. 2d, at 597 (likening houseboat at issue to a "barg[e]"); *Sea Village Marina*, 2009 WL 3379923, *7 ("According to the available evidence, [the houseboats in question] float and can be towed to a new marina without substantial effort . . . "); *Hudson Harbor*, 469 F. Supp., at 989 (houseboat "was capable of being used at least to the extent that a 'dumb barge' is capable of being used" and comparable to a "yach[t]"). Their holdings are consistent with older cases, see, *e. g.*, *The Ark*, 17 F. 2d 446, 447 (SD Fla. 1926), and the crafts at issue in these cases have been widely accepted as vessels by most treatises in this area, see 1 S. Friedell, Benedict on Admiralty § 164, p. 10–6, n. 2 (rev. 7th ed. 2012); 1 T. Schoenbaum, Admiralty & Maritime Law § 3–6, p. 153, n. 10 (5th ed. 2011); 1 R. Force & M. Norris, Law of Seamen § 2:12, p. 2–82 (5th ed. 2003). The majority's suggestion that rejecting the Eleventh Circuit's test necessitates jettisoning these other precedents is simply wrong. And, in its rejection, the majority works real damage to what has long been a settled area of maritime law.[5]

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[5] The majority's invocation of two state environmental and tax statutes as a reason to reject this well-established lower court precedent is particularly misguided. See *ante*, at 127. We have repeatedly emphasized that the "regulation of maritime vessels" is a "uniquely *federal* are[a] of regulation." *Chamber of Commerce of United States of America* v. *Whiting*, 563 U. S. 582, 604 (2011) (plurality opinion) (emphasis added);

III

With a more developed record, Lozman's craft might be distinguished from the houseboats in those lower court cases just discussed. For example, if Lozman's craft's previous voyages caused it serious damage, then that would strongly suggest that it lacked a maritime transportation purpose or function. There is no harm in remanding the case for further factfinding along the lines described above, cautioning the lower courts to be aware that features of Lozman's "incomparable" craft, see App. 43, may distinguish it from previous precedents. At most, such a remand would introduce a relatively short delay before finally ending the years-long battle between Lozman and the city of Riviera Beach.

On the other hand, there is great harm in stretching the facts below and overriding settled and likely correct lower court precedents to reach the unnecessary conclusion that Lozman's craft was not a vessel. Without an objective application of the § 3 standard, one that relies in a predictable fashion only on those physical characteristics of a craft that are related to maritime transport and use, parties will have no *ex ante* notion whether a particular ship is a vessel. As a wide range of *amici* have cautioned us, numerous maritime industries rely heavily on clear and predictable legal rules for determining which ships are vessels.[6] The majority's

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see also *United States* v. *Locke*, 529 U. S. 89, 99 (2000) (explaining that "the federal interest [in regulating interstate navigation] has been manifest since the beginning of our Republic and is now well established"). Our previous cases did not turn to state law in determining whether a given craft is a vessel. There are no good reasons to do so now.

[6] For example, without knowing whether a particular ship is a § 3 vessel, it is impossible for lenders to know how properly to characterize it as collateral for a financing agreement because they do not know what remedies they will have recourse to in the event of a default. Brief for National Marine Bankers Association as *Amicus Curiae* 14–15. Similarly, cities like Riviera Beach provide docking for crafts like Lozman's on the assumption that such crafts actually are "vessels," App. 13–21 (Riviera Beach's wet-slip agreement referring to Lozman's craft as a "vessel," "boat," or "houseboat"), that can be "remove[d]" upon short notice, *id.*, at

distorted application of our settled law to the facts of this case frustrates these ends. Moreover, the majority's decision reaches well beyond relatively insignificant boats like Lozman's craft, *id.*, at 79 (listing purchase price of Lozman's craft as $17,000), because it specifically disapproves of lower court decisions dealing with much larger ships, see *ante*, at 126 (questioning *Holmes* v. *Atlantic Sounding Co.*, 437 F. 3d 441 (CA5 2006) (finding a 140-foot-long and 40-foot-wide dormitory barge with 50 beds to be a § 3 vessel)).

IV

It is not clear that Lozman's craft is a § 3 vessel. It is clear, however, that we are not in a good position to make such a determination based on the limited record we possess. The appropriate response is to remand the case for further proceedings in light of the proper legal standard. See Brief for United States as *Amicus Curiae* 29–31. The Court resists this move and in its haste to christen Lozman's craft a nonvessel delivers an analysis that will confuse the lower courts and upset our longstanding admiralty precedent. I respectfully dissent.

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17 (requiring removal of the craft on three days' notice). The majority makes it impossible for these marinas to know whether the "houseboats" that fill their slips are actually vessels and what remedies they can exercise in the event of a dispute. See *id.*, at 15 ("In addition to any other remedies provided for in this Agreement, the Marina, as a provider of necessities to this *vessel*, has a maritime lien on the *vessel* and may bring a civil action *in rem*, under 46 United States Code 31342 in Federal Court, to arrest the *vessel* and enforce the lien . . . " (emphasis added)). Lozman's behavior over the years is emblematic of this problem. For example, in 2003, prior to his move to Riviera Beach, Lozman had his craft towed from one marina to another after a dispute arose with the first marina and he was threatened with eviction. *Id.*, at 76–78. The possibility that a shipowner like Lozman can depart so easily over water and go beyond the reach of a provider of necessaries like the marina in response to a legal dispute is exactly the kind of problem that the Federal Maritime Lien Act, 46 U. S. C. § 31342, was intended to address. See *Dampskibsselskabet Dannebrog* v. *Signal Oil & Gas Co. of Cal.*, 310 U. S. 268, 272–273 (1940).

Syllabus

SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* AUBURN REGIONAL MEDICAL CENTER ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11–1231. Argued December 4, 2012—Decided January 22, 2013

The reimbursement amount health care providers receive for inpatient services rendered to Medicare beneficiaries is adjusted upward for hospitals that serve a disproportionate share of low-income patients. The adjustment amount is determined in part by the percentage of a hospital's patients who are eligible for Supplemental Security Income (SSI), called the SSI fraction. Each year, the Centers for Medicare & Medicaid Services (CMS) calculates the SSI fraction for an eligible hospital and submits that number to the hospital's "fiscal intermediary," a Department of Health and Human Services (HHS) contractor. The intermediary computes the reimbursement amount due and then sends the hospital a Notice of Program Reimbursement (NPR). A provider dissatisfied with the determination has a right to appeal to the Provider Reimbursement Review Board (PRRB or Board) within 180 days of receiving the NPR. 42 U. S. C. § 1395*oo*(a)(3). By regulation, the Secretary of HHS authorized the PRRB to extend the 180-day limit, for good cause, up to three years. See 42 CFR § 405.1841(b) (2007).

The Baystate Medical Center—not a party here—timely appealed its SSI fraction calculation for each year from 1993 through 1996. The PRRB found that errors in CMS's methodology resulted in a systematic undercalculation of the disproportionate share adjustment and corresponding underpayments to providers. In March 2006, the Board's *Baystate* decision was made public. Within 180 days, respondent hospitals filed a complaint with the Board, challenging their adjustments for 1987 through 1994. Acknowledging that their challenges were more than a decade out of time, they urged that equitable tolling of the limitations period was in order due to CMS's failure to tell them about the computation error. The PRRB held that it lacked jurisdiction, reasoning that it had no equitable powers save those legislation or regulation might confer. On judicial review, the District Court dismissed the hospitals' claims. The D. C. Circuit reversed. The presumption that statutory limitations periods are generally subject to equitable tolling, the court concluded, applied to the 180-day time limit because nothing in § 1395*oo*(a)(3) indicated that Congress intended to disallow such tolling.

Syllabus

Held:

1. The 180-day limitation in § 1395*oo*(a)(3) is not "jurisdictional." Pp. 153–156.

(a) Unless Congress has "clearly state[d]" that a statutory limitation is jurisdictional, the restriction should be treated "as nonjurisdictional." *Arbaugh* v. *Y & H Corp.*, 546 U. S. 500, 515–516. "[C]ontext, including this Court's interpretations of similar provisions in many years past," is probative of whether Congress intended a particular provision to rank as jurisdictional. *Reed Elsevier, Inc.* v. *Muchnick*, 559 U. S. 154, 168. If § 1395*oo*(a)(3) were jurisdictional, the 180-day time limit could not be enlarged by agency or court.

Section 1395*oo*(a)(3) hardly reveals a design to preclude any regulatory extension. The provision instructs that a provider "may obtain a hearing" by filing "a request . . . within 180 days after notice of the intermediary's final determination." It "does not speak in jurisdictional terms." *Zipes* v. *Trans World Airlines, Inc.*, 455 U. S. 385, 394. This Court has repeatedly held that filing deadlines ordinarily are not jurisdictional; indeed, they have been described as "quintessential claim-processing rules." *Henderson* v. *Shinseki*, 562 U. S. 428, 435. Pp. 153–155.

(b) Court-appointed *amicus* urges that § 1395*oo*(a)(3) should be classified as a jurisdictional requirement based on its proximity to §§ 1395*oo*(a)(1) and (a)(2), both jurisdictional requirements, *amicus* asserts. But a requirement that would otherwise be nonjurisdictional does not become jurisdictional simply because it is in a section of a statute that also contains jurisdictional provisions. *Gonzalez* v. *Thaler*, 565 U. S. 134, 146–147. *Amicus* also urges that the Medicare Act's express grant of authority for the Secretary to extend the time for beneficiary appeals implies the absence of such leeway for § 1395*oo*(a)(3)'s provider appeals. In support, *amicus* relies on the general rule that Congress' use of "certain language in one part of the statute and different language in another" can indicate that "different meanings were intended." *Sosa* v. *Alvarez-Machain*, 542 U. S. 692, 711, n. 9. But that interpretive guide, like other canons of construction, is "no more than [a] rul[e] of thumb" that can tip the scales when a statute could be read in multiple ways. *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 253. Here, § 1395*oo*(a)'s limitation is most sensibly characterized as nonjurisdictional. Pp. 155–156.

2. The Secretary's regulation is a permissible interpretation of § 1395*oo*(a)(3). Pp. 156–161.

(a) Congress vested in the Secretary large rulemaking authority to administer Medicare. A court lacks authority to undermine the Secretary's regime unless her regulation is "arbitrary, capricious, or mani-

festly contrary to the statute." *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 844. Here, the regulation survives inspection under that deferential standard. The Secretary brought to bear practical experience in superintending the huge program generally, and the PRRB in particular, in maintaining a three-year outer limit for intermediary determination challenges. A court must uphold her judgment as long as it is a permissible construction of the statute, even if the court would have interpreted the statute differently absent agency regulation. Pp. 156–158.

(b) A presumption of equitable tolling generally applies to suits against the United States, *Irwin* v. *Department of Veterans Affairs*, 498 U. S. 89, 95–96, but application of this presumption is not in order for § 1395*oo*(a)(3). This Court has never applied *Irwin*'s presumption to an agency's internal appeal deadline. The presumption was adopted in part on the premise that "[s]uch a principle is likely to be a realistic assessment of legislative intent." *Id.*, at 95. That premise is inapt in the context of providers' administrative appeals under the Medicare Act. For nearly 40 years the Secretary has prohibited the Board from extending the 180-day deadline, except as provided by regulation. In the six times § 1395*oo* has been amended since 1974, Congress has left untouched the 180-day provision and the Secretary's rulemaking authority. Furthermore, the statutory scheme, which applies to sophisticated institutional providers, is not designed to be "'unusually protective' of claimants." *Bowen* v. *City of New York*, 476 U. S. 467, 480. Nor is the scheme one "in which laymen, unassisted by trained lawyers, initiate the process." *Zipes*, 455 U. S., at 397.

The hospitals ultimately argue that the Secretary's regulations fail to adhere to "fundamentals of fair play." *FCC* v. *Pottsville Broadcasting Co.*, 309 U. S. 134, 143. They point to 42 CFR § 405.1885(b)(3), which permits reopening of an intermediary's reimbursement determination "at any time" if the determination was procured by fraud or fault of the provider. But this Court has explained that giving intermediaries more time to discover overpayments than providers have to discover underpayments may be justified by the "administrative realities" of the system: A few dozen fiscal intermediaries are charged with issuing tens of thousands of NPRs, while each provider can concentrate on a single NPR, its own. *Your Home Visiting Nurse Services, Inc.* v. *Shalala*, 525 U. S. 449, 455, 456. Pp. 158–161.

642 F. 3d 1145, reversed and remanded.

GINSBURG, J., delivered the opinion for a unanimous Court. SOTOMAYOR, J., filed a concurring opinion, *post*, p. 161.

Deputy Solicitor General Kneedler argued the cause for petitioner. With him on the briefs were *Solicitor General Verrilli*, *Acting Assistant Attorney General Delery*, *Melissa Arbus Sherry*, *Mark B. Stern*, *Stephanie R. Marcus*, *William B. Schultz*, *Kenneth Y. Choe*, *Janice L. Hoffman*, *Lawrence J. Harder*, and *Gerard Keating.*

John F. Manning, by invitation of the Court, 567 U. S. 955, argued the cause as *amicus curiae* urging reversal. With him on the briefs was *Kevin B. Huff.*

Robert L. Roth argued the cause for respondents. With him on the brief were *John R. Hellow*, *Patricia A. Millett*, *Ruthanne M. Deutsch*, and *Hyland Hunt.**

JUSTICE GINSBURG delivered the opinion of the Court.

This case concerns the time within which health care providers may file an administrative appeal from the initial determination of the reimbursement due them for inpatient services rendered to Medicare beneficiaries. Government contractors, called fiscal intermediaries, receive cost reports annually from care providers and notify them of the reimbursement amount for which they qualify. A provider dissatisfied with the fiscal intermediary's determination may appeal to an administrative body named the Provider Reimbursement Review Board (PRRB or Board). The governing statute, § 602(h)(l)(D), 97 Stat. 165, 42 U. S. C. § 1395*oo*(a)(3), sets a 180-day limit for filing appeals from the fiscal intermediary to the PRRB. By a regulation promulgated in 1974, the Secretary of the Department of Health and Human

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*Briefs of *amici curiae* urging affirmance were filed for the American Hospital Association by *Catherine E. Stetson* and *Dominic F. Perella*; for Quality Reimbursement Services, Inc., by *Jeffrey A. Lovitky*; and for Southwest Consulting Associates, LP, by *John M. Faust.*

Briefs of *amici curiae* were filed for the Benjamin N. Cardozo School of Law Tax Clinic by *Carlton M. Smith*; and for Scott Dodson by *Mr. Dodson, pro se.*

Services (HHS) authorized the Board to extend the 180-day limitation, for good cause, up to three years.[1]

The providers in this case are hospitals who appealed to the PRRB more than ten years after expiration of the 180-day statutory deadline. They assert that the Secretary's failure to disclose information that made the fiscal intermediary's reimbursement calculation incorrect prevented them from earlier appealing to the Board. Three positions have been briefed and argued regarding the time for providers' appeals to the PRRB. First, a Court-appointed *amicus curiae* has urged that the 180-day limitation is "jurisdictional," and therefore cannot be enlarged at all by agency or court. Second, the Government maintains that the Secretary has the prerogative to set an outer limit of three years for appeals to the Board. And third, the hospitals argue that the doctrine of equitable tolling applies, stopping the 180-day clock during the time the Secretary concealed the information that made the fiscal intermediary's reimbursement determinations incorrect.

We hold that the statutory 180-day limitation is not "jurisdictional," and that the Secretary reasonably construed the statute to permit a regulation extending the time for a provider's appeal to the PRRB to three years. We further hold that the presumption in favor of equitable tolling does not apply to administrative appeals of the kind here at issue.

I

The Medicare program covers certain inpatient services that hospitals provide to Medicare beneficiaries. Providers are reimbursed at a fixed amount per patient, regardless of the actual operating costs they incur in rendering these services. But the total reimbursement amount is adjusted up-

[1] The agency was called the Department of Health, Education, and Welfare until 1979, but for simplicity's sake we refer to it as HHS throughout this opinion.

ward for hospitals that serve a disproportionate share of low-income patients. This adjustment is made because hospitals with an unusually high percentage of low-income patients generally have higher per-patient costs; such hospitals, Congress therefore found, should receive higher reimbursement rates. See H. R. Rep. No. 99–241, pt. 1, p. 16 (1985). The amount of the disproportionate share adjustment is determined in part by the percentage of the patients served by the hospital who are eligible for Supplemental Security Income (SSI) payments, a percentage commonly called the SSI fraction. 42 U. S. C. § 1395ww(d) (2006 ed. and Supp. V).

At the end of each year, providers participating in Medicare submit cost reports to contractors acting on behalf of HHS known as fiscal intermediaries. Also at year end, the Centers for Medicare & Medicaid Services (CMS) calculates the SSI fraction for each eligible hospital and submits that number to the intermediary for that hospital. Using these numbers to determine the total payment due, the intermediary issues a Notice of Program Reimbursement (NPR) informing the provider how much it will be paid for the year.

If a provider is dissatisfied with the intermediary's reimbursement determination, the statute gives it the right to file a request for a hearing before the PRRB within 180 days of receiving the NPR. § 1395*oo*(a)(3) (2006 ed.) In 1974, the Secretary promulgated a regulation, after notice and comment rulemaking, permitting the Board to extend the 180-day time limit upon a showing of good cause; the regulation further provides that "no such extension shall be granted by the Board if such request is filed more than 3 years after the date the notice of the intermediary's determination is mailed to the provider." 39 Fed. Reg. 34517 (1974) (codified in 42 CFR § 405.1841(b) (2007)).[2]

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[2] In 2008, after this case commenced, the Secretary replaced the 1974 regulation with a new prescription limiting "good cause" to "extraordinary circumstances beyond [the provider's] control (such as a natural or other catastrophe, fire, or strike)." 73 Fed. Reg. 30250 (2008) (codified in 42 CFR § 405.1836(b) (2012)). The new regulation retains the strict three-

For many years, CMS released only the results of its SSI fraction calculations and not the underlying data.[3] The Baystate Medical Center—a hospital not party to this case—timely appealed the calculation of its SSI fraction for each year from 1993 through 1996. Eventually, the PRRB determined that CMS had omitted several categories of SSI data from its calculations and was using a flawed process to determine the number of low-income beneficiaries treated by hospitals. These errors caused a systematic undercalculation of the disproportionate share adjustment, resulting in underpayments to the providers. *Baystate Medical Center* v. *Leavitt*, 545 F. Supp. 2d 20, 26–30 (DC 2008); see *id.*, at 57–58 (concluding that CMS failed to use the "best available data").

The methodological errors revealed by the Board's *Baystate* decision would have yielded similarly reduced payments to all providers for which CMS had calculated an SSI fraction. In March 2006, the Board's decision in the *Baystate* case was made public. Within 180 days, the hospitals in this case filed a complaint with the Board seeking to challenge their disproportionate share adjustments for the years 1987 through 1994. The hospitals acknowledged that their challenges, unlike Baystate's timely contest, were more than a decade out of time. But equitable tolling of the limitations period was in order, they urged, due to CMS's failure to inform the hospitals that their SSI fractions had been based on faulty data.

The PRRB held that it lacked jurisdiction over the hospitals' complaint, reasoning that it had no equitable powers save those legislation or regulation might confer, and that

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year cutoff for all claims. § 405.1836(c)(2). The parties agree that this case is governed by the 1974 regulation, and our opinion today addresses only that regulation.

[3] In § 951 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, 117 Stat. 2427, Congress required the Secretary to furnish hospitals with the data necessary to compute their own disproportionate share adjustment. Pursuant to this congressional mandate, the Secretary has adopted procedures for turning over the SSI data to hospitals upon request. 70 Fed. Reg. 47438 (2005).

the Secretary's regulation permitted it to excuse late appeals only for good cause, with three years as the outer limit. On judicial review, the District Court dismissed the hospitals' claims for relief, holding that nothing in the statute suggests that "Congress intended to authorize equitable tolling." 686 F. Supp. 2d 55, 70 (DC 2010).

The Court of Appeals reversed. 642 F. 3d 1145 (CADC 2011). It relied on the presumption that statutory limitations periods are generally subject to equitable tolling and reasoned that "'the same rebuttable presumption of equitable tolling applicable to suits against private defendants should also apply to suits against the United States.'" *Id.*, at 1148 (quoting *Irwin* v. *Department of Veterans Affairs*, 498 U. S. 89, 95–96 (1990)). The presumption applies to the 180-day time limit for provider appeals from reimbursement determinations, the Court of Appeals held, finding nothing in the statutory provision for PRRB review indicating that Congress intended to disallow equitable tolling. 642 F. 3d, at 1149–1151.

We granted the Secretary's petition for certiorari, 567 U. S. 933 (2012), to resolve a conflict among the Courts of Appeals over whether the 180-day time limit in 42 U. S. C. § 1395*oo*(a)(3) constricts the Board's jurisdiction. Compare 642 F. 3d 1145 (case below); *Western Medical Enterprises, Inc.* v. *Heckler*, 783 F. 2d 1376, 1379–1380 (CA9 1986) (180-day limit is not jurisdictional and the Secretary may extend it for good cause), with *Alacare Home Health Servs., Inc.* v. *Sullivan*, 891 F. 2d 850, 855–856 (CA11 1990) (statute of limitations is jurisdictional and the Secretary lacked authority to promulgate good-cause exception); *St. Joseph's Hospital of Kansas City* v. *Heckler*, 786 F. 2d 848, 852–853 (CA8 1986) (same). Beyond the jurisdictional inquiry,[4] the Secre-

[4] Because no party takes the view that the statutory 180-day time limit is jurisdictional, we appointed John F. Manning to brief and argue this position as *amicus curiae*. 567 U. S. 955 (2012). *Amicus* Manning has

tary asked us to determine whether the Court of Appeals erred in concluding that equitable tolling applies to providers' Medicare reimbursement appeals to the PRRB, notwithstanding the Secretary's regulation barring such appeals after three years.

II

A

Characterizing a rule as jurisdictional renders it unique in our adversarial system. Objections to a tribunal's jurisdiction can be raised at any time, even by a party that once conceded the tribunal's subject-matter jurisdiction over the controversy. Tardy jurisdictional objections can therefore result in a waste of adjudicatory resources and can disturbingly disarm litigants. See *Henderson* v. *Shinseki*, 562 U. S. 428, 434 (2011); *Arbaugh* v. *Y & H Corp.*, 546 U. S. 500, 514 (2006). With these untoward consequences in mind, "we have tried in recent cases to bring some discipline to the use" of the term "jurisdiction." *Henderson*, 562 U. S., at 435; see also *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 90 (1998) (jurisdiction has been a "word of many, too many, meanings" (internal quotation marks omitted)).

To ward off profligate use of the term "jurisdiction," we have adopted a "readily administrable bright line" for determining whether to classify a statutory limitation as jurisdictional. *Arbaugh*, 546 U. S., at 516. We inquire whether Congress has "clearly state[d]" that the rule is jurisdictional; absent such a clear statement, we have cautioned, "courts should treat the restriction as nonjurisdictional in character." *Id.*, at 515–516; see also *Gonzalez* v. *Thaler*, 565 U. S. 134, 137 (2012); *Henderson*, 562 U. S., at 435–436. This is not to say that Congress must incant magic words in order to speak clearly. We consider "context, including this Court's

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ably discharged his assigned responsibilities and the Court thanks him for his well-stated arguments.

interpretations of similar provisions in many years past," as probative of whether Congress intended a particular provision to rank as jurisdictional. *Reed Elsevier, Inc.* v. *Muchnick*, 559 U. S. 154, 168 (2010); see also *John R. Sand & Gravel Co.* v. *United States*, 552 U. S. 130, 133–134 (2008).

We reiterate what it would mean were we to type the governing statute, 42 U. S. C. § 1395*oo*(a)(3), "jurisdictional." Under no circumstance could providers engage PRRB review more than 180 days after notice of the fiscal intermediary's final determination. Not only could there be no equitable tolling. The Secretary's regulation providing for a good-cause extension, see *supra*, at 150, would fall as well.

The language Congress used hardly reveals a design to preclude any regulatory extension. Section 1395*oo*(a)(3) instructs that a provider of services "may obtain a hearing" by the Board regarding its reimbursement amount if "such provider files a request for a hearing within 180 days after notice of the intermediary's final determination." This provision "does not speak in jurisdictional terms." *Zipes* v. *Trans World Airlines, Inc.*, 455 U. S. 385, 394 (1982). Indeed, it is less "jurisdictional" in tone than the provision we held to be nonjurisdictional in *Henderson*. There, the statute provided that a veteran seeking Veterans Court review of the Department of Veterans Affairs' determination of disability benefits "*shall* file a notice of appeal . . . within 120 days." 562 U. S., at 438 (quoting 38 U. S. C. § 7266(a); emphasis added). Section 1395*oo*(a)(3), by contrast, contains neither the mandatory word "shall" nor the appellation "notice of appeal," words with jurisdictional import in the context of 28 U. S. C. § 2107's limitations on the time for appeal from a district court to a court of appeals. See *Bowles* v. *Russell*, 551 U. S. 205, 214 (2007).

Key to our decision, we have repeatedly held that filing deadlines ordinarily are not jurisdictional; indeed, we have described them as "quintessential claim-processing rules." *Henderson*, 562 U. S., at 435; see also *Scarborough* v. *Prin-*

cipi, 541 U. S. 401, 414 (2004) (filing deadline for fee applications under Equal Access to Justice Act); *Kontrick* v. *Ryan*, 540 U. S. 443, 454 (2004) (filing deadlines for objecting to debtor's discharge in bankruptcy); *Honda* v. *Clark*, 386 U. S. 484, 498 (1967) (filing deadline for claims under the Trading with the Enemy Act). This case is scarcely the exceptional one in which a "century's worth of precedent and practice in American courts" rank a time limit as jurisdictional. *Bowles*, 551 U. S., at 209, n. 2; cf. *Kontrick*, 540 U. S., at 454 (a time limitation may be emphatic, yet not jurisdictional).

B

Amicus urges that the three requirements in § 1395*oo*(a) are specifications that together define the limits of the PRRB's jurisdiction. Subsection (a)(1) specifies the claims providers may bring to the Board, and subsection (a)(2) sets forth an amount-in-controversy requirement. These are jurisdictional requirements, *amicus* asserts, so we should read the third specification, subsection (a)(3)'s 180-day limitation, as also setting a jurisdictional requirement.

Last Term, we rejected a similar proximity-based argument. A requirement we would otherwise classify as nonjurisdictional, we held, does not become jurisdictional simply because it is placed in a section of a statute that also contains jurisdictional provisions. *Gonzalez*, 565 U. S., at 146–147; see *Weinberger* v. *Salfi*, 422 U. S. 749, 763–764 (1975) (statutory provision at issue contained three requirements for judicial review, only one of which was jurisdictional).

Amicus also argues that the 180-day time limit for provider appeals to the PRRB should be viewed as jurisdictional because Congress could have expressly made the provision nonjurisdictional, and indeed did so for other time limits in the Medicare Act. *Amicus* notes particularly that when Medicare beneficiaries request the Secretary to reconsider a benefits determination, the statute gives them a time limit of 180 days or "such additional time as the Secretary may allow." 42 U. S. C. § 1395ff(b)(1)(D)(i); see also

§ 1395ff(b)(1)(D)(ii) (permitting Medicare beneficiary to request a hearing by the Secretary within "time limits" the Secretary "shall establish in regulations"). We have recognized, as a general rule, that Congress' use of "certain language in one part of the statute and different language in another" can indicate that "different meanings were intended." *Sosa* v. *Alvarez-Machain*, 542 U. S. 692, 711, n. 9 (2004) (internal quotation marks omitted). *Amicus* notes this general rule in urging that an express grant of authority for the Secretary to extend the time for beneficiary appeals implies the absence of such leeway for provider appeals.

But the interpretive guide just identified, like other canons of construction, is "no more than [a] rul[e] of thumb" that can tip the scales when a statute could be read in multiple ways. *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 253 (1992). For the reasons earlier stated, see *supra*, at 153–155, we are persuaded that the time limitation in § 1395*oo*(a) is most sensibly characterized as a nonjurisdictional prescription. The limitation therefore does not bar the modest extension contained in the Secretary's regulation.

III

We turn now to the question whether § 1395*oo*(a)(3)'s 180-day time limit for a provider to appeal to the PRRB is subject to equitable tolling.

A

Congress vested in the Secretary large rulemaking authority to administer the Medicare program. The PRRB may adopt rules and procedures only if "not inconsistent" with the Medicare Act or "regulations of the Secretary." 42 U. S. C. § 1395*oo*(e). Concerning the 180-day period for an appeal to the Board from an intermediary's reimbursement determination, the Secretary's regulation implementing § 1395*oo*, adopted after notice and comment, speaks in no uncertain terms:

> "A request for a Board hearing filed after [the 180-day time limit] shall be dismissed by the Board, except that for good cause shown, the time limit may be extended. However, no such extension shall be granted by the Board if such request is filed more than 3 years after the date the notice of the intermediary's determination is mailed to the provider." 42 CFR § 405.1841(b) (2007).

The Secretary allowed only a distinctly limited extension of time to appeal to the PRRB, cognizant that "the Board is burdened by an immense caseload," and that "procedural rules requiring timely filings are indispensable devices for keeping the machinery of the reimbursement appeals process running smoothly." *High Country Home Health, Inc.* v. *Thompson*, 359 F. 3d 1307, 1310 (CA10 2004). Imposing equitable tolling to permit appeals barred by the Secretary's regulation would essentially gut the Secretary's requirement that an appeal to the Board "shall be dismissed" if filed more than 180 days after the NPR, unless the provider shows "good cause" and requests an extension *no later than* three years after the NPR. A court lacks authority to undermine the regime established by the Secretary unless her regulation is "arbitrary, capricious, or manifestly contrary to the statute." *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 844 (1984).

The Secretary's regulation, we are satisfied, survives inspection under that deferential standard. As HHS has explained, "[i]t is in the interest of providers and the program that, at some point, intermediary determinations and the resulting amount of program payment due the provider or the program become no longer open to correction." CMS, Medicare: Provider Reimbursement Manual, pt. 1, ch. 29, § 2930, p. 29–73 (rev. no. 372, 2011); cf. *Taylor* v. *Freeland & Kronz*, 503 U. S. 638, 644 (1992) ("Deadlines may lead to unwelcome results, but they prompt parties to act and produce finality."). The Secretary brought to bear practical experience in superintending the huge program generally, and the

PRRB in particular, in maintaining three years as the outer limit. A court must uphold the Secretary's judgment as long as it is a permissible construction of the statute, even if it differs from how the court would have interpreted the statute in the absence of an agency regulation. *National Cable & Telecommunications Assn.* v. *Brand X Internet Services*, 545 U. S. 967, 980 (2005); see also *Chevron*, 467 U. S., at 843, n. 11.

B

Rejecting the Secretary's position, the Court of Appeals relied principally on this Court's decision in *Irwin*, 498 U. S., at 95–96. *Irwin* concerned the then 30-day time period for filing suit against a federal agency under Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e–16(c) (1988 ed.). We held in *Irwin* that "the same rebuttable presumption of equitable tolling applicable to suits against private defendants should also apply to suits against the United States." 498 U. S., at 95–96. *Irwin* itself, and equitable-tolling cases we have considered both pre- and post-*Irwin*, have generally involved time limits for filing suit in federal court. See, *e. g.*, *Holland* v. *Florida*, 560 U. S. 631 (2010) (one-year limitation for filing application for writ of habeas corpus); *Rotella* v. *Wood*, 528 U. S. 549 (2000) (four-year period for filing civil Racketeer Influenced and Corrupt Organizations Act suit); *United States* v. *Beggerly*, 524 U. S. 38 (1998) (12-year period to bring suit under Quiet Title Act); *Lampf, Pleva, Lipkind, Prupis & Petigrow* v. *Gilbertson*, 501 U. S. 350 (1991) (one- and three-year periods for commencing civil action under § 10(b) of the Securities Exchange Act of 1934); *Honda* v. *Clark*, 386 U. S. 484 (1967) (60-day period for filing suit under Trading with the Enemy Act); *Kendall* v. *United States*, 107 U. S. 123 (1883) (six-year period for filing suit in Court of Claims). Courts in those cases rendered in the first instance the decision whether equity required tolling.

This case is of a different order. We have never applied the *Irwin* presumption to an agency's internal appeal dead-

line, here the time a provider has to appeal an intermediary's reimbursement determination to the PRRB. Cf. *United States* v. *Brockamp*, 519 U. S. 347, 350 (1997) (assuming, *arguendo*, that *Irwin* presumption applied to time limit for filing an administrative claim for a tax refund, but concluding based on statutory text, structure, and purpose that there was "good reason to believe that Congress did *not* want the equitable tolling doctrine to apply").

The presumption of equitable tolling was adopted in part on the premise that "[s]uch a principle is likely to be a realistic assessment of legislative intent." *Irwin*, 498 U. S., at 95. But that premise is inapt in the context of providers' administrative appeals under the Medicare Act. The Act, until 1972, provided no avenue for providers to obtain administrative or judicial review. When Congress first directed the Secretary to establish the PRRB, Congress simultaneously imposed the 180-day deadline, with no statutory exceptions. For nearly 40 years the Secretary has prohibited the Board from extending that deadline, except as provided by regulation. And until the D. C. Circuit's decision in this case, no court had ever read equitable tolling into § 1395*oo*(a)(3) or the Secretary's implementation of that provision. Congress amended § 1395*oo* six times since 1974, each time leaving untouched the 180-day administrative appeal provision and the Secretary's rulemaking authority. At no time did Congress express disapproval of the three-year outer time limit set by the Secretary for an extension upon a showing of good cause. See *Commodity Futures Trading Comm'n* v. *Schor*, 478 U. S. 833, 846 (1986) ("[W]hen Congress revisits a statute giving rise to a longstanding administrative interpretation without pertinent change, the congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress." (internal quotation marks omitted)).

We note, furthermore, that unlike the remedial statutes at issue in many of this Court's equitable-tolling decisions, see

Irwin, 498 U. S., at 91; *Bowen* v. *City of New York*, 476 U. S. 467, 480 (1986); *Zipes*, 455 U. S., at 398, the statutory scheme before us is not designed to be "'unusually protective' of claimants," *Bowen*, 476 U. S., at 480. Nor is it one "in which laymen, unassisted by trained lawyers, initiate the process." *Zipes*, 455 U. S., at 397 (internal quotation marks omitted). The Medicare payment system in question applies to "sophisticated" institutional providers assisted by legal counsel, and "generally capable of identifying an underpayment in [their] own NPR within the 180-day time period specified in 42 U. S. C. § 1395*oo*(a)(3)." *Your Home Visiting Nurse Services, Inc.* v. *Shalala*, 525 U. S. 449, 456 (1999). As repeat players who elect to participate in the Medicare system, providers can hardly claim lack of notice of the Secretary's regulations.

The hospitals ultimately argue that the Secretary's regulations fail to adhere to the "fundamentals of fair play." *FCC* v. *Pottsville Broadcasting Co.*, 309 U. S. 134, 143 (1940). They point, particularly, to 42 CFR § 405.1885(b)(3) (2012), which permits reopening of an intermediary's reimbursement determination "at any time if it is established that such determination . . . was procured by fraud or similar fault of any party to the determination."[5]

We considered a similar alleged inequity in *Your Home* and explained that it was justified by the "administrative realities" of the provider reimbursement appeal system. 525 U. S., at 455. There are only a few dozen fiscal intermediaries and they are charged with issuing tens of thousands of NPRs, while each provider can concentrate on a single NPR, its own. *Id.*, at 456. The Secretary, *Your Home* concluded, could reasonably believe that this asymmetry justifies giving the intermediaries more time to discover overpayments than the providers have to discover underpay-

[5] Because neither the Secretary nor the intermediary counts as a party to the intermediary's determination, 42 CFR § 405.1805, providers alone are subject to this exception to the time limitation.

ments. Moreover, the fraud exception allowing indefinite reopening does apply to an intermediary if it "procured" a Board decision by "fraud or similar fault." Although an intermediary is not a party to its own determination, it does rank as a party in proceedings before the Board. 42 CFR § 405.1843(a).[6]

* * *

We hold, in sum, that the 180-day statutory deadline for administrative appeals to the PRRB, contained in 42 U. S. C. § 1395*oo*(a)(3), is not "jurisdictional." Therefore the Secretary lawfully exercised her rulemaking authority in providing for a three-year "good cause" extension. We further hold that the equitable-tolling presumption our *Irwin* decision approved for suits brought in court does not similarly apply to administrative appeals of the kind here considered, and that the Secretary's regulation, 42 CFR § 405.1841(b), is a permissible interpretation of the statute.

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

It is so ordered.

JUSTICE SOTOMAYOR, concurring.

The Court holds that the presumption in favor of equitable tolling that we adopted in *Irwin* v. *Department of Veterans Affairs*, 498 U. S. 89, 95–96 (1990), does not apply to 42 U. S. C. § 1395*oo*(a)(3)'s nonjurisdictional 180-day deadline for health care providers to file administrative appeals with the Provider Reimbursement Review Board (PRRB), and that

[6] The fraud exception apart, reopening time is limited to three years. § 405.1885(a). Within that time, reopening may be sought by the intermediary, the Board, the Secretary, or the provider. Thus an intermediary determination or Board decision could not be reopened if, outside the three-year window, the Secretary discovered errors in calculating the SSI fraction that resulted in overpayments to providers.

the Secretary's regulation limiting "good cause" extensions of that deadline to three years is a permissible interpretation of the statute. I agree with those holdings and join the Court's opinion in full. I write separately to note that the Court's decision in this case does not establish that equitable tolling principles are irrelevant to internal administrative deadlines in all, or even most, contexts.

The Court is correct that our equitable tolling cases have typically involved deadlines to bring suit in federal court. *Ante*, at 158. But we have never suggested that the presumption in favor of equitable tolling is generally inapplicable to administrative deadlines. Cf. *Henderson* v. *Shinseki*, 562 U. S. 428, 442, n. 4 (2011) (noting that the Government did not dispute whether the statutory filing deadline in the Article I Veterans Court was subject to equitable tolling if the deadline was nonjurisdictional); *United States* v. *Brockamp*, 519 U. S. 347, 350–353 (1997) (assuming without deciding that the *Irwin* presumption applied to administrative tax refund claims but finding based on statutory text, structure, and the underlying subject matter that tolling was unavailable); see also *ante*, at 159 (discussing *Brockamp*). And we have previously applied the *Irwin* presumption outside the context of filing deadlines in Article III courts. See *Young* v. *United States*, 535 U. S. 43, 49–53 (2002) (applying the presumption to a limitations period in bankruptcy proceedings); cf. *Zipes* v. *Trans World Airlines, Inc.*, 455 U. S. 385, 392–398 (1982) (holding that the statutory time limit for filing charges with the Equal Employment Opportunity Commission was "not a jurisdictional prerequisite to suit in federal court, but a requirement that, like a statute of limitations, is subject to waiver, estoppel, and equitable tolling").

In administrative settings other than the one presented here, I believe the "background principle" that limitations periods "are customarily subject to equitable tolling," *Young*, 535 U. S., at 49–50 (internal quotation marks omitted), may limit an agency's discretion to make filing deadlines abso-

lute. The Court quite properly observes that the question whether equitable tolling is available turns on congressional intent. See *ante*, at 159. "[A] realistic assessment" of that intent, *Irwin*, 498 U. S., at 95, may vary by context.

In this case, given the nature of the statutory scheme, which "applies to 'sophisticated' institutional providers" who are "repeat players" in the Medicare system, and the statute's history, I agree that it would distort congressional intent to presume that the PRRB's administrative deadline should be subject to equitable tolling. *Ante*, at 159–160 (quoting *Your Home Visiting Nurse Services, Inc.* v. *Shalala*, 525 U. S. 449, 456 (1999)). By contrast, with respect to remedial statutes designed to protect the rights of unsophisticated claimants, see *ante,* at 159–160, agencies (and reviewing courts) may best honor congressional intent by presuming that statutory deadlines for administrative appeals are subject to equitable tolling, just as courts presume comparable judicial deadlines under such statutes may be tolled. Because claimants must generally pursue administrative relief before seeking judicial review, see *Woodford* v. *Ngo*, 548 U. S. 81, 88–91 (2006), a contrary approach could have odd practical consequences and would attribute a strange intent to Congress: to protect a claimant's ability to seek judicial review of an agency's decision by making equitable tolling available, while leaving to the agency's discretion whether the same claimant may invoke equitable tolling in order to seek an administrative remedy in the first place.

Even in cases where the governing statute clearly delegates to an agency the discretion to adopt rules that limit the scope of equitable exceptions to administrative deadlines, I believe "cases may arise where the equities in favor of tolling the limitations period are 'so great that deference to the agency's judgment is inappropriate.'" *Bowen* v. *City of New York*, 476 U. S. 467, 480 (1986) (quoting *Mathews* v. *Eldridge*, 424 U. S. 319, 330 (1976)). In particular, efforts by an agency to enforce tight filing deadlines in cases where

there are credible allegations that filing delay was due to the agency's own misfeasance may not survive deferential review. While equitable tolling extends to circumstances outside both parties' control, the related doctrines of equitable estoppel and fraudulent concealment may bar a defendant from enforcing a statute of limitation when its own deception prevented a reasonably diligent plaintiff from bringing a timely claim. See *United States* v. *Beggerly*, 524 U. S. 38, 49–50 (1998) (Stevens, J., concurring) (noting that these doctrines are distinct); see generally 2 C. Corman, Limitation of Actions §§ 9.1, 9.7 (1991) (describing the doctrines). In *Bowen*, we applied the basic principle underlying these doctrines to an agency's conduct, as we concluded that a 60-day deadline to seek judicial review of the administrative denial of disability benefits should be tolled because the Social Security Administration's "'secretive conduct prevent[ed] plaintiffs from knowing of a violation of rights.'" 476 U. S., at 481 (quoting *New York* v. *Heckler*, 742 F. 2d 729, 738 (CA2 1984)).

While the providers in this case allege that the agency's failure to disclose information about how it calculated the Supplemental Security Income fraction prevented them from bringing timely challenges to reimbursement determinations, I am satisfied that the Secretary's 3-year good-cause exception is a reasonable accommodation of the competing interests in administrative efficiency and fairness. We would face a different case if the Secretary's regulation did not recognize an exception for good cause or defined good cause so narrowly as to exclude cases of fraudulent concealment and equitable estoppel. See *ante*, at 150, n. 2 (explaining that the Secretary's amended regulation limiting the scope of "'good cause,'" 73 Fed. Reg. 30250 (2008) (codified in 42 CFR § 405.1836(b) (2012)), is not before us).

With these observations, I join the Court's opinion in full.

Syllabus

CHAFIN *v.* CHAFIN

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

No. 11–1347. Argued December 5, 2012—Decided February 19, 2013

The Hague Convention on the Civil Aspects of International Child Abduction requires the judicial or administrative authority of a Contracting State to order a child returned to her country of habitual residence if the authority finds that the child has been wrongfully removed to or retained in the Contracting State. The International Child Abduction Remedies Act (ICARA) implements the Convention in the United States, granting federal and state courts concurrent jurisdiction over Convention actions and directing those courts to decide cases in accordance with the Convention. ICARA also requires defendants to pay various expenses incurred by plaintiffs associated with the return of children.

Petitioner Mr. Chafin, a United States citizen and member of the military, married respondent Ms. Chafin, a United Kingdom citizen, in Germany, where they later had a daughter, E. C. When Mr. Chafin was deployed to Afghanistan, Ms. Chafin took E. C. to Scotland. Mr. Chafin was later transferred to Huntsville, Alabama, and Ms. Chafin eventually traveled there with E. C. Soon after Ms. Chafin's arrival, Mr. Chafin filed for divorce and child custody in Alabama. Ms. Chafin was subsequently deported, but E. C. remained in Alabama with Mr. Chafin. Several months later, Ms. Chafin filed a petition under the Convention and ICARA, seeking E. C.'s return to Scotland. The District Court concluded that E. C.'s country of habitual residence was Scotland and granted the petition for return. Ms. Chafin immediately departed for Scotland with E. C. Ms. Chafin then initiated custody proceedings in Scotland and was granted interim custody and a preliminary injunction prohibiting Mr. Chafin from removing E. C. from Scotland. Mr. Chafin appealed the District Court's order, but the Eleventh Circuit dismissed the appeal as moot, on the ground that once a child has been returned to a foreign country, a U. S. court becomes powerless to grant relief. On remand, the District Court ordered Mr. Chafin to reimburse Ms. Chafin for court costs, attorney's fees, and travel expenses.

Held: The return of a child to a foreign country pursuant to a Convention return order does not render an appeal of that order moot. Pp. 171–180.

Syllabus

(a) Article III restricts the power of federal courts to "Cases" and "Controversies," and this "requirement subsists through all stages of [the] proceedings," *Lewis* v. *Continental Bank Corp.*, 494 U. S. 472, 477. No case or controversy exists, and a suit becomes moot, "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome," *Already, LLC* v. *Nike, Inc.*, *ante*, at 91 (internal quotation marks omitted). But a case "becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party," *Knox* v. *Service Employees*, 567 U. S. 298, 307 (same). As "long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot," *ibid.* (same). Pp. 171–172.

(b) Because the Chafins continue to vigorously contest the question of where their daughter will be raised, this dispute is very much alive. This case does not address "a hypothetical state of facts," *Lewis*, *supra*, at 477 (same), and there continues to exist between the parties "that concrete adverseness which sharpens the presentation of issues," *Camreta* v. *Greene*, 563 U. S. 692, 701. Pp. 173–177.

(1) Mr. Chafin seeks typical appellate relief: reversal of the District Court determination that E. C.'s habitual residence was Scotland and, upon reversal, an order that E. C. be returned to the United States. The question is whether such relief would be effectual. In arguing that this case is moot because the District Court has no authority to issue a re-return order either under the Convention or pursuant to its inherent equitable powers, Ms. Chafin confuses mootness with the merits. See, *e. g.*, *Powell* v. *McCormack*, 395 U. S. 486, 500. Mr. Chafin's claim for re-return cannot be dismissed as so implausible that it is insufficient to preserve jurisdiction, and his prospects of success are therefore not pertinent to the mootness inquiry. As to the effectiveness of any relief, even if Scotland were to ignore a re-return order, this case would not be moot. The U. S. courts continue to have personal jurisdiction over Ms. Chafin and may command her to take action under threat of sanctions. She could decide to comply with an order against her and return E. C. to the United States. Enforcement of the order may be uncertain if Ms. Chafin chooses to defy it, but such uncertainty does not typically render cases moot. Pp. 173–176.

(2) Mr. Chafin also seeks, if he prevails, vacatur of the District Court's expense orders. That too is common relief on appeal, and the mootness inquiry comes down to its effectiveness. In contending that this case is moot due to Mr. Chafin's failure to pursue an appeal of the expense orders, which were entered as separate judgments, Ms. Chafin again confuses mootness with the merits. Because there is authority for the proposition that failure to appeal such judgments separately does not preclude relief, it is for lower courts at later stages of the litigation

to decide whether Mr. Chafin is in fact entitled to the relief he seeks. That relief would not be " 'fully satisfactory,' " but "even the availability of a 'partial remedy' is 'sufficient to prevent [a] case from being moot,' " *Calderon* v. *Moore*, 518 U. S. 149, 150. Pp. 176–177.

(c) Manipulating constitutional doctrine and holding these cases moot is not necessary to achieve the ends of the Convention and ICARA, and may undermine the treaty's goals and harm the children meant to be protected. If these cases were to become moot upon return, courts would be more likely to grant stays as a matter of course, to prevent the loss of any right to appeal. Such routine stays would conflict with the Convention's mandate of prompt return. Courts should instead apply traditional factors in considering whether to stay a return order, see, *e. g.*, *Nken* v. *Holder*, 556 U. S. 418, 434, thus ensuring that each case will receive the individualized treatment necessary for appropriate consideration of the child's best interests. Finally, at both the district and appellate court level, courts should take steps to decide these cases as expeditiously as possible. Pp. 178–180.

Vacated and remanded.

ROBERTS, C. J., delivered the opinion for a unanimous Court. GINSBURG, J., filed a concurring opinion, in which SCALIA and BREYER, JJ., joined, *post*, p. 180.

Michael E. Manely argued the cause for petitioner. With him on the briefs were *John P. Smith*, *Stephanos Bibas*, *James A. Feldman*, *Nancy Bregstein Gordon*, and *Stephen B. Kinnaird*.

Nicole A. Saharsky argued the cause for the United States as *amicus curiae* in support of petitioner. With her on the brief were *Solicitor General Verrilli*, *Acting Assistant Attorney General Delery*, *Deputy Solicitor General Kneedler*, *Mark B. Stern*, *Sharon Swingle*, and *Harold Hongju Koh*.

Stephen J. Cullen argued the cause for respondent. With him on the brief were *Kelly A. Powers*, *Adair Dyer, Jr.*, and *Walter A. Kelley*.*

**Douglas Hallward-Driemeier* and *Elizabeth N. Dewar* filed a brief for the National Center for Missing and Exploited Children as *amicus curiae* urging reversal.

Bruce A. Boyer filed a brief for the Centre for Family Law and Policy as *amicus curiae* urging affirmance.

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

The Hague Convention on the Civil Aspects of International Child Abduction generally requires courts in the United States to order children returned to their countries of habitual residence, if the courts find that the children have been wrongfully removed to or retained in the United States. The question is whether, after a child is returned pursuant to such an order, any appeal of the order is moot.

I

A

The Hague Conference on Private International Law adopted the Hague Convention on the Civil Aspects of International Child Abduction in 1980. T. I. A. S. No. 11670, S. Treaty Doc. No. 99–11. In 1988, the United States ratified the treaty and passed implementing legislation, known as the International Child Abduction Remedies Act (ICARA), 102 Stat. 437, 42 U. S. C. § 11601 *et seq.* See generally *Abbott* v. *Abbott*, 560 U. S. 1, 8–9 (2010).

The Convention seeks "to secure the prompt return of children wrongfully removed to or retained in any Contracting State" and "to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States." Art. 1, S. Treaty Doc. No. 99–11, at 7. Article 3 of the Convention provides that the "removal or the retention of a child is to be considered wrongful" when "it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention" and "at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention." *Ibid.*

Article 12 then states:

> "Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith." *Id.*, at 9.

There are several exceptions to that command. Return is not required if the parent seeking it was not exercising custody rights at the time of removal or had consented to removal, if there is a "grave risk" that return will result in harm, if the child is mature and objects to return, or if return would conflict with fundamental principles of freedom and human rights in the state from which return is requested. Arts. 13, 20, *id.*, at 10, 11. Finally, the Convention directs Contracting States to "designate a Central Authority to discharge the duties which are imposed by the Convention." Art. 6, *id.*, at 8; see also Art. 7, *ibid.*

Congress established procedures for implementing the Convention in ICARA. See 42 U. S. C. § 11601(b)(1). ICARA grants federal and state courts concurrent jurisdiction over actions arising under the Convention, § 11603(a), and directs them to "decide the case in accordance with the Convention," § 11603(d). If those courts find children to have been wrongfully removed or retained, the children "are to be promptly returned." § 11601(a)(4). ICARA also provides that courts ordering children returned generally must require defendants to pay various expenses incurred by plaintiffs, including court costs, legal fees, and transportation costs associated with the return of the children. § 11607(b)(3). ICARA instructs the President to designate the U. S. Central Authority, § 11606(a), and the President has designated the Office of Children's Issues in the

State Department's Bureau of Consular Affairs, 22 CFR § 94.2 (2012).

Eighty-nine nations are party to the Convention as of this writing. Hague Conference on Private Int'l Law, Status Table, Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, http://www.hcch.net (as visited Feb. 15, 2013, and available in Clerk of Court's case file). In the 2009 fiscal year, 324 children removed to or retained in other countries were returned to the United States under the Convention, while 154 children removed to or retained in the United States were returned to their countries of habitual residence. Dept. of State, Report on Compliance with the Hague Convention on the Civil Aspects of International Child Abduction 6 (2010).

B

Petitioner Jeffrey Lee Chafin is a citizen of the United States and a sergeant first class in the U. S. Army. While stationed in Germany in 2006, he married respondent Lynne Hales Chafin, a citizen of the United Kingdom. Their daughter E. C. was born the following year.

Later in 2007, Mr. Chafin was deployed to Afghanistan, and Ms. Chafin took E. C. to Scotland. Mr. Chafin was eventually transferred to Huntsville, Alabama, and in February 2010, Ms. Chafin traveled to Alabama with E. C. Soon thereafter, however, Mr. Chafin filed for divorce and for child custody in Alabama state court. Toward the end of the year, Ms. Chafin was arrested for domestic violence, an incident that alerted U. S. Citizenship and Immigration Services to the fact that she had overstayed her visa. She was deported in February 2011, and E. C. remained in Mr. Chafin's care for several more months.

In May 2011, Ms. Chafin initiated this case in the U. S. District Court for the Northern District of Alabama. She filed a petition under the Convention and ICARA seeking an order for E. C.'s return to Scotland. On October 11 and 12, 2011, the District Court held a bench trial. Upon the close

of arguments, the court ruled in favor of Ms. Chafin, concluding that E. C.'s country of habitual residence was Scotland and granting the petition for return. Mr. Chafin immediately moved for a stay pending appeal, but the court denied his request. Within hours, Ms. Chafin left the country with E. C., headed for Scotland. By December 2011, she had initiated custody proceedings there. The Scottish court soon granted her interim custody and a preliminary injunction, prohibiting Mr. Chafin from removing E. C. from Scotland. In the meantime, Mr. Chafin had appealed the District Court order to the Court of Appeals for the Eleventh Circuit.

In February 2012, the Eleventh Circuit dismissed Mr. Chafin's appeal as moot in a one-paragraph order, citing *Bekier* v. *Bekier*, 248 F. 3d 1051 (2001). App. to Pet. for Cert. 1–2. In *Bekier*, the Eleventh Circuit had concluded that an appeal of a Convention return order was moot when the child had been returned to the foreign country, because the court "became powerless" to grant relief. 248 F. 3d, at 1055. In accordance with *Bekier*, the Court of Appeals remanded this case to the District Court with instructions to dismiss the suit as moot and vacate its order.

On remand, the District Court did so, and also ordered Mr. Chafin to pay Ms. Chafin over $94,000 in court costs, attorney's fees, and travel expenses. Meanwhile, the Alabama state court had dismissed the child custody proceeding initiated by Mr. Chafin for lack of jurisdiction. The Alabama Court of Civil Appeals affirmed, relying in part on the U. S. District Court's finding that the child's habitual residence was not Alabama, but Scotland.

We granted certiorari to review the judgment of the Court of Appeals for the Eleventh Circuit. 567 U. S. 960 (2012).

II

Article III of the Constitution restricts the power of federal courts to "Cases" and "Controversies." Accordingly,

"[t]o invoke the jurisdiction of a federal court, a litigant must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." *Lewis* v. *Continental Bank Corp.*, 494 U. S. 472, 477 (1990). Federal courts may not "decide questions that cannot affect the rights of litigants in the case before them" or give "opinion[s] advising what the law would be upon a hypothetical state of facts." *Ibid.* (quoting *North Carolina* v. *Rice*, 404 U. S. 244, 246 (1971) (*per curiam*); internal quotation marks omitted). The "case-or-controversy requirement subsists through all stages of federal judicial proceedings, trial and appellate." *Lewis*, 494 U. S., at 477. "[I]t is not enough that a dispute was very much alive when suit was filed"; the parties must "continue to have a 'personal stake' " in the ultimate disposition of the lawsuit. *Id.*, at 477–478 (quoting *Los Angeles* v. *Lyons*, 461 U. S. 95, 101 (1983); some internal quotation marks omitted).

There is thus no case or controversy, and a suit becomes moot, "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Already, LLC* v. *Nike, Inc.*, *ante*, at 91 (quoting *Murphy* v. *Hunt*, 455 U. S. 478, 481 (1982) (*per curiam*); some internal quotation marks omitted). But a case "becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Knox* v. *Service Employees*, 567 U. S. 298, 307 (2012) (internal quotation marks omitted); see also *Church of Scientology of Cal.* v. *United States*, 506 U. S. 9, 12 (1992) ("if an event occurs while a case is pending on appeal that makes it impossible for the court to grant 'any effectual relief whatever' to a prevailing party, the appeal must be dismissed" (quoting *Mills* v. *Green*, 159 U. S. 651, 653 (1895))). "As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Knox*, *supra*, at 307–308 (internal quotation marks and brackets omitted).

III

This dispute is still very much alive. Mr. Chafin continues to contend that his daughter's country of habitual residence is the United States, while Ms. Chafin maintains that E. C.'s home is in Scotland. Mr. Chafin also argues that even if E. C.'s habitual residence was Scotland, she should not have been returned because the Convention's defenses to return apply. Mr. Chafin seeks custody of E. C., and wants to pursue that relief in the United States, while Ms. Chafin is pursuing that right for herself in Scotland. And Mr. Chafin wants the orders that he pay Ms. Chafin over $94,000 vacated, while Ms. Chafin asserts the money is rightfully owed.

On many levels, the Chafins continue to vigorously contest the question of where their daughter will be raised. This is not a case where a decision would address "a hypothetical state of facts." *Lewis*, *supra*, at 477 (quoting *Rice*, *supra*, at 246; internal quotation marks omitted). And there is not the slightest doubt that there continues to exist between the parties "that concrete adverseness which sharpens the presentation of issues." *Camreta* v. *Greene*, 563 U. S. 692, 701 (2011) (quoting *Lyons*, *supra*, at 101; internal quotation marks omitted).

A

At this point in the ongoing dispute, Mr. Chafin seeks reversal of the District Court determination that E. C.'s habitual residence was Scotland and, if that determination is reversed, an order that E. C. be returned to the United States (or "re-return," as the parties have put it). In short, Mr. Chafin is asking for typical appellate relief: that the Court of Appeals reverse the District Court and that the District Court undo what it has done. See *Arkadelphia Milling Co.* v. *St. Louis Southwestern R. Co.*, 249 U. S. 134, 145–146 (1919); *Northwestern Fuel Co.* v. *Brock*, 139 U. S. 216, 219 (1891) ("Jurisdiction to correct what had been wrongfully done must remain with the court so long as the

parties and the case are properly before it, either in the first instance or when remanded to it by an appellate tribunal"). The question is whether such relief would be effectual in this case.

Ms. Chafin argues that this case is moot because the District Court lacks the authority to issue a re-return order either under the Convention or pursuant to its inherent equitable powers. But that argument—which goes to the meaning of the Convention and the legal availability of a certain kind of relief—confuses mootness with the merits. In *Powell* v. *McCormack*, 395 U. S. 486 (1969), this Court held that a claim for backpay saved the case from mootness, even though the defendants argued that the backpay claim had been brought in the wrong court and therefore could not result in relief. As the Court explained, "this argument . . . confuses mootness with whether [the plaintiff] has established a right to recover . . . , a question which it is inappropriate to treat at this stage of the litigation." *Id.*, at 500. Mr. Chafin's claim for re-return—under the Convention itself or according to general equitable principles—cannot be dismissed as so implausible that it is insufficient to preserve jurisdiction, see *Steel Co.* v. *Citizens for Better Environment*, 523 U. S. 83, 89 (1998), and his prospects of success are therefore not pertinent to the mootness inquiry.

As to the effectiveness of any relief, Ms. Chafin asserts that even if the habitual residence ruling were reversed and the District Court were to issue a re-return order, that relief would be ineffectual because Scotland would simply ignore it.[1] But even if Scotland were to ignore a U. S. re-return

[1] Whether Scotland would do so is unclear; Ms. Chafin cited no authority for her assertion in her brief or at oral argument. In a recently issued decision from the Family Division of the High Court of Justice of England and Wales, a judge of that court rejected the "concept of automatic re-return of a child in response to the overturn of [a] Hague order." *DL* v. *EL*, [2013] EWHC (Fam.) 49, ¶59 (Judgt. of Jan. 17). The judge in that case did not ignore the pertinent re-return order—issued by the District Court in *Larbie* v. *Larbie*, 690 F. 3d 295 (CA5 2012), cert. pending,

order, or decline to assist in enforcing it, this case would not be moot. The U. S. courts continue to have personal jurisdiction over Ms. Chafin, may command her to take action even outside the United States, and may back up any such command with sanctions. See *Steele* v. *Bulova Watch Co.*, 344 U. S. 280, 289 (1952); cf. *Leman* v. *Krentler-Arnold Hinge Last Co.*, 284 U. S. 448, 451–452 (1932). No law of physics prevents E. C.'s return from Scotland, see *Fawcett* v. *McRoberts*, 326 F. 3d 491, 496 (CA4 2003), abrogated on other grounds, *Abbott* v. *Abbott*, 560 U. S. 1 (2010), and Ms. Chafin might decide to comply with an order against her and return E. C. to the United States, see, *e. g.*, *Larbie* v. *Larbie*, 690 F. 3d 295, 303–304 (CA5 2012) (mother who had taken child to United Kingdom complied with Texas court sanctions order and order to return child to United States for trial), cert. pending, No. 12–304.[2] After all, the consequence of compliance presumably would not be relinquishment of custody rights, but simply custody proceedings in a different forum.

Enforcement of the order may be uncertain if Ms. Chafin chooses to defy it, but such uncertainty does not typically render cases moot. Courts often adjudicate disputes where the practical impact of any decision is not assured. For example, courts issue default judgments against defendants who failed to appear or participate in the proceedings and therefore seem less likely to comply. See Fed. Rule Civ. Proc. 55. Similarly, the fact that a defendant is insolvent

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No. 12–304 [Reporter's Note: See *post*, p. 1192]—but did not consider it binding in light of the proceedings in England.

Earlier in those proceedings, the Family Division of the High Court directed the parties to provide this Court with a joint statement on the status of those proceedings. This Court is grateful for that consideration.

[2] Ms. Chafin suggests that the Scottish court's *ne exeat* order prohibits E. C. from leaving Scotland. The *ne exeat* order, however, only prohibits Mr. Chafin from removing E. C. from Scotland; it does not constrain Ms. Chafin in the same way.

does not moot a claim for damages. See 13C C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3533.3, p. 3 (3d ed. 2008) (cases not moot "even though the defendant does not seem able to pay any portion of the damages claimed"). Courts also decide cases against foreign nations, whose choices to respect final rulings are not guaranteed. See, *e. g.*, *Republic of Austria* v. *Altmann*, 541 U. S. 677 (2004) (suit against Austria for return of paintings); *Republic of Argentina* v. *Weltover, Inc.*, 504 U. S. 607 (1992) (suit against Argentina for repayment of bonds). And we have heard the Government's appeal from the reversal of a conviction, even though the defendants had been deported, reducing the practical impact of any decision; we concluded that the case was not moot because the defendants might "re-enter this country on their own" and encounter the consequences of our ruling. *United States* v. *Villamonte-Marquez*, 462 U. S. 579, 581, n. 2 (1983).

So too here. A re-return order may not result in the return of E. C. to the United States, just as an order that an insolvent defendant pay $100 million may not make the plaintiff rich. But it cannot be said that the parties here have no "concrete interest" in whether Mr. Chafin secures a re-return order. *Knox*, 567 U. S., at 307 (internal quotation marks omitted). "[H]owever small" that concrete interest may be due to potential difficulties in enforcement, it is not simply a matter of academic debate, and is enough to save this case from mootness. *Ibid.* (internal quotation marks omitted).

B

Mr. Chafin also seeks, if he prevails, vacatur of the District Court's expense orders. The District Court ordered Mr. Chafin to pay Ms. Chafin over $94,000 in court costs, attorney's fees, and travel expenses. See Civ. No. 11–1461 (ND Ala., Mar. 7, 2012), pp. 15–16; Civ. No. 11–1461 (ND Ala., June 5, 2012), p. 2. That award was predicated on the District Court's earlier judgment allowing Ms. Chafin to return

with her daughter to Scotland. See Civ. No. 11–1461 (ND Ala., Mar. 7, 2012), pp. 2–3, and n. 2.[3] Thus, in conjunction with reversal of the judgment, Mr. Chafin desires vacatur of the award. That too is common relief on appeal, see, *e. g.*, *Fawcett*, *supra*, at 501, n. 6 (reversing costs and fees award when reversing on the issue of wrongful removal), and the mootness inquiry comes down to its effectiveness.

At oral argument, Ms. Chafin contended that such relief was "gone in this case," and that the case was therefore moot, because Mr. Chafin had failed to pursue an appeal of the expense orders, which had been entered as separate judgments. Tr. of Oral Arg. 33; see Civ. No. 11–1461 (ND Ala., Mar. 7, 2012); Civ. No. 11–1461 (ND Ala., June 5, 2012). But this is another argument on the merits. Mr. Chafin's requested relief is not so implausible that it may be disregarded on the question of jurisdiction; there is authority for the proposition that failure to appeal such judgments separately does not preclude relief. See 15B Wright, Miller, & Cooper, *supra*, § 3915.6, at 230, and n. 39.5 (2d ed., Supp. 2012) (citing cases). It is thus for lower courts at later stages of the litigation to decide whether Mr. Chafin is in fact entitled to the relief he seeks—vacatur of the expense orders.

Such relief would of course not be "'fully satisfactory,'" but with respect to the case as whole, "even the availability of a 'partial remedy' is 'sufficient to prevent [a] case from being moot.'" *Calderon* v. *Moore*, 518 U. S. 149, 150 (1996) (*per curiam*) (quoting *Church of Scientology*, 506 U. S., at 13).

[3] The award was predicated on the earlier judgment even though that judgment was vacated. The District Court cited Eleventh Circuit cases for the proposition that if a plaintiff obtains relief before a district court and the case becomes moot on appeal, the plaintiff is still a prevailing party entitled to attorney's fees. We express no view on that question. The fact remains that the District Court ordered Mr. Chafin to pay attorney's fees and travel expenses based on its earlier ruling. A reversal, as opposed to vacatur, of the earlier ruling could change the prevailing party calculus and afford Mr. Chafin effective relief.

IV

Ms. Chafin is correct to emphasize that both the Hague Convention and ICARA stress the importance of the prompt return of children wrongfully removed or retained. We are also sympathetic to the concern that shuttling children back and forth between parents and across international borders may be detrimental to those children. But courts can achieve the ends of the Convention and ICARA—and protect the well-being of the affected children—through the familiar judicial tools of expediting proceedings and granting stays where appropriate. There is no need to manipulate constitutional doctrine and hold these cases moot. Indeed, doing so may very well undermine the goals of the treaty and harm the children it is meant to protect.

If these cases were to become moot upon return, courts would be more likely to grant stays as a matter of course, to prevent the loss of any right to appeal. See, *e. g.*, *Garrison* v. *Hudson*, 468 U. S. 1301, 1302 (1984) (Burger, C. J., in chambers) ("When . . . the normal course of appellate review might otherwise cause the case to become moot, issuance of a stay is warranted" (citation and internal quotation marks omitted)); *Nicolson* v. *Pappalardo*, Civ. No. 10–1125 (CA1, Feb. 19, 2010) ("Without necessarily finding a clear probability that appellant will prevail, we grant the stay because . . . a risk exists that the case could effectively be mooted by the child's departure"). In cases in which a stay would not be granted but for the prospect of mootness, a child would lose precious months when she could have been readjusting to life in her country of habitual residence, even though the appeal had little chance of success. Such routine stays due to mootness would be likely but would conflict with the Convention's mandate of prompt return to a child's country of habitual residence.

Routine stays could also increase the number of appeals. Currently, only about 15% of Hague Convention cases are appealed. Hague Conference on Private Int'l Law, N. Lowe,

A Statistical Analysis of Applications Made in 2008 Under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Pt. III–National Reports 207 (2011). If losing parents were effectively guaranteed a stay, it seems likely that more would appeal, a scenario that would undermine the goal of prompt return and the best interests of children who should in fact be returned. A mootness holding here might also encourage flight in future Hague Convention cases, as prevailing parents try to flee the jurisdiction to moot the case. See *Bekier*, 248 F. 3d, at 1055 (mootness holding "to some degree conflicts with the purposes of the Convention: to prevent parents from fleeing jurisdictions to find a more favorable judicial forum").

Courts should apply the four traditional stay factors in considering whether to stay a return order: " '(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.' " *Nken* v. *Holder*, 556 U. S. 418, 434 (2009) (quoting *Hilton* v. *Braunskill*, 481 U. S. 770, 776 (1987)). In every case under the Hague Convention, the well-being of a child is at stake; application of the traditional stay factors ensures that each case will receive the individualized treatment necessary for appropriate consideration of the child's best interests.

Importantly, whether at the district or appellate court level, courts can and should take steps to decide these cases as expeditiously as possible, for the sake of the children who find themselves in such an unfortunate situation. Many courts already do so. See Federal Judicial Center, J. Garbolino, The 1980 Hague Convention on the Civil Aspects of International Child Abduction: A Guide for Judges 116, n. 435 (2012) (listing courts that expedite appeals). Cases in American courts often take over two years from filing to resolution; for a 6-year-old such as E. C., that is one-third

of her lifetime. Expedition will help minimize the extent to which uncertainty adds to the challenges confronting both parents and child.

* * *

The Hague Convention mandates the prompt return of children to their countries of habitual residence. But such return does not render this case moot; there is a live dispute between the parties over where their child will be raised, and there is a possibility of effectual relief for the prevailing parent. The courts below therefore continue to have jurisdiction to adjudicate the merits of the parties' respective claims.

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

It is so ordered.

JUSTICE GINSBURG, with whom JUSTICE SCALIA and JUSTICE BREYER join, concurring.

The driving objective of the Hague Convention on the Civil Aspects of International Child Abduction (Convention) is to facilitate custody adjudications, promptly and exclusively, in the place where the child habitually resides. See Convention, Arts. 1, 3, Oct. 25, 1980, T. I. A. S. No. 11670, S. Treaty Doc. No. 99–11, p. 7 (Treaty Doc.). To that end, the Convention instructs Contracting States to use "the most expeditious procedures available" to secure the return of a child wrongfully removed or retained away from her place of habitual residence. Art. 2, *ibid.*; see Art. 11, *id.*, at 9 (indicating six weeks as the target time for decision of a return-order petition); Hague Conference on Private International Law, Guide to Good Practice Under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part I–Central Authority Practice, § 1.5.1, p. 19 (2003) (Guide to Good Practice) ("Expeditious procedures are

essential at all stages of the Convention process."). While "[the] obligation to process return applications expeditiously . . . extends to appeal procedures," *id.*, Part IV–Enforcement, § 2.2, ¶51, at 13 (2010), the Convention does not prescribe modes of, or timeframes for, appellate review of first instance decisions. It therefore rests with each Contracting State to ensure that appeals proceed with dispatch.

Although alert to the premium the Convention places on prompt return, see 42 U. S. C. § 11601(a)(4), Congress did not specifically address appeal proceedings in the legislation implementing the Convention. The case before us illustrates the protraction likely to ensue when the finality of a return order is left in limbo.

Upon determining that the daughter of Jeffrey Chafin and Lynne Chafin resided in Scotland, the District Court denied Mr. Chafin's request for a stay pending appeal, and authorized the child's immediate departure for Scotland. The Eleventh Circuit, viewing the matter as a *fait accompli*, dismissed the appeal filed by Mr. Chafin as moot.[1] As the Court's opinion explains, the Eleventh Circuit erred in holding that the child's removal to Scotland rendered further adjudication in the United States meaningless. Reversal of the District Court's return order, I agree, could provide

[1] The Court of Appeals instructed the District Court to vacate the return order, thus leaving the child's habitual residence undetermined. The Convention envisions an adjudication of habitual residence by the return forum so that the forum abroad may proceed, immediately, to the adjudication of custody. See Convention, Arts. 1, 16, 19, Treaty Doc., at 7, 10, 11. See also *DL* v. *EL*, [2013] EWHC (Fam.) 49, ¶36 (Judgt. of Jan. 17) ("[T]he objective of Hague is the child's prompt return to the country of the child's habitual residence so that that country's courts can determine welfare issues."); Silberman, Interpreting the Hague Abduction Convention: In Search of a Global Jurisprudence, 38 U. C. D. L. Rev. 1049, 1054 (2005) (typing the "return" remedy as "provisional," because "proceedings on the merits of the custody dispute are contemplated in the State of the child's habitual residence once the child is returned there" (internal quotation marks omitted)).

Mr. Chafin with meaningful relief. A determination that the child's habitual residence was Alabama, not Scotland, would open the way for an order directing Ms. Chafin to "re-return" the child to the United States and for Mr. Chafin to seek a custody adjudication in an Alabama state court.[2] But that prospect is unsettling. "[S]huttling children back and forth between parents and across international borders may be detrimental to those children," *ante*, at 178, whose welfare led the Contracting States to draw up the Convention, see 1980 Conférence de La Haye de droit international privé, Enlèvement d'enfants, E. Pérez-Vera, Explanatory Report ¶23, in 3 Actes et Documents de la Quatorzième session, p. 431 (1982). And the advent of rival custody proceedings in Scotland and Alabama is just what the Convention aimed to stave off.

This case highlights the need for both speed and certainty in Convention decisionmaking. Most Contracting States permit challenges to first instance return orders. See Guide to Good Practice, Part IV–Enforcement, §2.3, ¶57, at 14. How might appellate review proceed consistent with the Convention's emphasis on expedition? According to a Federal Judicial Center guide, "[e]xpedited procedures for briefing and handling of [return-order] appeals have become common in most circuits." J. Garbolino, The 1980 Hague Convention on the Civil Aspects of International Child Ab-

[2] As the Court observes, *ante*, at 174, n. 1, a judge of the Family Division of the High Court of Justice of England and Wales recently concluded that "[t]he concept of automatic re-return of a child in response to the overturn of [a] Hague order pursuant to which [the child] came [to England] is unsupported by law or principle, and would . . . be deeply inimical to [the child's] best interests." *DL* v. *EL*, [2013] EWHC 49, ¶59(e). If Mr. Chafin were able to secure a reversal of the District Court's return order, the Scottish court adjudicating the custody dispute might similarly conclude that the child should not be re-returned to Alabama, notwithstanding any U. S. court order to the contrary, and that jurisdiction over her welfare should remain with the Scottish court.

duction: A Guide for Judges 116 (2012).[3] As an example, the guide describes *Charalambous* v. *Charalambous*, 627 F. 3d 462 (CA1 2010) (*per curiam*), in which the Court of Appeals stayed a return order, expedited the appeal, and issued a final judgment affirming the return order 57 days after its entry. Once appellate review established the finality of the return order, custody could be litigated in the child's place of habitual residence with no risk of a rival proceeding elsewhere.

But as the Court indicates, stays, even of short duration, should not be granted "as a matter of course," for they inevitably entail loss of "precious months when [the child] could have been readjusting to life in her country of habitual residence." *Ante*, at 178; see Tr. of Oral Arg. 39. See also *DL* v. *EL*, [2013] EWHC (Fam.) 49, ¶38 (Judgt. of Jan. 17) ("[Children] find themselves in a sort of Hague triangle limbo, marooned in a jurisdiction from which their return has been ordered but becalmed by extended uncertainty whether they will in the event go or stay."). Where no stay is ordered, the risk of a two-front battle over custody will remain real. See *supra*, at 181–182. See also *Larbie* v. *Larbie*, 690 F. 3d 295 (CA5 2012) (vacating return order following appeal in which no stay was sought).[4]

Amicus Centre for Family Law and Policy calls our attention to the management of Convention hearings and appeals in England and Wales and suggests that procedures there may be instructive. See Brief for Centre for Family Law

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[3] For the federal courts, the Advisory Committees on Federal Rules of Civil and Appellate Procedures might consider whether uniform rules for expediting Convention proceedings are in order. Cf. *ante*, at 179 (noting that "[c]ases in American courts often take over two years from filing to resolution").

[4] The *Larbie* litigation, known by another name in the English courts, illustrates that the risk of rival custody proceedings, and conflicting judgments, is hardly theoretical. Compare *Larbie*, 690 F. 3d 295, with *DL* v. *EL*, [2013] EWHC 49.

and Policy 22–24 (Centre Brief). To pursue an appeal from a return order in those domains, leave must be obtained from the first instance judge or the Court of Appeal. Family Procedure Rules 2010, Rule 30.3 (Eng. and Wales). Leave will be granted only where "the appeal would have a real prospect of success; or . . . there is some other compelling reason why the appeal should be heard." *Ibid.* Although an appeal does not trigger an automatic stay, see Rule 30.8, if leave to appeal is granted, we are informed, a stay is ordinarily ordered by the court that granted leave. Centre Brief 23; Guide to Good Practice, Part IV–Enforcement, §3.3, ¶74, at 19–20, n. 111. Appeals are then fast tracked with a target of six weeks for disposition. Centre Brief 24. See also *DL* v. *EL*, [2013] EWHC 49, ¶¶42–43 (describing the English practice and observing that "[t]he whole process is . . . very swift, and the resultant period of delay and uncertainty much curtailed by comparison with [the United States]").

By rendering a return order effectively final absent leave to appeal, the rules governing Convention proceedings in England and Wales aim for speedy implementation without turning away appellants whose pleas may have merit. And by providing for stays when an appeal is well founded, the system reduces the risk of rival custody proceedings. Congressional action would be necessary if return-order appeals are not to be available in U. S. courts as a matter of right, but legislation requiring leave to appeal would not be entirely novel. See 28 U. S. C. § 2253(c) (absent a certificate of appealability from a circuit justice or judge, an appeal may not be taken from the final decision of a district judge in a habeas corpus proceeding or a proceeding under § 2255); cf. Guide to Good Practice, Part IV–Enforcement, § 2.5, at 16 (suggesting that, to promote expedition, Contracting States might consider a requirement of leave to appeal); *id.*, Part II–Implementing Measures, § 6.6, at 37 (2003) (measures to promote speed within the appeals process include "limiting

the time for appeal from an adverse decision [and] requiring permission for appeal" (footnote omitted)).

Lynne Chafin filed her petition for a return order in May 2011. E. C. was then four years old. E. C. is now six and uncertainty still lingers about the proper forum for adjudication of her parents' custody dispute. Protraction so marked is hardly consonant with the Convention's objectives. On remand, the Court rightly instructs, the Court of Appeals should decide the case "as expeditiously as possible," *ante*, at 179. For future cases, rulemakers and legislators might pay sustained attention to the means by which the United States can best serve the Convention's aims: "to secure the prompt return of children wrongfully removed to or retained in" this Nation; and "to ensure that rights of custody . . . under the law of one Contracting State are effectively respected in the other Contracting States." Art. 1, Treaty Doc., at 7.

Syllabus

BAILEY *v.* UNITED STATES

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

No. 11–770. Argued November 1, 2012—Decided February 19, 2013

While police were preparing to execute a warrant to search a basement apartment for a handgun, detectives conducting surveillance in an unmarked car outside the apartment saw two men—later identified as petitioner Chunon Bailey and Bryant Middleton—leave the gated area above the apartment, get in a car, and drive away. The detectives waited for the men to leave and then followed the car approximately a mile before stopping it. They found keys during a patdown search of Bailey, who initially said that he resided in the apartment but later denied it when informed of the search. Both men were handcuffed and driven in a patrol car to the apartment, where the search team had already found a gun and illicit drugs. After arresting the men, police discovered that one of Bailey's keys unlocked the apartment's door.

At trial, the District Court denied Bailey's motion to suppress the apartment key and the statements he made to the detectives when stopped, holding that Bailey's detention was justified under *Michigan* v. *Summers*, 452 U. S. 692, as a detention incident to the execution of a search warrant, and, in the alternative, that the detention was supported by reasonable suspicion under *Terry* v. *Ohio*, 392 U. S. 1. Bailey was convicted. The Second Circuit affirmed denial of the suppression motion. Finding that *Summers* authorized Bailey's detention, it did not address the alternative *Terry* holding.

Held: The rule in *Summers* is limited to the immediate vicinity of the premises to be searched and does not apply here, where Bailey was detained at a point beyond any reasonable understanding of the immediate vicinity of the premises in question. Pp. 192–202.

(a) The *Summers* rule permits officers executing a search warrant "to detain the occupants of the premises while a proper search is conducted," 452 U. S., at 705, even when there is no particular suspicion that an individual is involved in criminal activity or poses a specific danger to the officers, *Muehler* v. *Mena*, 544 U. S. 93. Detention is permitted "because the character of the additional intrusion caused by detention is slight and because the justifications for detention are substantial." *Id.*, at 98. In *Summers* and later cases, the detained occupants were found within or immediately outside the residence being searched.

Here, however, petitioner left the apartment before the search began and was detained nearly a mile away. Pp. 192–194.

(b) In *Summers*, the Court recognized three important law enforcement interests that, taken together, justify detaining an occupant who is on the premises during the search warrant's execution, 452 U. S., at 702–703. The first, officer safety, requires officers to secure the premises, which may include detaining current occupants so the officers can search without fear that the occupants will become disruptive, dangerous, or otherwise frustrate the search. If an occupant returns home during the search, officers can mitigate the risk by taking routine precautions. Here, however, Bailey posed little risk to the officers at the scene after he left the premises, apparently without knowledge of the search. Had he returned, he could have been apprehended and detained under *Summers*. Were police to have the authority to detain persons away from the premises, the authority to detain incident to the execution of a search warrant would reach beyond the rationale of ensuring the integrity of the search by detaining those who are on the scene. As for the Second Circuit's additional concerns, if officers believe that it would be dangerous to detain a departing individual in front of a residence, they are not required to stop him; and if officers have reasonable suspicion of criminal activity, they can instead rely on *Terry*. The risk that a departing occupant might alert those still inside the residence is also an insufficient safety rationale for expanding the detention authority beyond the immediate vicinity of the premises to be searched.

The second law enforcement interest is the facilitation of the completion of the search. Unrestrained occupants can hide or destroy evidence, seek to distract the officers, or simply get in the way. But a general interest in avoiding obstruction of a search cannot justify detention beyond the vicinity of the premises. Occupants who are kept from leaving may assist the officers by opening locked doors or containers in order to avoid the use of force that can damage property or delay completion of the search. But this justification must be confined to persons on site as the search warrant is executed and so in a position to observe the progression of the search.

The third interest is the interest in preventing flight, which also serves to preserve the integrity of the search. If officers are concerned about flight in the event incriminating evidence is found, they might rush the search, causing unnecessary damage or compromising its careful execution. The need to prevent flight, however, if unbounded, might be used to argue for detention of any regular occupant regardless of his or her location at the time of the search, *e. g.*, detaining a suspect 10

miles away, ready to board a plane. Even if the detention of a former occupant away from the premises could facilitate a later arrest if incriminating evidence is discovered, "the mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment." *Mincey* v. *Arizona*, 437 U. S. 385, 393.

In sum, none of the three law enforcement interests identified in *Summers* applies with the same or similar force to the detention of recent occupants beyond the immediate vicinity of the premises to be searched. And each is also insufficient, on its own, to justify an expansion of the rule in *Summers* to permit the detention of a former occupant, wherever he may be found away from the scene of the search. Pp. 194–199.

(c) As recognized in *Summers*, the detention of a current occupant "represents only an incremental intrusion on personal liberty when the search of a home has been authorized by a valid warrant," 452 U. S., at 703, but an arrest of an individual away from his home involves an additional level of intrusiveness. A public detention, even if merely incident to a search, will resemble a full-fledged arrest and can involve the indignity of a compelled transfer back to the premises. Pp. 199–200.

(d) Limiting the rule in *Summers* to the area within which an occupant poses a real threat to the safe and efficient execution of a search warrant ensures that the scope of the detention incident to a search is confined to its underlying justification. Because petitioner was detained at a point beyond any reasonable understanding of immediate vicinity, there is no need to further define that term here. Since detention is justified by the interests in executing a safe and efficient search, the decision to detain must be acted upon at the scene of the search and not at a later time in a more remote place. Pp. 200–202.

(e) The question whether stopping petitioner was lawful under *Terry* remains open on remand. P. 202.

652 F. 3d 197, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. SCALIA, J., filed a concurring opinion, in which GINSBURG and KAGAN, JJ., joined, *post*, p. 203. BREYER, J., filed a dissenting opinion, in which THOMAS and ALITO, JJ., joined, *post*, p. 206.

Kannon K. Shanmugam argued the cause for petitioner. With him on the briefs were *John S. Williams*, *C. J. Mahoney* and *Susan V. Tipograph*.

Jeffrey B. Wall argued the cause for the United States. With him on the brief were *Solicitor General Verrilli*, *As-*

sistant Attorney General Breuer, Deputy Solicitor General Dreeben, and *Deborah Watson.**

JUSTICE KENNEDY delivered the opinion of the Court.

The Fourth Amendment guarantees the right to be free from unreasonable searches and seizures. A search may be of a person, a thing, or a place. So too a seizure may be of a person, a thing, or even a place. A search or a seizure may occur singly or in combination, and in differing sequence. In some cases the validity of one determines the validity of the other. The instant case involves the search of a place (an apartment dwelling) and the seizure of a person. But here, though it is acknowledged that the search was lawful, it does not follow that the seizure was lawful as well. The seizure of the person is quite in question. The issue to be resolved is whether the seizure of the person was reasonable when he was stopped and detained at some distance away from the premises to be searched when the only justification for

*Briefs of *amici curiae* urging reversal were filed for the American Civil Liberties Union et al. by *Catherine M. A. Carroll*, *Steven R. Shapiro*, *Ezekiel R. Edwards*, *Ilya Shapiro*, and *Timothy Lynch*; for the National Association of Criminal Defense Lawyers by *Jonathan D. Hacker* and *Anna-Rose Mathieson*; and for the National Association of Federal Defenders by *Michael Y. Scudder* and *Sarah Gannett*.

A brief of *amici curiae* urging affirmance was filed for the State of Michigan et al. by *Bill Schuette*, Attorney General of Michigan, *John J. Bursch*, Solicitor General, *Matthew T. Nelson*, and *Gaëtan Gerville-Réache*, and by the Attorneys General for their respective jurisdictions as follows: *Luther Strange* of Alabama, *Michael Geraghty* of Alaska, *Tom Horne* of Arizona, *Dustin McDaniel* of Arkansas, *John W. Suthers* of Colorado, *George Jepsen* of Connecticut, *Joseph R. Biden III* of Delaware, *Pamela Jo Bondi* of Florida, *Leonardo M. Rapadas* of Guam, *David M. Louie* of Hawaii, *Lawrence G. Wasden* of Idaho, *Gregory F. Zoeller* of Indiana, *Derek Schmidt* of Kansas, *Jack Conway* of Kentucky, *Catherine Cortez Masto* of Nevada, *Michael A. Delaney* of New Hampshire, *E. Scott Pruitt* of Oklahoma, *Linda L. Kelly* of Pennsylvania, *Marty J. Jackley* of South Dakota, *Robert E. Cooper, Jr.*, of Tennessee, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, *Robert M. McKenna* of Washington, and *J. B. Van Hollen* of Wisconsin.

the detention was to ensure the safety and efficacy of the search.

I

A

At 8:45 p.m. on July 28, 2005, local police obtained a warrant to search a residence for a .380-caliber handgun. The residence was a basement apartment at 103 Lake Drive, in Wyandanch, New York. A confidential informant had told police he observed the gun when he was at the apartment to purchase drugs from "a heavy set black male with short hair" known as "Polo." App. 16–26. As the search unit began preparations for executing the warrant, two officers, Detectives Richard Sneider and Richard Gorbecki, were conducting surveillance in an unmarked car outside the residence. About 9:56 p.m., Sneider and Gorbecki observed two men—later identified as petitioner Chunon Bailey and Bryant Middleton—leave the gated area above the basement apartment and enter a car parked in the driveway. Both matched the general physical description of "Polo" provided by the informant. There was no indication that the men were aware of the officers' presence or had any knowledge of the impending search. The detectives watched the car leave the driveway. They waited for it to go a few hundred yards down the street and followed. The detectives informed the search team of their intent to follow and detain the departing occupants. The search team then executed the search warrant at the apartment.

Detectives Sneider and Gorbecki tailed Bailey's car for about a mile—and for about five minutes—before pulling the vehicle over in a parking lot by a fire station. They ordered Bailey and Middleton out of the car and did a patdown search of both men. The officers found no weapons but discovered a ring of keys in Bailey's pocket. Bailey identified himself and said he was coming from his home at 103 Lake Drive. His driver's license, however, showed his address as Bay-

shore, New York, the town where the confidential informant told the police the suspect, "Polo," used to live. *Id.*, at 89. Bailey's passenger, Middleton, said Bailey was giving him a ride home and confirmed they were coming from Bailey's residence at 103 Lake Drive. The officers put both men in handcuffs. When Bailey asked why, Gorbecki stated that they were being detained incident to the execution of a search warrant at 103 Lake Drive. Bailey responded: "I don't live there. Anything you find there ain't mine, and I'm not cooperating with your investigation." *Id.*, at 57, 77.

The detectives called for a patrol car to take Bailey and Middleton back to the Lake Drive apartment. Detective Sneider drove the unmarked car back, while Detective Gorbecki used Bailey's set of keys to drive Bailey's car back to the search scene. By the time the group returned to 103 Lake Drive, the search team had discovered a gun and drugs in plain view inside the apartment. Bailey and Middleton were placed under arrest, and Bailey's keys were seized incident to the arrest. Officers later discovered that one of Bailey's keys opened the door of the basement apartment.

B

Bailey was charged with three federal offenses: possession of cocaine with intent to distribute, in violation of 21 U. S. C. §§ 841(a)(1) and (b)(1)(B)(iii); possession of a firearm by a felon, in violation of 18 U. S. C. § 922(g)(1); and possession of a firearm in furtherance of a drug-trafficking offense, in violation of § 924(c)(1)(A)(i). At trial Bailey moved to suppress the apartment key and the statements he made when stopped by Detectives Sneider and Gorbecki. That evidence, Bailey argued, derived from an unreasonable seizure. After an evidentiary hearing the United States District Court for the Eastern District of New York denied the motion to suppress. The District Court held that Bailey's detention was permissible under *Michigan* v. *Summers*, 452 U. S. 692 (1981), as a detention incident to the execution of

a search warrant. In the alternative, it held that Bailey's detention was lawful as an investigatory detention supported by reasonable suspicion under *Terry* v. *Ohio*, 392 U. S. 1 (1968). After a trial the jury found Bailey guilty on all three counts.

The Court of Appeals for the Second Circuit ruled that Bailey's detention was proper and affirmed denial of the suppression motion. It interpreted this Court's decision in *Summers* to "authoriz[e] law enforcement to detain the occupant of premises subject to a valid search warrant when that person is seen leaving those premises and the detention is effected *as soon as reasonably practicable*." 652 F. 3d 197, 208 (2011). Having found Bailey's detention justified under *Summers*, the Court of Appeals did not address the District Court's alternative holding that the stop was permitted under *Terry*.

The Federal Courts of Appeals have reached differing conclusions as to whether *Michigan* v. *Summers* justifies the detention of occupants beyond the immediate vicinity of the premises covered by a search warrant. This Court granted certiorari to address the question. 566 U. S. 1033 (2012).

II

The Fourth Amendment, applicable through the Fourteenth Amendment to the States, provides: "The right of the people to be secure in their persons . . . against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause . . . particularly describing the place to be searched, and the persons or things to be seized." This Court has stated "the general rule that Fourth Amendment seizures are 'reasonable' only if based on probable cause" to believe that the individual has committed a crime. *Dunaway* v. *New York*, 442 U. S. 200, 213 (1979). The standard of probable cause, with "roots that are deep in our history," *Henry* v. *United States*, 361 U. S. 98, 100 (1959), "represent[s] the accumulated wisdom of precedent and ex-

perience as to the minimum justification necessary to make the kind of intrusion involved in an arrest 'reasonable' under the Fourth Amendment." *Dunaway*, *supra*, at 208.

Within the framework of these fundamental rules there is some latitude for police to detain where "the intrusion on the citizen's privacy 'was so much less severe' than that involved in a traditional arrest that 'the opposing interests in crime prevention and detection and in the police officer's safety' could support the seizure as reasonable." *Summers*, *supra*, at 697–698 (quoting *Dunaway*, *supra*, at 209); see also *Terry*, *supra*, at 27 (holding that a police officer who has reasonable suspicion of criminal activity may conduct a brief investigative stop).

In *Summers*, the Court defined an important category of cases in which detention is allowed without probable cause to arrest for a crime. It permitted officers executing a search warrant "to detain the occupants of the premises while a proper search is conducted." 452 U. S., at 705. The rule in *Summers* extends further than some earlier exceptions because it does not require law enforcement to have particular suspicion that an individual is involved in criminal activity or poses a specific danger to the officers. *Muehler* v. *Mena*, 544 U. S. 93 (2005). In *Muehler*, applying the rule in *Summers*, the Court stated: "An officer's authority to detain incident to a search is categorical; it does not depend on the 'quantum of proof justifying detention or the extent of the intrusion to be imposed by the seizure.' " 544 U. S., at 98 (quoting *Summers*, *supra*, at 705, n. 19). The rule announced in *Summers* allows detention incident to the execution of a search warrant "because the character of the additional intrusion caused by detention is slight and because the justifications for detention are substantial." *Muehler*, *supra*, at 98.

In *Summers* and later cases, the occupants detained were found within or immediately outside a residence at the moment the police officers executed the search warrant. In

Summers, the defendant was detained on a walk leading down from the front steps of the house. See Tr. of Oral Arg. in O. T. 1980, No. 79–1794, pp. 41–42; see also *Muehler*, *supra*, at 96 (detention of occupant in adjoining garage); *Los Angeles County* v. *Rettele*, 550 U. S. 609, 611 (2007) (*per curiam*) (detention of occupants in bedroom). Here, however, petitioner left the apartment before the search began; and the police officers waited to detain him until he was almost a mile away. The issue is whether the reasoning in *Summers* can justify detentions beyond the immediate vicinity of the premises being searched. An exception to the Fourth Amendment rule prohibiting detention absent probable cause must not diverge from its purpose and rationale. See *Florida* v. *Royer*, 460 U. S. 491, 500 (1983) (plurality opinion) ("The scope of the detention must be carefully tailored to its underlying justification"). It is necessary, then, to discuss the reasons for the rule explained in *Summers* to determine if its rationale extends to a detention like the one here.

A

In *Summers*, the Court recognized three important law enforcement interests that, taken together, justify the detention of an occupant who is on the premises during the execution of a search warrant: officer safety, facilitating the completion of the search, and preventing flight. 452 U. S., at 702–703.

1

The first interest identified in *Summers* was "the interest in minimizing the risk of harm to the officers." *Id.*, at 702. There the Court held that "the execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence or frantic efforts to conceal or destroy evidence," and "[t]he risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation." *Id.*, at 702–703.

When law enforcement officers execute a search warrant, safety considerations require that they secure the premises, which may include detaining current occupants. By taking "unquestioned command of the situation," *id.*, at 703, the officers can search without fear that occupants, who are on the premises and able to observe the course of the search, will become disruptive, dangerous, or otherwise frustrate the search.

After *Summers*, this Court decided *Muehler* v. *Mena*. The reasoning and conclusions in *Muehler* in applying the *Summers* rule go quite far in allowing seizure and detention of persons to accommodate the necessities of a search. There, the person detained and held in handcuffs was not suspected of the criminal activity being investigated; but, the Court held, she could be detained nonetheless, to secure the premises while the search was underway. The "safety risk inherent in executing a search warrant for weapons was sufficient to justify the use of handcuffs, [and] the need to detain multiple occupants made the use of handcuffs all the more reasonable." 544 U. S., at 100. While the Court in *Muehler* did remand for consideration of whether the detention there—alleged to have been two or three hours—was necessary in light of all the circumstances, the fact that so prolonged a detention indeed might have been permitted illustrates the far-reaching authority the police have when the detention is made at the scene of the search. This in turn counsels caution before extending the power to detain persons stopped or apprehended away from the premises where the search is being conducted.

It is likely, indeed almost inevitable in the case of a resident, that an occupant will return to the premises at some point; and this might occur when the officers are still conducting the search. Officers can and do mitigate that risk, however, by taking routine precautions, for instance by erecting barricades or posting someone on the perimeter or at the door. In the instant case Bailey had left the premises,

apparently without knowledge of the search. He posed little risk to the officers at the scene. If Bailey had rushed back to his apartment, the police could have apprehended and detained him under *Summers*. There is no established principle, however, that allows the arrest of anyone away from the premises who is likely to return.

The risk, furthermore, that someone could return home during the execution of a search warrant is not limited to occupants who depart shortly before the start of a search. The risk that a resident might return home, either for reasons unrelated to the search or after being alerted by someone at the scene, exists whether he left five minutes or five hours earlier. Unexpected arrivals by occupants or other persons accustomed to visiting the premises might occur in many instances. Were police to have the authority to detain those persons away from the premises, the authority to detain incident to the execution of a search warrant would reach beyond the rationale of ensuring the integrity of the search by detaining those who are in fact on the scene.

The Court of Appeals relied on an additional safety consideration. It concluded that limiting the application of the authority to detain to the immediate vicinity would put law enforcement officers in a dilemma. They would have to choose between detaining an individual immediately (and risk alerting occupants still inside) or allowing the individual to leave (and risk not being able to arrest him later if incriminating evidence were discovered). 652 F. 3d, at 205–206. Although the danger of alerting occupants who remain inside may be of real concern in some instances, as in the case when a no-knock warrant has been issued, this safety rationale rests on the false premise that a detention must take place. If the officers find that it would be dangerous to detain a departing individual in front of a residence, they are not required to stop him. And, where there are grounds to believe the departing occupant is dangerous, or involved in criminal activity, police will generally not need *Summers* to

detain him at least for brief questioning, as they can rely instead on *Terry*.

The risk that a departing occupant might notice the police surveillance and alert others still inside the residence is also an insufficient safety rationale to justify expanding the existing categorical authority to detain so that it extends beyond the immediate vicinity of the premises to be searched. If extended in this way the rationale would justify detaining anyone in the neighborhood who could alert occupants that the police are outside, all without individualized suspicion of criminal activity or connection to the residence to be searched. This possibility demonstrates why it is necessary to confine the *Summers* rule to those who are present when and where the search is being conducted.

2

The second law enforcement interest relied on in *Summers* was that "the orderly completion of the search may be facilitated if the occupants of the premises are present." 452 U. S., at 703. This interest in efficiency derives from distinct, but related, concerns.

If occupants are permitted to wander around the premises, there is the potential for interference with the execution of the search warrant. They can hide or destroy evidence, seek to distract the officers, or simply get in the way. Those risks are not presented by an occupant who departs beforehand. So, in this case, after Bailey drove away from the Lake Drive apartment, he was not a threat to the proper execution of the search. Had he returned, officers would have been free to detain him at that point. A general interest in avoiding obstruction of a search, however, cannot justify detention beyond the vicinity of the premises to be searched.

Summers also noted that occupants can assist the officers. Under the reasoning in *Summers*, the occupants' "self-interest may induce them to open locked doors or locked con-

tainers to avoid the use of force that is not only damaging to property but may also delay the completion of the task at hand." *Ibid.* This justification must be confined to those persons who are on site and so in a position, when detained, to at once observe the progression of the search; and it would have no limiting principle were it to be applied to persons beyond the premises of the search. Here, it appears the police officers decided to wait until Bailey had left the vicinity of the search before detaining him. In any event it later became clear to the officers that Bailey did not wish to cooperate. See App. 57, 77 ("I don't live there. Anything you find there ain't mine, and I'm not cooperating with your investigation"). And, by the time the officers brought Bailey back to the apartment, the search team had discovered contraband. Bailey's detention thus served no purpose in ensuring the efficient completion of the search.

3

The third law enforcement interest addressed in *Summers* was the "the legitimate law enforcement interest in preventing flight in the event that incriminating evidence is found." 452 U. S., at 702. The proper interpretation of this language, in the context of *Summers* and in the broader context of the reasonableness standard that must govern and inform the detention incident to a search, is that the police can prohibit an occupant from leaving the scene of the search. As with the other interests identified in *Summers*, this justification serves to preserve the integrity of the search by controlling those persons who are on the scene. If police officers are concerned about flight, and have to keep close supervision of occupants who are not restrained, they might rush the search, causing unnecessary damage to property or compromising its careful execution. Allowing officers to secure the scene by detaining those present also prevents the search from being impeded by occupants leaving with the evidence being sought or the means to find it.

The concern over flight is not because of the danger of flight itself but because of the damage that potential flight can cause to the integrity of the search. This interest does not independently justify detention of an occupant beyond the immediate vicinity of the premises to be searched. The need to prevent flight, if unbounded, might be used to argue for detention, while a search is underway, of any regular occupant regardless of his or her location at the time of the search. If not circumscribed, the rationale of preventing flight would justify, for instance, detaining a suspect who is 10 miles away, ready to board a plane. The interest in preventing escape from police cannot extend this far without undermining the usual rules for arrest based on probable cause or a brief stop for questioning under standards derived from *Terry*. Even if the detention of a former occupant away from the premises could facilitate a later arrest should incriminating evidence be discovered, "the mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment." *Mincey* v. *Arizona*, 437 U. S. 385, 393 (1978).

In sum, of the three law enforcement interests identified to justify the detention in *Summers*, none applies with the same or similar force to the detention of recent occupants beyond the immediate vicinity of the premises to be searched. Any of the individual interests is also insufficient, on its own, to justify an expansion of the rule in *Summers* to permit the detention of a former occupant, wherever he may be found away from the scene of the search. This would give officers too much discretion. The categorical authority to detain incident to the execution of a search warrant must be limited to the immediate vicinity of the premises to be searched.

B

In *Summers*, the Court recognized the authority to detain occupants incident to the execution of a search warrant not only in light of the law enforcement interests at stake but

also because the intrusion on personal liberty was limited. The Court held detention of a current occupant "represents only an incremental intrusion on personal liberty when the search of a home has been authorized by a valid warrant." 452 U. S., at 703. Because the detention occurs in the individual's own home, "it could add only minimally to the public stigma associated with the search itself and would involve neither the inconvenience nor the indignity associated with a compelled visit to the police station." *Id.*, at 702.

Where officers arrest an individual away from his home, however, there is an additional level of intrusiveness. A public detention, even if merely incident to a search, will resemble a full-fledged arrest. As demonstrated here, detention beyond the immediate vicinity can involve an initial detention away from the scene and a second detention at the residence. In between, the individual will suffer the additional indignity of a compelled transfer back to the premises, giving all the appearances of an arrest. The detention here was more intrusive than a usual detention at the search scene. Bailey's car was stopped; he was ordered to step out and was detained in full public view; he was handcuffed, transported in a marked patrol car, and detained further outside the apartment. These facts illustrate that detention away from a premises where police are already present often will be more intrusive than detentions at the scene.

C

Summers recognized that a rule permitting the detention of occupants on the premises during the execution of a search warrant, even absent individualized suspicion, was reasonable and necessary in light of the law enforcement interests in conducting a safe and efficient search. Because this exception grants substantial authority to police officers to detain outside of the traditional rules of the Fourth Amendment, it must be circumscribed.

A spatial constraint defined by the immediate vicinity of the premises to be searched is therefore required for detentions incident to the execution of a search warrant. The police action permitted here—the search of a residence—has a spatial dimension, and so a spatial or geographical boundary can be used to determine the area within which both the search and detention incident to that search may occur. Limiting the rule in *Summers* to the area in which an occupant poses a real threat to the safe and efficient execution of a search warrant ensures that the scope of the detention incident to a search is confined to its underlying justification. Once an occupant is beyond the immediate vicinity of the premises to be searched, the search-related law enforcement interests are diminished and the intrusiveness of the detention is more severe.

Here, petitioner was detained at a point beyond any reasonable understanding of the immediate vicinity of the premises in question; and so this case presents neither the necessity nor the occasion to further define the meaning of immediate vicinity. In closer cases courts can consider a number of factors to determine whether an occupant was detained within the immediate vicinity of the premises to be searched, including the lawful limits of the premises, whether the occupant was within the line of sight of his dwelling, the ease of reentry from the occupant's location, and other relevant factors.

Confining an officer's authority to detain under *Summers* to the immediate vicinity of a premises to be searched is a proper limit because it accords with the rationale of the rule. The rule adopted by the Court of Appeals here, allowing detentions of a departed occupant "as soon as reasonably practicable," departs from the spatial limit that is necessary to confine the rule in light of the substantial intrusions on the liberty of those detained. Because detention is justified by the interests in executing a safe and efficient search, the decision to detain must be acted upon at the scene of the

search and not at a later time in a more remote place. If officers elect to defer the detention until the suspect or departing occupant leaves the immediate vicinity, the lawfulness of detention is controlled by other standards, including, of course, a brief stop for questioning based on reasonable suspicion under *Terry* or an arrest based on probable cause. A suspect's particular actions in leaving the scene, including whether he appears to be armed or fleeing with the evidence sought, and any information the officers acquire from those who are conducting the search, including information that incriminating evidence has been discovered, will bear, of course, on the lawfulness of a later stop or detention. For example, had the search team radioed Detectives Sneider and Gorbecki about the gun and drugs discovered in the Lake Drive apartment as the officers stopped Bailey and Middleton, this may have provided them with probable cause for an arrest.

III

Detentions incident to the execution of a search warrant are reasonable under the Fourth Amendment because the limited intrusion on personal liberty is outweighed by the special law enforcement interests at stake. Once an individual has left the immediate vicinity of a premises to be searched, however, detentions must be justified by some other rationale. In this respect it must be noted that the District Court, as an alternative ruling, held that stopping petitioner was lawful under *Terry.* This opinion expresses no view on that issue. It will be open, on remand, for the Court of Appeals to address the matter and to determine whether, assuming the *Terry* stop was valid, it yielded information that justified the detention the officers then imposed.

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 SCALIA, with whom JUSTICE GINSBURG AND JUSTICE KAGAN join, concurring.

I join the Court's opinion. I write separately to emphasize why the Court of Appeals' interest-balancing approach to this case—endorsed by the dissent—is incompatible with the categorical rule set forth in *Michigan* v. *Summers*, 452 U. S. 692 (1981).

Summers identified several law-enforcement interests supporting the detention of occupants incident to the execution of a warrant to search for contraband, along with several reasons why such detentions are typically less intrusive than an arrest. See *id.*, at 701–704. Weighing those factors, the Court determined that "it is constitutionally reasonable to require [a] citizen to remain while officers of the law execute a valid warrant to search his home." *Id.*, at 705.

The existence and scope of the *Summers* exception were predicated on that balancing of the interests and burdens. But—crucially—whether *Summers* authorizes a seizure *in an individual case* does not depend on any balancing, because the *Summers* exception, within its scope, is "categorical." *Muehler* v. *Mena*, 544 U. S. 93, 98 (2005). That *Summers* establishes a categorical, bright-line rule is simply not open to debate—*Summers* itself insisted on it: "The rule we adopt today does not depend upon such an ad hoc determination, because the officer is not required to evaluate either the quantum of proof justifying detention or the extent of the intrusion to be imposed by the seizure." 452 U. S., at 705, n. 19. Where *Summers* applies, a seizure is *ipso facto* "constitutionally reasonable." *Id.*, at 705.

The question in this case is whether *Summers* applies at all. It applies only to seizures of "occupants"—that is, persons within "the immediate vicinity of the premises to be searched." *Ante*, at 199. Bailey was seized a mile away. Ergo, *Summers* cannot sanction Bailey's detention. It really is that simple.

The Court of Appeals' mistake, echoed by the dissent, was to replace that straightforward, binary inquiry with open-ended balancing. Weighing the equities—Bailey "posed a risk of harm to the officers," his detention "was not unreasonably prolonged," and so forth—the Court of Appeals proclaimed the officers' conduct, "in the circumstances presented, reasonable and prudent." 652 F. 3d 197, 206 (CA2 2011) (internal quotation marks and brackets omitted); see also *post,* at 209–210 (opinion of BREYER, J.). That may be so, but it is irrelevant to whether *Summers* authorized the officers to seize Bailey without probable cause. To resolve that issue, a court need ask only one question: Was the person seized within "the immediate vicinity of the premises to be searched?" *Ante,* at 199.

The Court of Appeals read *Summers*' spatial constraint somewhat more promiscuously: In its view, it sufficed that police observed Bailey "in the process of leaving the premises" and detained him "as soon as practicable." 652 F. 3d, at 206 (emphasis deleted); see also *post,* at 212–214. That has pragmatic appeal; police, the argument runs, should not be precluded from seizing the departing occupant at a distance from the premises if that would be safer than stopping him on the front steps. But it rests on the fallacy that each search warrant *entitles* the Government to a concomitant *Summers* detention. Conducting a *Summers* seizure incident to the execution of a warrant "is not the Government's right; it is an exception—justified by necessity—to a rule that would otherwise render the [seizure] unlawful." *Thornton* v. *United States*, 541 U. S. 615, 627 (2004) (SCALIA, J., concurring in judgment).

It bears repeating that the "general rule" is "that Fourth Amendment seizures are 'reasonable' only if based on probable cause." *Dunaway* v. *New York*, 442 U. S. 200, 213 (1979). *Summers* embodies a categorical judgment that *in one narrow circumstance*—the presence of occupants during the execution of a search warrant—seizures are reasonable despite

the absence of probable cause. *Summers* itself foresaw that without clear limits its exception could swallow the general rule: If a "multifactor balancing test of 'reasonable police conduct under the circumstances'" were extended "to cover all seizures that do not amount to technical arrests," it recognized, the "'protections intended by the Framers could all too easily disappear in the consideration and balancing of the multifarious circumstances presented by different cases.'" 452 U. S., at 705, n. 19 (quoting *Dunaway*, *supra*, at 213 (some internal quotation marks omitted)). The dissent would harvest from *Summers* what it likes (permission to seize without probable cause) and leave behind what it finds uncongenial (limitation of that permission to a narrow, categorical exception, not an open-ended "reasonableness" inquiry).* *Summers* anticipated that gambit and explicitly disavowed the dissent's balancing test. See 452 U. S., at 705, n. 19 ("[T]he rule we adopt today does not depend upon such an ad hoc determination").

Regrettably, this Court's opinion in *Summers* facilitated the Court of Appeals' error here by setting forth a smorgasbord of law-enforcement interests assertedly justifying its holding, including "preventing flight in the event that incriminating evidence is found" and obtaining residents' assistance in "open[ing] locked doors or locked containers." *Id.*, at 701–703. We should not have been so expansive. The *Summers* exception is appropriately predicated *only* on law enforcement's interest in carrying out the search unimpeded by violence or other disruptions. "The common denominator" of the few Fourth Amendment doctrines permitting seizures based on less than probable cause "is the presence of

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*The dissent purports to agree "that the question involves drawing a line of demarcation granting a categorical form of detention authority." *Post*, at 209. What the dissent misses is that a "categorical" exception must be defined by categorical *limits*. *Summers*' authorization to detain applies only to "occupants"—a bright-line limitation that the dissent's "reasonably practicable" test discards altogether.

some governmental interest independent of the ordinary interest in investigating crime and apprehending suspects." *Id.*, at 707 (Stewart, J., dissenting). Preventing flight is not a special governmental interest—it is indistinguishable from the ordinary interest in apprehending suspects. Similarly, the interest in inducing residents to open locked doors or containers is nothing more than the ordinary interest in investigating crime. That *Summers* detentions aid police in uncovering evidence and nabbing criminals does not distinguish them from the mine run of seizures unsupported by probable cause, which the Fourth Amendment generally proscribes.

* * *

Summers' clear rule simplifies the task of officers who encounter occupants during a search. "[I]f police are to have workable rules, the balancing of the competing interests . . . 'must in large part be done on a categorical basis—not in an ad hoc, case-by-case fashion by individual police officers.'" *Id.*, at 705, n. 19 (quoting *Dunaway*, *supra*, at 219–220 (White, J., concurring)); see also *Arizona* v. *Gant*, 556 U. S. 332, 352–353 (2009) (SCALIA, J., concurring). But having received the advantage of *Summers*' categorical authorization to detain occupants incident to a search, the Government must take the bitter with the sweet: Beyond *Summers*' spatial bounds, seizures must comport with ordinary Fourth Amendment principles.

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

Did the police act reasonably when they followed (for 0.7 miles), and then detained, two men who left a basement apartment as the police were about to enter to execute a search warrant for a gun? The Court of Appeals for the Second Circuit found that the police action was reasonable because (1) the "premises [were] subject to a valid search warrant," (2) the detained persons were "seen leaving those

premises," and (3) "the detention [was] effected *as soon as reasonably practicable*." 652 F. 3d 197, 208 (2011). In light of the risks of flight, of evidence destruction, and of human injury present in this and similar cases, I would follow the approach of the Court of Appeals and uphold its determination.

I

The Court of Appeals rested its holding upon well-supported District Court findings. The police stopped the men "at the earliest practicable location that was consistent with the safety and security of the officers and the public." 468 F. Supp. 2d 373, 380 (EDNY 2006). "[D]etention in open view outside the residence" would have subjected the officers "to additional dangers during the execution of the search," and it would have "potentially frustrat[ed] the whole purpose of the search due to destruction of evidence." *Id.*, at 379. It also could have

> "jeopardize[d] the search or endanger[ed] the lives of the officers . . . by allowing any other occupants inside the residence, who might see or hear the detention of the individual outside the residence as he was leaving, to have some time to (1) destroy or hide incriminating evidence just before the police are about to enter for the search; (2) flee through a back door or window; or (3) arm themselves in preparation for a violent confrontation with the police when they entered to conduct the search." *Id.*, at 380.

Moreover, the police stopped the men's car "at the first spot where they determined it was safe to conduct the stop," namely, after the car, which had traveled a few blocks along busier streets and intersections, turned off on a quieter side road. *Id.*, at 379.

II

The holding by the Court of Appeals is strongly supported by Supreme Court precedent. In *Michigan* v. *Summers*,

452 U. S. 692 (1981), this Court held that "a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted." *Id.*, at 705 (footnote omitted). And the similarities between *Summers* and this case are multiple. In *Summers* the police had a valid warrant based on probable cause to search a house for drugs. *Id.*, at 693. Here the police had a valid warrant based on probable cause to search a house for a gun and ammunition, believed to be used in multiple drug deals. App. 16–18, 26. In *Summers* the police, beginning to execute that warrant, were outside the house. 452 U. S., at 693. Here the police, beginning to execute that warrant, were outside the house. 468 F. Supp. 2d, at 376. In *Summers* the police then "encountered" an occupant of the house "descending the front steps." 452 U. S., at 693. Here the police then encountered two occupants of the house ascending the back (basement) steps. 468 F. Supp. 2d, at 376; App. 43, 45. In *Summers* the police entered the house soon after encountering that occupant. 452 U. S., at 693. Here the police entered the house soon after encountering those occupants (while other officers pursued them). App. 49, 59–60. In *Summers* the police detained the occupant while they engaged in their search. 452 U. S., at 693. Here the police did the same. 468 F. Supp. 2d, at 377.

Thus, given *Summers*, only one question is open. In *Summers* the police detained the occupant before he left "the sidewalk outside" of the house. 452 U. S., at 702, n. 16. Here the police, for good reason, permitted the occupants to leave the premises and stopped them a few blocks from the house. App. 48, 72, 86, 103. (See Appendix, *infra*.) The resulting question is whether this difference makes a constitutional difference. In particular, which is the right constitutional line to demarcate where a *Summers* detention may be initiated? Is it the Court's line, drawn at the "immediate vicinity" of the house? *Ante*, at 200. Or is it the Second

Circuit's line, drawn on the basis of what is "reasonably practicable"? 652 F. 3d, at 207. I agree, of course, with the concurrence that the question involves drawing a line of demarcation granting a categorical form of detention authority. The question is simply *where* that line should be drawn.

III

The Court in *Summers* rested its conclusion upon four considerations, each of which strongly supports the reasonableness of Bailey's detention, and each of which is as likely or more likely to support detention of an occupant of searchable premises detained "as soon as reasonably practicable," 652 F. 3d, at 208, as it is to support the detention of an occupant detained "within the immediate vicinity" of those premises, *ante,* at 201. First, the Court in *Summers* found "[o]f prime importance . . . the fact that the police had obtained a warrant to search [the occupant's] house for contraband." 452 U. S., at 701. That fact meant that the *additional* detention-related "invasion of the privacy of the persons who resided there" was "less intrusive" than in a typical detention. *Ibid.* The same is true here and *always* true in this class of cases.

Second, the Court in *Summers* said that the detention was justified in part by "the legitimate law enforcement interest in preventing flight in the event that incriminating evidence is found." *Id.*, at 702. This factor, which *Summers* identifies as the "[m]ost obvious" rationale supporting detention, *ibid.*, will be present in all *Summers* detentions. *Summers* applies when police have a search warrant for contraband, *id.*, at 701, 705, n. 20, and any occupant departing a residence containing contraband will have incentive to flee once he encounters police. Indeed, since here the warrant itself described the possessor of the unlawful gun in terms that applied to both of the detained occupants, App. 46, the strength of this interest is equal to or greater than its strength in *Summers*.

Third, the Court in *Summers* said that the detention was justified in part by "the interest in minimizing the risk of harm to the officers." 452 U. S., at 702. The strength of this interest is greater here than in *Summers*, for here there was good reason, backed by probable cause, to believe that "[a] chrome .380 handgun, ammunition, [and] magazine clips" were on the premises. App. 17. As I discuss below, the interest in minimizing harm to officers is compromised by encouraging them to initiate searches before they are prepared to do so safely.

Fourth, the Court in *Summers* said that "the orderly completion of the search may be facilitated if the occupants of the premises are present." 452 U. S., at 703. The strength of this interest here is equal to its strength in *Summers*. See, *e. g.*, *United States* v. *Montieth*, 662 F. 3d 660, 663 (CA4 2011) (After being followed, detained, and returned to his home, Montieth helped officers find "marijuana, firearms, and cash").

The Court in *Summers* did not emphasize any other consideration.

IV

There is, however, one further consideration, namely, an administrative consideration. A bright line will sometimes help police more easily administer Fourth Amendment rules, while also helping to ensure that the police do not go beyond the bounds of the reasonable. The majority, however, offers no easily administered bright line. It describes its line as one drawn at "the immediate vicinity of the premises to be searched," to be determined by "a number of factors . . . including [but not limited to] the lawful limits of the premises, whether the occupant was within the line of sight of his dwelling, the ease of reentry from the occupant's location, and other relevant factors." *Ante*, at 201. The majority's line invites case-by-case litigation although, divorced as it is from interests that directly motivate the Fourth Amendment, it offers no clear case-by-case guidance.

In any event, as the lower courts pointed out, considerations related to the risks of flight, of evidence destruction, and of physical danger overcome any administrative advantages. Consider *why* the officers here waited until the occupants had left the block to stop them: They did so because the occupants might have been armed.

Indeed, even if those emerging occupants were not armed (and even if the police knew it), those emerging occupants might have seen the officers outside the house. And they might have alerted others inside the house where, as we now know (and the officers had probable cause to believe), there was a gun lying on the floor in plain view. App. 202. Suppose those inside the house, once alerted, had tried to flee with the evidence. Suppose they had destroyed the evidence. Suppose that one of them had picked up the gun and fired when the officers entered. Suppose that an individual inside the house (perhaps under the influence of drugs) had grabbed the gun and begun to fire through the window, endangering police, neighbors, or families passing by. See *id.*, at 26 (informant describing gun's relation to drugs in the house).

Considerations of this kind reveal the dangers inherent in the majority's effort to draw a semi-bright line. And they show the need here and in this class of cases to test the constitutionality of the details of a search warrant's execution by taking more directly into account concerns related to safety, evidence, and flight, *i. e.*, the kinds of concerns more directly related to the Fourth Amendment's "ultimate touchstone of . . . reasonableness." *Kentucky* v. *King*, 563 U. S. 452, 459 (2011) (internal quotation marks omitted). See *New York* v. *Class*, 475 U. S. 106, 116–117 (1986) (assessing Fourth Amendment reasonableness "[i]n light of the danger to the officers' safety"); *Pennsylvania* v. *Mimms*, 434 U. S. 106, 110 (1977) (*per curiam*) ("We think it too plain for argument that the State's proffered justification [for a stop]—the safety of the officer—is both legitimate and weighty"). See

also *Maryland* v. *Buie*, 494 U. S. 325, 335, n. 2 (1990) (assessing Fourth Amendment reasonableness based on "the proper balance between officer safety and citizen privacy").

V

The majority responds by pointing out that the police "are not required to stop" "a departing individual." *Ante*, at 196. Quite right. But that response is not convincing. After all, the police do not know whether an emerging individual has seen an officer. If he has, the risks are as I have described them, *e. g.*, that those inside may learn of imminent police entry and fire the gun. In any event, the police may fear that they might be or have been spotted. And they may consequently feel the need, under the majority's rule, to seize the emerging individual just before he leaves the "vicinity" but just too soon to guard against the danger of physical harm inherent in any search for guns.

The majority adds that, where the departing individuals themselves are dangerous, *Terry* v. *Ohio*, 392 U. S. 1 (1968), may authorize detention. *Terry*, however, is irrelevant where the risks at issue are those of flight, destruction of evidence, or harm caused by those inside the house shooting at police or passersby.

Finally, the majority creates hypothetical specific examples of abuse, such as detention "10 miles away" from one's home at an airport and detention "five hours" after an occupant departs from the premises. *Ante*, at 199, 196. The seizures the majority imagines, however, strike me as red herrings, for I do not see how they could be justified as having taken place as soon as "reasonably practicable." Indeed, the majority can find no such example in any actual case—even though almost every Court of Appeals to have considered the matter has taken the Second Circuit's approach. See, *e. g.*, *Montieth*, *supra*, at 666–669 ("as soon as practicable"); *United States* v. *Cavazos*, 288 F. 3d 706, 711–712 (CA5 2002) (rejecting "geographic proximity" as the test

under *Summers*); *United States* v. *Cochran*, 939 F. 2d 337, 338–340 (CA6 1991) ("as soon as practicable"); *United States* v. *Bullock*, 632 F. 3d 1004, 1018–1021 (CA7 2011) (same); *United States* v. *Castro-Portillo*, 211 Fed. Appx. 715, 720–723 (CA10 2007) (same); *United States* v. *Sears*, 139 Fed. Appx. 162, 166 (CA11 2005) (*per curiam*) (same).

While it is true that a hypothetical occupant whom police do not encounter until he is far from the searchable premises could engage some of the *Summers* rationales, that hypothetical occupant would do so significantly less often than would an occupant like Bailey. The difference is obvious: A hypothetical occupant 10 miles away from the searchable premises is less likely to learn of the search (and thus less likely to alert those inside or return to disrupt the search) than is an occupant like Bailey, who may perceive the police presence without alerting the police to the fact that he noticed them.

It is even less likely—indeed impossible—that the lower court's rule would (as the majority claims) permit "detaining anyone in the neighborhood," *ante*, at 197, for the rule explicitly applies only to those "*in the process of leaving* the premises," 652 F. 3d, at 206.

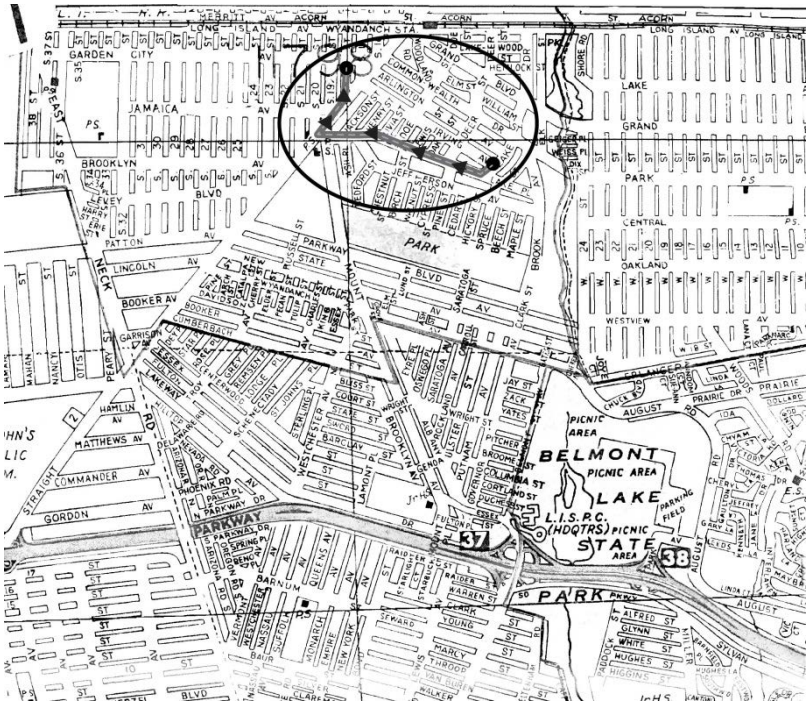
More fundamentally, *Summers* explained that detention incident to a search is permissible because, once police have obtained a search warrant, they "have an articulable basis for suspecting criminal activity." 452 U. S., at 699. That articulable, individualized suspicion attaches to the "particularly describ[ed] . . . place to be searched." U. S. Const., Amdt. 4. In turn, the connection between individualized suspicion of that place and individualized suspicion of "an individual *in the process of leaving* the premises" is sufficiently tight to justify detention. 652 F. 3d, at 206. That connection dissipates when the individual is not actually leaving the premises where, according to a neutral magistrate, there is probable cause to believe contraband can be found, and the *Summers* justification therefore does not

apply. Hence, *Summers* applies *only* where the connection between the searchable premises and the detained occupant is as tight as it is in cases like *Summers* and this one: In both, a departing occupant had just left his home and was merely turned around and escorted back there for the duration of a search.

* * *

In sum, I believe that the majority has substituted a line based on indeterminate geography for a line based on realistic considerations related to basic Fourth Amendment concerns such as privacy, safety, evidence destruction, and flight. In my view, these latter considerations should govern the Fourth Amendment determination at issue here. I consequently dissent.

APPENDIX



Shown above, from right to left, is the path of approximately 0.7 miles traveled by police as they followed petitioner Bailey and his companion.

Syllabus

FEDERAL TRADE COMMISSION *v.* PHOEBE PUTNEY HEALTH SYSTEM, INC., ET AL.

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

No. 11–1160. Argued November 26, 2012—Decided February 19, 2013

Under Georgia's Hospital Authorities Law (Law), political subdivisions may create special-purpose public entities called hospital authorities to provide "for the operation and maintenance of needed health care facilities in the several counties and municipalities of th[e] state." The Law permits authorities to "exercise public and essential governmental functions" and delegates to them numerous general powers, including the ability to acquire and lease hospitals and other public health facilities. Ga. Code Ann. §31–7–75.

The Hospital Authority of Albany-Dougherty County (Authority) owns Phoebe Putney Memorial Hospital (Memorial), one of two hospitals in the county. The Authority formed two private nonprofit corporations to manage Memorial: Phoebe Putney Health System, Inc. (PPHS), and Phoebe Putney Memorial Hospital, Inc. (PPMH). After the Authority decided to purchase the second hospital in the county and lease it to a subsidiary of PPHS, the Federal Trade Commission (FTC) issued an administrative complaint alleging that the transaction would substantially reduce competition in the market for acute-care hospital services, in violation of §5 of the Federal Trade Commission Act and §7 of the Clayton Act. The FTC and Georgia subsequently sued the Authority, PPHS, PPMH, and others (collectively respondents), seeking to enjoin the transaction pending administrative proceedings. The District Court denied the request for a preliminary injunction and granted respondents' motion to dismiss, holding that respondents are immune from antitrust liability under the state-action doctrine. The Eleventh Circuit affirmed. It concluded that the Authority, as a local governmental entity, was entitled to state-action immunity because the challenged anticompetitive conduct was a foreseeable result of the Law. The court reasoned that the state legislature could have readily anticipated an anticompetitive effect, given the breadth of the powers delegated to hospital authorities, particularly leasing and acquisition powers that could lead to consolidation of hospital ownership.

Held: Because Georgia has not clearly articulated and affirmatively expressed a policy allowing hospital authorities to make acquisitions that

substantially lessen competition, state-action immunity does not apply. Pp. 224–236.

(a) This Court recognized in *Parker* v. *Brown*, 317 U. S. 341, 350–352, that the federal antitrust laws do not prevent States from imposing market restraints "as an act of government . . . ." Under the state-action doctrine, immunity from federal antitrust law may extend to non-state actors carrying out the State's regulatory program. See, *e. g.*, *Patrick* v. *Burget*, 486 U. S. 94, 99–100. But given the antitrust laws' values of free enterprise and economic competition, "state-action immunity is disfavored," *FTC* v. *Ticor Title Ins. Co.*, 504 U. S. 621, 636, and is recognized only when it is clear that the challenged anticompetitive conduct is undertaken pursuant to the "State's own" regulatory scheme, *id.*, at 635. Immunity will attach only to activities of substate governmental entities that are undertaken pursuant to a "clearly articulated and affirmatively expressed" state policy to displace competition. *Community Communications Co.* v. *Boulder*, 455 U. S. 40, 52. A state legislature need not "expressly state" that intent, *Hallie* v. *Eau Claire*, 471 U. S. 34, 43, but the anticompetitive effect must have been the "foreseeable result" of what the State authorized, *id.*, at 42. Pp. 224–227.

(b) Respondents' state-action immunity defense fails under the clear-articulation test because there is no evidence the State affirmatively contemplated that hospital authorities would displace competition by consolidating hospital ownership. The Authority's powers, including its acquisition and leasing powers, mirror general powers routinely conferred by state law on private corporations. More is required to establish state-action immunity; the Authority must show that it has been delegated authority not just to act, but to act or regulate anticompetitively. *Columbia* v. *Omni Outdoor Advertising, Inc.*, 499 U. S. 365, 372. In *Boulder*, this Court concluded that a Colorado law granting municipalities the power to enact ordinances governing local affairs did not satisfy the clear-articulation test, 455 U. S., at 55–56, because, when a State's position "is one of mere *neutrality* respecting the municipal actions challenged as anticompetitive," the State cannot be said to have "'contemplated'" those anticompetitive actions, *id.*, at 55.

That principle controls here. Grants of general corporate power allowing substate governmental entities to participate in a competitive marketplace are typically used without raising federal antitrust concerns, so a State cannot be said to have contemplated that such powers will be used anticompetitively. Here, though the Law allows the Authority to acquire hospitals, it does not clearly articulate and affirmatively express a state policy empowering the Authority to make acquisitions of existing hospitals that will substantially lessen competition. Pp. 227–228.

Syllabus

(c) In concluding otherwise, the Eleventh Circuit applied the concept of "foreseeability" too loosely. This Court, recognizing that no legislature "can be expected to catalog all of the anticipated effects" of a statute delegating authority to a substate governmental entity, *Hallie*, 471 U. S., at 43, has approached the clear-articulation inquiry practically, but without diluting the ultimate requirement that the State must have affirmatively contemplated the displacement of competition such that the challenged anticompetitive effects can be attributed to the "state itself," *Parker*, 317 U. S., at 352. Thus, the Court has found a state policy to displace federal antitrust law was sufficiently expressed where the displacement of competition was the inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature. In that scenario, the State must have foreseen and implicitly endorsed the anticompetitive effects as consistent with its policy goals. See *Hallie*, 471 U. S., at 41; *Omni*, 499 U. S., at 373. By contrast, when a State grants an entity a general power to act, it does so against the backdrop of federal antitrust law. Entities might transgress antitrust requirements by exercising their powers anticompetitively, but a reasonable legislature's ability to anticipate that possibility falls well short of clearly articulating an affirmative state policy to displace competition. The Eleventh Circuit's argument, echoed by respondents, that the case falls within the foreseeability standard used in *Hallie* and *Omni* is rejected. Pp. 229–232.

(d) Respondents' additional arguments are also unpersuasive. They contend that because hospital authorities are granted unique powers and responsibilities to fulfill Georgia's objective of providing access to adequate and affordable health care, it was foreseeable that they would decide that the best way to serve their communities was to acquire an existing local hospital, instead of incurring the additional expense and regulatory burden of expanding, or constructing, a facility. But even though the authorities may differ from private corporations offering hospital services, neither the Law nor any other state-law provision clearly articulates a state policy allowing authorities to exercise their general corporate powers without regard to anticompetitive effects. Respondents also contend that when there is doubt about whether the clear-articulation test is satisfied, federal courts should err on the side of recognizing immunity to avoid improper interference with state policy choices. But the Law here is not ambiguous, and respondents' suggestion is inconsistent with the principle that "state-action immunity is disfavored," *Ticor Title*, 504 U. S., at 636. Pp. 232–236.

663 F. 3d 1369, reversed and remanded.

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

Benjamin J. Horwich argued the cause for petitioner. With him on the briefs were *Solicitor General Verrilli*, *Deputy Solicitor General Stewart*, *Deputy Assistant Attorney General Hesse*, *Willard K. Tom*, *John F. Daly*, and *Imad D. Abyad.*

Seth P. Waxman argued the cause for respondents. With him on the brief were *Edward C. DuMont*, *Daniel P. Kearney, Jr.*, *Alan E. Schoenfeld*, and *Thomas S. Chambless.**

JUSTICE SOTOMAYOR delivered the opinion of the Court.

Under this Court's state-action immunity doctrine, when a local governmental entity acts pursuant to a clearly articulated and affirmatively expressed state policy to displace competition, it is exempt from scrutiny under the federal antitrust laws. In this case, we must decide whether a Geor-

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*Briefs of *amici curiae* urging reversal were filed for the State of Illinois et al. by *Lisa Madigan*, Attorney General of Illinois, *Michael A. Scodro*, Solicitor General, and *Jane Elinor Notz*, Deputy Solicitor General, and by the Attorneys General for their respective States as follows: *Thomas C. Horne* of Arizona, *Kamala D. Harris* of California, *John W. Suthers* of Colorado, *George Epson* of Connecticut, *Joseph R. Biden III* of Delaware, *David M. Louie* of Hawaii, *Lawrence W. Wasden* of Idaho, *Douglas F. Gansler* of Maryland, *Bill Schuette* of Michigan, *Lori Swanson* of Minnesota, *Catherine Cortez Masto* of Nevada, *Michael A. Delaney* of New Hampshire, *Gary K. King* of New Mexico, *Eric T. Schneiderman* of New York, *Roy Cooper* of North Carolina, *Ellen F. Rosenblum* of Oregon, *Linda L. Kelly* of Pennsylvania, *Robert E. Cooper, Jr.*, of Tennessee, and *Darrell V. McGraw, Jr.*, of West Virginia; for the American Antitrust Institute by *Richard M. Brunell* and *Albert A. Foer*; and for Joseph Stubbs et al. by *Kermit S. Dorough, Jr.*

Briefs of *amici curiae* urging affirmance were filed for the American Hospital Association et al. by *Beth Heifetz* and *Toby G. Singer*; for the Georgia Alliance of Community Hospitals, Inc., et al. by *John H. Parker, Jr.*; and for the Lee Memorial Health System by *Ms. Heifetz* and *Mr. Singer.*

Briefs of *amici curiae* were filed for the American Medical Association et al. by *Jack R. Bierig*; for Economics Professors by *Bernard S. Black*, *pro se*; and for the National Federation of Independent Business by *Jarod M. Bona* and *Karen R. Harned.*

gia law that creates special-purpose public entities called hospital authorities and gives those entities general corporate powers, including the power to acquire hospitals, clearly articulates and affirmatively expresses a state policy to permit acquisitions that substantially lessen competition. Because Georgia's grant of general corporate powers to hospital authorities does not include permission to use those powers anticompetitively, we hold that the clear-articulation test is not satisfied and state-action immunity does not apply.

I

A

In 1941, the State of Georgia amended its Constitution to allow political subdivisions to provide health care services. 1941 Ga. Laws p. 50. The State concurrently enacted the Hospital Authorities Law (Law), *id.*, at 241, Ga. Code Ann. §31–7–70 *et seq.* (2012), "to provide a mechanism for the operation and maintenance of needed health care facilities in the several counties and municipalities of th[e] state." §31–7–76(a). "The purpose of the constitutional provision and the statute based thereon was to . . . create an organization which could carry out and make more workable the duty which the State owed to its indigent sick." *DeJarnette* v. *Hospital Auth. of Albany*, 195 Ga. 189, 200, 23 S. E. 2d 716, 723 (1942) (citations omitted). As amended, the Law authorizes each county and municipality, and certain combinations of counties or municipalities, to create "a public body corporate and politic" called a "hospital authority." §§31–7–72(a), (d). Hospital authorities are governed by five- to nine-member boards that are appointed by the governing body of the county or municipality in their area of operation. §31–7–72(a).

Under the Law, a hospital authority "exercise[s] public and essential governmental functions" and is delegated "all the powers necessary or convenient to carry out and effectuate" the Law's purposes. §31–7–75. Giving more content to

that general delegation, the Law enumerates 27 powers conferred upon hospital authorities, including the power "[t]o acquire by purchase, lease, or otherwise and to operate projects," § 31–7–75(4), which are defined to include hospitals and other public health facilities, § 31–7–71(5); "[t]o construct, reconstruct, improve, alter, and repair projects," § 31–7–75(5); "[t]o lease . . . for operation by others any project" provided certain conditions are satisfied, § 31–7–75(7); and "[t]o establish rates and charges for the services and use of the facilities of the authority," § 31–7–75(10). Hospital authorities may not operate or construct any project for profit, and accordingly they must set rates so as only to cover operating expenses and create reasonable reserves. § 31–7–77.

B

In the same year that the Law was adopted, the city of Albany and Dougherty County established the Hospital Authority of Albany-Dougherty County (Authority) and the Authority promptly acquired Phoebe Putney Memorial Hospital (Memorial), which has been in operation in Albany since 1911. In 1990, the Authority restructured its operations by forming two private nonprofit corporations to manage Memorial: Phoebe Putney Health System, Inc. (PPHS), and its subsidiary, Phoebe Putney Memorial Hospital, Inc. (PPMH). The Authority leased Memorial to PPMH for $1 per year for 40 years. Under the lease, PPMH has exclusive authority over the operation of Memorial, including the ability to set rates for services. Consistent with § 31–7–75(7), PPMH is subject to lease conditions that require provision of care to the indigent sick and limit its rate of return.

Memorial is one of two hospitals in Dougherty County. The second, Palmyra Medical Center (Palmyra), was established in Albany in 1971 and is located just two miles from Memorial. At the time suit was brought in this case, Palmyra was operated by a national for-profit hospital network, HCA, Inc. (HCA). Together, Memorial and Palmyra ac-

count for 86 percent of the market for acute-care hospital services provided to commercial health care plans and their customers in the six counties surrounding Albany. Memorial accounts for 75 percent of that market on its own.

In 2010, PPHS began discussions with HCA about acquiring Palmyra. Following negotiations, PPHS presented the Authority with a plan under which the Authority would purchase Palmyra with PPHS controlled funds and then lease Palmyra to a PPHS subsidiary for $1 per year under the Memorial lease agreement. The Authority unanimously approved the transaction.

The Federal Trade Commission (FTC) shortly thereafter issued an administrative complaint alleging that the proposed purchase-and-lease transaction would create a virtual monopoly and would substantially reduce competition in the market for acute-care hospital services, in violation of § 5 of the Federal Trade Commission Act, 38 Stat. 719, 15 U. S. C. § 45, and § 7 of the Clayton Act, 38 Stat. 731, 15 U. S. C. § 18. The FTC, along with the State of Georgia,[1] subsequently filed suit against the Authority, HCA, Palmyra, PPHS, PPMH, and the new PPHS subsidiary created to manage Palmyra (collectively respondents), seeking to enjoin the transaction pending administrative proceedings. See 15 U. S. C. §§ 26, 53(b).

The United States District Court for the Middle District of Georgia denied the request for a preliminary injunction and granted respondents' motion to dismiss. 793 F. Supp. 2d 1356 (2011). The District Court held that respondents are immune from antitrust liability under the state-action doctrine. See *id.*, at 1366–1381.

The United States Court of Appeals for the Eleventh Circuit affirmed. 663 F. 3d 1369 (2011). As an initial matter, the court "agree[d] with the [FTC] that, on the facts alleged, the joint operation of Memorial and Palmyra would substan-

[1] Georgia did not join the notice of appeal filed by the FTC and is no longer a party in the case.

tially lessen competition or tend to create, if not create, a monopoly." *Id.*, at 1375. But the court concluded that the transaction was immune from antitrust liability. See *id.*, at 1375–1378. The Court of Appeals explained that as a local governmental entity, the Authority was entitled to state-action immunity if the challenged anticompetitive conduct was a "'foreseeable result'" of Georgia's legislation. *Id.*, at 1375. According to the court, anticompetitive conduct is foreseeable if it could have been "'reasonably anticipated'" by the state legislature; it is not necessary, the court reasoned, for an anticompetitive effect to "be 'one that ordinarily occurs, routinely occurs, or is inherently likely to occur as a result of the empowering legislation.'" *Id.*, at 1375–1376 (quoting *FTC* v. *Hospital Bd. of Directors of Lee Cty.*, 38 F. 3d 1184, 1188, 1190–1191 (CA11 1994)). Applying that standard, the Court of Appeals concluded that the Law contemplated the anticompetitive conduct challenged by the FTC. The court noted the "impressive breadth" of the powers given to hospital authorities, which include traditional powers of private corporations and a few additional capabilities, such as the power to exercise eminent domain. See 663 F. 3d, at 1376. More specifically, the court reasoned that the Georgia Legislature must have anticipated that the grant of power to hospital authorities to acquire and lease projects would produce anticompetitive effects because "[f]oreseeably, acquisitions could consolidate ownership of competing hospitals, eliminating competition between them." *Id.*, at 1377.[2]

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[2] In tension with the Court of Appeals' decision, other Circuits have held in analogous circumstances that substate governmental entities exercising general corporate powers were not entitled to state-action immunity. See *Kay Elec. Cooperative* v. *Newkirk*, 647 F. 3d 1039, 1043, 1045–1047 (CA10 2011); *First Am. Title Co.* v. *Devaugh*, 480 F. 3d 438, 456–457 (CA6 2007); *Surgical Care Center of Hammond, L. C.* v. *Hospital Serv. Dist. No. 1*, 171 F. 3d 231, 235–236 (CA5 1999) (en banc); *Lancaster Community Hospital* v. *Antelope Valley Hospital Dist.*, 940 F. 2d 397, 402–403 (CA9 1991).

The Court of Appeals also rejected the FTC's alternative argument that state-action immunity did not apply because the transaction in substance involved a transfer of control over Palmyra from one private entity to another, with the Authority acting as a mere conduit for the sale to evade antitrust liability. See *id.*, at 1376, n. 12.

We granted certiorari on two questions: whether the Georgia Legislature, through the powers it vested in hospital authorities, clearly articulated and affirmatively expressed a state policy to displace competition in the market for hospital services; and if so, whether state-action immunity is nonetheless inapplicable as a result of the Authority's minimal participation in negotiating the terms of the sale of Palmyra and the Authority's limited supervision of the two hospitals' operations. See 567 U. S. 933 (2012). Concluding that the answer to the first question is "no," we reverse without reaching the second question.[3]

II

In *Parker* v. *Brown*, 317 U. S. 341 (1943), this Court held that because "nothing in the language of the Sherman Act [15 U. S. C. § 1 *et seq.*] or in its history" suggested that Congress intended to restrict the sovereign capacity of the States to regulate their economies, the Act should not be read to bar States from imposing market restraints "as an act of government." *Id.*, at 350, 352. Following *Parker*, we have held that under certain circumstances, immunity from

[3] After issuing its decision, the Court of Appeals dissolved the temporary injunction that it had granted pending appeal and the transaction closed. The case is not moot, however, because the District Court on remand could enjoin respondents from taking actions that would disturb the status quo and impede a final remedial decree. See *Knox* v. *Service Employees*, 567 U. S. 298, 307 (2012) ("A case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party" (internal quotation marks omitted)); see also *FTC* v. *Whole Foods Market, Inc.*, 548 F. 3d 1028, 1033–1034 (CADC 2008) (opinion of Brown, J.) (rejecting a mootness argument in a similar posture).

the federal antitrust laws may extend to nonstate actors carrying out the State's regulatory program. See *Patrick* v. *Burget*, 486 U. S. 94, 99–100 (1988); *Southern Motor Carriers Rate Conference, Inc.* v. *United States*, 471 U. S. 48, 56–57 (1985).

But given the fundamental national values of free enterprise and economic competition that are embodied in the federal antitrust laws, "state-action immunity is disfavored, much as are repeals by implication." *FTC* v. *Ticor Title Ins. Co.*, 504 U. S. 621, 636 (1992). Consistent with this preference, we recognize state-action immunity only when it is clear that the challenged anticompetitive conduct is undertaken pursuant to a regulatory scheme that "is the State's own." *Id.*, at 635. Accordingly, "[c]loser analysis is required when the activity at issue is not directly that of" the State itself, but rather "is carried out by others pursuant to state authorization." *Hoover* v. *Ronwin*, 466 U. S. 558, 568 (1984). When determining whether the anticompetitive acts of private parties are entitled to immunity, we employ a two-part test, requiring first that "the challenged restraint . . . be one clearly articulated and affirmatively expressed as state policy," and second that "the policy . . . be actively supervised by the State." *California Retail Liquor Dealers Assn.* v. *Midcal Aluminum, Inc.*, 445 U. S. 97, 105 (1980) (internal quotation marks omitted).

This case involves allegedly anticompetitive conduct undertaken by a substate governmental entity. Because municipalities and other political subdivisions are not themselves sovereign, state-action immunity under *Parker* does not apply to them directly. See *Columbia* v. *Omni Outdoor Advertising, Inc.*, 499 U. S. 365, 370 (1991); *Lafayette* v. *Louisiana Power & Light Co.*, 435 U. S. 389, 411–413 (1978) (plurality opinion). At the same time, however, substate governmental entities do receive immunity from antitrust scrutiny when they act "pursuant to state policy to displace competition with regulation or monopoly public service."

Id., at 413.[4] This rule "preserves to the States their freedom . . . to use their municipalities to administer state regulatory policies free of the inhibitions of the federal antitrust laws without at the same time permitting purely parochial interests to disrupt the Nation's free-market goals." *Id.*, at 415–416.

As with private parties, immunity will only attach to the activities of local governmental entities if they are undertaken pursuant to a "clearly articulated and affirmatively expressed" state policy to displace competition. *Community Communications Co.* v. *Boulder*, 455 U. S. 40, 52 (1982). But unlike private parties, such entities are not subject to the "active state supervision requirement" because they have less of an incentive to pursue their own self-interest under the guise of implementing state policies. *Hallie* v. *Eau Claire*, 471 U. S. 34, 46–47 (1985).[5]

"[T]o pass the 'clear articulation' test," a state legislature need not "expressly state in a statute or its legislative history that the legislature intends for the delegated action to have anticompetitive effects." *Id.*, at 43. Rather, we ex-

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[4] An *amicus curiae* contends that we should recognize and apply a "market participant" exception to state-action immunity because Georgia's hospital authorities engage in proprietary activities. Brief for National Federation of Independent Business 6–24; see also *Columbia* v. *Omni Outdoor Advertising, Inc.*, 499 U. S. 365, 374–375, 379 (1991) (leaving open the possibility of a market participant exception). Because this argument was not raised by the parties or passed on by the lower courts, we do not consider it. *United Parcel Service, Inc.* v. *Mitchell*, 451 U. S. 56, 60, n. 2 (1981).

[5] The Eleventh Circuit has held that while Georgia's hospital authorities are "unique entities" that lie "somewhere between a local, general-purpose governing body (such as a city or county) and a corporation," they qualify as "an instrumentality, agency, or 'political subdivision' of Georgia for purposes of state action immunity." *Crosby* v. *Hospital Auth. of Valdosta & Lowndes Cty.*, 93 F. 3d 1515, 1524–1526 (1996). The FTC has not challenged that characterization of Georgia's hospital authorities, and we accordingly operate from the assumption that hospital authorities are akin to political subdivisions.

plained in *Hallie* that state-action immunity applies if the anticompetitive effect was the "foreseeable result" of what the State authorized. *Id.*, at 42. We applied that principle in *Omni*, where we concluded that the clear-articulation test was satisfied because the suppression of competition in the billboard market was the foreseeable result of a state statute authorizing municipalities to adopt zoning ordinances regulating the construction of buildings and other structures. 499 U. S., at 373.

III

A

Applying the clear-articulation test to the Law before us, we conclude that respondents' claim for state-action immunity fails because there is no evidence the State affirmatively contemplated that hospital authorities would displace competition by consolidating hospital ownership. The acquisition and leasing powers exercised by the Authority in the challenged transaction, which were the principal powers relied upon by the Court of Appeals in finding state-action immunity, see 663 F. 3d, at 1377, mirror general powers routinely conferred by state law upon private corporations.[6] Other powers possessed by hospital authorities that the Court of Appeals characterized as having "impressive breadth," *id.*, at 1376, also fit this pattern, including the ability to make and execute contracts, § 31–7–75(3), to set rates for services, § 31–7–75(10), to sue and be sued, § 31–7–75(1), to borrow money, § 31–7–75(17), and the residual authority to exercise any or all powers possessed by private corporations, § 31–7–75(21).

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[6] Compare Ga. Code Ann. §§ 31–7–75(4), (7) (2012) (authorizing hospital authorities to acquire projects and enter lease agreements) with § 14–2–302 (outlining general powers of private corporations in Georgia, which include the ability to acquire and lease property), § 14–2–1101 (allowing corporate mergers), and §§ 14–2–1201, 14–2–1202 (allowing sales of corporate assets to other corporations).

Our case law makes clear that state-law authority to act is insufficient to establish state-action immunity; the substate governmental entity must also show that it has been delegated authority to act or regulate anticompetitively. See *Omni*, 499 U. S., at 372. In *Boulder*, we held that Colorado's Home Rule Amendment allowing municipalities to govern local affairs did not satisfy the clear-articulation test. 455 U. S., at 55–56. There was no doubt in that case that the city had authority as a matter of state law to pass an ordinance imposing a moratorium on a cable provider's expansion of service. *Id.*, at 45–46. But we rejected the proposition that "the general grant of power to enact ordinances necessarily implies state authorization to enact specific anticompetitive ordinances" because such an approach "would wholly eviscerate the concepts of 'clear articulation and affirmative expression' that our precedents require." *Id.*, at 56. We explained that when a State's position "is one of mere *neutrality* respecting the municipal actions challenged as anticompetitive," the State cannot be said to have "'contemplated'" those anticompetitive actions. *Id.*, at 55.

The principle articulated in *Boulder* controls this case. Grants of general corporate power that allow substate governmental entities to participate in a competitive marketplace should be, can be, and typically are used in ways that raise no federal antitrust concerns. As a result, a State that has delegated such general powers "can hardly be said to have 'contemplated'" that they will be used anticompetitively. *Ibid.* See also 1A P. Areeda & H. Hovenkamp, Antitrust Law ¶225a, p. 131 (3d ed. 2006) (hereinafter Areeda & Hovenkamp) ("When a state grants power to an inferior entity, it presumably grants the power to do the thing contemplated, but not to do so anticompetitively"). Thus, while the Law does allow the Authority to acquire hospitals, it does not clearly articulate and affirmatively express a state policy empowering the Authority to make acquisitions of existing hospitals that will substantially lessen competition.

B

In concluding otherwise, and specifically in reasoning that the Georgia Legislature "must have anticipated" that acquisitions by hospital authorities "would produce anticompetitive effects," 663 F. 3d, at 1377, the Court of Appeals applied the concept of "foreseeability" from our clear-articulation test too loosely.

In *Hallie*, we recognized that it would "embod[y] an unrealistic view of how legislatures work and of how statutes are written" to require state legislatures to explicitly authorize specific anticompetitive effects before state-action immunity could apply. 471 U. S., at 43. "No legislature," we explained, "can be expected to catalog all of the anticipated effects" of a statute delegating authority to a substate governmental entity. *Ibid.* Instead, we have approached the clear-articulation inquiry more practically, but without diluting the ultimate requirement that the State must have affirmatively contemplated the displacement of competition such that the challenged anticompetitive effects can be attributed to the "state itself." *Parker*, 317 U. S., at 352. Thus, we have concluded that a state policy to displace federal antitrust law was sufficiently expressed where the displacement of competition was the inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature. In that scenario, the State must have foreseen and implicitly endorsed the anticompetitive effects as consistent with its policy goals.

For example, in *Hallie*, Wisconsin statutory law regulating the municipal provision of sewage services expressly permitted cities to limit their service to surrounding unincorporated areas. See 471 U. S., at 41. While unincorporated towns alleged that the city's exercise of that power constituted an unlawful tying arrangement, an unlawful refusal to deal, and an abuse of monopoly power, we had no trouble concluding that these alleged anticompetitive effects were affirmatively contemplated by the State because it was

"clear" that they "logically would result" from the grant of authority. *Id.*, at 42. As described by the Wisconsin Supreme Court, the state legislature "'viewed annexation by the city of a surrounding unincorporated area as a reasonable *quid pro quo* that a city could require before extending sewer services to the area.'" *Id.*, at 44–45, n. 8 (quoting *Hallie* v. *Chippewa Falls*, 105 Wis. 2d 533, 540–541, 314 N. W. 2d 321, 325 (1982)). Without immunity, federal antitrust law could have undermined that arrangement and taken completely off the table the policy option that the State clearly intended for cities to have.

Similarly, in *Omni*, where the respondents alleged that the city had used its zoning power to protect an incumbent billboard provider against competition, we found that the clear-articulation test was easily satisfied even though the state statutes delegating zoning authority to the city did not explicitly permit the suppression of competition. We explained that "[t]he very purpose of zoning regulation is to displace unfettered business freedom in a manner that regularly has the effect of preventing normal acts of competition" and that a zoning ordinance regulating the size, location, and spacing of billboards "necessarily protects existing billboards against some competition from newcomers." 499 U. S., at 373. Other cases in which we have found a "clear articulation" of the State's intent to displace competition without an explicit statement have also involved authorizations to act or regulate in ways that were inherently anticompetitive.[7]

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[7] See *Southern Motor Carriers Rate Conference, Inc.* v. *United States*, 471 U. S. 48, 64, 65, and n. 25 (1985) (finding that a state commission's decision to encourage collective ratemaking by common carriers was entitled to state-action immunity where the legislature had left "[t]he details of the inherently anticompetitive rate-setting process . . . to the agency's discretion"); *Hallie* v. *Eau Claire*, 471 U. S. 34, 42 (1985) (describing *New Motor Vehicle Bd. of Cal.* v. *Orrin W. Fox Co.*, 439 U. S. 96 (1978), as a case where there was not an "express intent to displace the antitrust laws" but where the regulatory structure at issue restricting the establishment

By contrast, "simple permission to play in a market" does not "foreseeably entail permission to roughhouse in that market unlawfully." *Kay Elec. Cooperative* v. *Newkirk*, 647 F. 3d 1039, 1043 (CA10 2011). When a State grants some entity general power to act, whether it is a private corporation or a public entity like the Authority, it does so against the backdrop of federal antitrust law. See *Ticor Title*, 504 U. S., at 632. Of course, both private parties and local governmental entities conceivably may transgress antitrust requirements by exercising their general powers in anticompetitive ways. But a reasonable legislature's ability to anticipate that (potentially undesirable) possibility falls well short of clearly articulating an affirmative state policy to displace competition with a regulatory alternative.

Believing that this case falls within the scope of the foreseeability standard applied in *Hallie* and *Omni*, the Court of Appeals stated that "[i]t defies imagination to suppose the [state] legislature could have believed that every geographic market in Georgia was so replete with hospitals that authorizing acquisitions by the authorities could have no serious anticompetitive consequences." 663 F. 3d, at 1377. Respondents echo this argument, noting that each of Georgia's 159 counties covers a small geographical area and that most of them are sparsely populated, with nearly three-quarters having fewer than 50,000 residents as of the 2010 Census. Brief for Respondents 46.

Even accepting, *arguendo*, the premise that facts about a market could make the anticompetitive use of general corporate powers "foreseeable," we reject the Court of Appeals' and respondents' conclusion because only a relatively small subset of the conduct permitted as a matter of state law by Ga. Code Ann. §31–7–75(4) has the potential to negatively affect competition. Contrary to the Court of Appeals' and

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or relocation of automobile dealerships "inherently displaced unfettered business freedom" (internal quotation marks and brackets omitted)).

respondents' characterization, § 31–7–75(4) is not principally concerned with hospital authorities' ability to acquire multiple hospitals and consolidate their operations. Section 31–7–75(4) allows authorities to acquire "projects," which includes not only "hospitals," but also "health care facilities, dormitories, office buildings, clinics, housing accommodations, nursing homes, rehabilitation centers, extended care facilities, and other public health facilities." § 31–7–71(5). Narrowing our focus to the market for hospital services, the power to acquire hospitals still does not ordinarily produce anticompetitive effects. Section 31–7–75(4) was, after all, the source of power for newly formed hospital authorities to acquire a hospital in the first instance—a transaction that was unlikely to raise any antitrust concerns even in small markets because the transfer of ownership from private to public hands does not increase market concentration. See 1A Areeda & Hovenkamp ¶224e(c), at 126 ("[S]ubstitution of one monopolist for another is not an antitrust violation"). While subsequent acquisitions by authorities have the potential to reduce competition, they will raise federal antitrust concerns only in markets that are large enough to support more than one hospital but sufficiently small that the merger of competitors would lead to a significant increase in market concentration. This is too slender a reed to support the Court of Appeals' and respondents' inference.

IV

A

Taking a somewhat different approach than the Court of Appeals, respondents insist that the Law should not be read as a mere authorization for hospital authorities to participate in the hospital-services market and exercise general corporate powers. Rather, they contend that hospital authorities are granted unique powers and responsibilities to fulfill the State's objective of providing all residents with access to ad-

equate and affordable health and hospital care. See, *e. g.*, Ga. Code Ann. § 31–7–75(22). Respondents argue that in view of hospital authorities' statutory objective, their specific attributes, and the regulatory context in which they operate, it was foreseeable that authorities facing capacity constraints would decide they could best serve their communities' needs by acquiring an existing local hospital rather than incur the additional expense and regulatory burden of expanding a facility or constructing a new one. See Brief for Respondents 33–39.

In support of this argument, respondents observe that hospital authorities are simultaneously empowered to act in ways private entities cannot while also being subject to significant regulatory constraints. On the power side, as the Court of Appeals noted, 663 F. 3d, at 1376–1377, hospital authorities may acquire through eminent domain property that is "essential to the [authority's] purposes." § 31–7–75(12).[8] On the restraint side, hospital authorities are managed by a publicly accountable board, §§ 31–7–74.1, 31–7–76; they must operate on a nonprofit basis, § 31–7–77; and they may only lease a project for others to operate after determining that doing so will promote the community's public health needs and that the lessee will not receive more than a reasonable rate of return on its investment, § 31–7–75(7). Moreover, hospital authorities operate within a broader regulatory context in which Georgia requires any party seeking to establish or significantly expand certain medical facilities, including

[8] The Court of Appeals also invoked Ga. Code Ann. § 31–7–84, which provides that hospital authorities do not have the power to assess taxes, but allows the applicable governing body in the authority's area of operation to impose taxes to cover the authority's expenses. See 663 F. 3d, at 1377. This provision applies in cases in which the county or municipality has entered into a contract with a hospital authority for the use of its facilities. See §§ 31–7–84(a), 31–7–85. No such contract exists in this case, and respondents have not relied on this provision in briefing or argument before us.

hospitals, to obtain a certificate of need from state regulators. See § 31–6–40 *et seq.*[9]

We have no doubt that Georgia's hospital authorities differ materially from private corporations that offer hospital services. But nothing in the Law or any other provision of Georgia law clearly articulates a state policy to allow authorities to exercise their general corporate powers, including their acquisition power, without regard to negative effects on competition. The state legislature's objective of improving access to affordable health care does not logically suggest that the State intended that hospital authorities pursue that end through mergers that create monopolies. Nor do the restrictions imposed on hospital authorities, including the requirement that they operate on a nonprofit basis, reveal such a policy. Particularly in light of our national policy favoring competition, these restrictions should be read to reflect more modest aims. The legislature may have viewed profit generation as incompatible with its goal of providing care for the indigent sick. In addition, the legislature may have believed that some hospital authorities would operate in markets with characteristics of natural monopolies, in which case the legislature could not rely on competition to control prices. See *Cantor* v. *Detroit Edison Co.*, 428 U. S. 579, 595–596 (1976).

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[9] Georgia first adopted certificate of need legislation in 1978 in part to comply with a since-repealed federal law conditioning federal funding for a number of health care programs on a State's enactment of certificate of need laws. See 1978 Ga. Laws p. 941, as amended, Ga. Code Ann. § 31–6–40 *et seq.* (2012); see also National Health Planning and Resources Development Act of 1974, 88 Stat. 2246, repealed by § 701(a), 100 Stat. 3799. Many other States also have certificate of need laws. See National Conference of State Legislatures, Certificate of Need: State Health Laws and Programs, online at http://www.ncsl.org/issues-research/health/con-certificate-of-need-state-laws.aspx (as visited Feb. 15, 2013, and available in Clerk of Court's case file) (indicating in "States with CON Programs" table that 35 States retained some type of certificate of need program as of December 2011 while 15 other States had such programs but have repealed them).

We recognize that Georgia, particularly through its certificate of need requirement, does limit competition in the market for hospital services in some respects. But regulation of an industry, and even the authorization of discrete forms of anticompetitive conduct pursuant to a regulatory structure, does not establish that the State has affirmatively contemplated other forms of anticompetitive conduct that are only tangentially related. Thus, in *Goldfarb* v. *Virginia State Bar*, 421 U. S. 773 (1975), we rejected a state-action defense to price-fixing claims where a state bar adopted a compulsory minimum fee schedule. Although the State heavily regulated the practice of law, we found no evidence that it had adopted a policy to displace price competition among lawyers. *Id.*, at 788–792. And in *Cantor*, we concluded that a state commission's regulation of rates for electricity charged by a public utility did not confer state-action immunity for a claim that the utility's free distribution of light bulbs restrained trade in the light-bulb market. 428 U. S., at 596.

In this case, the fact that Georgia imposes limits on entry into the market for medical services, which apply to both hospital authorities and private corporations, does not clearly articulate a policy favoring the consolidation of existing hospitals that are engaged in active competition. Accord, *FTC* v. *University Health, Inc.*, 938 F. 2d 1206, 1213, n. 13 (CA11 1991). As to the Authority's eminent domain power, it was not exercised here and we do not find it relevant to the question whether the State authorized hospital authorities to consolidate market power through potentially anticompetitive acquisitions of existing hospitals.

B

Finally, respondents contend that to the extent there is any doubt about whether the clear-articulation test is satisfied in this context, federal courts should err on the side of recognizing immunity to avoid improper interference with

state policy choices. See Brief for Respondents 43–44. But we do not find the Law ambiguous on the question whether it clearly articulates a policy authorizing anticompetitive acquisitions; it does not.

More fundamentally, respondents' suggestion is inconsistent with the principle that "state-action immunity is disfavored." *Ticor Title*, 504 U. S., at 636. *Parker* and its progeny are premised on an understanding that respect for the States' coordinate role in government counsels against reading the federal antitrust laws to restrict the States' sovereign capacity to regulate their economies and provide services to their citizens. But federalism and state sovereignty are poorly served by a rule of construction that would allow "essential national policies" embodied in the antitrust laws to be displaced by state delegations of authority "intended to achieve more limited ends." 504 U. S., at 636. As an *amici* brief filed by 20 States in support of the FTC contends, loose application of the clear-articulation test would attach significant unintended consequences to States' frequent delegations of corporate authority to local bodies, effectively requiring States to disclaim any intent to displace competition to avoid inadvertently authorizing anticompetitive conduct. Brief for State of Illinois et al. 12–17; see also *Surgical Care Center of Hammond, L. C.* v. *Hospital Serv. Dist. No. 1*, 171 F. 3d 231, 236 (CA5 1999) (en banc). We decline to set such a trap for unwary state legislatures.

* * *

We hold that Georgia has not clearly articulated and affirmatively expressed a policy to allow hospital authorities to make acquisitions that substantially lessen competition. 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.

Syllabus

FLORIDA *v.* HARRIS

CERTIORARI TO THE SUPREME COURT OF FLORIDA

No. 11–817. Argued October 31, 2012—Decided February 19, 2013

Officer Wheetley pulled over respondent Harris for a routine traffic stop. Observing Harris's nervousness and an open beer can, Wheetley sought consent to search Harris's truck. When Harris refused, Wheetley executed a sniff test with his trained narcotics dog, Aldo. The dog alerted at the driver's-side door handle, leading Wheetley to conclude that he had probable cause for a search. That search turned up nothing Aldo was trained to detect, but did reveal pseudoephedrine and other ingredients for manufacturing methamphetamine. Harris was arrested and charged with illegal possession of those ingredients. In a subsequent stop while Harris was out on bail, Aldo again alerted on Harris's truck but nothing of interest was found. At a suppression hearing, Wheetley testified about his and Aldo's extensive training in drug detection. Harris's attorney did not contest the quality of that training, focusing instead on Aldo's certification and performance in the field, particularly in the two stops of Harris's truck. The trial court denied the motion to suppress, but the Florida Supreme Court reversed. It held that a wide array of evidence was always necessary to establish probable cause, including field performance records showing how many times the dog has falsely alerted. If an officer like Wheetley failed to keep such records, he could never have probable cause to think the dog a reliable indicator of drugs.

Held: Because training and testing records supported Aldo's reliability in detecting drugs and Harris failed to undermine that evidence, Wheetley had probable cause to search Harris's truck. Pp. 243–250.

(a) In testing whether an officer has probable cause to conduct a search, all that is required is the kind of "fair probability" on which "reasonable and prudent [people] act." *Illinois* v. *Gates*, 462 U. S. 213, 235. To evaluate whether the State has met this practical and commonsensical standard, this Court has consistently looked to the totality of the circumstances and rejected rigid rules, bright-line tests, and mechanistic inquiries. *Ibid.*

The Florida Supreme Court flouted this established approach by creating a strict evidentiary checklist to assess a drug-detection dog's reliability. Requiring the State to introduce comprehensive documentation of the dog's prior hits and misses in the field, and holding that absent

Syllabus

field records will preclude a finding of probable cause no matter how much other proof the State offers, is the antithesis of a totality-of-the-circumstances approach. This is made worse by the State Supreme Court's treatment of field performance records as the evidentiary gold standard when, in fact, such data may not capture a dog's false negatives or may markedly overstate a dog's false positives. Such inaccuracies do not taint records of a dog's performance in standard training and certification settings, making that performance a better measure of a dog's reliability. Field records may sometimes be relevant, but the court should evaluate all the evidence, and should not prescribe an inflexible set of requirements.

Under the correct approach, a probable-cause hearing focusing on a dog's alert should proceed much like any other, with the court allowing the parties to make their best case and evaluating the totality of the circumstances. If the State has produced proof from controlled settings that a dog performs reliably in detecting drugs, and the defendant has not contested that showing, the court should find probable cause. But a defendant must have an opportunity to challenge such evidence of a dog's reliability, whether by cross-examining the testifying officer or by introducing his own fact or expert witnesses. The defendant may contest training or testing standards as flawed or too lax, or raise an issue regarding the particular alert. The court should then consider all the evidence and apply the usual test for probable cause—whether all the facts surrounding the alert, viewed through the lens of common sense, would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime. Pp. 243–248.

(b) The record in this case amply supported the trial court's determination that Aldo's alert gave Wheetley probable cause to search the truck. The State introduced substantial evidence of Aldo's training and his proficiency in finding drugs. Harris declined to challenge any aspect of that training or testing in the trial court, and the Court does not consider such arguments when they are presented for the first time in this Court. Harris principally relied below on Wheetley's failure to find any substance that Aldo was trained to detect. That infers too much from the failure of a particular alert to lead to drugs, and did not rebut the State's evidence from recent training and testing. Pp. 248–250.

71 So. 3d 756, reversed.

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

Gregory G. Garre argued the cause for petitioner. With him on the briefs were *Pamela Jo Bondi*, Attorney General of Florida, *Carolyn M. Snurkowski*, Associate Deputy

Counsel

Attorney General, *Robert J. Krauss*, Chief-Assistant Attorney General, and *Susan M. Shanahan*, Assistant Attorney General.

Joseph R. Palmore argued the cause for the United States as *amicus curiae* in support of petitioner. With him on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Breuer*, and *Deputy Solicitor General Dreeben.*

Glen P. Gifford argued the cause and filed a brief for respondent.*

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*Briefs of *amici curiae* urging reversal were filed for the Commonwealth of Virginia et al. by *Kenneth T. Cuccinelli II*, Attorney General of Virginia, *E. Duncan Getchell, Jr.*, Solicitor General, *Charles E. James, Jr.*, Chief Deputy Attorney General, *Wesley G. Russell, Jr.*, Deputy Attorney General, and *Michael H. Brady*, Assistant Attorney General, and by officials for their respective jurisdictions as follows: *Luther Strange*, Attorney General of Alabama, *Tom Horne*, Attorney General of Arizona, *John W. Suthers*, Attorney General of Colorado, *Joseph R. Biden III*, Attorney General of Delaware, *Leonardo M. Rapadas*, Attorney General of Guam, *Lawrence G. Wasden*, Attorney General of Idaho, *Lisa Madigan*, Attorney General of Illinois, *Gregory F. Zoeller*, Attorney General of Indiana, *Derek Schmidt*, Attorney General of Kansas, and *John Campbell*, Chief Deputy Attorney General, *William J. Schneider*, Attorney General of Maine, *Bill Schuette*, Attorney General of Michigan, *Chris Koster*, Attorney General of Missouri, *Jon Bruning*, Attorney General of Nebraska, *Jeffrey S. Chiesa*, Attorney General of New Jersey, *Gary K. King*, Attorney General of New Mexico, *Wayne Stenehjem*, Attorney General of North Dakota, *E. Scott Pruitt*, Attorney General of Oklahoma, *John R. Kroger*, Attorney General of Oregon, *Linda L. Kelly*, Attorney General of Pennsylvania, *Guillermo Somoza-Colombani*, Attorney General of Puerto Rico, and *Luis R. Román Negrón*, Solicitor General, *Greg Abbott*, Attorney General of Texas, *Mark L. Shurtleff*, Attorney General of Utah, *William H. Sorrell*, Attorney General of Vermont, *Robert M. McKenna*, Attorney General of Washington, *J. B. Van Hollen*, Attorney General of Wisconsin, and *Gregory A. Phillips*, Attorney General of Wyoming; and for the National Police Canine Association et al. by *Arthur T. Daus III.*

Briefs of *amici curiae* urging affirmance were filed for the Electronic Privacy Information Center by *Marc Rotenberg*; for the Institute for Justice by *William H. Mellor*, *Scott G. Bullock*, *Darpana M. Sheth*, and *Robert P. Frommer*; for the National Association of Criminal Defense Lawyers et al. by *Danielle Spinelli*, *Annie L. Owens*, *Jonathan D. Hacker*,

JUSTICE KAGAN delivered the opinion of the Court.

In this case, we consider how a court should determine if the "alert" of a drug-detection dog during a traffic stop provides probable cause to search a vehicle. The Florida Supreme Court held that the State must in every case present an exhaustive set of records, including a log of the dog's performance in the field, to establish the dog's reliability. See 71 So. 3d 756, 775 (2011). We think that demand inconsistent with the "flexible, common-sense standard" of probable cause. *Illinois* v. *Gates*, 462 U. S. 213, 239 (1983).

I

William Wheetley is a K–9 Officer in the Liberty County, Florida Sheriff's Office. On June 24, 2006, he was on a routine patrol with Aldo, a German shepherd trained to detect certain narcotics (methamphetamine, marijuana, cocaine, heroin, and ecstasy). Wheetley pulled over respondent Clayton Harris's truck because it had an expired license plate. On approaching the driver's-side door, Wheetley saw that Harris was "visibly nervous," unable to sit still, shaking, and breathing rapidly. App. 62. Wheetley also noticed an open can of beer in the truck's cup holder. *Ibid.* Wheetley asked Harris for consent to search the truck, but Harris refused. At that point, Wheetley retrieved Aldo from the patrol car and walked him around Harris's truck for a "free air sniff." *Id.*, at 63. Aldo alerted at the driver's-side door handle—signaling, through a distinctive set of behaviors, that he smelled drugs there.

Wheetley concluded, based principally on Aldo's alert, that he had probable cause to search the truck. His search did not turn up any of the drugs Aldo was trained

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Mason C. Clutter, Steven R. Shapiro, Ezekiel R. Edwards, Michael Ufferman, Sonya Rudenstine, Randall C. Marshall, and *Maria Kayanan*; for The Rutherford Institute by *Anand Agneshwar, Lisa S. Blatt, Carl Nadler, John W. Whitehead, Rita M. Dunaway,* and *Charles I. Lugosi*; and for Fourth Amendment Scholars by *Leslie A. Shoebotham.*

to detect. But it did reveal 200 loose pseudoephedrine pills, 8,000 matches, a bottle of hydrochloric acid, two containers of antifreeze, and a coffee filter full of iodine crystals—all ingredients for making methamphetamine. Wheetley accordingly arrested Harris, who admitted after proper *Miranda* warnings that he routinely "cooked" methamphetamine at his house and could not go "more than a few days without using" it. *Id.*, at 68. The State charged Harris with possessing pseudoephedrine for use in manufacturing methamphetamine.

While out on bail, Harris had another run-in with Wheetley and Aldo. This time, Wheetley pulled Harris over for a broken brake light. Aldo again sniffed the truck's exterior, and again alerted at the driver's-side door handle. Wheetley once more searched the truck, but on this occasion discovered nothing of interest.

Harris moved to suppress the evidence found in his truck on the ground that Aldo's alert had not given Wheetley probable cause for a search. At the hearing on that motion, Wheetley testified about both his and Aldo's training in drug detection. See *id.*, at 52–82. In 2004, Wheetley (and a different dog) completed a 160-hour course in narcotics detection offered by the Dothan, Alabama Police Department, while Aldo (and a different handler) completed a similar, 120-hour course given by the Apopka, Florida Police Department. That same year, Aldo received a one-year certification from Drug Beat, a private company that specializes in testing and certifying K–9 dogs. Wheetley and Aldo teamed up in 2005 and went through another, 40-hour refresher course in Dothan together. They also did four hours of training exercises each week to maintain their skills. Wheetley would hide drugs in certain vehicles or buildings while leaving others "blank" to determine whether Aldo alerted at the right places. *Id.*, at 57. According to Wheetley, Aldo's performance in those exercises was "really good." *Id.*, at 60. The State introduced "Monthly Canine Detection

Training Logs" consistent with that testimony: They showed that Aldo always found hidden drugs and that he performed "satisfactorily" (the higher of two possible assessments) on each day of training. *Id.*, at 109–116.

On cross-examination, Harris's attorney chose not to contest the quality of Aldo's or Wheetley's training. She focused instead on Aldo's certification and his performance in the field, particularly the two stops of Harris's truck. Wheetley conceded that the certification (which, he noted, Florida law did not require) had expired the year before he pulled Harris over. See *id.*, at 70–71. Wheetley also acknowledged that he did not keep complete records of Aldo's performance in traffic stops or other field work; instead, he maintained records only of alerts resulting in arrests. See *id.*, at 71–72, 74. But Wheetley defended Aldo's two alerts to Harris's seemingly narcotics-free truck: According to Wheetley, Harris probably transferred the odor of methamphetamine to the door handle, and Aldo responded to that "residual odor." *Id.*, at 80.

The trial court concluded that Wheetley had probable cause to search Harris's truck and so denied the motion to suppress. Harris then entered a no-contest plea while reserving the right to appeal the trial court's ruling. An intermediate state court summarily affirmed. 989 So. 2d 1214, 1215 (Fla. App. 2008) (*per curiam*).

The Florida Supreme Court reversed, holding that Wheetley lacked probable cause to search Harris's vehicle under the Fourth Amendment. "[W]hen a dog alerts," the court wrote, "the fact that the dog has been trained and certified is simply not enough to establish probable cause." 71 So. 3d, at 767. To demonstrate a dog's reliability, the State needed to produce a wider array of evidence:

> "[T]he State must present . . . the dog's training and certification records, an explanation of the meaning of the particular training and certification, field performance records (including any unverified alerts), and evi-

> dence concerning the experience and training of the officer handling the dog, as well as any other objective evidence known to the officer about the dog's reliability." *Id.*, at 775.

The court particularly stressed the need for "evidence of the dog's performance history," including records showing "how often the dog has alerted in the field without illegal contraband having been found." *Id.*, at 769. That data, the court stated, could help to expose such problems as a handler's tendency (conscious or not) to "cue [a] dog to alert" and "a dog's inability to distinguish between residual odors and actual drugs." *Id.*, at 769, 774. Accordingly, an officer like Wheetley who did not keep full records of his dog's field performance could never have the requisite cause to think "that the dog is a reliable indicator of drugs." *Id.*, at 773.

Chief Justice Canady dissented, maintaining that the majority's "elaborate and inflexible evidentiary requirements" went beyond the demands of probable cause. *Id.*, at 775. He would have affirmed the trial court's ruling on the strength of Aldo's training history and Harris's "fail[ure] to present any evidence challenging" it. *Id.*, at 776.

We granted certiorari, 566 U. S. 904 (2012), and now reverse.

II

A police officer has probable cause to conduct a search when "the facts available to [him] would 'warrant a [person] of reasonable caution in the belief' " that contraband or evidence of a crime is present. *Texas* v. *Brown*, 460 U. S. 730, 742 (1983) (plurality opinion) (quoting *Carroll* v. *United States*, 267 U. S. 132, 162 (1925)); see *Safford Unified School Dist. #1* v. *Redding*, 557 U. S. 364, 370–371 (2009). The test for probable cause is not reducible to "precise definition or quantification." *Maryland* v. *Pringle*, 540 U. S. 366, 371 (2003). "Finely tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence . . .

have no place in the [probable-cause] decision." *Gates*, 462 U. S., at 235. All we have required is the kind of "fair probability" on which "reasonable and prudent [people,] not legal technicians, act." *Id.*, at 238, 231 (internal quotation marks omitted).

In evaluating whether the State has met this practical and common-sensical standard, we have consistently looked to the totality of the circumstances. See, *e. g.*, *Pringle*, 540 U. S., at 371; *Gates*, 462 U. S., at 232; *Brinegar* v. *United States*, 338 U. S. 160, 176 (1949). We have rejected rigid rules, bright-line tests, and mechanistic inquiries in favor of a more flexible, all-things-considered approach. In *Gates*, for example, we abandoned our old test for assessing the reliability of informants' tips because it had devolved into a "complex superstructure of evidentiary and analytical rules," any one of which, if not complied with, would derail a finding of probable cause. 462 U. S., at 235. We lamented the development of a list of "inflexible, independent requirements applicable in every case." *Id.*, at 230, n. 6. Probable cause, we emphasized, is "a fluid concept—turning on the assessment of probabilities in particular factual contexts—not readily, or even usefully, reduced to a neat set of legal rules." *Id.*, at 232.

The Florida Supreme Court flouted this established approach to determining probable cause. To assess the reliability of a drug-detection dog, the court created a strict evidentiary checklist, whose every item the State must tick off.[1] Most prominently, an alert cannot establish

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[1] By the time of oral argument in this case, even Harris declined to defend the idea that the Fourth Amendment compels the State to produce each item of evidence the Florida Supreme Court enumerated. See Tr. of Oral Arg. 29–30 ("I don't believe the Constitution requires [that list]"). Harris instead argued that the court's decision, although "look[ing] rather didactic," in fact did not impose any such requirement. *Id.*, at 29; see *id.*, at 31 ("[I]t's not a specific recipe that can't be deviated from"). But in reading the decision below as establishing a mandatory checklist, we

probable cause under the Florida court's decision unless the State introduces comprehensive documentation of the dog's prior "hits" and "misses" in the field. (One wonders how the court would apply its test to a rookie dog.) No matter how much other proof the State offers of the dog's reliability, the absent field performance records will preclude a finding of probable cause. That is the antithesis of a totality-of-the-circumstances analysis. It is, indeed, the very thing we criticized in *Gates* when we overhauled our method for assessing the trustworthiness of an informant's tip. A gap as to any one matter, we explained, should not sink the State's case; rather, that "deficiency . . . may be compensated for, in determining the overall reliability of a tip, by a strong showing as to . . . other indicia of reliability." *Id.*, at 233. So too here, a finding of a drug-detection dog's reliability cannot depend on the State's satisfaction of multiple, independent evidentiary requirements. No more for dogs than for human informants is such an inflexible checklist the way to prove reliability, and thus establish probable cause.

Making matters worse, the decision below treats records of a dog's field performance as the gold standard in evidence, when in most cases they have relatively limited import. Errors may abound in such records. If a dog on patrol fails to alert to a car containing drugs, the mistake usually will go undetected because the officer will not initiate a search. Field data thus may not capture a dog's false negatives. Conversely (and more relevant here), if the dog alerts to a car in which the officer finds no narcotics, the dog may not have made a mistake at all. The dog may have detected substances that were too well hidden or present in quantities too small for the officer to locate. Or the dog may have smelled the residual odor of drugs previously in the vehicle

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do no more than take the court at its (oft-repeated) word. See, *e. g.*, 71 So. 3d 756, 758, 759, 771, 775 (Fla. 2011) (holding that the State "must" present the itemized evidence).

or on the driver's person.[2] Field data thus may markedly overstate a dog's real false positives. By contrast, those inaccuracies—in either direction—do not taint records of a dog's performance in standard training and certification settings. There, the designers of an assessment know where drugs are hidden and where they are not—and so where a dog should alert and where he should not. The better measure of a dog's reliability thus comes away from the field, in controlled testing environments.[3]

For that reason, evidence of a dog's satisfactory performance in a certification or training program can itself provide sufficient reason to trust his alert. If a bona fide organiza-

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[2] See U. S. Dept. of Army, Military Working Dog Program 30 (Pamphlet 190–12, 1993) ("The odor of a substance may be present in enough concentration to cause the dog to respond even after the substance has been removed. Therefore, when a detector dog responds and no drug or explosive is found, do not assume the dog has made an error"); S. Bryson, Police Dog Tactics 257 (2d ed. 2000) ("Four skiers toke up in the parking lot before going up the mountain. Five minutes later a narcotic detector dog alerts to the car. There is no dope inside. However, the dog has performed correctly"). The Florida Supreme Court treated a dog's response to residual odor as an error, referring to the "inability to distinguish between [such] odors and actual drugs" as a "facto[r] that call[s] into question Aldo's reliability." 71 So. 3d, at 773–774; see *supra*, at 243. But that statement reflects a misunderstanding. A detection dog recognizes an odor, not a drug, and should alert whenever the scent is present, even if the substance is gone (just as a police officer's much inferior nose detects the odor of marijuana for some time after a joint has been smoked). In the usual case, the mere chance that the substance might no longer be at the location does not matter; a well-trained dog's alert establishes a fair probability—all that is required for probable cause—that either drugs or evidence of a drug crime (like the precursor chemicals in Harris's truck) will be found.

[3] See K. Furton, J. Greb, & H. Holness, Florida Int'l Univ., The Scientific Working Group on Dog and Orthogonal Detector Guidelines 1, 61–62, 66 (2010) (recommending as a "best practice" that a dog's reliability should be assessed based on "the results of certification and proficiency assessments," because in those "procedure[s] you should know whether you have a false positive," unlike in "most operational situations").

tion has certified a dog after testing his reliability in a controlled setting, a court can presume (subject to any conflicting evidence offered) that the dog's alert provides probable cause to search. The same is true, even in the absence of formal certification, if the dog has recently and successfully completed a training program that evaluated his proficiency in locating drugs. After all, law enforcement units have their own strong incentive to use effective training and certification programs, because only accurate drug-detection dogs enable officers to locate contraband without incurring unnecessary risks or wasting limited time and resources.

A defendant, however, must have an opportunity to challenge such evidence of a dog's reliability, whether by cross-examining the testifying officer or by introducing his own fact or expert witnesses. The defendant, for example, may contest the adequacy of a certification or training program, perhaps asserting that its standards are too lax or its methods faulty. So too, the defendant may examine how the dog (or handler) performed in the assessments made in those settings. Indeed, evidence of the dog's (or handler's) history in the field, although susceptible to the kind of misinterpretation we have discussed, may sometimes be relevant, as the Solicitor General acknowledged at oral argument. See Tr. of Oral Arg. 23–24 ("[T]he defendant can ask the handler, if the handler is on the stand, about field performance, and then the court can give that answer whatever weight is appropriate"). And even assuming a dog is generally reliable, circumstances surrounding a particular alert may undermine the case for probable cause—if, say, the officer cued the dog (consciously or not), or if the team was working under unfamiliar conditions.

In short, a probable-cause hearing focusing on a dog's alert should proceed much like any other. The court should allow the parties to make their best case, consistent with the usual rules of criminal procedure. And the court should then evaluate the proffered evidence to decide what all the cir-

cumstances demonstrate. If the State has produced proof from controlled settings that a dog performs reliably in detecting drugs, and the defendant has not contested that showing, then the court should find probable cause. If, in contrast, the defendant has challenged the State's case (by disputing the reliability of the dog overall or of a particular alert), then the court should weigh the competing evidence. In all events, the court should not prescribe, as the Florida Supreme Court did, an inflexible set of evidentiary requirements. The question—similar to every inquiry into probable cause—is whether all the facts surrounding a dog's alert, viewed through the lens of common sense, would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime. A sniff is up to snuff when it meets that test.

III

And here, Aldo's did. The record in this case amply supported the trial court's determination that Aldo's alert gave Wheetley probable cause to search Harris's truck.

The State, as earlier described, introduced substantial evidence of Aldo's training and his proficiency in finding drugs. See *supra*, at 241–242. The State showed that two years before alerting to Harris's truck, Aldo had successfully completed a 120-hour program in narcotics detection, and separately obtained a certification from an independent company. And although the certification expired after a year, the Sheriff's Office required continuing training for Aldo and Wheetley. The two satisfied the requirements of another, 40-hour training program one year prior to the search at issue. And Wheetley worked with Aldo for four hours each week on exercises designed to keep their skills sharp. Wheetley testified, and written records confirmed, that in those settings Aldo always performed at the highest level.

Harris, as also noted above, declined to challenge in the trial court any aspect of Aldo's training. See *supra*, at 242. To be sure, Harris's briefs in *this* Court raise questions about

that training's adequacy—for example, whether the programs simulated sufficiently diverse environments and whether they used enough blind testing (in which the handler does not know the location of drugs and so cannot cue the dog). See Brief for Respondent 57–58. Similarly, Harris here queries just how well Aldo performed in controlled testing. See *id.*, at 58. But Harris never voiced those doubts in the trial court, and cannot do so for the first time here. See, *e. g.*, *Rugendorf* v. *United States*, 376 U. S. 528, 534 (1964). As the case came to the trial court, Aldo had successfully completed two recent drug-detection courses and maintained his proficiency through weekly training exercises. Viewed alone, that training record—with or without the prior certification—sufficed to establish Aldo's reliability. See *supra,* at 246–248.

And Harris's cross-examination of Wheetley, which focused on Aldo's field performance, failed to rebut the State's case. Harris principally contended in the trial court that because Wheetley did not find any of the substances Aldo was trained to detect, Aldo's two alerts must have been false. See Brief for Respondent 1; App. 77–80. But we have already described the hazards of inferring too much from the failure of a dog's alert to lead to drugs, see *supra,* at 245–246; and here we doubt that Harris's logic does justice to Aldo's skills. Harris cooked and used methamphetamine on a regular basis; so as Wheetley later surmised, Aldo likely responded to odors that Harris had transferred to the driver's-side door handle of his truck. See *supra*, at 242. A well-trained drug-detection dog *should* alert to such odors; his response to them might appear a mistake, but in fact is not. See n. 2, *supra*. And still more fundamentally, we do not evaluate probable cause in hindsight, based on what a search does or does not turn up. See *United States* v. *Di Re*, 332 U. S. 581, 595 (1948). For the reasons already stated, Wheetley had good cause to view Aldo as a reliable detector of drugs. And no special circumstance here gave Wheetley reason to

discount Aldo's usual dependability or distrust his response to Harris's truck.

Because training records established Aldo's reliability in detecting drugs and Harris failed to undermine that showing, we agree with the trial court that Wheetley had probable cause to search Harris's truck. We accordingly reverse the judgment of the Florida Supreme Court.

It is so ordered.

Syllabus

GUNN ET AL. *v.* MINTON

CERTIORARI TO THE SUPREME COURT OF TEXAS

No. 11–1118. Argued January 16, 2013—Decided February 20, 2013

Petitioner attorneys represented respondent Minton in a federal patent infringement suit. The District Court declared Minton's patent invalid under the "on sale" bar since he had leased his interactive securities trading system to a securities brokerage "more than one year prior to the date of the [patent] application." 35 U. S. C. § 102(b). In a motion for reconsideration, Minton argued for the first time that the lease was part of ongoing testing, and therefore fell within the "experimental use" exception to the on-sale bar. The District Court denied the motion and the Federal Circuit affirmed, concluding that the District Court had appropriately held that argument waived. Convinced that his attorneys' failure to timely raise the argument cost him the lawsuit and led to the invalidation of his patent, Minton brought a legal malpractice action in Texas state court. His former attorneys argued that Minton's infringement claims would have failed even if the experimental-use argument had been timely raised, and the trial court agreed. On appeal, Minton claimed that the federal district courts had exclusive jurisdiction over claims like his under 28 U. S. C. § 1338(a), which provides for exclusive federal jurisdiction over any case "arising under any Act of Congress relating to patents." Minton argued that the state trial court had therefore lacked jurisdiction, and he should be able to start over with his malpractice suit in federal court. Applying the test of *Grable & Sons Metal Products, Inc.* v. *Darue Engineering & Mfg.*, 545 U. S. 308, the Texas Court of Appeals rejected Minton's argument, proceeded to the merits, and determined that Minton had failed to establish experimental use. The Texas Supreme Court reversed, concluding that the case properly belonged in federal court because the success of Minton's malpractice claim relied upon a question of federal patent law.

Held: Section 1338(a) does not deprive the state courts of subject matter jurisdiction over Minton's malpractice claim. Pp. 256–265.

(a) Congress has authorized the federal district courts to exercise original jurisdiction over "any civil action arising under any Act of Congress relating to patents," and further decreed that "[n]o State court shall have jurisdiction over any [such] claim." § 1338(a). Because federal law did not create the cause of action asserted by Minton's legal malpractice claim, the claim can "aris[e] under" federal patent law only if it "necessarily raise[s] a stated federal issue, actually disputed and

substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities." *Grable, supra,* at 314. Pp. 256–258.

(b) Applying *Grable*'s inquiry here, it is clear that Minton's legal malpractice claim does not arise under federal patent law. Pp. 258–264.

(1) Resolution of a federal patent question is "necessary" to Minton's case. To prevail on his claim, Minton must show that an experimental-use argument would have prevailed if only petitioners had timely made it in the earlier patent litigation. That hypothetical patent case within the malpractice case must be resolved to decide Minton's malpractice claim. P. 259.

(2) The federal issue is also "actually disputed." Minton argues that the experimental-use exception applied, which would have saved his patent from the on-sale bar; petitioners argue that it did not. P. 259.

(3) Minton's argument founders, however, on *Grable*'s substantiality requirement. The substantiality inquiry looks to the importance of the issue to the federal system as a whole. Here, the federal issue does not carry the necessary significance. No matter how the state courts resolve the hypothetical "case within a case," the real-world result of the prior federal patent litigation will not change. Nor will allowing state courts to resolve these cases undermine "the development of a uniform body of [patent] law." *Bonito Boats, Inc.* v. *Thunder Craft Boats, Inc.*, 489 U. S. 141, 162. The federal courts have exclusive jurisdiction over actual patent cases, and in resolving the nonhypothetical patent questions those cases present they are of course not bound by state precedents. Minton suggests that state courts' answers to hypothetical patent questions can sometimes have real-world effect on other patents through issue preclusion, but even assuming that is true, such "fact-bound and situation-specific" effects are not sufficient to establish arising under jurisdiction, *Empire HealthChoice Assurance, Inc.* v. *McVeigh*, 547 U. S. 677, 701. Finally, the federal courts' greater familiarity with patent law is not enough, by itself, to trigger the federal courts' exclusive patent jurisdiction. Pp. 260–264.

(4) It follows from the foregoing that Minton does not meet *Grable*'s fourth requirement, which is concerned with the appropriate federal-state balance. There is no reason to suppose that Congress meant to bar from state courts state legal malpractice claims simply because they require resolution of a hypothetical patent issue. P. 264.

355 S. W. 3d 634, reversed and remanded.

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

Jane M. N. Webre argued the cause for petitioners. With her on the briefs were *Cynthia S. Connolly*, *Charles B. Walker*, *Jr.*, *David E. Keltner*, *Edward J. Murphy*, and *Bruce C. Morris*.

Thomas M. Michel argued the cause for respondent. With him on the brief were *Coyt Randal Johnston*, *Robert L. Tobey*, *Coyt Randal Johnston*, *Jr.*, *Theodore F. Shiells*, and *Daniel R. Ortiz*.*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Federal courts have exclusive jurisdiction over cases "arising under any Act of Congress relating to patents." 28 U. S. C. § 1338(a). The question presented is whether a state law claim alleging legal malpractice in the handling of a patent case must be brought in federal court.

I

In the early 1990's, respondent Vernon Minton developed a computer program and telecommunications network designed to facilitate securities trading. In March 1995, he leased the system—known as the Texas Computer Exchange Network, or TEXCEN—to R. M. Stark & Co., a securities brokerage. A little over a year later, he applied for a patent for an interactive securities trading system that was based

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*Ronald E. Mallen, *pro se*, filed a brief as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the Intellectual Property Law Association of Chicago by *Charles W. Shifley*, *Janet Pioli*, *David L. De Bruin*, and *Donald W. Rupert*; for Los Alamos National Security, LLC, et al. by *Lynn H. Pasahow*, *Charlene M. Morrow*, and *Carolyn Chang*; and for Wood, Herron & Evans, LLP, by *Charles J. Faruki* and *J. Robert Chambers*.

Briefs of *amici curiae* were filed for the American Intellectual Property Law Association by *Joseph R. Re*, *Stephen W. Larson*, and *Jeffrey I. D. Lewis*; and for Law Professors by *Rory Ryan*, *pro se*.

substantially on TEXCEN. The U. S. Patent and Trademark Office issued the patent in January 2000.

Patent in hand, Minton filed a patent infringement suit in Federal District Court against the National Association of Securities Dealers, Inc. (NASD), and the NASDAQ Stock Market, Inc. He was represented by Jerry Gunn and the other petitioners. NASD and NASDAQ moved for summary judgment on the ground that Minton's patent was invalid under the "on sale" bar, 35 U. S. C. § 102(b). That provision specifies that an inventor is not entitled to a patent if "the invention was . . . on sale in [the United States], more than one year prior to the date of the application," and Minton had leased TEXCEN to Stark more than one year prior to filing his patent application. Rejecting Minton's argument that there were differences between TEXCEN and the patented system that precluded application of the on-sale bar, the District Court granted the summary judgment motion and declared Minton's patent invalid. *Minton* v. *National Assn. of Securities Dealers, Inc.*, 226 F. Supp. 2d 845, 873, 883–884 (ED Tex. 2002).

Minton then filed a motion for reconsideration in the District Court, arguing for the first time that the lease agreement with Stark was part of ongoing testing of TEXCEN and therefore fell within the "experimental use" exception to the on-sale bar. See generally *Pfaff* v. *Wells Electronics, Inc.*, 525 U. S. 55, 64 (1998) (describing the exception). The District Court denied the motion. *Minton* v. *National Assn. of Securities Dealers, Inc.*, No. 9:00–cv–00019 (ED Tex., July 15, 2002).

Minton appealed to the U. S. Court of Appeals for the Federal Circuit. That court affirmed, concluding that the District Court had appropriately held Minton's experimental-use argument waived. See *Minton* v. *National Assn. of Securities Dealers, Inc.*, 336 F. 3d 1373, 1379–1380 (CA Fed. 2003).

Minton, convinced that his attorneys' failure to raise the experimental-use argument earlier had cost him the lawsuit and led to invalidation of his patent, brought this malpractice action in Texas state court. His former lawyers defended on the ground that the lease to Stark was not, in fact, for an experimental use, and that therefore Minton's patent infringement claims would have failed even if the experimental-use argument had been timely raised. The trial court agreed, holding that Minton had put forward "less than a scintilla of proof" that the lease had been for an experimental purpose. App. 213. It accordingly granted summary judgment to Gunn and the other lawyer defendants.

On appeal, Minton raised a new argument: Because his legal malpractice claim was based on an alleged error in a patent case, it "aris[es] under" federal patent law for purposes of 28 U. S. C. § 1338(a). And because, under § 1338(a), "[n]o State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents," the Texas court—where Minton had originally brought his malpractice claim—lacked subject matter jurisdiction to decide the case. Accordingly, Minton argued, the trial court's order should be vacated and the case dismissed, leaving Minton free to start over in the Federal District Court.

A divided panel of the Court of Appeals of Texas rejected Minton's argument. Applying the test we articulated in *Grable & Sons Metal Products, Inc.* v. *Darue Engineering & Mfg.*, 545 U. S. 308, 314 (2005), it held that the federal interests implicated by Minton's state law claim were not sufficiently substantial to trigger § 1338 "arising under" jurisdiction. It also held that finding exclusive federal jurisdiction over state legal malpractice actions would, contrary to *Grable*'s commands, disturb the balance of federal and state judicial responsibilities. Proceeding to the merits of Minton's malpractice claim, the Court of Appeals affirmed the trial court's determination that Minton had failed to establish ex-

perimental use and that arguments on that ground therefore would not have saved his infringement suit.

The Supreme Court of Texas reversed, relying heavily on a pair of cases from the U. S. Court of Appeals for the Federal Circuit. 355 S. W. 3d 634, 641–642 (2011) (discussing *Air Measurement Technologies, Inc.* v. *Akin Gump Strauss Hauer & Feld, L. L. P.*, 504 F. 3d 1262 (2007); *Immunocept, LLC* v. *Fulbright & Jaworski, LLP*, 504 F. 3d 1281 (2007)). The court concluded that Minton's claim involved "a substantial federal issue" within the meaning of *Grable* "because the success of Minton's malpractice claim is reliant upon the viability of the experimental use exception as a defense to the on-sale bar." 355 S. W. 3d, at 644. Adjudication of Minton's claim in federal court was consistent with the appropriate balance between federal and state judicial responsibilities, it held, because "the federal government and patent litigants have an interest in the uniform application of patent law by courts well-versed in that subject matter." *Id.*, at 646 (citing *Immunocept*, *supra*, at 1285–1286; *Air Measurement Technologies*, *supra*, at 1272).

Justice Guzman, joined by Justices Medina and Willett, dissented. The dissenting justices would have held that the federal issue was neither substantial nor disputed, and that maintaining the proper balance of responsibility between state and federal courts precluded relegating state legal malpractice claims to federal court.

We granted certiorari. *Post*, p. 936.

II

"Federal courts are courts of limited jurisdiction," possessing "only that power authorized by Constitution and statute." *Kokkonen* v. *Guardian Life Ins. Co. of America*, 511 U. S. 375, 377 (1994). There is no dispute that the Constitution permits Congress to extend federal court jurisdiction to a case such as this one, see *Osborn* v. *Bank of United States*, 9 Wheat. 738, 823–824 (1824); the question is whether Con-

gress has done so, see *Powell* v. *McCormack*, 395 U. S. 486, 515–516 (1969).

As relevant here, Congress has authorized the federal district courts to exercise original jurisdiction in "all civil actions arising under the Constitution, laws, or treaties of the United States," 28 U. S. C. § 1331, and, more particularly, over "any civil action arising under any Act of Congress relating to patents," § 1338(a). Adhering to the demands of "[l]inguistic consistency," we have interpreted the phrase "arising under" in both sections identically, applying our § 1331 and § 1338(a) precedents interchangeably. See *Christianson* v. *Colt Industries Operating Corp.*, 486 U. S. 800, 808–809 (1988). For cases falling within the patent specific arising under jurisdiction of § 1338(a), however, Congress has not only provided for federal jurisdiction but also eliminated state jurisdiction, decreeing that "[n]o State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents." § 1338(a). To determine whether jurisdiction was proper in the Texas courts, therefore, we must determine whether it would have been proper in a federal district court—whether, that is, the case "aris[es] under any Act of Congress relating to patents."

For statutory purposes, a case can "aris[e] under" federal law in two ways. Most directly, a case arises under federal law when federal law creates the cause of action asserted. See *American Well Works Co.* v. *Layne & Bowler Co.*, 241 U. S. 257, 260 (1916) ("A suit arises under the law that creates the cause of action"). As a rule of inclusion, this "creation" test admits of only extremely rare exceptions, see, *e. g.*, *Shoshone Mining Co.* v. *Rutter*, 177 U. S. 505 (1900), and accounts for the vast bulk of suits that arise under federal law, see *Franchise Tax Bd. of Cal.* v. *Construction Laborers Vacation Trust for Southern Cal.*, 463 U. S. 1, 9 (1983). Minton's original patent infringement suit against NASD and NASDAQ, for example, arose under federal law in this manner because it was authorized by 35 U. S. C. §§ 271, 281.

But even where a claim finds its origins in state rather than federal law—as Minton's legal malpractice claim indisputably does—we have identified a "special and small category" of cases in which arising under jurisdiction still lies. *Empire HealthChoice Assurance, Inc.* v. *McVeigh*, 547 U. S. 677, 699 (2006). In outlining the contours of this slim category, we do not paint on a blank canvas. Unfortunately, the canvas looks like one that Jackson Pollock got to first. See 13D C. Wright, A. Miller, E. Cooper, & R. Freer, Federal Practice and Procedure § 3562, pp. 175–176 (3d ed. 2008) (reviewing general confusion on question).

In an effort to bring some order to this unruly doctrine several Terms ago, we condensed our prior cases into the following inquiry: Does the "state-law claim necessarily raise a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities?" *Grable*, 545 U. S., at 314. That is, federal jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress. Where all four of these requirements are met, we held, jurisdiction is proper because there is a "serious federal interest in claiming the advantages thought to be inherent in a federal forum," which can be vindicated without disrupting Congress's intended division of labor between state and federal courts. *Id.*, at 313–314.

III

Applying *Grable*'s inquiry here, it is clear that Minton's legal malpractice claim does not arise under federal patent law. Indeed, for the reasons we discuss, we are comfortable concluding that state legal malpractice claims based on underlying patent matters will rarely, if ever, arise under federal patent law for purposes of § 1338(a). Although such

cases may necessarily raise disputed questions of patent law, those cases are by their nature unlikely to have the sort of significance for the federal system necessary to establish jurisdiction.

A

To begin, we acknowledge that resolution of a federal patent question is "necessary" to Minton's case. Under Texas law, a plaintiff alleging legal malpractice must establish four elements: (1) that the defendant attorney owed the plaintiff a duty; (2) that the attorney breached that duty; (3) that the breach was the proximate cause of the plaintiff's injury; and (4) that damages occurred. See *Alexander* v. *Turtur & Associates, Inc.*, 146 S. W. 3d 113, 117 (Tex. 2004). In cases like this one, in which the attorney's alleged error came in failing to make a particular argument, the causation element requires a "case within a case" analysis of whether, had the argument been made, the outcome of the earlier litigation would have been different. 355 S. W. 3d, at 639; see 4 R. Mallen & J. Smith, Legal Malpractice § 37:15, pp. 1509–1520 (2012). To prevail on his legal malpractice claim, therefore, Minton must show that he would have prevailed in his federal patent infringement case if only petitioners had timely made an experimental-use argument on his behalf. 355 S. W. 3d, at 644. That will necessarily require application of patent law to the facts of Minton's case.

B

The federal issue is also "actually disputed" here—indeed, on the merits, it is the central point of dispute. Minton argues that the experimental-use exception properly applied to his lease to Stark, saving his patent from the on-sale bar; petitioners argue that it did not. This is just the sort of "'dispute . . . respecting the . . . effect of [federal] law'" that *Grable* envisioned. 545 U. S., at 313 (quoting *Shulthis* v. *McDougal*, 225 U. S. 561, 569 (1912)).

C

Minton's argument founders on *Grable*'s next requirement, however, for the federal issue in this case is not substantial in the relevant sense. In reaching the opposite conclusion, the Supreme Court of Texas focused on the importance of the issue to the plaintiff's case and to the parties before it. 355 S. W. 3d, at 644 ("because the success of Minton's malpractice claim is reliant upon the viability of the experimental use exception as a defense to the on-sale bar, we hold that it is a substantial federal issue"); see also *Air Measurement Technologies*, 504 F. 3d, at 1272 ("the issue is substantial, for it is a necessary element of the malpractice case"). As our past cases show, however, it is not enough that the federal issue be significant to the particular parties in the immediate suit; that will *always* be true when the state claim "necessarily raise[s]" a disputed federal issue, as *Grable* separately requires. The substantiality inquiry under *Grable* looks instead to the importance of the issue to the federal system as a whole.

In *Grable* itself, for example, the Internal Revenue Service had seized property from the plaintiff and sold it to satisfy the plaintiff's federal tax delinquency. 545 U. S., at 310–311. Five years later, the plaintiff filed a state law quiet title action against the third party that had purchased the property, alleging that the Internal Revenue Service had failed to comply with certain federally imposed notice requirements, so that the seizure and sale were invalid. *Ibid.* In holding that the case arose under federal law, we primarily focused not on the interests of the litigants themselves, but rather on the broader significance of the notice question for the Federal Government. We emphasized the Government's "strong interest" in being able to recover delinquent taxes through seizure and sale of property, which in turn "require[d] clear terms of notice to allow buyers . . . to satisfy themselves that the Service has touched the bases necessary for good title." *Id.*, at 315. The Government's "direct in-

terest in the availability of a federal forum to vindicate its own administrative action" made the question "an important issue of federal law that sensibly belong[ed] in a federal court." *Ibid.*

A second illustration of the sort of substantiality we require comes from *Smith* v. *Kansas City Title & Trust Co.*, 255 U. S. 180 (1921), which *Grable* described as "[t]he classic example" of a state claim arising under federal law. 545 U. S., at 312. In *Smith*, the plaintiff argued that the defendant bank could not purchase certain bonds issued by the Federal Government because the Government had acted unconstitutionally in issuing them. 255 U. S., at 198. We held that the case arose under federal law, because the "decision depends upon the determination" of "the constitutional validity of an act of Congress which is directly drawn in question." *Id.*, at 201. Again, the relevant point was not the importance of the question to the parties alone but rather the importance more generally of a determination that the Government "securities were issued under an unconstitutional law, and hence of no validity." *Ibid.*; see also *Merrell Dow Pharmaceuticals Inc.* v. *Thompson*, 478 U. S. 804, 814, n. 12 (1986).

Here, the federal issue carries no such significance. Because of the backward-looking nature of a legal malpractice claim, the question is posed in a merely hypothetical sense: *If* Minton's lawyers had raised a timely experimental-use argument, would the result in the patent infringement proceeding have been different? No matter how the state courts resolve that hypothetical "case within a case," it will not change the real-world result of the prior federal patent litigation. Minton's patent will remain invalid.

Nor will allowing state courts to resolve these cases undermine "the development of a uniform body of [patent] law." *Bonito Boats, Inc.* v. *Thunder Craft Boats, Inc.*, 489 U. S. 141, 162 (1989). Congress ensured such uniformity by vesting exclusive jurisdiction over actual patent cases in the fed-

eral district courts and exclusive appellate jurisdiction in the Federal Circuit. See 28 U. S. C. §§ 1338(a), 1295(a)(1). In resolving the nonhypothetical patent questions those cases present, the federal courts are of course not bound by state court case-within-a-case patent rulings. See *Tafflin* v. *Levitt*, 493 U. S. 455, 465 (1990). In any event, the state court case-within-a-case inquiry asks what would have happened in the prior federal proceeding if a particular argument had been made. In answering that question, state courts can be expected to hew closely to the pertinent federal precedents. It is those precedents, after all, that would have applied had the argument been made. Cf. *ibid.* ("State courts adjudicating civil RICO claims will . . . be guided by federal court interpretations of the relevant federal criminal statutes, just as federal courts sitting in diversity are guided by state court interpretations of state law").

As for more novel questions of patent law that may arise for the first time in a state court "case within a case," they will at some point be decided by a federal court in the context of an actual patent case, with review in the Federal Circuit. If the question arises frequently, it will soon be resolved within the federal system, laying to rest any contrary state court precedent; if it does not arise frequently, it is unlikely to implicate substantial federal interests. The present case is "poles apart from *Grable*," in which a state court's resolution of the federal question "would be controlling in numerous other cases." *Empire HealthChoice Assurance, Inc.*, 547 U. S., at 700.

Minton also suggests that state courts' answers to hypothetical patent questions can sometimes have real-world effect on other patents through issue preclusion. Brief for Respondent 33–36. Minton, for example, has filed what is known as a "continuation patent" application related to his original patent. See 35 U. S. C. § 120; 4A D. Chisum, Patents § 13.03 (2005) (describing continuation applications). He argues that, in evaluating this separate application, the

patent examiner could be bound by the Texas trial court's interpretation of the scope of Minton's original patent. See Brief for Respondent 35–36. It is unclear whether this is true. The Patent and Trademark Office's Manual of Patent Examining Procedure provides that res judicata is a proper ground for rejecting a patent "only when the earlier decision was a decision of the Board of Appeals" or certain federal reviewing courts, giving no indication that state court decisions would have preclusive effect. See Dept. of Commerce, Patent and Trademark Office, Manual of Patent Examining Procedure § 706.03(w), p. 700–79 (rev. 8th ed. 2012); 35 U. S. C. §§ 134(a), 141, 145; Reply Brief 9–10. In fact, Minton has not identified any case finding such preclusive effect based on a state court decision. But even assuming that a state court's case-within-a-case adjudication may be preclusive under some circumstances, the result would be limited to the parties and patents that had been before the state court. Such "fact-bound and situation-specific" effects are not sufficient to establish federal arising under jurisdiction. *Empire HealthChoice Assurance, Inc.*, *supra*, at 701.

Nor can we accept the suggestion that the federal courts' greater familiarity with patent law means that legal malpractice cases like this one belong in federal court. See *Air Measurement Technologies*, 504 F. 3d, at 1272 ("The litigants will also benefit from federal judges who have experience in claim construction and infringement matters"); 355 S. W. 3d, at 646 ("patent litigants have an interest in the uniform application of patent law by courts well-versed in that subject matter"). It is true that a similar interest was among those we considered in *Grable*. 545 U. S., at 314. But the possibility that a state court will incorrectly resolve a state claim is not, by itself, enough to trigger the federal courts' exclusive patent jurisdiction, even if the potential error finds its root in a misunderstanding of patent law.

There is no doubt that resolution of a patent issue in the context of a state legal malpractice action can be vitally im-

portant to the particular parties in that case. But something more, demonstrating that the question is significant to the federal system as a whole, is needed. That is missing here.

D

It follows from the foregoing that *Grable*'s fourth requirement is also not met. That requirement is concerned with the appropriate "balance of federal and state judicial responsibilities." *Ibid.* We have already explained the absence of a substantial federal issue within the meaning of *Grable.* The States, on the other hand, have "a special responsibility for maintaining standards among members of the licensed professions." *Ohralik* v. *Ohio State Bar Assn.*, 436 U. S. 447, 460 (1978). Their "interest . . . in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice, and have historically been officers of the courts." *Goldfarb* v. *Virginia State Bar*, 421 U. S. 773, 792 (1975) (internal quotation marks omitted). We have no reason to suppose that Congress—in establishing exclusive federal jurisdiction over patent cases—meant to bar from state courts state legal malpractice claims simply because they require resolution of a hypothetical patent issue.

* * *

As we recognized a century ago, "[t]he Federal courts have exclusive jurisdiction of all cases arising under the patent laws, but not of all questions in which a patent may be the subject-matter of the controversy." *New Marshall Engine Co.* v. *Marshall Engine Co.*, 223 U. S. 473, 478 (1912). In this case, although the state courts must answer a question of patent law to resolve Minton's legal malpractice claim, their answer will have no broader effects. It will not stand as binding precedent for any future patent claim; it will not even affect the validity of Minton's patent. Accordingly, there is no "serious federal interest in claiming the advan-

tages thought to be inherent in a federal forum," *Grable*, *supra*, at 313. Section 1338(a) does not deprive the state courts of subject matter jurisdiction.

The judgment of the Supreme Court of Texas is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Syllabus

HENDERSON *v.* UNITED STATES

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

No. 11–9307. Argued November 28, 2012—Decided February 20, 2013

A federal court of appeals normally will not correct a legal error made in a criminal trial unless the defendant first brought the error to the trial court's attention. *United States* v. *Olano*, 507 U. S. 725, 731. But Federal Rule of Criminal Procedure 52(b) provides an exception, permitting "[a] plain error that affects substantial rights [to] be considered even though it was not brought to the [trial] court's attention."

Here, the District Court increased the length of petitioner Henderson's sentence so he could participate in a prison drug rehabilitation program. Henderson's counsel did not object to the sentence, but, on appeal, Henderson claimed that the District Court plainly erred in increasing his sentence solely for rehabilitative purposes. While the appeal was pending, this Court decided in *Tapia* v. *United States*, 564 U. S. 319, 335, that it is error for a court to "impose or lengthen a prison sentence to enable an offender to complete a treatment program or otherwise to promote rehabilitation." While this meant that the District Court's sentence was erroneous, the Fifth Circuit determined that Rule 52(b) did not give it authority to correct the error. In doing so, it concluded that an error is "plain" under the Rule only if it was clear under current law at the time of trial, but that, in this case, Circuit law was unsettled until *Tapia* was decided.

Held: Regardless of whether a legal question was settled or unsettled at the time of trial, an error is "plain" within the meaning of Rule 52(b) so long as the error was plain at the time of appellate review. Pp. 271–279.

(a) The question whether an error must be plain at the time it is committed or at the time it is reviewed reflects two competing legal principles. The principle that a right may be forfeited in a case if it is not timely asserted before a tribunal having jurisdiction to determine it favors limiting the assessment of plainness to the time of the error's commission. See *Olano*, *supra*, at 731. And the rule that an appellate court must apply the law in effect at the time it renders its decision favors assessing plainness at the time of review. See *Thorpe* v. *Housing Authority of Durham*, 393 U. S. 268, 281. Because neither principle is absolute, the conflict cannot be decided by looking to one rather than the other. The text of Rule 52(b) also leaves open the temporal ques-

tion. And relevant precedent does not directly answer the question. In *Olano*, this Court said that Rule 52(b) authorizes an appeals court to correct a forfeited error only if (1) there is an "error," (2) that is "plain," (3) that "'affect[s] substantial rights,'" 507 U. S., at 732, and (4) that "'seriously affect[s] the fairness, integrity or public reputation of judicial proceedings,'" *id.*, at 736. In *Johnson* v. *United States*, 520 U. S. 461, 468, the Court concluded that, where a trial court's decision was clearly correct under Circuit law when made but becomes "clearly contrary to the law at the time of appeal[,] it is enough that an error be 'plain' at the time of appellate consideration." However, neither case addressed what rule should apply where the law is unsettled at the time of the error but plain at the time of review. 507 U. S., at 734; 520 U. S., at 467–468. Pp. 271–273.

(b) This precedent, when read in light of the underlying background principles, leads to the conclusion that Rule 52(b)'s "plain error" phrase applies at the time of review. If "plain error" covers trial court decisions that were plainly correct when made and those that were plainly incorrect when made, it should cover cases in the middle—*i. e.*, where the law was neither clearly correct nor incorrect, but unsettled, at the time of the trial court's decision. To hold to the contrary would lead to unjustifiably different treatment of similarly situated individuals, for there is no practical reason to treat a defendant more harshly simply because his circuit's law was unclear at the time of trial. Even if a "time of error" rule would provide an added incentive to counsel to call a trial judge's attention to the matter so the judge could quickly consider remedial action, such incentive has little, if any, practical importance since counsel normally has good reasons for calling a trial court's attention to potential error, *e. g.*, the advantage to counsel and client of having an error speedily corrected. In sum, in contrast to a "time of error" rule, a "time of review" interpretation furthers the basic principle that "an appellate court must apply the law in effect at the time it renders its decision," *Thorpe*, *supra*, at 281; works little, if any, practical harm upon the competing administrative principle that insists that counsel call a potential error to the trial court's attention; and is consistent with Rule 52(b)'s basic purpose of creating a fairness-based exception to the general requirement that an objection be made at trial to preserve a claim of error. Pp. 273–277.

(c) The Government's arguments to the contrary are unpersuasive. Its claim that appellate courts should consider only errors that counsel called to the trial court's attention and errors that the court should have independently recognized overlooks the way in which Rule 52(b) restricts the appellate court's authority to correct an error to those errors that would, in fact, seriously affect the fairness, integrity, or public

reputation of judicial proceedings. The Government also fears that the holding here will lead to too many "plain error" claims. But, a new rule of law set by an appellate court cannot automatically lead that court to consider all contrary determinations by trial courts plainly erroneous, given that lower court decisions that are questionable but not plainly wrong fall outside the Rule's scope, and given that any error must have affected the defendant's substantial rights and affected the fairness, integrity, or public reputation of judicial proceedings. Finally, the Government's textual argument that Rule 52(b) is written mostly in the past tense, whatever its merits, is foreclosed by *Johnson.* Pp. 277–279.

646 F. 3d 223, reversed and remanded.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. SCALIA, J., filed a dissenting opinion, in which THOMAS and ALITO, JJ., joined, *post,* p. 280.

Patricia A. Gilley, by appointment of the Court, *post,* p. 810, argued the cause and filed briefs for petitioner.

Jeffrey B. Wall argued the cause for the United States. With him on the brief were *Solicitor General Verrilli, Assistant Attorney General Breuer, Deputy Solicitor General Dreeben,* and *Sangita K. Rao.**

JUSTICE BREYER delivered the opinion of the Court.

A federal court of appeals normally will not correct a legal error made in criminal trial court proceedings unless the defendant first brought the error to the trial court's attention. See *United States* v. *Olano,* 507 U. S. 725, 731 (1993). But Federal Rule of Criminal Procedure 52(b), creating an exception to the normal rule, says that "[a] *plain* error that affects substantial rights may be considered even though it was not brought to the [trial] court's attention." (Emphasis added.) The Rule does not say explicitly, however, as of just what time the error must be "plain." Must the lower court ruling

**John D. Cline* and *Barbara E. Bergman* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae* urging reversal.

be plainly erroneous as of the time the lower court made the error? Or can an error still count as "plain" if the erroneous nature of that ruling is not "plain" until the time of appellate review?

The case before us concerns a District Court's decision on a substantive legal question that was unsettled at the time the trial court acted, thus foreclosing the possibility that any error could have been "plain" *then*. Before the case was final and at the time of direct appellate review, however, the question had become settled in the defendant's favor, making the trial court's error "plain"—but not until that later time. In our view, as long as the error was plain as of that later time—the time of appellate review—the error is "plain" within the meaning of the Rule. And the Court of Appeals "may . . . conside[r]" the error even though it was "not brought to the [trial] court's attention." Fed. Rule Crim. Proc. 52(b).

I

In early 2010, Armarcion Henderson, the petitioner, pleaded guilty in Federal District Court to a charge of being a felon in possession of a firearm. 646 F. 3d 223, 224 (CA5 2011). The District Judge accepted the plea and, in June 2010, he sentenced Henderson to an above-Guidelines prison term of 60 months. *Ibid.* The judge entered the longer sentence to "try to help" Henderson by qualifying him for an in-prison drug rehabilitation program, a program that would provide "the treatment and the counse[l]ing that this defendant needs right now." App. to Pet. for Cert. 35a, 40a.

Henderson's counsel did not object. Indeed, the judge asked counsel if there was "any reason why that sentence as stated should not be imposed." *Id.*, at 41a. And counsel replied, "Procedurally, no." *Ibid.* Subsequently, Henderson appealed, claiming, among other things, that the District Court had "plainly" erred in sentencing him to an above-Guidelines prison term solely for rehabilitative purposes. 646 F. 3d, at 224.

In 2011, after Henderson was sentenced but before Henderson's appeal was heard, this Court decided *Tapia* v. *United States*, 564 U. S. 319. There, we held that it is error for a court to "impose or lengthen a prison sentence to enable an offender to complete a treatment program or otherwise to promote rehabilitation." *Id.*, at 335. Given *Tapia*, Henderson's sentence was unlawful, and the District Court's decision to impose that sentence was erroneous. But, since Henderson's counsel had not objected in the trial court, the Court of Appeals could not correct the error unless Rule 52(b) applied. The Rule, however, applies only if the error was "plain." The error was not plain before *Tapia*; it was plain after *Tapia*. Thus, the Fifth Circuit had to determine the temporal scope of Rule 52(b)'s words "plain error."

The appeals court decided that Rule 52(b) did not give it the authority to correct the trial court's error. 646 F. 3d, at 225. The appellate panel pointed out that, "[b]efore *Tapia*, there was a circuit split on whether a district court can consider a defendant's rehabilitative needs to lengthen a sentence." *Ibid.* The panel added that the Fifth Circuit had "not pronounced on the question" before Henderson was sentenced. *Ibid.* Thus, at the time when the District Court reached its decision, the law in that Circuit was unsettled. The Court of Appeals concluded that "Henderson cannot show that the error in his case was plain, . . . because an error is plain only if it was clear under current law *at the time of trial*." *Ibid.* (internal quotation marks omitted).

The Fifth Circuit denied rehearing en banc by a divided vote. 665 F. 3d 160 (2011) (*per curiam*) (7 to 10). Henderson filed a petition for certiorari. And we granted the petition to resolve differences among the Circuits. Compare, *e. g.*, *United States* v. *Cordery*, 656 F. 3d 1103, 1107 (CA10 2011) (time of review), with, *e. g.*, *United States* v. *Mouling*, 557 F. 3d 658, 664 (CADC 2009) (time of error).

II

A

Is the time for determining "plainness" the time when the error is committed, or can an error be "plain" if it is not plain until the time the error is reviewed? The question reflects a conflict between two important, here competing, legal principles. On the one hand, "'[n]o procedural principle is more familiar to this Court than that a constitutional right,' or a right of any other sort, 'may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.'" *Olano*, 507 U. S., at 731 (quoting *Yakus* v. *United States*, 321 U. S. 414, 444 (1944)). This principle favors assessing plainness limited to the time the error was committed.

On the other hand, "[t]he general rule . . . is that an appellate court must apply the law in effect at the time it renders its decision." *Thorpe* v. *Housing Authority of Durham*, 393 U. S. 268, 281 (1969). See *Ziffrin* v. *United States*, 318 U. S. 73, 78 (1943). Indeed, Chief Justice Marshall wrote long ago:

> "It is in the general true that the province of an appellate court is only to enquire whether a judgment when rendered was erroneous or not. But if subsequent to the judgment and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied. . . . In such a case the court must decide according to existing laws, and if it be necessary to set aside a judgment, rightful when rendered, but which cannot be affirmed but in violation of law, the judgment must be set aside." *United States* v. *Schooner Peggy*, 1 Cranch 103, 110 (1801).

This principle favors assessing plainness at the time of review.

Rule 52(b) itself makes clear that the first principle is not absolute. Indeed, we have said that a "'rigid and undeviating judicially declared practice under which courts of review would invariably and under all circumstances decline to consider all questions which had not previously been specifically urged would be out of harmony with . . . the rules of fundamental justice.'" *Olano*, *supra*, at 732 (quoting *Hormel* v. *Helvering*, 312 U. S. 552, 557 (1941); ellipsis in original). But neither is the second principle absolute. Even where a new rule of law is at issue, Rule 52(b) does not give a court of appeals authority to overlook a failure to object unless an error not only "affect[s] substantial rights" but also "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *Olano*, *supra*, at 732 (internal quotation marks omitted; brackets in original). Because the two principles here point in different directions and neither is absolute, we cannot decide this conflict simply by looking to one rather than to the other.

The text of Rule 52(b) does not resolve the problem. It does not say that a court of appeals may consider an "error that *was* plain"—language that would look to the past. Rather, it simply says that a court of appeals may consider "[a] plain error." And that language leaves the temporal question open. But see *infra*, at 279.

Neither does precedent answer the temporal question—at least not directly. *Olano* is clearly relevant. There, we said that Rule 52(b) authorizes an appeals court to correct a forfeited error only if (1) there is "an error," (2) the error is "plain," and (3) the error "affect[s] substantial rights." 507 U. S., at 732 (internal quotation marks omitted). Pointing out that Rule 52 "is permissive, not mandatory," *id.*, at 735, we added (4) that "the standard that should guide the exercise of remedial discretion under Rule 52(b)" is whether "the error 'seriously affect[s] the fairness, integrity or public reputation of judicial proceedings,'" *id.*, at 736 (quoting *United States* v. *Atkinson*, 297 U. S. 157, 160 (1936); brackets in orig-

inal). At the same time, we said that "[w]e need not consider the special case where the error was unclear at the time of trial but becomes clear on appeal because the applicable law has been clarified." 507 U. S., at 734. That is the case now before us.

Johnson v. *United States*, 520 U. S. 461 (1997), is also relevant. We there considered a trial court's decision that was clearly correct under Circuit law when made but which, by the time of review, had become plainly erroneous due to an intervening authoritative legal decision. We concluded that, "where the law at the time of trial was settled and clearly contrary to the law at the time of appeal[,] it is enough that an error be 'plain' at the time of appellate consideration." *Id.*, at 468. As in *Olano*, however, we declined to decide whether that same rule should apply where the law is unsettled at the time of error but plain at the time of review. 520 U. S., at 467–468. As we have said, this is precisely the case now before us.

B

The text, precedents, and background principles do not *directly* dictate a result here. But prior precedent has helped to shape current law. And that precedent, read in light of those underlying principles, leads us to interpret Rule 52(b)'s phrase "plain error" as applying at the time of review. Given *Johnson*, a "time of error" interpretation would prove highly, and unfairly, anomalous.

Consider the lay of the post-*Johnson* legal land: No one doubts that an (unobjected to) error by a trial judge will ordinarily fall within Rule 52(b)'s word "plain" as long as the trial court's decision was *plainly incorrect* at the time it was made. *E. g.*, *Olano*, *supra*, at 734. That much is common ground. *Johnson* then adds that, at least in one circumstance, an (unobjected to) error by a trial judge will also fall within Rule 52(b)'s word "plain" *even if the judge was not plainly incorrect* at the time it was made. That is the circumstance where an error is "plain" even if the trial judge's

decision was plainly *correct* at the time when it was made but subsequently becomes incorrect based on a change in law. 520 U. S., at 468. And, since by definition the trial judge did not commit *plain error* at the time of the ruling, *Johnson* explicitly rejects applying the words "plain error" as of the time when the trial judge acted. Instead, *Johnson* deems it "enough that an error be 'plain' at the time of appellate consideration" for that error to fall within Rule 52(b)'s category of "plain error." *Ibid.*

But if the Rule's words "plain error" cover both (1) trial court decisions that were plainly correct at the time when the judge made the decision and (2) trial court decisions that were plainly *in*correct at the time when the judge made the decision, then why should they not also cover (3) cases in the middle—*i. e.*, where the law at the time of the trial judge's decision was neither clearly correct nor incorrect, but unsettled?

To hold to the contrary would bring about unjustifiably different treatment of similarly situated individuals. Imagine three virtually identical defendants, each from a different circuit, each sentenced in January to identical long prison terms, and each given those long sentences for the same reason, namely, to obtain rehabilitative treatment. Imagine that none of them raises an objection. In June, the Supreme Court holds this form of sentencing unlawful. And, in December, each of the three different circuits considers the claim that the trial judge's January-imposed prison term constituted a legal error. Imagine further that in the first circuit the law in January made the trial court's decision clearly lawful as of the time when the judge made it; in the second circuit, the law in January made the trial court's decision clearly unlawful as of the time when the judge made it; and in the third circuit, the law in January was unsettled.

To apply Rule 52(b)'s words "plain error" as of the time of appellate review would treat all three defendants alike. It would permit all three to go on to argue to the appellate

court that the trial court error affected their "substantial rights" and "seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings." *Olano*, 507 U. S., at 732 (internal quotation marks omitted). To interpret "plain error" differently, however, would treat these three virtually identical defendants differently, allowing only the first two defendants, but not the third defendant, potentially to qualify for Rule 52(b) relief. All three defendants suffered from legal error; all three failed to object; and all three would benefit from the new legal interpretation. What reason is there to give two of these three defendants the benefits of a new rule of law, but not the third? Cf. *Schooner Peggy*, 1 Cranch, at 110.

There is no practical ground for making this distinction. To the contrary, to distinguish and treat more harshly cases where a circuit's law was unclear would simply promote arguments about *whether* the law of the circuit initially was unclear (rather than clearly settled one way or the other). And these arguments are likely to be particularly difficult to resolve where what is at issue is a matter of legal degree, not kind. To what extent, for example, did a prosecutor's closing argument go *too far* down the road of prejudice? A "time of error" interpretation also would require courts of appeals to play a kind of temporal ping-pong, looking at *the law that now is* to decide whether "error" exists, looking at *the law that then was* to decide whether the error was "plain," and looking at *the circumstances that now are* to decide whether the defendant has satisfied *Olano*'s third and fourth criteria. Thus, the "time of error" interpretation would make the appellate process yet more complex and time consuming.

We recognize, as the Solicitor General points out, that a "time of error" rule, even if confined to instances in which the law is uncertain, would in such cases provide an added incentive to counsel to call the lower court judge's attention to the matter at a time when that judge could quickly take

remedial action. And, even if no remedy is offered, the lower court judge's analysis may help the court of appeals to decide the legal question. See Brief for United States 30–32. See also *Mouling*, 557 F. 3d, at 664. We disagree with the Solicitor General, however, in that we also believe that, in the present context, any added incentive has little, if any, practical importance.

That is because counsel normally has other good reasons for calling a trial court's attention to potential error—for example, it is normally to the advantage of counsel and his client to get the error speedily corrected. And, even where that is not so, counsel cannot rely upon the "plain error" rule to make up for a failure to object at trial. After all, that rule will help only if (1) the law changes in the defendant's favor, (2) the change comes after trial but before the appeal is decided, (3) the error affected the defendant's "substantial rights," and (4) the error "seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings." *Olano*, *supra*, at 732 (internal quotation marks omitted). If there is a lawyer who would deliberately forgo objection *now* because he perceives some slightly expanded chance to argue for "plain error" *later*, we suspect that, like the unicorn, he finds his home in the imagination, not the courtroom.

The upshot is that a "time of review" interpretation furthers the basic *Schooner Peggy* principle that "an appellate court must apply the law in effect at the time it renders its decision." *Thorpe*, 393 U. S., at 281. It works little, if any, practical harm upon the competing administrative principle that insists that counsel call a potential error to the trial court's attention. And, it is consistent with the basic purpose of Rule 52(b), namely, the creation of a fairness-based exception to the general requirement that an objection be made at trial. See *supra*, at 271–272.

At the same time, the competing "time of error" rule is out of step with our precedents, creates unfair and anoma-

lous results, and works practical administrative harm. Thus, in the direct appeals of cases that are not yet final, we consider the "time of review" interpretation the better reading of Rule 52's words "plain error."

III

The Solicitor General makes several other important arguments, but they fail to lead us to a different conclusion. First, the Government argues that the purpose of plain-error review is to ensure "the integrity of the [trial] proceedings." Brief for United States 33–34. In turn, the argument goes, appellate courts should consider only (1) errors that counsel called to the court's attention *and* (2) errors that the trial court should have known about regardless, namely, those that *then* were plain. Expanding on this theme, one Court of Appeals described plain error as "error that is so clear-cut, so obvious, a competent district judge should be able to avoid it without benefit of objection. When the state of the law is unclear at trial and only becomes clear as a result of later authority, the district court's error is perforce not plain; we expect district judges to be knowledgeable, not clairvoyant." *United States* v. *Turman*, 122 F. 3d 1167, 1170 (CA9 1997) (citation omitted).

This approach, however, overlooks the way in which the plain-error rule—Rule 52(b)—restricts the appellate court's authority to correct an error to those errors that would, in fact, seriously affect the fairness, integrity, or public reputation of judicial proceedings. Cf. *United States* v. *Farrell*, 672 F. 3d 27, 36–37 (CA1 2012) (considering the issue from this perspective). And the approach runs headlong into *Johnson*. The error in *Johnson* was not an error that the District Court should have known about at the time. It was the very opposite: The District Judge should have known that his ruling (at the time he made it) was *not* error; and perhaps not even clairvoyance could have led him to hold to the contrary. Cf. *Khan* v. *State Oil Co.*, 93 F. 3d 1358, 1362–

1364 (CA7 1996) (registering disagreement with this Court's precedent while following it nonetheless); *State Oil Co.* v. *Khan*, 522 U. S. 3, 20–22 (1997) (approving of that approach).

Rather, *Johnson* makes clear that plain-error review is not a grading system for trial judges. It has broader purposes, including in part allowing courts of appeals better to identify those instances in which the application of a new rule of law to cases on appeal will meet the demands of fairness and judicial integrity. See *Johnson*, 520 U. S., at 467–468; *Olano*, 507 U. S., at 732.

Second, the Government fears that our holding will lead to too many claims of "plain error." Brief for United States 26–28. After all, courts of appeals, not just the Supreme Court, clarify the law through their opinions. When a court of appeals does so, will not all defendants, including many who never objected in the court below, insist that the court of appeals now judge their cases according to the new rule? And will "plain error" in such cases not then disappear, leaving only simple "error" in its stead?

The answer to this claim is that a new rule of law, set forth by an appellate court, cannot automatically lead that court to consider all contrary determinations by trial courts *plainly* erroneous. Many such new rules, as we have pointed out, concern matters of degree, not kind. And a lower court ruling about such matters (say, the nature of a closing argument), even if now wrong (in light of the new appellate holding), is not necessarily *plainly* wrong. The Rule's requirement that an error be "plain" means that lower court decisions that are questionable but not *plainly* wrong (at time of trial or at time of appeal) fall outside the Rule's scope.

And there are other reasons for concluding that our holding will not open any "plain error" floodgates. As we have said, the Rule itself contains other screening criteria. The error must have affected the defendant's substantial rights and it must have seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Olano*, *supra*, at 732. When courts apply these latter criteria, the fact that

a defendant did not object, despite unsettled law, may well count against the grant of Rule 52(b) relief. Moreover, the problem here arises only when there is a new rule of law, when the law was previously unsettled, and when the District Court reached a decision contrary to the subsequent rule. These limitations may well explain the absence of any account before us of "plain error" inundation in those Circuits that already follow the interpretation we now adopt. See, *e. g.*, *Farrell*, *supra*, at 36–37; *Cordery*, 656 F. 3d, at 1107; *United States* v. *Garcia*, 587 F. 3d 509, 519–520 (CA2 2009); *United States* v. *Ross*, 77 F. 3d 1525, 1539 (CA7 1996).

Finally, the Government points out that Rule 52(b) is written mostly in the past tense. It says that a "plain error . . . may be considered even though it *was not brought* to the court's attention." (Emphasis added.) This use of the past tense, the Government argues, refers to a "plain error" that was not "brought to the court's attention" *back then*, when the error occurred. And that linguistic fact, in turn, means that the error must have been plain at that time. Brief for United States 18–22.

Whatever the merits of this textual argument, however, *Johnson* forecloses it. The error at issue in that case was not even an error, let alone plain, at the time when the defendant might have "brought [it] to the court's attention." Nonetheless, we found the error to be "plain error." We cannot square the Government's textual argument with our holding in that case.

IV

For these reasons, we conclude that whether a legal question was settled or unsettled at the time of trial, "it is enough that an error be 'plain' at the time of appellate consideration" for "[t]he second part of the [four-part] *Olano* test [to be] satisfied." *Johnson*, *supra*, at 468. The contrary 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 SCALIA, with whom JUSTICE THOMAS and JUSTICE ALITO join, dissenting.

When the law was unsettled at the time an error was committed, the error is not "plain" within the meaning of Federal Rule of Criminal Procedure 52(b). To hold otherwise disregards the importance of claim preservation and deprives Rule 52(b)'s plainness limitation of all conceivable purpose.

I

The Court begins its analysis by misconceiving our task. We are here, it thinks, in order to resolve a supposed "conflict" between two "competing . . . legal principles," *ante*, at 271—the principle that a legal right may be forfeited by the failure to assert it in a timely fashion, and the principle that an appellate court must apply the law in effect at the time of its judgment. To begin with, there is no such conflict. Forfeiture rules establish *exceptions* to the legal rights that they qualify; like all exceptions they do not "conflict" with what they modify but rather mark out its scope. And second, our task in this case is not the exalted philosophical one of deciding where justice lies. It is presumed (rightly or not) that Congress has taken that into consideration in approving the Rules of Criminal Procedure. Ours, alas, is the more mundane and lawyerly task of deciding whether the Rules of Criminal Procedure make the failure of timely objection an exception to the rule that an appellate court applies the law in effect at the time of its judgment.

Having addressed itself to the wrong question, the Court unsurprisingly gives the wrong answer. The correct answer must be sought in the text of the Federal Rules of Criminal Procedure, beginning with Rule 51(b), which provides: "A party may preserve a claim of error by informing the court—*when the court ruling or order is made or sought*—of the action the party wishes the court to take, or the party's objection to the court's action and the grounds for that objection." (Emphasis added.) Surely this means

that a party does *not* preserve a claim of error—cannot assert that on appeal, whatever the law on the point may be—unless he informs the court or objects to the court's action when the ruling or order is made or sought. If it does not mean that, it means nothing.

We move then to Rule 52(b), which says: "A plain error that affects substantial rights may be considered even though it was not brought to the [trial] court's attention." The meaning of that is not difficult to grasp. It is an exception to Rule 51(b)'s rule of forfeiture—an exception that applies only to "plain error." The question before us is whether plainness means plainness at the time "the [trial] court ruling or order is made or sought" or plainness when the case reaches the Court of Appeals.

The answer to that question seems to me entirely clear. A rudimentary principle of textual interpretation—so commonsensical that it scarcely needs citation—is that if one interpretation of an ambiguous provision causes it to serve a purpose consistent with the entire text, and the other interpretation renders it pointless, the former prevails. Limiting review of forfeited errors to those that were "plain" when the objection should have been made serves a purpose consistent with Rule 51: It permits reviewing courts to correct error where doing so will not thwart the objective of causing objections to be made when they can do some good. Objection is not so much needed when the error ought to be plain to the court and to the prosecution. And the fault in overlooking such an error is not solely the defendant's, but must be shared equally by the court and the prosecutor. We have affirmed this principle, and have affirmed the proposition that plainness is to be determined at the trial stage, in our prior opinions. "By its terms, recourse may be had to [Rule 52(b)] only on appeal from a trial infected with error so 'plain' the trial judge and prosecutor were derelict in countenancing it, even absent the defendant's timely assistance in detecting it." *United States* v. *Frady*, 456 U. S. 152, 163

(1982). Where error at trial is plain, the rationale for penalizing forfeiture is at its weakest and the injustice to the defendant correspondingly strong.

The Court, on the other hand, is unable to provide *any purpose* served by a plainness requirement applied when the case reaches the Court of Appeals. Consider two defendants in the same circuit who fail to object to an identical error committed by the trial court under unsettled law. By happenstance, Defendant A's appeal is considered first. The court of appeals recognizes that there was error, but denies relief because the law was unclear up to the time of the court of appeals' opinion. Defendant B's appeal is heard later, and he reaps the benefit of the opinion in Defendant A's case settling the law in his favor. What possible purpose is served by distinguishing between these two appellants? "The negligence in not raising the error is equivalent regardless of what happens by the time of appeal." *United States* v. *Escalante-Reyes*, 689 F. 3d 415, 429 (CA5 2012) (en banc) (Smith, J., dissenting). Since a plain-error doctrine of this sort cannot possibly induce counsel to make contemporaneous objection, it seemingly has no purpose whatever *except* to create the above described anomaly.

No, that is not quite true. It does serve the purpose of enabling today's opinion to say that the plain-error rule has been "preserved," and has not been entirely converted to a simple-error rule. Of course a simple-error rule—*all* trial-court mistakes affecting substantial rights can be corrected on appeal—would better serve the Court's mistaken understanding that the only purpose of Rule 52(b) is fairness, *ante*, at 276,[1] combined with its erroneous perception that *all* defend-

[1] The reality, of course, is that the object of Rule 52(b) is fairness *to the extent that is compatible with preservation of the principal objective of the contemporaneous-objection requirement of Rule 51(b).* The Court suppresses this limitation by paying lipservice to *Olano*'s four-prong Rule 52(b) analysis while reducing the plain-error requirement which is part of that analysis to a nullity. See *United States* v. *Olano*, 507 U. S. 725

ants who fail to make a timely objection to misapplication of the law stand in the same boat, see *ante*, at 274. But a simple-error rule would be contrary to the clear text of Rule 52(b), which tempers Rule 51(b) with "fairness" only when the error is plain. The Court must find *some* application for the plainness requirement, even if it be one that is utterly pointless. It has done so.

II

The Court contends that evaluating plainness at the trial-court level "runs headlong into *Johnson* [v. *United States*, 520 U. S. 461 (1997)]." *Ante*, at 277. The error there, it points out, "was not an error that the District Court should have known about at the time." *Ibid.* *Johnson* would have been decided the same way at whatever stage the plainness requirement was evaluated, since the Court found that the error did "not meet the final requirement of [*United States* v.] *Olano*, [507 U. S. 725 (1993),]" that "the forfeited error 'seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.' " *Johnson* v. *United States*, 520 U. S. 461, 469 (1997) (some internal quotation marks omitted).[2] I accept, however, that the Court said in *Johnson*, and will presumably hold in future cases, that in the situation presented by that case, plainness at the time of appeal will

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(1993). It asserts that "the plain-error rule—Rule 52(b)—restricts the appellate court's authority to correct an error to those errors that would, in fact, seriously affect the fairness, integrity, or public reputation of judicial proceedings." *Ante*, at 277. That is a description of prong 4 of the *Olano* analysis, see 507 U. S., at 732, which does not even *pertain* to the words "plain error" in Rule 52(b), but rather to the word "may"—to when a court should *exercise* its discretion to consider an unobjected-to plain error. It has nothing whatever to do with plainness. Rule 52(b) clearly restricts review to those unobjected-to errors that are *plain*, and the Court offers no explanation—none—of what purpose that restriction can possibly serve if plainness is determined at the appellate stage.

[2] That is why I was able to join the judgment in *Johnson*, even though I did not join the portion of the opinion addressing the stage at which plainness was to be evaluated. See 520 U. S., at 463, n.

suffice. That was a situation in which the law was settled against the defendant at trial but became plain in his favor by the time of appeal. As to that narrow class of cases, a time-of-appeal rule promotes both the fairness and efficiency concerns of Rule 51(b). When the law is settled against a defendant at trial he is not remiss for failing to bring his claim of error to the court's attention. It would be futile. An objection would therefore disserve efficiency, and a time-of-trial rule "would result in counsel's inevitably making a long and virtually useless laundry list of objections to rulings that were plainly supported by existing precedent." *Id.*, at 468. In that unique context, a time-of-appeal approach actually "furthers the substantial interest in the orderly administration of justice that underlies the contemporaneous objection rule." *United States* v. *David*, 83 F. 3d 638, 644 (CA4 1996).

The Court wrote in *Johnson* a circumspect opinion that took pains to exclude from the time-of-appeal method it articulated the case before us now. After agreeing with the petitioner that in the situation before the Court a time-of-trial rule would impede rather than assist fairness and efficiency, the opinion said that "in a case such as this—where the law at the time of trial was settled and clearly contrary to the law at the time of appeal—it is enough that an error be 'plain' at the time of appellate consideration." 520 U. S., at 468. The limitation of the Court's opinion is clear. The concerns that justified evaluating plainness at the time of appeal in *Johnson* cut against such a rule here, where the law was not clear but uncertain at the time of trial. In the difficult and often hectic process of conducting a trial, a judge depends on the parties—"officers of the court"—to flag less-than-obvious issues that might otherwise escape his notice. A prompt claim of error in those circumstances is not futile but eminently useful.

The Court hypothesizes three defendants failing to object at trial to a ruling that later (before the case reaches the

court of appeals) is shown by a Supreme Court opinion to have been error: one tried in a circuit whose law at the time clearly accorded with the Supreme Court's holding, one tried in a circuit whose law clearly contradicted that holding, and one tried in a circuit whose law on the point was uncertain. *Ante*, at 274. These defendants, the Court asserts, are "similarly situated," and the plain-error-at-time-of-appeal rule appropriately treats them alike. *Ibid.* But they are not "similarly situated" insofar as the purposes of Rules 51(b) and 52(b) are concerned, and treating them alike frustrates those purposes. Where the circuit law clearly accorded with the Supreme Court's later opinion, the trial court should have known that law, and hence the raising of the point by counsel should not have been needed; this is the classic case for plain-error reversal on appeal. Where the circuit law clearly contradicted the later Supreme Court opinion, again the trial court should have known that law, and counsel's raising the point would be futile and wasteful rather than sparing of judicial resources; this is the classic case for *Johnson* reversal on appeal. Where the circuit law was unsettled, the trial court was most in need of counsel's assistance, and the failure to provide it has no excuse; this is the classic case for normal application of the contemporaneous-objection requirement of Rule 51(b). To be sure, these litigants are alike in that all three "suffered from legal error," *ante,* at 275; and if the sole, unqualified objective of appellate review were to correct trial-court error that would suffice to entitle them to equal treatment. Until today, however, the objective of correcting trial-court error *has* been qualified by the objective of inducing counsel to bring forward claims of error when they can be remedied without overturning a verdict and setting the convicted criminal defendant free. To overlook counsel's failure to object, spend judicial resources to conduct plain-error review, and set aside a criminal conviction where retrial may be difficult if not impossible, is exactly the "'extravagant protection'" that this Court has up until now

disavowed. *United States* v. *Young*, 470 U. S. 1, 16 (1985) (quoting *Henderson* v. *Kibbe*, 431 U. S. 145, 154, n. 12 (1977), in turn quoting *Namet* v. *United States*, 373 U. S. 179, 190 (1963)).

III

The Court sees no harm in its evisceration of the contemporaneous-objection rule, disbelieving that a lawyer would "deliberately forgo objection *now* because he perceives some slightly expanded chance to argue for 'plain error' *later*," *ante*, at 276. It is hard to say whether this conclusion springs from a touching faith in the good sportsmanship of criminal defense counsel or an unkind disparagement of their intelligence. Where a criminal case always has been, or has at trial been shown to be, a sure loser with the jury, it makes entire sense to stand silent while the court makes a mistake that may be the basis for undoing the conviction. The happy-happy thought that counsel will not "deliberately forgo objection" is not a delusion that this Court has hitherto indulged, worrying as it has (in an opinion joined by the author of today's opinion) about counsel's "'"sandbagging"' the court" by "remaining silent about his objection and belatedly raising the error only if the case does not conclude in his favor." *Puckett* v. *United States*, 556 U. S. 129, 134 (2009). In any event, sandbagging is not the only evil to be feared. What is to be feared even more is a lessening of counsel's diligent efforts to identify uncertain points of law and bring them (or rather the defendant's version of them) to the court's attention, *so that error will never occur*. It is remarkably naive to disbelieve the proposition that lessening the costs of noncompliance with Rule 51(b) diminishes the incentives to be diligent in objecting. See Meltzer, State Court Forfeitures of Federal Rights, 99 Harv. L. Rev. 1128, 1135 (1986). Meant to apply only in "exceptional circumstances," *United States* v. *Atkinson*, 297 U. S. 157, 160 (1936), Rule 52(b) today has been transformed into an end-run around the consequences of claim forfeiture.

The Court's final argument, that a time-of-error rule would "wor[k] practical administrative harm," *ante*, at 277, is even more peculiar than the rest of its opinion. Whatever administrative ease may flow from a time-of-appeal rule (and more on that in a moment) it is outweighed by "lower[ing] the bar for plain-error review, which will undoubtedly result in more remands and new trials." *Escalante-Reyes*, 689 F. 3d, at 431 (Smith, J., dissenting). The Court's Pollyannaish rejoinder is that few reversals will occur anyway because a defendant must still show that the error affected his substantial rights (*Olano* prong 3) and seriously affected the fairness of judicial proceedings (*Olano* prong 4), *ante*, at 278–279. I doubt that. *Many* hitherto forfeited claims may incorrectly be found to meet those vague requirements. And all claims—whether found to meet them or not—will have to be evaluated under those vague standards, requiring intensive consideration and producing a judgment whose correctness is often difficult to assess.

As for the Court's belief that it is difficult to assess whether error was plain at the time of trial: it is really not that hard. Appellate courts regularly conduct that type of inquiry in other areas of law. For example, in the context of federal habeas corpus review under 28 U. S. C. § 2254(d)(1) relief may not be granted to a state prisoner based on a legal error unless that error was contrary to or an unreasonable application of clearly established federal law as of " 'the time the state court render[ed] its decision,' " *Cullen* v. *Pinholster*, 563 U. S. 171, 182 (2011). Similarly, we determine whether public officials have immunity based on what law was clearly established at the time of their acts. See *Harlow* v. *Fitzgerald*, 457 U. S. 800, 818–819 (1982). The Court offers us no reason to believe the inquiry would be any more difficult in this context.

In any event, a time-of-appeal rule for assessing plainness does not eliminate the need to assess plainness. And contrary to the Court's belief, that need will not arise only

"when there is a *new* rule of law, when the law was previously unsettled, and when the District Court reached a decision contrary to the *subsequent* rule." *Ante*, at 279 (emphasis added). That easy situation, which exists in the present case, may well be the exception rather than the rule for claims that failure to object to plain error should be excused. For a trial-court error is plain not only when it becomes so in retrospect, after the law has subsequently been clarified; but also when the court disregards the *pre-existing* "'clarity of a statutory provision or court rule.'" *United States* v. *Perry*, 479 F. 3d 885, 893, n. 8 (CADC 2007). This Court recognized as much in *United States* v. *Olano*, 507 U. S. 725 (1993), where the Government "essentially concede[d]," and this Court accepted, that the District Court's interpretation of Rule 24(c) was plainly erroneous, even though the appellate court had yet to say so, because the text of the Rule was so clear. *Id.*, at 737. For that and other reasons, the question whether the law was "unsettled" will often not admit of an easy answer, and our Courts of Appeals will have to resolve lots of claims that it was not. The practical difficulties the Court professes to avoid will not be avoided.

* * *

Today's opinion converts the "plain error" limitation of Rule 52(b), a limitation designed to induce trial objections that will assist the court, into a limitation designed to serve no conceivable purpose at all. Fair trial will suffer from the ensuing disregard of the now unenforceable contemporaneous-objection rule. I respectfully dissent.

Syllabus

JOHNSON, ACTING WARDEN *v.* WILLIAMS

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

No. 11–465. Argued October 3, 2012—Decided February 20, 2013

The Antiterrorism and Effective Death Penalty Act of 1996 provides that a federal habeas court may not grant relief to a state prisoner whose claim has already been "adjudicated on the merits in State court," 28 U. S. C. § 2254(d), unless the claim's adjudication resulted in a decision that was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by [this] Court," § 2254(d)(1), or "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," § 2254(d)(2).

A California jury convicted respondent Williams of first-degree murder. On direct appeal to the California Court of Appeal, she claimed that the trial court's questioning and dismissal of a juror during deliberations violated both the Sixth Amendment and California law. In holding that the juror had been properly dismissed for bias, the California Court of Appeal quoted the definition of "impartiality" from *United States* v. *Wood*, 299 U. S. 123, 145–146, but it did not expressly acknowledge that it was deciding a Sixth Amendment issue. The State Supreme Court remanded for further consideration in light of its intervening *Cleveland* decision, which held that a trial court abused its discretion by dismissing for failure to deliberate a juror who appeared to disagree with the rest of the jury about the evidence. Reaffirming its prior decision on remand, the State Court of Appeal discussed *Cleveland*, again quoted *Wood*, and failed to expressly acknowledge that Williams had raised a federal claim.

When Williams later sought federal habeas relief, the District Court applied § 2254's deferential standard of review for claims adjudicated on the merits and denied relief. But the Ninth Circuit concluded that the State Court of Appeal had not considered Williams' Sixth Amendment claim. The court then reviewed that claim *de novo* and held that the questioning and dismissal of the juror violated the Sixth Amendment.

Held:

1. For purposes of § 2254(d), when a state court rules against a defendant in an opinion that rejects some of the defendant's claims but does not expressly address a federal claim, a federal habeas court must presume, subject to rebuttal, that the federal claim was adjudicated on the merits. Pp. 298–303.

Syllabus

(a) This conclusion follows logically from *Harrington* v. *Richter*, 562 U. S. 86. There, the Court held that when a state court issues an order that summarily rejects without discussion *all* the claims raised by a defendant, including a federal claim that the defendant subsequently presses in federal habeas, the federal habeas court must presume that the federal claim was adjudicated on the merits. Though *Richter* concerned a state-court order that did not address *any* of the defendant's claims, there is no sound reason not to apply its presumption when a state-court opinion addresses some but not all of those claims. Federal habeas courts should not assume that any unaddressed federal claim was simply overlooked because state courts do not uniformly discuss separately every claim referenced by a defendant. In fact, they frequently take a different course. They may view a line of state precedent as fully incorporating a related federal constitutional right, may not regard a fleeting reference to a provision of the Federal Constitution or federal precedent as sufficient to raise a federal claim, or may simply regard a claim as too insubstantial to merit discussion. Pp. 298–301.

(b) Petitioner's argument for an irrebuttable presumption goes too far. Certainly, if a state standard subsumes the federal standard, the federal claim may be regarded as having been adjudicated on the merits. See *Early* v. *Packer*, 537 U. S. 3, 8. But where, *e. g.*, the state standard is less protective or the federal precedent was mentioned in passing, the presumption may be rebutted—either by a habeas petitioner (to show that the federal court should consider the claim *de novo*) or by the State (to show that the federal claim should be regarded as procedurally defaulted). See *Coleman* v. *Thompson*, 501 U. S. 722, 739. An irrebuttable presumption that state courts never overlook federal claims would sometimes be wrong. It would also improperly excise § 2254(d)'s on-the-merits requirement, for a claim that is rejected as a result of sheer inadvertence has not been evaluated on the merits. The experience of the lower federal courts shows that allowing federal habeas petitioners to rebut the presumption will not prompt an unduly burdensome flood of litigation. Pp. 301–303.

2. Applying the rebuttable presumption of merits adjudication here, the Ninth Circuit erred by finding that the State Court of Appeal overlooked Williams' Sixth Amendment claim. Several facts lead to that conclusion. Most important is that the court discussed *Cleveland*, a State Supreme Court case that in turn examined three Federal Court of Appeals cases concerning the Sixth Amendment implications of discharging holdout jurors. Though *Cleveland* refused to follow those cases, the views of the federal courts of appeals do not bind a state supreme court when it decides a federal constitutional question. Regardless of whether a California court would consider Williams' state-

Syllabus

law and Sixth Amendment claims to be coextensive, their similarity makes it unlikely that the State Court of Appeal decided one while overlooking the other. The State Court of Appeal's quotation of *Wood, supra,* at 145–146, further confirms that it was well aware that the juror's questioning and dismissal implicated federal law. Williams' litigation strategy also supports this result. She treated her state and federal claims as interchangeable, so it is not surprising that the state courts did as well. Notably, Williams neither petitioned the State Court of Appeal for rehearing nor argued in subsequent state and federal proceedings that the state court had failed to adjudicate her Sixth Amendment claim on the merits. Pp. 304–306.

646 F. 3d 626, reversed and remanded.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. SCALIA, J., filed an opinion concurring in the judgment, *post*, p. 306.

Stephanie C. Brenan, Deputy Attorney General of California, argued the cause for petitioner. With her on the briefs were *Kamala D. Harris*, Attorney General, *Dane R. Gillette*, Chief Assistant Attorney General, *Lance E. Winters*, Senior Assistant Attorney General, *Donald E. de Nicola*, Deputy State Solicitor General, and *Lawrence M. Daniels*, *Xiomara Costello*, and *James William Bilderback II*, Supervising Deputy Attorneys General.

Kurt David Hermansen argued the cause for respondent. With him on the brief was *Steven M. Klepper*.*

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*A brief of *amici curiae* urging reversal was filed for the State of Illinois et al. by *Lisa Madigan*, Attorney General of Illinois, *Michael A. Scodro*, Solicitor General, *Jane Elinor Notz*, Deputy Solicitor General, and *Eric Levin*, Assistant Attorney General, and by the Attorneys General for their respective States as follows: *Luther Strange* of Alabama, *Michael C. Geraghty* of Alaska, *Tom Horne* of Arizona, *John W. Suthers* of Colorado, *Joseph R. Biden III* of Delaware, *Pamela Jo Bondi* of Florida, *Samuel S. Olens* of Georgia, *David M. Louie* of Hawaii, *Lawrence G. Wasden* of Idaho, *Gregory F. Zoeller* of Indiana, *Jack Conway* of Kentucky, *James D. "Buddy" Caldwell* of Louisiana, *William Schneider* of Maine, *Douglas F. Gansler* of Maryland, *Jim Hood* of Mississippi, *Steve Bullock* of Montana, *Gary K. King* of New Mexico, *Wayne Stenehjem* of North Dakota,

JUSTICE ALITO delivered the opinion of the Court.

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) restricts the circumstances under which a federal habeas court may grant relief to a state prisoner whose claim has already been "adjudicated on the merits in State court." 28 U. S. C. § 2254(d). Specifically, if a claim has been "adjudicated on the merits in State court," a federal habeas court may not grant relief unless "the adjudication of the claim—

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

Because the requirements of § 2254(d) are difficult to meet, it is important whether a federal claim was "adjudicated on the merits in State court," and this case requires us to ascertain the meaning of the adjudication-on-the-merits requirement. This issue arises when a defendant convicted in state court attempts to raise a federal claim, either on direct appeal or in a collateral state proceeding, and a state court rules against the defendant and issues an opinion that addresses some issues but does not expressly address the federal claim in question. If this defendant then raises the same claim in a federal habeas proceeding, should the federal

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E. Scott Pruitt of Oklahoma, *John R. Kroger* of Oregon, *Peter F. Kilmartin* of Rhode Island, *Alan Wilson* of South Carolina, *Marty J. Jackley* of South Dakota, *Robert E. Cooper, Jr.,* of Tennessee, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, *Kenneth T. Cuccinelli II* of Virginia, *Robert M. McKenna* of Washington, *J. B. Van Hollen* of Wisconsin, and *Gregory A. Phillips* of Wyoming.

C. Kevin Marshall and *David M. Porter* filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae* urging affirmance.

court regard the claim as having been adjudicated on the merits by the state court and apply deference under § 2254(d)? Or may the federal court assume that the state court simply overlooked the federal claim and proceed to adjudicate the claim *de novo*, the course taken by the Court of Appeals in the case at hand?

We believe that the answer to this question follows logically from our decision in *Harrington* v. *Richter*, 562 U. S. 86 (2011). In that case, we held that, when a state court issues an order that summarily rejects without discussion *all* the claims raised by a defendant, including a federal claim that the defendant subsequently presses in a federal habeas proceeding, the federal habeas court must presume (subject to rebuttal) that the federal claim was adjudicated on the merits. We see no reason why this same rule should not apply when the state court addresses some of the claims raised by a defendant but not a claim that is later raised in a federal habeas proceeding.

Applying this rule in the present case, we hold that the federal claim at issue here (a Sixth Amendment jury trial claim) must be presumed to have been adjudicated on the merits by the California courts, that this presumption was not adequately rebutted, that the restrictive standard of review set out in § 2254(d)(2) consequently applies, and that under that standard respondent is not entitled to habeas relief. We therefore reverse the judgment of the Court of Appeals.

I

A

In October 1993, respondent Tara Williams took two of her friends for a drive in southern California with the objective of committing a robbery. They stopped at a liquor store in Long Beach, and while Williams waited in the getaway car, her friends stole money from the cash register and fatally shot the store's owner. Williams then drove one of her

friends away, and the other fled on foot. Williams avoided capture for five years but was ultimately apprehended and charged with first-degree murder.

At trial, Williams admitted that she had served as the getaway driver but claimed that she did not know that her friends were going to rob the liquor store at the particular time in question. Instead, she contended that the three friends had agreed only that they would "case" the store and would possibly return later that evening to rob it. The State countered that, regardless of whether Williams knew precisely when and where the robbery was to take place, she had agreed to help commit a robbery and that this was sufficient to provide the predicate for felony murder under California law.

After deliberating for about three hours, the jury foreman sent the judge two notes. The first note asked the following question:

> "'Is it legally permissible for a juror to interpret . . . the jury instructions to mean that the conspiracy should involve a plan to commit a specific robbery rather than a general plan to commit robberies in the future?'" Tr. 1247.

The second note stated:

> "I wish to inform you that we have one juror who . . . has expressed an intention to disregard the law . . . and . . . has expressed concern relative to the severity of the charge (first degree murder)." *Id.*, at 1246.

The judge told the jury that the answer to the question in the first note was "no." *Id.*, at 1249. Then, over Williams' objection, the judge briefly questioned the foreman outside the presence of the rest of the jury about the second note. The foreman said that he thought the judge's answer to the first note might resolve the problem, and the judge instructed the jury to resume its deliberations.

The next morning, once again over Williams' objection, the judge decided to inquire further about the foreman's second

note. On questioning by the judge and lawyers for both parties, the foreman testified that Juror 6 had brought up past instances of jury nullification. The foreman also expressed doubt about whether Juror 6 was willing to apply the felony-murder rule. The trial judge then ordered questioning of Juror 6, who first denied and then admitted bringing up instances of nullification. Juror 6 also testified that this was a serious case and that he would vote to convict only if he was "very convinced . . . beyond a reasonable doubt." *Id.*, at 1280. He later clarified that in his view "convinced beyond a reasonable doubt" and "very convinced beyond a reasonable doubt" meant the same thing. *Id.*, at 1281. After taking testimony from the remaining jurors, who corroborated the foreman's testimony to varying degrees, the trial judge dismissed Juror 6 for bias. With an alternate juror in place, the jury convicted Williams of first-degree murder.

B

On appeal to the California Court of Appeal, Williams argued, among other things, that the discharge of Juror 6 violated both the Sixth Amendment and the California Penal Code, which allows a California trial judge to dismiss a juror who "upon . . . good cause shown to the court is found to be unable to perform his or her duty." Cal. Penal Code Ann. § 1089 (West 2004). Although Williams' brief challenged the questioning and dismissal of Juror 6 on both state and federal grounds, it did not clearly distinguish between these two lines of authority.

In a written opinion affirming Williams' conviction, the California Court of Appeal devoted several pages to discussing the propriety of the trial judge's decision to dismiss the juror. *People* v. *Taylor*, No. B137365 (Mar. 27, 2001). The court held that Juror 6 had been properly dismissed for bias and quoted this Court's definition of "impartiality" in *United States* v. *Wood*, 299 U. S. 123, 145–146 (1936). But despite its extended discussion of Juror 6's dismissal and the ques-

tioning that preceded it, the California Court of Appeal never expressly acknowledged that it was deciding a Sixth Amendment issue.

Williams petitioned the California Supreme Court for review, and while her petition was pending, that court decided *People* v. *Cleveland*, 25 Cal. 4th 466, 21 P. 3d 1225 (2001), which held that a trial court had abused its discretion by dismissing for failure to deliberate a juror who appeared to disagree with the rest of the jury about the evidence. The California Supreme Court granted Williams' petition for review and remanded her case for further consideration in light of this intervening authority. *People* v. *Taylor*, No. S097387 (July 11, 2001).

On remand, the California Court of Appeal issued a revised opinion holding that the trial court had not abused its discretion by questioning the jury and dismissing Juror 6. Williams argued that Juror 6—like the holdout juror in *Cleveland*—was dismissed because he was uncooperative with other jurors who did not share his view of the evidence. But the California Court of Appeal disagreed, explaining that Williams' argument "not only misstate[d] the evidence," but also "ignore[d] the trial court's explanation that it was discharging Juror No. 6 because he had shown himself to be biased, *not* because he was failing to deliberate or engaging in juror nullification." *People* v. *Taylor*, No. B137365 (Jan. 18, 2002), App. to Pet. for Cert. 105a. As in its earlier opinion, the California Court of Appeal quoted our definition of juror bias in *Wood*, but the court did not expressly acknowledge that Williams had invoked a federal basis for her argument. Despite that omission, however, Williams did not seek rehearing or otherwise suggest that the court had overlooked her federal claim. Instead, she filed another petition for review in the California Supreme Court, but this time that court denied relief in a one-sentence order. *People* v. *Taylor*, No. S104661 (Apr. 10, 2002), App. to Pet. for Cert. 85a.

Williams sought but failed to obtain relief through state habeas proceedings, and she then filed a federal habeas petition under 28 U. S. C. § 2254. The District Court applied AEDPA's deferential standard of review for claims previously adjudicated on the merits and denied relief. *Williams* v. *Mitchell*, No. 03–2691 (CD Cal., May 30, 2007), App. to Pet. for Cert. 57a. In so holding, the District Court adopted a Magistrate Judge's finding that the evidence "amply support[ed] the trial judge's determination that good cause existed for the discharge of Juror 6." *Williams* v. *Mitchell*, No. 03–2691 (CD Cal., Mar. 19, 2007), *id.*, at 70a.

The Ninth Circuit reversed. Unlike the District Court, the Ninth Circuit declined to apply the deferential standard of review contained in § 2254(d). The Ninth Circuit took this approach because it thought it "obvious" that the State Court of Appeal had "overlooked or disregarded" Williams' Sixth Amendment claim.[1] *Williams* v. *Cavazos*, 646 F. 3d 626, 639 (2011). The Ninth Circuit reasoned that *Cleveland*, the State Supreme Court decision on which the State Court of Appeal had relied, "was not a constitutional decision," 646 F. 3d, at 640, and the Ninth Circuit attributed no significance to the state court's citation of our decision in *Wood*. Reviewing Williams' Sixth Amendment claim *de novo*, the Ninth Circuit applied its own precedent and held that the questioning and dismissal of Juror 6 violated the Sixth Amendment. 646 F. 3d, at 646–647. We granted the warden's petition for a writ of certiorari, 565 U. S. 1153 (2012), in order to decide whether the Ninth Circuit erred by refusing to afford AEDPA deference to the California Court of Appeal's decision.

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[1] Consistent with our decision in *Ylst* v. *Nunnemaker*, 501 U. S. 797, 806 (1991), the Ninth Circuit "look[ed] through" the California Supreme Court's summary denial of Williams' petition for review and examined the California Court of Appeal's opinion, the last reasoned state-court decision to address Juror 6's dismissal. *Williams* v. *Cavazos*, 646 F. 3d 626, 635 (2011).

II

A

As noted above, AEDPA sharply limits the circumstances in which a federal court may issue a writ of habeas corpus to a state prisoner whose claim was "adjudicated on the merits in State court proceedings." 28 U. S. C. § 2254(d). In *Richter*, 562 U. S., at 100, we held that § 2254(d) "does not require a state court to give reasons before its decision can be deemed to have been 'adjudicated on the merits.'" Rather, we explained, "[w]hen a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary." *Id.*, at 99.

Our reasoning in *Richter* points clearly to the answer to the question presented in the case at hand. Although *Richter* itself concerned a state-court order that did not address *any* of the defendant's claims, we see no reason why the *Richter* presumption should not also apply when a state-court opinion addresses some but not all of a defendant's claims. There would be a reason for drawing a distinction between these two situations if opinions issued by state appellate courts always separately addressed every single claim that is mentioned in a defendant's papers. If there were such a uniform practice, then federal habeas courts could assume that any unaddressed federal claim was simply overlooked.

No such assumption is warranted, however, because it is not the uniform practice of busy state courts to discuss separately every single claim to which a defendant makes even a passing reference. On the contrary, there are several situations in which state courts frequently take a different course.

First, there are circumstances in which a line of state precedent is viewed as fully incorporating a related federal constitutional right. In California, for example, the state con-

stitutional right to be present at trial "'is generally coextensive with'" the protections of the Federal Constitution. *People* v. *Butler*, 46 Cal. 4th 847, 861, 209 P. 3d 596, 606 (2009); see also, *e. g.*, *Commonwealth* v. *Prunty*, 462 Mass. 295, 305, n. 14, 968 N. E. 2d 361, 371, n. 14 (2012) (standard for racial discrimination in juror selection "'is the same under the Federal Constitution and the [Massachusetts] Declaration of Rights'"); *State* v. *Krause*, 817 N. W. 2d 136, 144 (Minn. 2012) ("'The due process protection provided under the Minnesota Constitution is identical to the due proces[s] guaranteed under the Constitution of the United States'"); *State* v. *Engelhardt*, 280 Kan. 113, 122, 119 P. 3d 1148, 1158 (2005) (observing that a Kansas statute is "analytically and functionally identical to the requirements under the Confrontation Clause and the Due Process Clause of the federal Constitution"). In this situation, a state appellate court may regard its discussion of the state precedent as sufficient to cover a claim based on the related federal right.

Second, a state court may not regard a fleeting reference to a provision of the Federal Constitution or federal precedent as sufficient to raise a separate federal claim. Federal courts of appeals refuse to take cognizance of arguments that are made in passing without proper development. See, *e. g.*, *United States* v. *Cloud*, 680 F. 3d 396, 409, n. 7 (CA4 2012); *United States* v. *Mitchell*, 502 F. 3d 931, 953, n. 2 (CA9 2007); *United States* v. *Charles*, 469 F. 3d 402, 408 (CA5 2006); *Reynolds* v. *Wagner*, 128 F. 3d 166, 178 (CA3 1997); *Carducci* v. *Regan*, 714 F. 2d 171, 177 (CADC 1983). State appellate courts are entitled to follow the same practice.

Third, there are instances in which a state court may simply regard a claim as too insubstantial to merit discussion. Indeed, the California Court of Appeal has expressly stated that it has no obligation to address claims that lack arguable merit. See *People* v. *Rojas*, 118 Cal. App. 3d 278, 290, 174 Cal. Rptr. 91, 93 (1981) (*per curiam*). That court has explained: "In an era in which there is concern that the quality

of justice is being diminished by appellate backlog with its attendant delay, which in turn contributes to a lack of finality of judgment, it behooves us as an appellate court to 'get to the heart' of cases presented and dispose of them expeditiously." *Ibid.* See also *People* v. *Burke*, 18 Cal. App. 72, 79, 122 P. 435, 439 (1912) ("The author of an opinion . . . must follow his own judgment as to the degree of elaboration to be accorded to the treatment of any proposition and *as to the questions which are worthy of notice at all*" (emphasis added)). While it is preferable for an appellate court in a criminal case to list all of the arguments that the court recognizes as having been properly presented, see R. Aldisert, Opinion Writing 95–96 (3d ed. 2012), federal courts have no authority to impose mandatory opinion-writing standards on state courts, see *Coleman* v. *Thompson*, 501 U. S. 722, 739 (1991) ("[W]e have no power to tell state courts how they must write their opinions"). The caseloads shouldered by many state appellate courts are very heavy,[2] and the opinions issued by these courts must be read with that factor in mind.

In sum, because it is by no means uncommon for a state court to fail to address separately a federal claim that the court has not simply overlooked, we see no sound reason for

[2] See, *e. g.*, Judicial Council of California, 2011 Court Statistics Report, Statewide Caseload Trends, 2000–2001 Through 2009–2010, p. 15 (observing that in fiscal year 2009–2010, the 105-judge California Court of Appeal produced opinions in 10,270 cases), online at http://www.courts.ca.gov/documents/2011CourtStatisticsReport.pdf (all Internet materials as visited Jan. 24, 2013, and available in Clerk of Court's case file); *In re Certification of Need for Additional Judges*, 105 So. 3d 1271 (Fla. 2012) (*per curiam*) (in fiscal year 2011–2012, Florida's Second District Court of Appeal received appeals in 6,834 cases); Supreme Court of Ohio, 2011 Ohio Courts Statistical Report, p. 14 (observing that in 2011 the State's 69 intermediate appellate judges rendered decisions in 7,129 cases), online at http://www.supremecourt.ohio.gov/publications/annrep/11OCS/2011OCS.pdf; Court Statistics Project, Examining the Work of State Courts: An Analysis of 2010 State Court Caseloads 40 (2012) (noting that in 2010 state appellate courts received appeals in over 270,000 cases).

failing to apply the *Richter* presumption in cases like the one now before us. When a state court rejects a federal claim without expressly addressing that claim, a federal habeas court must presume that the federal claim was adjudicated on the merits—but that presumption can in some limited circumstances be rebutted.

B

Not satisfied with a strong but rebuttable presumption, petitioner urges us to make the presumption irrebuttable. Specifically, petitioner contends that a state court must be regarded as having adjudicated a federal claim on the merits if the state court addressed "the substance of [an] asserted trial error." Brief for Petitioner 27. Suppose, for example, that a defendant claimed in state court that something that occurred at trial violated both a provision of the Federal Constitution and a related provision of state law, and suppose further that the state court, in denying relief, made no reference to federal law. According to petitioner's argument, a federal habeas court would be required to proceed on the assumption that the federal claim was adjudicated on the merits.

This argument goes too far. To be sure, if the state-law rule subsumes the federal standard—that is, if it is at least as protective as the federal standard—then the federal claim may be regarded as having been adjudicated on the merits. See *Early* v. *Packer*, 537 U. S. 3, 8 (2002) (*per curiam*). But what if, for example, in at least some circumstances the state standard is *less* protective? Or what if the state standard is quite different from the federal standard, and the defendant's papers made no effort to develop the basis for the federal claim? What if a provision of the Federal Constitution or a federal precedent was simply mentioned in passing in a footnote or was buried in a string cite? In such circumstances, the presumption that the federal claim was adjudicated on the merits may be rebutted—either by the habeas petitioner (for the purpose of showing that the claim should be consid-

ered by the federal court *de novo*) or by the State (for the purpose of showing that the federal claim should be regarded as procedurally defaulted). See *Coleman*, *supra*, at 739 (rebuttable presumption of no independent and adequate state ground applies so long as "it fairly appears that a state court judgment rested primarily on federal law or was interwoven with federal law"). Thus, while the *Richter* presumption is a strong one that may be rebutted only in unusual circumstances, it is not irrebuttable.[3] "*Per se* rules should not be applied . . . in situations where the generalization is incorrect as an empirical matter," *Coleman*, *supra*, at 737, and an irrebuttable presumption that state courts never overlook federal claims would occasionally miss the mark.

The language of 28 U. S. C. § 2254(d) makes it clear that this provision applies only when a federal claim was "adjudicated *on the merits* in State court." A judgment is normally said to have been rendered "on the merits" only if it was "delivered after the court . . . heard and *evaluated* the evidence and the parties' substantive arguments." Black's Law Dictionary 1199 (9th ed. 2009) (emphasis added). And as used in this context, the word "merits" is defined as "*[t]he intrinsic rights and wrongs of a case* as determined by *matters of substance*, in distinction from matters of form." Webster's New International Dictionary 1540 (2d ed. 1954) (emphasis added); see also, *e. g.*, 9 Oxford English Dictionary 634 (2d ed. 1989) ("*the intrinsic 'rights and wrongs' of the matter*, in contradistinction to extraneous points such as the competence of the tribunal or the like" (emphasis added)); Random House Dictionary of the English Language 897 (1967) ("the *intrinsic right and wrong of a matter*, as a law case, unobscured by procedural details, technicalities, personal feelings, etc." (emphasis added)). If a federal claim is

[3] For example, when a defendant does so little to raise his claim that he fails to "'fairly present'" it in "each appropriate state court," *Baldwin* v. *Reese*, 541 U. S. 27, 29 (2004), the *Richter* presumption is fully rebutted.

rejected as a result of sheer inadvertence, it has not been evaluated based on the intrinsic right and wrong of the matter. JUSTICE SCALIA is surely correct that such claims have been adjudicated and present federal questions we may review, *post,* at 309 (opinion concuring in judgment), but it does not follow that they have been adjudicated "on the merits." By having us nevertheless apply AEDPA's deferential standard of review in such cases, petitioner's argument would improperly excise § 2254(d)'s on-the-merits requirement.

Nor does petitioner's preferred approach follow inexorably from AEDPA's deferential architecture. Even while leaving "primary responsibility" for adjudicating federal claims to the States, *Woodford* v. *Visciotti*, 537 U. S. 19, 27 (2002) (*per curiam*), AEDPA permits *de novo* review in those rare cases when a state court decides a federal claim in a way that is "contrary to" clearly established Supreme Court precedent, see *Panetti* v. *Quarterman*, 551 U. S. 930, 953 (2007). When the evidence leads very clearly to the conclusion that a federal claim was inadvertently overlooked in state court, § 2254(d) entitles the prisoner to an unencumbered opportunity to make his case before a federal judge.

We are not persuaded that applying a rebuttable presumption in this context will be unduly burdensome for federal courts. Before *Richter*, every Court of Appeals to consider the issue allowed a prisoner to argue that a state court had overlooked his federal claim.[4] That approach did not prompt an unmanageable flood of litigation, and we see no reason to fear that it will do so now.

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[4] See, *e. g.*, *Lyell* v. *Renico*, 470 F. 3d 1177, 1181–1182 (CA6 2006); *Billings* v. *Polk*, 441 F. 3d 238, 252 (CA4 2006); *Espy* v. *Massac*, 443 F. 3d 1362, 1364–1365, and n. 2 (CA11 2006); *Brown* v. *Luebbers*, 371 F. 3d 458, 460–461 (CA8 2004) (en banc); *Chadwick* v. *Janecka*, 312 F. 3d 597, 606 (CA3 2002); *Norde* v. *Keane*, 294 F. 3d 401, 410 (CA2 2002); *Duckett* v. *Mullin*, 306 F. 3d 982, 990 (CA10 2002); *Fortini* v. *Murphy*, 257 F. 3d 39, 47 (CA1 2001).

III

Applying the presumption of merits adjudication to the facts of this case, we hold that the Ninth Circuit erred by finding that the California Court of Appeal overlooked Williams' Sixth Amendment claim. Several facts make this conclusion inescapable.

Most important is the state court's discussion of *Cleveland*, 25 Cal. 4th 466, 21 P. 3d 1225, a California Supreme Court decision on which the Court of Appeal solicited briefing. *Cleveland* held that a California trial court, "if put on notice that a juror is not participating in deliberations," may "conduct 'whatever inquiry is reasonably necessary to determine' whether such grounds exist and . . . discharge the juror if it appears as a 'demonstrable reality' that the juror is unable or unwilling to deliberate." *Id.*, at 484, 21 P. 3d, at 1237 (citations omitted). The *Cleveland* court acknowledged "[t]he need to protect the sanctity of jury deliberations," *id.*, at 476, 21 P. 3d, at 1231, and included a lengthy discussion of three Federal Court of Appeals cases that it said had "considered these issues in depth," *id.*, at 480–484, 21 P. 3d, at 1234–1237. Those three cases—*United States* v. *Symington*, 195 F. 3d 1080 (CA9 1999), *United States* v. *Thomas*, 116 F. 3d 606 (CA2 1997), and *United States* v. *Brown*, 823 F. 2d 591 (CADC 1987)—concern the discharge of holdout jurors in federal court. Each case discusses the Sixth Amendment right to a jury trial and concludes that a trial court should not inquire further if it appears that there is "'any reasonable possibility that the impetus for a juror's dismissal stems from the juror's views on the merits of the case.'" *Cleveland*, *supra*, at 484, 21 P. 3d, at 1237 (quoting *Symington*, *supra*, at 1087); see also *Thomas*, *supra*, at 621–622; *Brown*, *supra*, at 596. Though the *Cleveland* court found much to praise in these decisions, it expressly declined to follow them on this point. 25 Cal. 4th, at 483–484, 21 P. 3d, at 1236–1237.

Cleveland did not expressly purport to decide a federal constitutional question, but its discussion of *Symington*, *Thomas*, and *Brown* shows that the California Supreme Court understood itself to be deciding a question with federal constitutional dimensions. See 25 Cal. 4th, at 487, 21 P. 3d, at 1239 (Werdegar, J., concurring) (emphasizing importance of careful appellate review in juror discharge cases in light of the "constitutional dimension to the problem"). Indeed, it is difficult to imagine the California Supreme Court announcing an interpretation of Cal. Penal Code Ann. § 1089 that it believed to be less protective than the Sixth Amendment, as any such interpretation would provide no guidance to state trial judges bound to follow both state and federal law.

The Ninth Circuit's conclusion to the contrary rested on the fact that *Cleveland* refused to follow *Symington*, *Brown*, and *Thomas*. 646 F. 3d, at 640. But the views of the federal courts of appeals do not bind the California Supreme Court when it decides a federal constitutional question, and disagreeing with the lower federal courts is not the same as ignoring federal law. The Ninth Circuit's apparent assumption that the California Supreme Court could not refuse to follow federal court of appeals precedent without disregarding the Federal Constitution would undo § 2254(d)'s "contrary to" provision, which requires deference unless a state court fails to follow *Supreme Court* precedent. 28 U. S. C. § 2254(d)(1).

Regardless of whether a California court would consider Williams' § 1089 and Sixth Amendment claims to be perfectly coextensive, the fact that these claims are so similar makes it unlikely that the California Court of Appeal decided one while overlooking the other. Indeed, it is difficult to imagine any panel of appellate judges reading *Cleveland* and passing on the propriety of dismissing a holdout juror under § 1089 without realizing that such situations also bear on the federal constitutional right to a fair trial. The California

Court of Appeal's quotation of our definition of "impartiality" from *Wood*, 299 U. S., at 145–146, points to the same conclusion, confirming that the state court was well aware that the questioning and dismissal of Juror 6 implicated both state and federal law.

Williams' litigation strategy supports the same result. Throughout her state proceedings, Williams treated her state and federal claims as interchangeable, and it is hardly surprising that the state courts did so as well. See Brief for Appellant in No. B137365 (Cal. App.), App. 29 (citing § 1089 precedent and concluding that Williams "was accordingly denied her Sixth Amendment right to a unanimous jury"). After the California Court of Appeal rendered its decision, Williams neither petitioned that court for rehearing nor argued in the subsequent state and federal proceedings that the state court had failed to adjudicate her Sixth Amendment claim on the merits. The possibility that the California Court of Appeal had simply overlooked Williams' Sixth Amendment claim apparently did not occur to anyone until that issue was raised by two judges during the oral argument in the Ninth Circuit. See 646 F. 3d, at 638, n. 7. Williams presumably knows her case better than anyone else, and the fact that she does not appear to have thought that there was an oversight makes such a mistake most improbable.

We think it exceedingly unlikely that the California Court of Appeal overlooked Williams' federal claim, and the Ninth Circuit's judgment to the contrary is reversed. The case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE SCALIA, concurring in the judgment.

I agree with the Court's rejection of the proposition that a judgment denying a federal claim is irrebuttably presumed to have been "adjudicated on the merits" within the meaning

of 28 U. S. C. § 2254(d). I disagree, however, that one of the grounds on which the rebuttal may rely is that the federal claim was "inadvertently overlooked." *Ante*, at 303. In my view the rebuttal must consist of a showing, based on the explicit text of the court's order, or upon standard practice and understanding in the jurisdiction with regard to the meaning of an ambiguous text, that the judgment *did not purport* to decide the federal question. "Decided after due consideration" is not, and has never been, the meaning of the legal term of art "decided on the merits," and giving it that meaning burdens our lower courts with an unusual subjective inquiry that demeans state courts and will be a fertile source of litigation and delay.

In the Court's view, a habeas petitioner receives *de novo* review if he can prove that the state court, although addressing his state claim, overlooked his federal claim. A nonexhaustive list of factors, we are told, may bear on the analysis: state-court opinion-writing practices, *ante*, at 298–299; state-law precedents and whether and how they incorporate federal law, *ante*, at 298; substantiality of the federal claim, *ante*, at 299–300; citations to federal cases in state-court opinions (or citations to state cases that contain citations to federal cases), *ante*, at 304–305; the degree of similarity between the federal and state claim, *ante*, at 305–306; a petitioner's "litigation strategy," *ante*, at 306; and other clues that may possibly illuminate the inner thought processes of a state-court judge. Only after conducting its own detective work does the Court conclude that the federal claim was not overlooked in this case.

This complex exercise is unnecessary. A judgment that denies relief *necessarily* denies—and thus adjudicates—*all* the claims a petitioner has raised. See 1 H. Black, Law of Judgments § 1, p. 2 (2d ed. 1902) ("[T]he judgment necessarily affirms, or else denies, that [an alleged] duty or . . . liability rests upon the person against whom the aid of the law is invoked"); *id.*, § 24, at 37. The judgment itself gives conclusive expression that the claims have been considered and

rejected—*whatever* the individual judge might have been pondering (or not pondering). At common law the formal language traditionally preceding the announcement of a court's judgment was "*consideratum est per curiam*" ("It is considered by the court"). See Black's Law Dictionary 349–350 (9th ed. 2009); 1 Bouvier's Law Dictionary 619 (8th ed. 1914).

The Court maintains that "[i]f a federal claim is rejected as a result of sheer inadvertence, it has not been evaluated based on the intrinsic right and wrong of the matter," *ante*, at 302–303. Perhaps not, but it nonetheless may have been rejected "on the merits." That phrase does not suggest a line between a *considered* rejection of a claim and an *unconsidered*, *inadequately considered*, or *inadvertent* rejection. Rather, it refers to a "determination that there exist or do not exist grounds entitling a petitioner" to relief under his claim, as contrasted with a "denial for such reasons as failure to exhaust, procedural default, or statute-of-limitations bar." *Gonzalez* v. *Crosby*, 545 U. S. 524, 532, n. 4 (2005). An "adjudication on the merits" is "best understood by stating what it is not: it is not the resolution of a claim on procedural grounds." *Muth* v. *Frank*, 412 F. 3d 808, 815 (CA7 2005). And, as we have affirmed and reaffirmed recently, where a claim has been denied, but it is unclear from the record whether the denial was on the merits or on another basis, we presume the former. *Harrington* v. *Richter*, 562 U. S. 86, 99 (2011) (citing *Harris* v. *Reed*, 489 U. S. 255, 265 (1989)); see also *Coleman* v. *Thompson*, 501 U. S. 722, 732–733 (1991).

We apply a presumption of merits determination in that sense not just with respect to § 2254(d) but for other purposes as well. We have long applied it, for example, in determining whether a claim is barred by res judicata:

> "Ordinarily, such a question is answered by a mere inspection of the decree—the presumption being that a dismissal in equity, without qualifying words, is a final decision *on the merits*. That presumption of finality . . .

> disappears whenever the record shows that the court did not pass upon the merits but dismissed the bill because of a want of jurisdiction, for want of parties, because the suit was brought prematurely, because the plaintiff had a right to file a subsequent bill on the same subject-matter, or on any other ground not going to the merits." *Swift* v. *McPherson*, 232 U. S. 51, 55–56 (1914) (emphasis added).

See also *Hubbell* v. *United States*, 171 U. S. 203, 207 (1898); *Durant* v. *Essex Co.*, 7 Wall. 107, 109 (1869).

We also apply a presumption of merits determination in the sense I have described for purposes of 28 U. S. C. § 1257, which imposes a federal-question requirement as a condition of this Court's appellate jurisdiction. *Michigan* v. *Long*, 463 U. S. 1032, 1040–1041 (1983). Indeed, the application of the presumption in direct-review cases was the genesis of the presumption in federal habeas cases. The condition for federal habeas—that the federal question must have been addressed on the merits by the state courts—did not originate with the enactment of the Antiterrorism and Effective Death Penalty Act in 1996 (AEDPA), but was established as early as 1977 in *Wainwright* v. *Sykes*, 433 U. S. 72, 81, 86–87. We described the assessment of whether that requirement was met as presenting "the same problem of ambiguity that this Court resolved in *Michigan* v. *Long*." *Harris*, 489 U. S., at 262. And indeed, we described the habeas requirement as an application of the "adequate and independent state ground doctrine," which inquires whether a "finding of procedural default will bar federal habeas review." *Ibid.* It is of course unthinkable that a state-court resolution of a federal question will escape our review under § 1257 if it is inadvertent rather than intentional.

Given this background, there is no reason to believe that AEDPA established a new and peculiar regime in which the federal habeas court must make one assessment of whether the federal question has been decided "on the merits" for

purposes of determining its authority to review the question (a *Long* assessment which counts, as § 1257 cases count, inadvertent resolution of a federal question); and then must proceed to a different assessment of "on the merits" (one that does not count inadvertent resolution) for purposes of determining whether deference to the state-court judgment is required.

But, it will be argued, how can a court "defer" to a state-court determination that was in fact never made? Must not one first be sure it exists before one can accord it respect? The answer is no; according respect only to determinations that have for sure been made is demonstrably not the scheme that AEDPA envisions. Federal habeas courts defer to state determinations that may in fact never have been made whenever they find a summary, unexplained rejection of a federal claim to be sustainable (*e. g.*, not contrary to clearly established federal law as determined by this Court). The validating basis that the federal habeas court posits need not have been the one that the state court actually relied upon; the state court may well have applied a theory that was flat-out wrong, and may not have made the subsidiary determinations (including factual assessments) necessary to support the correct theory. That does not matter. For what is accorded deference is not the state court's reasoning but the state court's judgment, which is presumed to be supported by whatever valid support was available. See *Harrington*, *supra*, at 102 ("Under § 2254(d), a habeas court must determine what arguments or theories supported or, as here, could have supported, the state court's decision"). Indeed, the deference with regard to the basis of decision is much more "blind" than the deference I assert is necessary in the present case. I demand a state-court statement (contained in the unqualified terms of its judgment) that it has rejected the federal claim; I simply refuse to question the veracity of that statement. By contrast, no statement is ever even required that the state court relied upon the theory of federal law that the habeas court finds validating.

I doubt that the Court is prepared to abide by its novel interpretation of "on the merits" for purposes of § 2254(d). Imagine that the state court formulated its judgment as follows: "All claims raised by the defendant have been considered and denied." I cannot believe that the Court would require federal courts to test the veracity of that statement. Yet, as we have described, that is precisely what an (unadorned) judgment denying relief *already conveys*. Although the Court acknowledges that "'[w]e have no power to tell state courts how they must write their opinions,'" *ante*, at 300, its analysis would turn solely on how the order of judgment is styled.

Resolution of this case is direct: Respondent's claim was "adjudicated on the merits," because the state court rendered a judgment rejecting all her claims, and the judgment gave no indication (such as a statement that it was "without prejudice") that it was based on a procedural or other nonmerits ground.

The Court's novel resolution of the "on the merits" question produces a clear enough answer in this case. The weight of the evidence demonstrated that it was "exceedingly unlikely" that the state court overlooked the federal claim. *Ante*, at 306. But such ready resolution will not be commonplace. Consider another case, where the federal and state claims are *not* related, where there is *no* relevant state precedent referring to federal law, where state law might be interpreted as *less* defendant-friendly than the federal standard, or where a confluence of such factors exists. The answer to whether the federal claim has been "evaluated based on the intrinsic right and wrong of the matter" is anybody's guess. One thing, however, *is* certain: The Court's case-by-case approach will guarantee protracted litigation over whether a state-court judge was aware of a claim on the day he rejected it.

The Court tells us not to worry about a flood of litigation, because the Courts of Appeals have previously allowed argu-

ments from petitioners that the state courts overlooked their federal claims. *Ante*, at 303, and n. 4 (citing cases). But many of those cases applied a much simpler (and even less justifiable) test than the one adopted today: If the federal claim was not addressed in the opinion, then it was not adjudicated on the merits. See, *e. g.*, *Lyell* v. *Renico*, 470 F. 3d 1177, 1181–1182 (CA6 2006); *Fortini* v. *Murphy*, 257 F. 3d 39, 47 (CA1 2001). And even those courts that attempted to "divin[e] the thought processes of" the judge limited their inquiry to "what a state court has *said*." *Brown* v. *Luebbers*, 371 F. 3d 458, 461 (CA8 2004) (emphasis added); see also, *e. g.*, *Chadwick* v. *Janecka*, 312 F. 3d 597, 606 (CA3 2002). By contrast, the Court today asks whether a judge *thought* about the merits of an unaddressed claim, and leaves on the table any evidence relevant to that inquiry.

This newly-sponsored enterprise of probing the judicial mind is inappropriately intrusive upon state-court processes. Are federal habeas courts now to consider evidence relevant to the internal deliberations of the state judiciary? Can a petitioner introduce testimony showing that state-court judges—because of time constraints, heavy caseloads, or other reasons—fail to read the briefs but leave that to their assistants, whose recommendations they rarely reject? Or testimony showing that, typically, only one judge on the state-court appellate panel reads the briefs and considers all the claims, and the others simply join the drafted order? Has there been an "adjudication on the merits" then? Future litigation will supply the answers.

For these reasons, I do not join the opinion of the Court and concur only in the judgment.

Syllabus

EVANS *v.* MICHIGAN

CERTIORARI TO THE SUPREME COURT OF MICHIGAN

No. 11–1327. Argued November 6, 2012—Decided February 20, 2013

After the State of Michigan rested its case at petitioner Evans' arson trial, the court granted Evans' motion for a directed verdict of acquittal, concluding that the State had failed to prove that the burned building was not a dwelling, a fact the court mistakenly believed was an "element" of the statutory offense. The State Court of Appeals reversed and remanded for retrial. In affirming, the State Supreme Court held that a directed verdict based on an error of law that did not resolve a factual element of the charged offense was not an acquittal for double jeopardy purposes.

Held: The Double Jeopardy Clause bars retrial for Evans' offense. Pp. 318–330.

(a) Retrial following a court-decreed acquittal is barred, even if the acquittal is "based upon an egregiously erroneous foundation," *Fong Foo* v. *United States*, 369 U. S. 141, 143, such as an erroneous decision to exclude evidence, *Sanabria* v. *United States*, 437 U. S. 54, 68–69; a mistaken understanding of what evidence would suffice to sustain a conviction, *Smith* v. *Massachusetts*, 543 U. S. 462, 473; or a "misconstruction of the statute" defining the requirements to convict, *Arizona* v. *Rumsey*, 467 U. S. 203, 211. Most relevant here, an acquittal encompasses any ruling that the prosecution's proof is insufficient to establish criminal liability for an offense. See, *e. g.*, *United States* v. *Scott*, 437 U. S. 82, 98; *Burks* v. *United States*, 437 U. S. 1, 10. In contrast to procedural rulings, which lead to dismissals or mistrials on a basis unrelated to factual guilt or innocence, acquittals are substantive rulings that conclude proceedings absolutely, and thus raise significant double jeopardy concerns. *Scott*, 437 U. S., at 91. Here, the trial court clearly "evaluated the [State's] evidence and determined that it was legally insufficient to sustain a conviction." *United States* v. *Martin Linen Supply Co.*, 430 U. S. 564, 572. Evans' acquittal was the product of an erroneous interpretation of governing legal principles, but that error affects only the accuracy of the determination to acquit, not its essential character. See *Scott*, 437 U. S., at 98. Pp. 318–320.

(b) The State Supreme Court attempted to distinguish this Court's cases on the ground that they involved "the sufficiency of the factual elements of the charged offense," while Evans' case concerned "an error of law unrelated to [his] guilt or innocence," but this Court perceives no

such difference. This case, like the Court's previous ones, involves an antecedent legal error that led to an acquittal because the State failed to prove a fact it was not actually required to prove. The State and the United States claim that only when an actual element of the offense is resolved can there be an acquittal of the offense, but Evans' verdict was based on something that was concededly not an element. Their argument reads *Martin Linen* too narrowly and is inconsistent with this Court's decisions since then. *Martin Linen* focused on the significance of the District Court's acquittal based on a nonculpability determination, and its result did not depend on defining the "elements" of the offense. Culpability is the touchstone, not whether any particular elements were resolved or whether the nonculpability determination was legally correct. *Scott*, 437 U. S., at 98. Pp. 320–324.

(c) Additional arguments the State and the United States raise in support of the lower court's distinction are unpersuasive. The State claims that unless an actual element of the offense is resolved by the trial court, the only way to know whether the court's ruling was an "acquittal" is to rely upon the court's label, which would wrongly allow the form of the trial court's action to control. However, the instant decision turns not on the form of the trial court's action but on whether that action serves substantive or procedural purposes. The State and the United States argue that if the grounds for an acquittal are untethered from the actual elements of the offense, a trial court could issue an unreviewable order finding insufficient evidence to convict for any reason at all. But this Court presumes that courts exercise their duties in good faith. The State also suggests that Evans should not be heard to complain when a trial court error that he induced is corrected and the State wishes to retry him, but most midtrial acquittals result from defense motions. The United States claims that, under *Lee* v. *United States*, 432 U. S. 23, Evans was required to ask the court to resolve whether nondwelling status was an element of the offense before jeopardy attached. However, *Lee* involved a midtrial dismissal that was akin to a mistrial, while this case involves a ruling on the sufficiency of the State's proof. Pp. 325–327.

(d) This Court declines to revisit decisions such as *Fong Foo*, *Smith*, *Rumsey*, and *Smalis* v. *Pennsylvania*, 476 U. S. 140. There is no reason to believe that the existing rules have become so "unworkable" as to justify overruling precedent. *Payne* v. *Tennessee*, 501 U. S. 808, 827. And the logic of those cases still holds. As for the objection that the rule denies the prosecution a full and fair opportunity to present its evidence to the jury while the defendant reaps a "windfall" from the trial court's unreviewable error, sovereigns have power to prevent such

situations by disallowing the practice of midtrial acquittals, encouraging courts to defer consideration of a motion to acquit until after the jury renders a verdict, or providing for mandatory continuances or expedited interlocutory appeals. Pp. 327–330.

491 Mich. 1, 810 N. W. 2d 535, reversed.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, THOMAS, GINSBURG, BREYER, and KAGAN, JJ., joined. ALITO, J., filed a dissenting opinion, *post*, p. 330.

David A. Moran argued the cause for petitioner. With him on the briefs were *Jonathan B. D. Simon*, *Richard D. Friedman*, and *Timothy P. O'Toole*.

Timothy A. Baughman argued the cause for respondent. With him on the brief was *Kym L. Worthy*.

Curtis E. Gannon argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Breuer*, and *Deputy Solicitor General Dreeben*.*

JUSTICE SOTOMAYOR delivered the opinion of the Court.

When the State of Michigan rested its case at petitioner Lamar Evans' arson trial, the court entered a directed verdict of acquittal, based upon its view that the State had not provided sufficient evidence of a particular element of the offense. It turns out that the unproven "element" was not actually a required element at all. We must decide whether an erroneous acquittal such as this nevertheless constitutes an acquittal for double jeopardy purposes, which would mean that Evans could not be retried. This Court has previously held that a judicial acquittal premised upon a "misconstruction" of a criminal statute is an "acquittal on the merits [that] bars retrial." *Arizona* v. *Rumsey*, 467 U. S. 203, 211 (1984). Seeing no meaningful constitutional distinction between a

David M. Porter filed a brief for the National Association of Criminal Defense Lawyers as *amicus curiae*.

trial court's "misconstruction" of a statute and its erroneous addition of a statutory element, we hold that a midtrial acquittal in these circumstances is an acquittal for double jeopardy purposes as well.

I

The State charged Evans with burning "other real property," a violation of Mich. Comp. Laws § 750.73 (1981). The State's evidence at trial suggested that Evans had burned down an unoccupied house. At the close of the State's case, however, Evans moved for a directed verdict of acquittal. He pointed the court to the applicable Michigan Criminal Jury Instructions, which listed as the "Fourth" element of the offense "that the building was not a dwelling house." 3 Mich. Crim. Jury Instr. § 31.3, p. 31–7 (2d ed., Supp. 2006/2007). And the commentary to the instructions emphasized, "an essential element is that the structure burned is *not* a dwelling house." *Id.*, at 31–8. Evans argued that Mich. Comp. Laws § 750.72 criminalizes common-law arson, which requires that the structure burned be a dwelling, while the provision under which he was charged, § 750.73, covers all other real property.[1] Persuaded, the trial court granted the motion. 491 Mich. 1, 8, 810 N. W. 2d 535, 539 (2012). The court explained that the "'testimony [of the homeowner] was this was a dwelling house,'" so the nondwelling requirement of § 750.73 was not met. *Ibid.*

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[1] Michigan Comp. Laws § 750.72 (1981), "Burning dwelling house," provides: "Any person who wilfully or maliciously burns any dwelling house, either occupied or unoccupied, or the contents thereof, whether owned by himself or another, or any building within the curtilage of such dwelling house, or the contents thereof, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 20 years."

And § 750.73, "Burning of other real property," provides: "Any person who wilfully or maliciously burns any building or other real property, or the contents thereof, other than those specified in the next preceding section of this chapter, the property of himself or another, shall be guilty of a felony, punishable by imprisonment in the state prison for not more than 10 years."

On the State's appeal, the Michigan Court of Appeals reversed and remanded. 288 Mich. App. 410, 794 N. W. 2d 848 (2010). Evans had conceded, and the court held, that under controlling precedent, burning "other real property" is a lesser included offense under Michigan law, and disproving the greater offense is not required. *Id.*, at 416, 794 N. W. 2d, at 852 (citing *People* v. *Antonelli*, 66 Mich. App. 138, 140, 238 N. W. 2d 551, 552 (1975) (on rehearing)).[2] The court thus explained it was "undisputed that the trial court misperceived the elements of the offense with which [Evans] was charged and erred by directing a verdict." 288 Mich. App., at 416, 794 N. W. 2d, at 852. But the court rejected Evans' argument that the Double Jeopardy Clause barred retrial. *Id.*, at 421–422, 794 N. W. 2d, at 856.

In a divided decision, the Supreme Court of Michigan affirmed. It held that "when a trial court grants a defendant's motion for a directed verdict on the basis of an error of law that did not resolve any factual element of the charged offense, the trial court's ruling does not constitute an acquittal for the purposes of double jeopardy and retrial is therefore not barred." 491 Mich., at 4, 810 N. W. 2d, at 536–537.

We granted certiorari to resolve the disagreement among state and federal courts on the question whether retrial is barred when a trial court grants an acquittal because the prosecution had failed to prove an "element" of the offense that, in actuality, it did not have to prove.[3] 567 U. S. 905 (2012). We now reverse.

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[2] In other words, the pattern jury instructions were incorrect. The State later revised them. See 288 Mich. App. 410, 416, n. 3, 794 N. W. 2d 848, 852, n. 3 (2010).

[3] Compare 491 Mich. 1, 810 N. W. 2d 535 (2012) (case below), and *State* v. *Korsen*, 138 Idaho 706, 716–717, 69 P. 3d 126, 136–137 (2003) (same conclusion), and *United States* v. *Maker*, 751 F. 2d 614, 624 (CA3 1984) (same), with *Carter* v. *State*, 365 Ark. 224, 228, 227 S. W. 3d 895, 898 (2006) (rejecting this distinction), and *State* v. *Lynch*, 79 N. J. 327, 337–343, 399 A. 2d 629, 634–637 (1979) (holding double jeopardy barred retrial after trial court erroneously required extra element).

II

A

In answering this question, we do not write on a clean slate. Quite the opposite. It has been half a century since we first recognized that the Double Jeopardy Clause bars retrial following a court-decreed acquittal, even if the acquittal is "based upon an egregiously erroneous foundation." *Fong Foo* v. *United States*, 369 U. S. 141, 143 (1962) (*per curiam*). A mistaken acquittal is an acquittal nonetheless, and we have long held that "[a] verdict of acquittal . . . could not be reviewed, on error or otherwise, without putting [a defendant] twice in jeopardy, and thereby violating the Constitution." *United States* v. *Ball*, 163 U. S. 662, 671 (1896).

Our cases have applied *Fong Foo*'s principle broadly. An acquittal is unreviewable whether a judge directs a jury to return a verdict of acquittal, *e. g.*, *Fong Foo*, 369 U. S., at 143, or forgoes that formality by entering a judgment of acquittal herself. See *Smith* v. *Massachusetts*, 543 U. S. 462, 467–468 (2005) (collecting cases). And an acquittal precludes retrial even if it is premised upon an erroneous decision to exclude evidence, *Sanabria* v. *United States*, 437 U. S. 54, 68–69, 78 (1978); a mistaken understanding of what evidence would suffice to sustain a conviction, *Smith*, 543 U. S., at 473; or a "misconstruction of the statute" defining the requirements to convict, *Rumsey*, 467 U. S., at 203, 211; cf. *Smalis* v. *Pennsylvania*, 476 U. S. 140, 144–145, n. 7 (1986). In all these circumstances, "the fact that the acquittal may result from erroneous evidentiary rulings or erroneous interpretations of governing legal principles affects the accuracy of that determination, but it does not alter its essential character." *United States* v. *Scott*, 437 U. S. 82, 98 (1978) (internal quotation marks and citation omitted).

Most relevant here, our cases have defined an acquittal to encompass any ruling that the prosecution's proof is insufficient to establish criminal liability for an offense. See *ibid.*,

and n. 11; *Burks* v. *United States*, 437 U. S. 1, 10 (1978); *United States* v. *Martin Linen Supply Co.*, 430 U. S. 564, 571 (1977). Thus an "acquittal" includes "a ruling by the court that the evidence is insufficient to convict," a "factual finding [that] necessarily establish[es] the criminal defendant's lack of criminal culpability," and any other "rulin[g] which relate[s] to the ultimate question of guilt or innocence." *Scott*, 437 U. S., at 91, 98, and n. 11 (internal quotation marks omitted). These sorts of substantive rulings stand apart from procedural rulings that may also terminate a case midtrial, which we generally refer to as dismissals or mistrials. Procedural dismissals include rulings on questions that "are unrelated to factual guilt or innocence," but "which serve other purposes," including "a legal judgment that a defendant, although criminally culpable, may not be punished" because of some problem like an error with the indictment. *Id.*, at 98, and n. 11.

Both procedural dismissals and substantive rulings result in an early end to trial, but we explained in *Scott* that the double jeopardy consequences of each differ. "[T]he law attaches particular significance to an acquittal," so a merits-related ruling concludes proceedings absolutely. *Id.*, at 91. This is because "[t]o permit a second trial after an acquittal, however mistaken the acquittal may have been, would present an unacceptably high risk that the Government, with its vastly superior resources, might wear down the defendant so that 'even though innocent he may be found guilty,'" *ibid.* (quoting *Green* v. *United States*, 355 U. S. 184, 188 (1957)). And retrial following an acquittal would upset a defendant's expectation of repose, for it would subject him to additional "embarrassment, expense and ordeal" while "compelling him to live in a continuing state of anxiety and insecurity." *Id.*, at 187. In contrast, a "termination of the proceedings against [a defendant] on a basis unrelated to factual guilt or innocence of the offense of which he is accused," 437 U. S., at 98–99, *i. e.*, some procedural ground, does not pose the same

concerns, because no expectation of finality attaches to a properly granted mistrial.

Here, "it is plain that the [trial court] . . . evaluated the [State's] evidence and determined that it was legally insufficient to sustain a conviction." *Martin Linen*, 430 U. S., at 572. The trial court granted Evans' motion under a rule that requires the court to "direct a verdict of acquittal on any charged offense as to which the evidence is insufficient to support conviction." Mich. Rule Crim. Proc. 6.419(A) (2012). And the court's oral ruling leaves no doubt that it made its determination on the basis of "'[t]he testimony'" that the State had presented. 491 Mich., at 8, 810 N. W. 2d, at 539. This ruling was not a dismissal on a procedural ground "unrelated to factual guilt or innocence," like the question of "preindictment delay" in *Scott*, but rather a determination that the State had failed to prove its case. 437 U. S., at 98, 99. Under our precedents, then, Evans was acquitted.

There is no question the trial court's ruling was wrong; it was predicated upon a clear misunderstanding of what facts the State needed to prove under state law. But that is of no moment. *Martin Linen*, *Sanabria*, *Rumsey*, *Smalis*, and *Smith* all instruct that an acquittal due to insufficient evidence precludes retrial, whether the court's evaluation of the evidence was "correct or not," *Martin Linen*, 430 U. S., at 571, and regardless of whether the court's decision flowed from an incorrect antecedent ruling of law. Here Evans' acquittal was the product of an "erroneous interpretatio[n] of governing legal principles," but as in our other cases, that error affects only "the accuracy of [the] determination" to acquit, not "its essential character." *Scott*, 437 U. S., at 98 (internal quotation marks omitted).

B

The court below saw things differently. It identified a "constitutionally meaningful difference" between this case

and our previous decisions. Those cases, the court found, "involve[d] evidentiary errors regarding the proof needed to establish a factual element of the . . . crimes at issue," but still ultimately involved "a resolution regarding the sufficiency of the factual elements of the charged offense." 491 Mich., at 14–15, 810 N. W. 2d, at 542–543. When a court mistakenly "identifie[s] an extraneous element and dismisse[s] the case solely on that basis," however, it has "not resolve[d] or even address[ed] any factual element necessary to establish" the offense. *Id.*, at 15, 20, 810 N. W. 2d, at 543, 546. As a result, the court below reasoned, the case terminates "based on an error of law unrelated to [the] defendant's guilt or innocence on the elements of the charged offense," and thus falls outside the definition of an acquittal. *Id.*, at 21, 810 N. W. 2d, at 546.

We fail to perceive the difference. This case, like our previous ones, involves an antecedent legal error that led to an acquittal because the State failed to prove some fact it was not actually required to prove. Consider *Rumsey.* There the trial court, sitting as sentencer in a capital case involving a murder committed during a robbery, mistakenly held that Arizona's statutory aggravating factor describing killings for pecuniary gain was limited to murders for hire. Accordingly, it found the State had failed to prove the killing was for pecuniary gain and sentenced the defendant to life imprisonment. After the State successfully appealed and obtained a death sentence on remand, we held that retrial on the penalty phase question was a double jeopardy violation.[4]

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[4] Under *Bullington* v. *Missouri*, 451 U. S. 430 (1981), a capital defendant is "acquitted" of the death penalty if, at the end of a separate sentencing proceeding, the factfinder concludes that the prosecution has failed to prove required additional facts to support a sentence of death. Thus in *Rumsey*, the trial court's initial "judgment, based on findings sufficient to establish legal entitlement to the life sentence, amounts to an acquittal on the merits and, as such, bars any retrial of the appropriateness of the death penalty." 467 U. S., at 211.

The only relevant difference between that situation and this one is that in *Rumsey* the trial court's error was called a "misinterpretation" and a "misconstruction of the statute," 467 U. S., at 207, 211, whereas here the error has been designated the "erroneous addition of [an] extraneous element to the charged offense," 491 Mich., at 3–4, 810 N. W. 2d, at 536. But we have emphasized that labels do not control our analysis in this context; rather, the substance of a court's decision does. See *Smalis*, 476 U. S., at 144, n. 5; *Scott*, 437 U. S., at 96–97; *Martin Linen*, 430 U. S., at 571. The error in *Rumsey* could just as easily have been characterized as the erroneous addition of an element of the statutory aggravating circumstance: that the homicide be a murder-for-hire. Conversely, the error here could be viewed as a misinterpretation of the statute's phrase "building or other real property" to exclude dwellings.[5] This is far too fine a distinction to be meaningful, and we reject the notion that a defendant's constitutional rights would turn on

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[5] Indeed, it is possible that this is what the trial court thought it was doing, not articulating an additional element. The statute criminalizes burning "any building or other real property, . . . other than those specified in" the previous section, which criminalizes the burning of a dwelling house. Mich. Comp. Laws § 750.73. In light of the statute's phrasing, the trial court interpreted "building or other real property" to be exclusive of the type of property described in § 750.72, although the Michigan courts have explained that the term is actually meant to be inclusive. So the trial court decision could be viewed as having given the statutory "building" element an unduly narrow construction (by limiting it to nondwellings), just as the trial court in *Rumsey* gave the pecuniary-gain provision an unduly narrow construction (by limiting it to contract killings). Nevertheless, we accept the parties' and the Michigan courts' alternative characterization of the trial court's error as the "addition" of an extraneous element. Our observation simply underscores how malleable the distinction adopted by the Michigan Supreme Court, and defended by the State and the United States, can be. And it belies the dissent's suggestion, *post*, at 340 (opinion of ALITO, J.), that drawing this distinction is "quite easy" here, and that the basis for the trial court's ruling could not be subject to "real dispute."

the happenstance of how an appellate court chooses to describe a trial court's error.

Echoing the Michigan Supreme Court, the State and the United States, as well as the dissent, emphasize *Martin Linen*'s description of an acquittal as the "resolution, correct or not, of some or all of the factual *elements* of the *offense* charged." 430 U. S., at 571 (emphasis added); see Brief for Respondent 11–17; see Brief for United States as *Amicus Curiae* 11–15 (hereinafter U. S. Brief); see *post*, at 336–338. They observe that the Double Jeopardy Clause protects against being twice placed in jeopardy for the same "offence," U. S. Const., Amdt. 5, cl. 2, and they note that an offense comprises constituent parts called elements, which are facts that must be proved to sustain a conviction. See, *e. g.*, *United States* v. *Dixon*, 509 U. S. 688, 696–697 (1993). Consequently, they argue, only if an actual element of the offense is resolved can it be said that there has been an acquittal of the offense, because " 'innocence of the charged offense' cannot turn on something that is concededly not an element of the offense." U. S. Brief 15. Because Evans' trial ended without resolution of even one actual element, they conclude, there was no acquittal.

This argument reads *Martin Linen* too narrowly, and it is inconsistent with our decisions since then. Our focus in *Martin Linen* was on the significance of a judicial acquittal under Federal Rule of Civil Procedure 29. The District Court in that case had "evaluated the Government's evidence and determined that it was legally insufficient to sustain a conviction." 430 U. S., at 572. That determination of nonculpability was enough to make the acquittal akin to a jury verdict; our holding did not depend upon defining the "elements" of the offense. As we have explained, *supra*, at 319–320, *Scott* confirms that the relevant distinction is between judicial determinations that go to "the criminal defendant's lack of criminal culpability," and those that hold "that a defendant, although criminally culpable, may not be pun-

ished because of a supposed" procedural error. 437 U. S., at 98. Culpability (*i. e.*, the "ultimate question of guilt or innocence") is the touchstone, not whether any particular elements were resolved or whether the determination of nonculpability was legally correct. *Ibid.*, n. 11 (internal quotation marks omitted).

Perhaps most inconsistent with the State's and United States' argument is *Burks*. There we held that when a defendant raises insanity as a defense, and a court decides the "Government ha[s] failed to come forward with sufficient proof of [the defendant's] capacity to be responsible for criminal acts," the defendant has been acquitted because the court decided that "criminal culpability ha[s] not been established." 437 U. S., at 10. Lack of insanity was not an "element" of Burks' offense, bank robbery by use of a dangerous weapon. See 18 U. S. C. § 2113(d) (1976 ed.). Rather, insanity was an affirmative defense to criminal liability. Our conclusion thus depended upon equating a judicial acquittal with an order finding insufficient evidence of culpability, not insufficient evidence of any particular element of the offense.[6]

In the end, this case follows those that have come before it. The trial court's judgment of acquittal resolved the question of Evans' guilt or innocence as a matter of the sufficiency of the evidence, not on unrelated procedural grounds. That judgment, "however erroneous" it was, precludes reprosecution on this charge, and so should have barred the State's appeal as well. *Sanabria*, 437 U. S., at 69.

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[6] To account for *Burks*, the United States posits that, "[a]s used in [its] brief, the 'elements' of an offense encompass legally recognized defenses that would negate culpability." U. S. Brief 11, n. 3. So too would the dissent hold that, "as used in this opinion, the 'elements' of an offense include legally recognized affirmative defenses that would negate culpability." *Post*, at 337, n. 2. Rather than adopt a novel definition of the word "element" to mean "elements and affirmative defenses," and then promptly limit that novel definition to these circumstances, we prefer to read *Burks* for what it says, which is that the issue is whether the bottom-line question of "criminal culpability" was resolved. 437 U. S., at 10.

III

A

The State, supported by the United States, offers three other reasons why the distinction drawn by the court below should be maintained. None persuades us.

To start, the State argues that unless an actual element of the offense is resolved by the trial court, the only way to know whether the court's ruling was an "acquittal" is to rely upon the label used by the court, which would wrongly allow the form of the trial court's action to control. Brief for Respondent 17–18, 21–22. We disagree. Our decision turns not on the form of the trial court's action, but rather whether it "serve[s]" substantive "purposes" or procedural ones. *Scott*, 437 U. S., at 98, n. 11. If a trial court were to announce, midtrial, "The defendant shall be acquitted because he was prejudiced by preindictment delay," the Double Jeopardy Clause would pose no barrier to reprosecution, notwithstanding the "acquittal" label. Cf. *Scott*, 437 U. S. 82. Here we know the trial court acquitted Evans, not because it incanted the word "acquit" (which it did not), but because it acted on its view that the prosecution had failed to prove its case.

Next, the State and the United States fear that if the grounds for an acquittal are untethered from the actual elements of the offense, a trial court could issue an unreviewable order finding insufficient evidence to convict for any reason at all, such as that the prosecution failed to prove "that the structure burned [was] blue." Brief for Respondent 16–17; U. S. Brief 15. If the concern is that there is no limit to the magnitude of the error that could yield an acquittal, the response is that we have long held as much. See *supra*, at 318. If the concern is instead that our holding will make it easier for courts to insulate from review acquittals that are granted as a form of nullification, see Brief for Respondent 30, n. 58, we reject the premise. We presume here, as in

other contexts, that courts exercise their duties in good faith. Cf. *Harrington* v. *Richter*, 562 U. S. 86, 103 (2011).

Finally, the State suggests that because Evans induced the trial court's error, he should not be heard to complain when that error is corrected and the State wishes to retry him. Brief for Respondent 32–33; cf. *id.*, at 5–9. But we have recognized that "most [judgments of acquittal] result from defense motions," so "[t]o hold that a defendant waives his double jeopardy protection whenever a trial court error in his favor on a midtrial motion leads to an acquittal would undercut the adversary assumption on which our system of criminal justice rests, and would vitiate one of the fundamental rights established by the Fifth Amendment." *Sanabria*, 437 U. S., at 78 (citation omitted).[7] It is true that when a defendant persuades the court to declare a mistrial, jeopardy continues and retrial is generally allowed. See *United States* v. *Dinitz*, 424 U. S. 600 (1976). But in such circumstances the defendant consents to a disposition that contemplates reprosecution, whereas when a defendant moves for acquittal he does not. See *Sanabria*, 437 U. S., at 75.

The United States makes a related argument. It contends that Evans could have asked the court to resolve whether nondwelling status is an element of the offense before jeopardy attached, so having elected to wait until trial was underway to raise the point, he cannot now claim a double jeopardy violation. U. S. Brief 22–25. The Government relies upon *Lee* v. *United States*, 432 U. S. 23 (1977), in which the District Court dismissed an indictment midtrial because it had failed to allege the required intent element of the offense. We held that retrial on a corrected indictment was not barred, because the dismissal was akin to a mistrial, not

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[7] The dissent says that "defense counsel fooled the judge," *post*, at 335, but surely that charge is not fair. Nothing suggests counsel exceeded the permissible bounds of zealous advocacy on behalf of his client. Counsel presented a colorable legal argument, and marshaled persuasive authority: Michigan's own criminal jury instructions, which, at the time, supported his position. See *supra*, at 316, 317, n. 2.

an acquittal. This was clear because the District Court had separately denied the defendant's motion for judgment of acquittal, explaining that the defendant "'has been proven [guilty] beyond any reasonable doubt in the world,'" while acknowledging that the error in the indictment required dismissal. *Id.*, at 26–27. Because the defendant "invited the court to interrupt the proceedings before formalizing a finding on the merits" by raising the indictment issue so late, we held the principles governing a defendant's consent to mistrial should apply. *Id.*, at 28 (citing *Dinitz*, 424 U. S. 600).

The Government suggests the situation here is "functionally similar," because "identifying the elements of an offense is a necessary step in determining the sufficiency of a charging document." U. S. Brief 23. But we cannot ignore the fact that what the trial court actually did here was rule on the sufficiency of the State's proof, not the sufficiency of the information filed against him. *Lee* demonstrates that the two need not rise or fall together. And even if the Government is correct that Evans could have challenged the charging document on the same legal theory he used to challenge the sufficiency of the evidence, it matters that he made only the latter motion, a motion that necessarily may not be made until trial is underway. Evans cannot be penalized for requesting from the court a ruling on the merits of the State's case, as the Michigan Rules entitled him to do; whether he could have also brought a distinct procedural objection earlier on is beside the point.

B

In the alternative, the State and the United States ask us to reconsider our past decisions. Brief for Respondent 34–56 (suggesting overruling our cases since at least *Fong Foo*); U. S. Brief 27–32 (suggesting overruling *Smith*, *Rumsey*, and *Smalis*).[8] We declined to revisit our cases when the United

[8] The dissent's true gripe may be with these cases as well, rather than our result here, which, we have explained, follows inevitably from them. See *post*, at 334 (noting "how far [our cases] have departed from the common-law principles that applied at the time of the founding"); compare *post*, at

States made a similar request in *Smalis*. 476 U. S., at 144; see Brief for United States as *Amicus Curiae* in *Smalis* v. *Pennsylvania*, O. T. 1985, No. 85–227, pp. 19–25. And we decline to do so here.

First, we have no reason to believe the existing rules have become so "unworkable" as to justify overruling precedent. *Payne* v. *Tennessee*, 501 U. S. 808, 827 (1991). The distinction drawn in *Scott* has stood the test of time, and we expect courts will continue to have little "difficulty in distinguishing between those rulings which relate to the ultimate question of guilt or innocence and those which serve other purposes." 437 U. S., at 98, n. 11 (internal quotation marks omitted). See, *e. g.*, *United States* v. *Dionisio*, 503 F. 3d 78, 83–88 (CA2 2007) (collecting cases); 6 W. LaFave, J. Israel, N. King, & O. Kerr, Criminal Procedure § 25.3(a), p. 629 (3d ed. 2007) (same).

Second, the logic of these cases still holds. There is no question that a jury verdict of acquittal precludes retrial, and thus bars appeal of any legal error that may have led to that acquittal. See *Ball*, 163 U. S., at 671. So, had the trial court here instructed the jury that it must find the burned structure was not a dwelling in order to convict, the jury would have acquitted Evans accordingly; "'[a] jury is presumed to follow its instructions.'" *Blueford* v. *Arkansas*, 566 U. S. 599, 606 (2012) (quoting *Weeks* v. *Angelone*, 528 U. S. 225, 234 (2000)). And that would have been the end of the matter. From that premise, *Fong Foo*'s holding follows: If a trial court instead exercises its discretion to direct a jury to return a verdict of acquittal, jeopardy also terminates notwithstanding any legal error, because there too it is the jury that returns an acquittal. And from there, *Martin Linen*'s conclusion is unavoidable: It should make no difference

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341 ("Permitting retrial in these egregious cases is especially appropriate"), with *Fong Foo* v. *United States*, 369 U. S. 141, 143 (1962) (*per curiam*) (according finality to even those acquittals "based upon an egregiously erroneous foundation").

whether the court employs the formality of directing the jury to return an acquittal or whether the court enters an acquittal itself. *Sanabria*, *Rumsey*, *Smalis*, and *Smith* merely apply *Fong Foo* and *Martin Linen* in tandem: If a trial court makes an antecedent legal error (as in *Fong Foo*), and then grants a judgment of acquittal rather than directing the jury to acquit (as in *Martin Linen*), the result is an acquittal all the same.

In other words, there is no way for antecedent legal errors to be reviewable in the context of judicial acquittals unless those errors are also reviewable when they give rise to jury acquittals (contrary to the settled understanding that a jury verdict of acquittal is unreviewable), or unless we distinguish between juries that acquit pursuant to their instructions and judicial acquittals (notwithstanding that this is a purely formal distinction). Neither option has become more attractive with time. We therefore reiterate: "[A]ny contention that the Double Jeopardy Clause must itself . . . leave open a way of correcting legal errors is at odds with the well-established rule that the bar will attach to a preverdict acquittal that is patently wrong in law." *Smith*, 543 U. S., at 473.

Finally, the State and the United States object that this rule denies the prosecution a full and fair opportunity to present its evidence to the jury, while the defendant reaps a "windfall" from the trial court's unreviewable error. Brief for Respondent 6; U. S. Brief 31–32. But sovereigns are hardly powerless to prevent this sort of situation, as we observed in *Smith*, 543 U. S., at 474. Nothing obligates a jurisdiction to afford its trial courts the power to grant a mid-trial acquittal, and at least two States disallow the practice. See Nev. Rev. Stat. § 175.381(1) (2011); *State* v. *Parfait*, 96–1814 (La. App. 1 Cir. 05/09/97), 693 So. 2d 1232, 1242. Many jurisdictions, including the federal system, allow or encourage their courts to defer consideration of a motion to acquit until after the jury returns a verdict, which mitigates double

jeopardy concerns.[9] See Fed. Rule Crim. Proc. 29(b). And for cases such as this, in which a trial court's interpretation of the relevant criminal statute is likely to prove dispositive, we see no reason why jurisdictions could not provide for mandatory continuances or expedited interlocutory appeals if they wished to prevent misguided acquittals from being entered.[10] But having chosen to vest its courts with the power to grant midtrial acquittals, the State must bear the corresponding risk that some acquittals will be granted in error.

* * *

We hold that Evans' trial ended in an acquittal when the trial court ruled the State had failed to produce sufficient evidence of his guilt. The Double Jeopardy Clause thus bars retrial for his offense and should have barred the State's appeal. The judgment of the Supreme Court of Michigan is

Reversed.

JUSTICE ALITO, dissenting.

The Court holds that the Double Jeopardy Clause bars petitioner's retrial for arson because his attorney managed to convince a judge to terminate petitioner's first trial prior to verdict on the specious ground that the offense with which he was charged contains an imaginary "element" that the prosecution could not prove. The Court's decision makes no sense. It is not consistent with the original meaning of the

[9] If a court grants a motion to acquit after the jury has convicted, there is no double jeopardy barrier to an appeal by the government from the court's acquittal, because reversal would result in reinstatement of the jury verdict of guilt, not a new trial. *United States* v. *Wilson*, 420 U. S. 332 (1975).

[10] Here, the prosecutor twice asked the court for a recess to review the Michigan statutes and to discuss the question with her supervisor. 491 Mich., at 7, 810 N. W. 2d, at 538–539. If the trial court's refusal was ill advised, that is a matter for state procedure to address, but it does not bear on the double jeopardy consequences of the acquittal that followed.

Double Jeopardy Clause; it does not serve the purposes of the prohibition against double jeopardy; and contrary to the Court's reasoning, the trial judge's ruling was not an "acquittal," which our cases have "consistently" defined as a decision that "'actually represents a resolution, correct or not, of some or all of the factual *elements of the offense charged.*'" *Smith* v. *Massachusetts*, 543 U. S. 462, 468 (2005) (quoting *United States* v. *Martin Linen Supply Co.*, 430 U. S. 564, 571 (1977); emphasis added). For no good reason, the Court deprives the State of Michigan of its right to have one fair opportunity to convict petitioner, and I therefore respectfully dissent.

I

After Detroit police officers heard an explosion at a burning house, they observed petitioner running away from the building with a gasoline can. The officers pursued and ultimately apprehended petitioner, who admitted that he had burned down the house. No one was living in the house at the time of the fire.

If the house in question had been a "dwelling house," petitioner could have been charged under Mich. Comp. Laws § 750.72 (1981) for burning a dwelling, an offense punishable by imprisonment for up to 20 years. But petitioner was instead charged with "[b]urning of other real property" in violation of Mich. Comp. Laws § 750.73. This offense, which carries a maximum penalty of 10 years' imprisonment, applies to "[a]ny person who wilfully or maliciously burns any building or other real property . . . other than those specified in [§ 750.72]." This crime is a lesser included offense of the crime of burning a dwelling house. The "necessary elements to prove either offense are the same, except to prove the greater [offense] it must be shown that the building is a dwelling." 491 Mich. 1, 19–20, 810 N. W. 2d 535, 545–546 (2012) (internal quotation marks omitted). To prove the lesser offense, however, "'it is not necessary to prove that

the building is *not* a dwelling.' " *Id.*, at 20, 810 N. W. 2d, at 546 (emphasis added).

At the close of the prosecution's case, petitioner's attorney moved for a directed verdict on the ground that (1) the prosecution was required to prove, as an "element" of the charged offense, that "the building was *not* a dwelling" and (2) "the prosecution had failed to prove that the burned building was not a dwelling house." *Id.*, at 5, 810 N. W. 2d, at 537. The prosecutor responded by arguing that nothing in the charged offense requires proof that the building was not a dwelling, and the prosecutor requested "a moment" to "pull the statute" and "consult with [her] supervisors." *Id.*, at 5–7, 810 N. W. 2d, at 537–539 (internal quotation marks omitted). The trial judge denied the prosecutor's requests and erroneously concluded that the prosecution was required to prove that the burned building was not a dwelling. After determining that the State had not proved this nonexistent "element," the trial judge granted petitioner's motion for a directed verdict and entered an order that it labeled an "[a]cquittal." App. to Pet. for Cert. 72.

The trial judge's ruling was plainly wrong, and on appeal, defense counsel did not even attempt to defend its correctness, conceding that the judge had "wrongly added an extraneous element to the statute" under which his client was charged. 491 Mich., at 3, 810 N. W. 2d, at 536; see also 288 Mich. App. 410, 416, and n. 2, 794 N. W. 2d 848, 852, and n. 2 (2010). The Michigan Court of Appeals agreed with this concession and went on to hold that the trial judge's ruling did not constitute an "acquittal" for double jeopardy purposes because the ruling did not represent "a resolution in the defendant's favor . . . of a factual element necessary for a criminal conviction." *Id.*, at 421–422, 794 N. W. 2d, at 856 (internal quotation marks omitted). The Michigan Supreme Court affirmed, holding that when, as here, a trial judge erroneously adds an extra "element" to a charged offense and subsequently determines that the prosecution did not prove

that extra "element," the trial judge's decision is not based on the defendant's guilt or innocence of the elements of the charged offense. 491 Mich., at 3–4, 19–21, 810 N. W. 2d, at 536–537, 545–546. Accordingly, the Michigan Supreme Court concluded that the judge's ruling in this case "does not constitute an acquittal for the purposes of double jeopardy and retrial is . . . not barred." *Id.*, at 4, 810 N. W. 2d, at 537.

II

This Court now reverses the decision of the State Supreme Court, but the Court's holding is supported by neither the original understanding of the prohibition against double jeopardy nor any of the reasons for that prohibition.

A

The prohibition against double jeopardy "had its origin in the three common-law pleas of *autrefois acquit*, *autrefois convict*, and pardon," which "prevented the retrial of a person who had previously been acquitted, convicted, or pardoned for the same offense." *United States* v. *Scott*, 437 U. S. 82, 87 (1978); see *Crist* v. *Bretz*, 437 U. S. 28, 33 (1978). As the Court has previously explained, "the common-law protection against double jeopardy historically applied only to charges on which a *jury* had rendered a *verdict*." *Smith*, *supra*, at 466 (emphasis added).[1] As a result, the original

[1] See also *Crist*, 437 U. S., at 33 ("The Fifth Amendment guarantee against double jeopardy derived from English common law, which followed . . . the relatively simple rule that a defendant has been put in jeopardy only when there has been a conviction or an acquittal—after a complete trial. . . . And it is clear that in the early years of our national history the constitutional guarantee against double jeopardy was considered to be equally limited in scope"); 3 J. Story, Commentaries on the Constitution of the United States § 1781, p. 659 (1833) ("The meaning of [the Double Jeopardy Clause] is, that a party shall not be tried a second time for the same offence, after he has once been convicted, or acquitted of the offence charged, *by the verdict of a jury*, and judgment has passed thereon for or against him. *But it does not mean, that he shall not be tried for the*

understanding of the Clause, which is "hardly a matter of dispute," *Scott*, *supra*, at 87, does not compel the Court's conclusion that a defendant is acquitted for double jeopardy purposes whenever a *judge* issues a *preverdict* ruling that the prosecution has failed to prove a nonexistent "element" of the charged offense.

Although our decisions have expanded double jeopardy protection beyond its common-law origins, see, *e. g.*, *Smith*, 543 U. S., at 466–467 (acknowledging the Court's expansion of "the common-law protection against double jeopardy"); *Crist*, *supra*, at 33–34, I nonetheless count it significant that the result the Court reaches today finds no support in the relevant common-law analogues that "lie at the core of the area protected by the Double Jeopardy Clause," see *Scott*, 437 U. S., at 96. And given how far we have departed from the common-law principles that applied at the time of the founding, we should at least ensure that our decisions in this area serve the underlying *purposes* of the constitutional prohibition against double jeopardy. See *id.*, at 95–96, 100–101. Yet today's decision fails to advance the purposes of the Double Jeopardy Clause.

B

The Double Jeopardy Clause is largely based on "the deeply ingrained principle that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty." *Yeager* v. *United States*, 557 U. S. 110, 117–118 (2009) (internal quotation marks omitted); see also *Blueford* v. *Arkansas*, 566 U. S.

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offence a second time, if the jury have been discharged without giving any verdict . . . " (emphasis added)); 2 M. Hale, Pleas of the Crown 246 (1778) ("It must be an acquittal upon trial either by verdict or battle").

599, 605 (2012); *Martin Linen*, 430 U. S., at 569. Allowing retrial in the circumstances of the present case would not result in any such abuse. The prosecution would not be afforded a second opportunity to persuade the factfinder that its evidence satisfies the actual elements of the offense. Instead, because the trial judge's ruling in the first trial was not based on an actual element of the charged offense, retrial would simply give the prosecution one fair opportunity to prove its case.

Allowing retrial in this case would not permit prosecutors "to make repeated attempts to convict an individual for an alleged offense," *Yeager*, *supra*, at 117. It was *petitioner*, not the prosecutor, who sought to terminate the trial prior to verdict. Thus, contrary to the Court's unexplained suggestion, see *ante*, at 319–320, "[t]his case hardly presents the specter of 'an all-powerful state relentlessly pursuing a defendant who had either been found not guilty or who had at least insisted on having the issue of guilt submitted to the first trier of fact,'" *Sattazahn* v. *Pennsylvania*, 537 U. S. 101, 114–115 (2003) (quoting *Scott*, *supra*, at 96). On the contrary, this is a case in which defense counsel fooled the judge into committing an error that provided his client with an undeserved benefit, the termination of a trial that the defense obviously did not want to run to completion. The Double Jeopardy Clause does not require that the defense receive an even greater benefit, the protection provided by an acquittal. As this Court has repeatedly emphasized in double jeopardy cases, a State has an interest in receiving "one complete opportunity to convict those who have violated its laws," *Sattazahn*, *supra*, at 115 (internal quotation marks omitted); *Scott*, *supra*, at 100, but today's decision deprives the State of Michigan of this valuable right.

C

The Court's decision also flies in the face of our established understanding of the meaning of an acquittal for double jeop-

ardy purposes. The Double Jeopardy Clause provides that no person shall "be subject for the same *offence* to be twice put in jeopardy of life or limb." U. S. Const., Amdt. 5 (emphasis added). Thus, "[d]ouble-jeopardy analysis focuses on the individual 'offence' charged." *Smith*, 543 U. S., at 469, n. 3. And to determine what constitutes "the individual 'offence' charged," *ibid.*, the Court homes in on the elements of the offense. See *United States* v. *Dixon*, 509 U. S. 688, 696 (1993) ("In both the multiple punishment and multiple prosecution contexts, this Court has concluded that where the two offenses for which the defendant is punished or tried cannot survive the 'same-elements' test, the double jeopardy bar applies"). Consistent with the constitutional text's focus on the "offence"—and thus the elements—with which a defendant is charged, the Court's "double-jeopardy cases have consistently" defined an acquittal as a decision that "'actually represents a resolution, correct or not, of some or all of the factual elements of the offense charged.'" *Smith*, *supra*, at 468 (quoting *Martin Linen*, *supra*, at 571); see also *Scott*, *supra*, at 97 ("[A] defendant is acquitted only when the ruling of the judge, whatever its label, actually represents a resolution in the defendant's favor, correct or not, of some or all of the factual elements of the offense charged" (internal quotation marks and brackets omitted)).

Today, the Court effectively abandons the well-established definition of an acquittal. Indeed, in the face of our repeated holdings that an acquittal for double jeopardy purposes requires a "'resolution, correct or not, of some or all of the factual elements of the offense charged,'" *Smith*, *supra*, at 468; *Martin Linen*, *supra*, at 571; see also *Scott*, *supra*, at 97, the Court now declares that "the touchstone [is] *not* whether any particular elements were resolved," *ante*, at 324 (emphasis added). Instead, the Court proclaims that the dispositive question is whether a midtrial termination represented a "procedural dismissa[l]" or a "substantive rulin[g]," *ante*, at 319. This reformulation of double jeopardy law is not

faithful to our precedents—or to the Double Jeopardy Clause itself. The key question is not whether a ruling is "procedural" or "substantive" (whatever those terms mean in this context), but whether a ruling relates to the defendant's factual guilt or innocence with respect to the "offence," see U. S. Const., Amdt. 5—and thus the elements—with which he is charged. See *Scott*, 437 U. S., at 87, 97–99, and n. 11.

When a judge evaluates the evidence and determines that the prosecution has not proved facts that are legally sufficient to satisfy the actual elements of the charged offense, the ruling, however labeled, represents an acquittal because it is founded on the defendant's factual innocence. See *Martin Linen*, *supra*, at 572. But when a judge manufactures an additional "element" of an offense and then holds that there is insufficient evidence to prove that extra "element," the judge has not resolved the defendant's "factual guilt or innocence" as to any of the actual elements of the offense.[2] Thus, the ruling, no matter what the judge calls it, does not acquit the defendant of the offense with which he is charged. No acquittal occurs when a criminal trial is terminated "on a basis unrelated to factual guilt or innocence of the offense of which [a defendant] is accused." *Scott*, 437 U. S., at 87, 94–95, 98–99. "[I]n a case such as this the defendant, by deliberately choosing to seek termination of the proceedings against him on a basis unrelated to factual guilt or innocence of the offense of which he is accused, suffers no injury cognizable under the Double Jeopardy Clause if the Government is permitted to appeal from such a ruling of the trial court in favor of the defendant." *Id.*, at 98–99 (reasoning that, in

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[2] Because culpability for an offense can be negated by proof of an affirmative defense, the Court has held that a ruling that the prosecution did not submit sufficient evidence to rebut an affirmative defense constitutes an acquittal for double jeopardy purposes. See *Burks* v. *United States*, 437 U. S. 1, 10–11 (1978); *United States* v. *Scott*, 437 U. S. 82, 97–98 (1978). Thus, as used in this opinion, the "elements" of an offense include legally recognized affirmative defenses that would negate culpability.

such a case, the defendant was "neither acquitted nor convicted, because he himself successfully undertook to persuade the trial court not to submit the issue of guilt or innocence to the jury which had been empaneled to try him").

III

Contrary to the Court's opinion, its decision in this case is not supported by prior precedent. In all three of the principal cases on which the Court relies—*Smalis* v. *Pennsylvania*, 476 U. S. 140 (1986); *Smith*, *supra*; and *Arizona* v. *Rumsey*, 467 U. S. 203 (1984)—trial judges ruled that the prosecution had failed to introduce sufficient evidence to prove one or more of the *actual* elements of the offenses in question. In none of these cases (and in none of our other double jeopardy cases) did a trial judge terminate a prosecution before verdict based on an element of the judge's own creation.

The first two cases, *Smalis* and *Smith*, involved garden variety preverdict acquittals, *i. e.*, rulings based on the ground that the prosecution had failed to introduce sufficient evidence to prove one or more of the *actual* elements of an offense. (Using conventional modern terminology, Rule 29(a) of the Federal Rules of Criminal Procedure explicitly labels such rulings "acquittal[s].")

In *Smalis*, the judge, at the close of the prosecution's case in chief, granted a demurrer with respect to certain charges on the ground that the evidence regarding those charges was "legally insufficient to support a conviction." 476 U. S., at 141. The State Supreme Court held that this ruling was not an acquittal for double jeopardy purposes because it was based on a legal determination (*i. e.*, that the evidence was not sufficient) rather than a factual finding, but we rejected that distinction. *Id.*, at 143–144. See also *Sanabria* v. *United States*, 437 U. S. 54, 71–72 (1978).

Smith involved a similar situation. There, one of the elements of a firearms offense with which the defendant was

charged required proof that the gun "had a barrel 'less than 16 inches' in length," 543 U. S., at 464, and the trial judge dismissed this charge before verdict on the ground that the prosecution had not introduced sufficient evidence to establish this undisputed element, *id.*, at 464–465. Before the remaining charges were submitted to the jury, however, the judge reversed this ruling and allowed the charge to go to the jury. *Id.*, at 465. We held, however, that the judge's prior ruling constituted an acquittal and therefore barred the defendant's conviction for this offense. *Id.*, at 467–469. Thus, both *Smalis* and *Smith* involved rulings that were very different from the one at issue here. In both of those earlier cases, the trial judges held that the evidence was insufficient to prove undisputed elements of the offenses in question. In neither case did the judge invent a new element.

The final case, *Rumsey*, differs from *Smalis* and *Smith* in only one particular. Like *Smalis* and *Smith*, *Rumsey* involved a ruling that the prosecution's evidence was insufficient to prove an element, but in *Rumsey* the ruling was predicated on a misconstruction of an element. In that case, after the defendant was found guilty of first-degree murder, the "trial judge, with no jury, . . . conducted a separate sentencing hearing" at which he determined that no aggravating circumstances were present. 467 U. S., at 205. In particular, the judge found that the prosecution had not proved that the murder had been committed "'as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value.'" *Id.*, at 205–206 (quoting Ariz. Rev. Stat. Ann. § 13–703(F)(5) (Supp. 1983–1984)). The judge reached this conclusion because, in his (incorrect) view, that aggravating circumstance was limited to contract killings. 467 U. S., at 205–206. Holding that the judge's ruling constituted an acquittal on the merits of the question whether a death sentence was appropriate, we noted that the ruling rested on "a misconstruction of the statute defining the pecu-

niary gain aggravating circumstance." *Id.*, at 211. Accordingly, the ruling was based on a determination that there was insufficient evidence to prove a real element; it was not based on the judicial invention of an extra "element." And for that reason, it does not support the nonsensical result that the Court reaches today.

The Court may feel compelled to reach that result because it thinks that it would be unworkable to draw a distinction between a preverdict termination based on the trial judge's misconstruction of an element of an offense and a preverdict termination based on the judge's perception that a statute contains an "element" that is actually nonexistent. This practical concern is overblown. There may be cases in which this determination presents problems, but surely there are many cases in which the determination is quite easy. The present case is a perfect example, for here there is no real dispute that the trial judge's ruling was based on a nonexistent statutory "element." As noted, defense counsel conceded on appeal that the judge had "wrongly added an extraneous element to the statute" under which his client was charged. 491 Mich., at 3, 810 N. W. 2d, at 536.

Another good example is provided by *State* v. *Korsen*, 138 Idaho 706, 69 P. 3d 126 (2003), where a Magistrate erroneously concluded that the offense of criminal trespass under Idaho law requires a showing that the defendant did something to justify the property owner's request for the defendant to leave the premises. *Id.*, at 710, 716–717, 69 P. 3d, at 130, 136–137. There is no question that the Magistrate in *Korsen* "effectively created an additional statutory element" before concluding that the prosecution had presented insufficient evidence as to this purported "element." See *ibid.* (holding that double jeopardy did not bar a retrial because the Magistrate's "finding did not actually determine in [defendant's] favor any of the essential elements of the crime of trespass").

Cases in which it can be said that a trial judge did not simply misinterpret a real element of an offense but instead invented an entirely new and nonexistent "element" are cases in which the judge's error is particularly egregious. Permitting retrial in these egregious cases is especially appropriate.

* * *

I would hold that double jeopardy protection is not triggered by a judge's erroneous preverdict ruling that creates an "element" out of thin air and then holds that the element is not satisfied. I therefore respectfully dissent.

Syllabus

CHAIDEZ *v.* UNITED STATES

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

No. 11–820. Argued November 1, 2012—Decided February 20, 2013

Immigration officials initiated removal proceedings against petitioner Chaidez in 2009 upon learning that she had pleaded guilty to mail fraud in 2004. To avoid removal, she sought to overturn that conviction by filing a petition for a writ of *coram nobis*, contending that her former attorney's failure to advise her of the guilty plea's immigration consequences constituted ineffective assistance of counsel under the Sixth Amendment. While her petition was pending, this Court held in *Padilla* v. *Kentucky*, 559 U. S. 356, that the Sixth Amendment requires defense attorneys to inform non-citizen clients of the deportation risks of guilty pleas. The District Court vacated Chaidez's conviction, determining that *Padilla* did not announce a "new rule" under *Teague* v. *Lane*, 489 U. S. 288, and thus applied to Chaidez's case. The Seventh Circuit reversed, holding that *Padilla* had declared a new rule and should not apply in a challenge to a final conviction.

Held: *Padilla* does not apply retroactively to cases already final on direct review. Pp. 347–358.

(a) Under *Teague*, a person whose conviction is already final may not benefit from a new rule of criminal procedure on collateral review. A "case announces a new rule if the result was not *dictated* by precedent existing at the time the defendant's conviction became final." 489 U. S., at 301. And a holding is not so dictated unless it would have been "apparent to all reasonable jurists." *Lambrix* v. *Singletary*, 520 U. S. 518, 527–528. At the same time, a case does not "announce a new rule [when] it [is] merely an application of the principle that governed" a prior decision to a different set of facts. *Teague*, 489 U. S., at 307. Thus, garden-variety applications of the test in *Strickland* v. *Washington*, 466 U. S. 668, for assessing ineffective assistance claims do not produce new rules, *id.*, at 687–688.

But *Padilla* did more than just apply *Strickland*'s general standard to yet another factual situation. Before deciding if failing to inform a client about the risk of deportation "fell below [*Strickland*'s] objective standard of reasonableness," 466 U. S., at 688, *Padilla* first considered the threshold question whether advice about deportation was "categorically removed" from the scope of the Sixth Amendment right to counsel

because it involved only a "collateral consequence" of a conviction, rather than a component of a criminal sentence, 559 U. S., at 366. That is, prior to asking *how* the *Strickland* test applied, *Padilla* asked *whether* that test applied at all.

That preliminary question came to the Court unsettled. *Hill* v. *Lockhart*, 474 U. S. 52, had explicitly left open whether the Sixth Amendment right extends to collateral consequences. That left the issue to the state and lower federal courts, and they almost unanimously concluded that the Sixth Amendment does not require attorneys to inform their clients of a conviction's collateral consequences, including deportation. *Padilla*'s contrary ruling thus answered an open question about the Sixth Amendment's reach, in a way that altered the law of most jurisdictions. In so doing, *Padilla* broke new ground and imposed a new obligation. Pp. 347–354.

(b) Chaidez argues that *Padilla* did no more than apply *Strickland* to a new set of facts. But she ignores that *Padilla* had to develop new law to determine that *Strickland* applied at all. The few lower court decisions she cites held only that a lawyer may not affirmatively misrepresent his expertise or otherwise actively mislead his client as to any important matter. Those rulings do not apply to her case, and they do not show that all reasonable judges thought that lawyers had to advise their clients about deportation risks. Neither does *INS* v. *St. Cyr*, 533 U. S. 289, have any relevance here. In saying that a reasonably competent lawyer would tell a non-citizen client about a guilty plea's deportation consequences, *St. Cyr* did not determine that the Sixth Amendment requires a lawyer to provide such information. It took *Padilla* to decide that question. Pp. 354–358.

655 F. 3d 684, affirmed.

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, BREYER, and ALITO, JJ., joined. THOMAS, J., filed an opinion concurring in the judgment, *post*, p. 358. SOTOMAYOR, J., filed a dissenting opinion, in which GINSBURG, J., joined, *post*, p. 359.

Jeffrey L. Fisher argued the cause for petitioner. With him on the briefs were *Pamela S. Karlan*, *Kathleen Sanderson*, *Angela Vigil*, *Gerardo S. Gutierrez*, *Chuck Roth*, *Thomas C. Goldstein*, and *Kevin K. Russell*.

Deputy Solicitor General Dreeben argued the cause for the United States. With him on the brief were *Solicitor*

General Verrilli, Assistant Attorney General Breuer, Ginger Anders, and *Joel M. Gershowitz.**

JUSTICE KAGAN delivered the opinion of the Court.

In *Padilla* v. *Kentucky*, 559 U. S. 356 (2010), this Court held that the Sixth Amendment requires an attorney for a criminal defendant to provide advice about the risk of deportation arising from a guilty plea. We consider here whether that ruling applies retroactively, so that a person whose conviction became final before we decided *Padilla* can benefit from it. We conclude that, under the principles set out in *Teague* v. *Lane*, 489 U. S. 288 (1989), *Padilla* does not have retroactive effect.

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*Briefs of *amici curiae* urging reversal were filed for Active and Former State and Federal Prosecutors by *Heidi Altman* and *Michael K. Gottlieb*; for the American Immigration Lawyers Association by *Ira J. Kurzban* and *Rebecca Sharpless*; for Habeas Scholars et al. by *Douglas T. Kendall* and *Elizabeth B. Wydra*; for the National Association of Criminal Defense Lawyers et al. by *Jeffrey S. Trachtman, Craig Louis Siegel, Joshua L. Dratel, Edwin A. Burnette,* and *Dawn M. Seibert*; and for the National Association of Federal Defenders by *Stephen B. Kinnaird* and *Sarah S. Gannett.*

Briefs of *amici curiae* urging affirmance were filed for the State of New Jersey et al. by *Jeffrey S. Chiesa*, Attorney General of New Jersey, and *Frank Muroski*, Deputy Attorney General, and by the Attorneys General for their respective States as follows: *Luther Strange* of Alabama, *Michael C. Geraghty* of Alaska, *Tom Horne* of Arizona, *John W. Suthers* of Colorado, *Joseph R. Biden III* of Delaware, *Samuel S. Olens* of Georgia, *David M. Louie* of Hawaii, *Lawrence G. Wasden* of Idaho, *Gregory F. Zoeller* of Indiana, *Derek Schmidt* of Kansas, *Jack Conway* of Kentucky, *William J. Schneider* of Maine, *Douglas F. Gansler* of Maryland, *Bill Schuette* of Michigan, *Chris Koster* of Missouri, *Jon Bruning* of Nebraska, *Michael A. Delaney* of New Hampshire, *Gary K. King* of New Mexico, *E. Scott Pruitt* of Oklahoma, *Linda L. Kelly* of Pennsylvania, *Marty J. Jackley* of South Dakota, *Robert E. Cooper, Jr.*, of Tennessee, *Mark L. Shurtleff* of Utah, *Kenneth T. Cuccinelli II* of Virginia, *Robert M. McKenna* of Washington, *J. B. Van Hollen* of Wisconsin, and *Gregory A. Phillips* of Wyoming; and for the Criminal Justice Legal Foundation by *Kent S. Scheidegger.*

I

Petitioner Roselva Chaidez hails from Mexico, but became a lawful permanent resident of the United States in 1977. About 20 years later, she helped to defraud an automobile insurance company out of $26,000. After federal agents uncovered the scheme, Chaidez pleaded guilty to two counts of mail fraud, in violation of 18 U. S. C. § 1341. The District Court sentenced her to four years of probation and ordered her to pay restitution. Chaidez's conviction became final in 2004.

Under federal immigration law, the offenses to which Chaidez pleaded guilty are "aggravated felonies," subjecting her to mandatory removal from this country. See 8 U. S. C. §§ 1101(a)(43)(M)(i), 1227(a)(2)(A)(iii). But according to Chaidez, her attorney never advised her of that fact, and at the time of her plea she remained ignorant of it.

Immigration officials initiated removal proceedings against Chaidez in 2009, after an application she made for citizenship alerted them to her prior conviction. To avoid removal, Chaidez sought to overturn that conviction by filing a petition for a writ of *coram nobis* in Federal District Court.[1] She argued that her former attorney's failure to advise her of the immigration consequences of pleading guilty constituted ineffective assistance of counsel under the Sixth Amendment.

While Chaidez's petition was pending, this Court decided *Padilla*. Our ruling vindicated Chaidez's view of the Sixth Amendment: We held that criminal defense attorneys must

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[1] A petition for a writ of *coram nobis* provides a way to collaterally attack a criminal conviction for a person, like Chaidez, who is no longer "in custody" and therefore cannot seek collateral relief under 28 U. S. C. § 2255 or habeas relief under § 2241. See *United States* v. *Morgan*, 346 U. S. 502, 507, 510–511 (1954). Chaidez and the Government agree that nothing in this case turns on the difference between a *coram nobis* petition and a habeas petition, and we assume without deciding that they are correct.

inform non-citizen clients of the risks of deportation arising from guilty pleas. See 559 U. S., at 374. But the Government argued that Chaidez could not benefit from *Padilla* because it announced a "new rule" and, under *Teague*, such rules do not apply in collateral challenges to already-final convictions.

The District Court determined that *Padilla* "did not announce a new rule for *Teague* purposes," and therefore should apply to Chaidez's case. 730 F. Supp. 2d 896, 904 (ND Ill. 2010). It then found that Chaidez's counsel had performed deficiently under *Padilla* and that Chaidez suffered prejudice as a result. Accordingly, the court vacated Chaidez's conviction. See No. 03 CR 636–6, 2010 WL 3979664 (ND Ill., Oct. 6, 2010).

The United States Court of Appeals for the Seventh Circuit reversed, holding that *Padilla* had declared a new rule and so should not apply in a challenge to a final conviction. "Before *Padilla*," the Seventh Circuit reasoned, "the [Supreme] Court had never held that the Sixth Amendment requires a criminal defense attorney to provide advice about matters not directly related to [a] client's criminal prosecution," including the risks of deportation. 655 F. 3d 684, 693 (2011). And state and lower federal courts had uniformly concluded that an attorney need *not* give "advice concerning [such a] collateral (as opposed to direct) consequenc[e] of a guilty plea." *Id.*, at 690. According to the Seventh Circuit, *Padilla*'s holding was new because it ran counter to that widely accepted "distinction between direct and collateral consequences." 655 F. 3d, at 691. Judge Williams dissented. Agreeing with the Third Circuit's view, she argued that *Padilla* "broke no new ground" because it merely applied established law about a lawyer's "duty to consult" with a client. 655 F. 3d, at 695 (quoting *United States* v. *Orocio*, 645 F. 3d 630, 638–639 (CA3 2011); internal quotation marks omitted).

We granted certiorari, 566 U. S. 974 (2012), to resolve a split among federal and state courts on whether *Padilla* applies retroactively.[2] Holding that it does not, we affirm the Seventh Circuit.

II

Teague makes the retroactivity of our criminal procedure decisions turn on whether they are novel. When we announce a "new rule," a person whose conviction is already final may not benefit from the decision in a habeas or similar proceeding.[3] Only when we apply a settled rule may a person avail herself of the decision on collateral review. Here, Chaidez filed her *coram nobis* petition five years after her guilty plea became final. Her challenge therefore fails if *Padilla* declared a new rule.

"[A] case announces a new rule," *Teague* explained, "when it breaks new ground or imposes a new obligation" on the government. 489 U. S., at 301. "To put it differently," we continued, "a case announces a new rule if the result was not *dictated* by precedent existing at the time the defendant's conviction became final." *Ibid.* And a holding is not so dictated, we later stated, unless it would have been "apparent to all reasonable jurists." *Lambrix* v. *Singletary*, 520 U. S. 518, 527–528 (1997).

But that account has a flipside. *Teague* also made clear that a case does *not* "announce a new rule [when] it '[is]

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[2] Compare 655 F. 3d 684 (CA7 2011) (case below) (not retroactive); *United States* v. *Amer*, 681 F. 3d 211 (CA5 2012) (same); *United States* v. *Chang Hong*, 671 F. 3d 1147 (CA10 2011) (same); *State* v. *Gaitan*, 209 N. J. 339, 37 A. 3d 1089 (2012) (same), with *United States* v. *Orocio*, 645 F. 3d 630 (CA3 2011) (retroactive); *Commonwealth* v. *Clarke*, 460 Mass. 30, 949 N. E. 2d 892 (2011) (same).

[3] *Teague* stated two exceptions: "[W]atershed rules of criminal procedure" and rules placing "conduct beyond the power of the [government] to proscribe" apply on collateral review, even if novel. 489 U. S., at 311 (internal quotation marks omitted). Chaidez does not argue that either of those exceptions is relevant here.

merely an application of the principle that governed' " a prior decision to a different set of facts. 489 U. S., at 307 (quoting *Yates* v. *Aiken*, 484 U. S. 211, 217 (1988)). As JUSTICE KENNEDY has explained, "[w]here the beginning point" of our analysis is a rule of "general application, a rule designed for the specific purpose of evaluating a myriad of factual contexts, it will be the infrequent case that yields a result so novel that it forges a new rule, one not dictated by precedent." *Wright* v. *West*, 505 U. S. 277, 309 (1992) (concurring in judgment); see also *Williams* v. *Taylor*, 529 U. S. 362, 391 (2000). Otherwise said, when all we do is apply a general standard to the kind of factual circumstances it was meant to address, we will rarely state a new rule for *Teague* purposes.

Because that is so, garden-variety applications of the test in *Strickland* v. *Washington*, 466 U. S. 668 (1984), for assessing claims of ineffective assistance of counsel do not produce new rules. In *Strickland*, we held that legal representation violates the Sixth Amendment if it falls "below an objective standard of reasonableness," as indicated by "prevailing professional norms," and the defendant suffers prejudice as a result. *Id.*, at 687–688. That standard, we later concluded, "provides sufficient guidance for resolving virtually all" claims of ineffective assistance, even though their particular circumstances will differ. *Williams*, 529 U. S., at 391. And so we have granted relief under *Strickland* in diverse contexts without ever suggesting that doing so required a new rule. See, *e. g.*, *ibid.*; *Rompilla* v. *Beard*, 545 U. S. 374 (2005); *Wiggins* v. *Smith*, 539 U. S. 510 (2003).[4] In like manner, *Padilla* would not have created a new rule had it only applied *Strickland*'s general standard to yet another factual

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[4] We did not consider *Teague* in *Williams*, *Rompilla*, and *Wiggins*, but we granted habeas relief pursuant to 28 U. S. C. § 2254(d)(1) because state courts had unreasonably applied "clearly established" law. And, as we have explained, "clearly established" law is not "new" within the meaning of *Teague*. See *Williams*, 529 U. S., at 412.

situation—that is, had *Padilla* merely made clear that a lawyer who neglects to inform a client about the risk of deportation is professionally incompetent.

But *Padilla* did something more. Before deciding if failing to provide such advice "fell below an objective standard of reasonableness," *Padilla* considered a threshold question: Was advice about deportation "categorically removed" from the scope of the Sixth Amendment right to counsel because it involved only a "collateral consequence" of a conviction, rather than a component of the criminal sentence? 559 U. S., at 365–366.[5] In other words, prior to asking *how* the *Strickland* test applied ("Did this attorney act unreasonably?"), *Padilla* asked *whether* the *Strickland* test applied ("Should we even evaluate if this attorney acted unreasonably?"). And as we will describe, that preliminary question about *Strickland*'s ambit came to the *Padilla* Court unsettled—so that the Court's answer ("Yes, *Strickland* governs here") required a new rule.

The relevant background begins with our decision in *Hill* v. *Lockhart*, 474 U. S. 52 (1985), which explicitly left open whether advice concerning a collateral consequence must satisfy Sixth Amendment requirements. Hill pleaded guilty to first-degree murder after his attorney misinformed him about his parole eligibility. In addressing his claim of ineffective assistance, we first held that the *Strickland* standard extends generally to the plea process. See *Hill*, 474 U. S., at 57. We then determined, however, that Hill had failed to allege prejudice from the lawyer's error and so could not prevail under that standard. See *id.*, at 60. That conclu-

[5] We have never attempted to delineate the world of "collateral consequences," see *Padilla*, 559 U. S., at 364, n. 8, nor do we do so here. But other effects of a conviction commonly viewed as collateral include civil commitment, civil forfeiture, sex offender registration, disqualification from public benefits, and disfranchisement. See *id.*, at 376 (ALITO, J., concurring in judgment) (listing other examples).

sion allowed us to avoid another, more categorical question: whether advice about parole (however inadequate and prejudicial) could possibly violate the Sixth Amendment. The Court of Appeals, we noted, had held "that parole eligibility is a collateral rather than a direct consequence of a guilty plea, of which a defendant need not be informed." *Id.*, at 55. But our ruling on prejudice made "it unnecessary to determine whether there may be circumstances under which" advice about a matter deemed collateral violates the Sixth Amendment. *Id.*, at 60.[6]

That non-decision left the state and lower federal courts to deal with the issue; and they almost unanimously concluded that the Sixth Amendment does not require attorneys to inform their clients of a conviction's collateral consequences, including deportation. All 10 federal appellate courts to consider the question decided, in the words of one, that "counsel's failure to inform a defendant of the collateral consequences of a guilty plea is never" a violation of the Sixth Amendment. *Santos-Sanchez* v. *United States*, 548 F. 3d 327, 334 (CA5 2008).[7] That constitutional guarantee, another typical decision expounded, "assures an accused of effective assistance of counsel in '*criminal prosecutions*' "; accordingly, advice about matters like deportation, which are "not a part of or enmeshed in the criminal proceeding," does

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[6] In saying that much, we declined to rule not only on whether advice about a conviction's collateral consequences falls outside the Sixth Amendment's scope, but also on whether parole eligibility should be considered such a consequence, as the Court of Appeals held.

[7] See *Broomes* v. *Ashcroft*, 358 F. 3d 1251, 1256 (CA10 2004); *United States* v. *Fry*, 322 F. 3d 1198, 1200–1201 (CA9 2003); *United States* v. *Gonzalez*, 202 F. 3d 20, 25 (CA1 2000); *Russo* v. *United States*, 1999 WL 164951, *2 (CA2, Mar. 22, 1999); *Ogunbase* v. *United States*, 1991 WL 11619, *1 (CA6, Feb. 5, 1991); *United States* v. *Del Rosario*, 902 F. 2d 55, 58–59 (CADC 1990); *United States* v. *George*, 869 F. 2d 333, 337 (CA7 1989); *United States* v. *Yearwood*, 863 F. 2d 6, 7–8 (CA4 1988); *United States* v. *Campbell*, 778 F. 2d 764, 768–769 (CA11 1985).

not fall within the Amendment's scope. *United States* v. *George*, 869 F. 2d 333, 337 (CA7 1989). Appellate courts in almost 30 States agreed.[8] By contrast, only two state courts held that an attorney could violate the Sixth Amendment by failing to inform a client about deportation risks or other collateral consequences of a guilty plea.[9] That imbalance led the authors of the principal scholarly article on the subject to call the exclusion of advice about collateral consequences from the Sixth Amendment's scope one of "the most widely recognized rules of American law." Chin & Holmes,

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[8] *Rumpel* v. *State*, 847 So. 2d 399, 402–405 (Ala. Crim. App. 2002); *Tafoya* v. *State*, 500 P. 2d 247, 252 (Alaska 1972); *State* v. *Rosas*, 183 Ariz. 421, 423, 904 P. 2d 1245, 1247 (App. 1995); *Niver* v. *Commissioner of Correction*, 101 Conn. App. 1, 3–5, 919 A. 2d 1073, 1075–1076 (2007) (*per curiam*); *State* v. *Christie*, 655 A. 2d 836, 841 (Del. Super. 1994); *Matos* v. *United States*, 631 A. 2d 28, 31–32 (D. C. 1993); *Major* v. *State*, 814 So. 2d 424, 431 (Fla. 2002); *People* v. *Huante*, 143 Ill. 2d 61, 68–71, 571 N. E. 2d 736, 740–741 (1991); *State* v. *Ramirez*, 636 N. W. 2d 740, 743–746 (Iowa 2001); *State* v. *Muriithi*, 273 Kan. 952, 961, 46 P. 3d 1145, 1152 (2002); *Commonwealth* v. *Fuartado*, 170 S. W. 3d 384, 385–386 (Ky. 2005); *State* v. *Montalban*, 2000–2739, p. 4 (La. 2/26/02), 810 So. 2d 1106, 1110; *Commonwealth* v. *Fraire*, 55 Mass. App. 916, 917, 774 N. E. 2d 677, 678–679 (2002); *People* v. *Davidovich*, 463 Mich. 446, 452, 618 N. W. 2d 579, 582 (2000) (*per curiam*); *State ex rel. Nixon* v. *Clark*, 926 S. W. 2d 22, 25 (Mo. App. 1996); *State* v. *Zarate*, 264 Neb. 690, 693–696, 651 N. W. 2d 215, 221–223 (2002); *Barajas* v. *State*, 115 Nev. 440, 441–442, 991 P. 2d 474, 475–476 (1999) (*per curiam*); *State* v. *Chung*, 210 N. J. Super. 427, 434, 510 A. 2d 72, 76 (App. Div. 1986); *People* v. *Ford*, 86 N. Y. 2d 397, 403–404, 657 N. E. 2d 265, 268–269 (1995); *State* v. *Dalman*, 520 N. W. 2d 860, 863–864 (N. D. 1994); *Commonwealth* v. *Frometa*, 520 Pa. 552, 555–557, 555 A. 2d 92, 93–94 (1989); *State* v. *Alejo*, 655 A. 2d 692, 692–693 (R. I. 1995); *Nikolaev* v. *Weber*, 2005 S. D. 100, ¶¶11–12, 705 N. W. 2d 72, 75–77 (*per curiam*); *Bautista* v. *State*, 160 S. W. 3d 917, 922 (Tenn. Crim. App. 2004); *Perez* v. *State*, 31 S. W. 3d 365, 367–368 (Tex. App. 2000); *State* v. *Rojas-Martinez*, 2005 UT 86, ¶¶15–20, 125 P. 3d 930, 934–935; *State* v. *Martinez-Lazo*, 100 Wash. App. 869, 876–878, 999 P. 2d 1275, 1279–1280 (2000); *State* v. *Santos*, 136 Wis. 2d 528, 531, 401 N. W. 2d 856, 858 (App. 1987).

[9] *People* v. *Pozo*, 746 P. 2d 523, 527–529 (Colo. 1987); *State* v. *Paredez*, 2004–NMSC–036, ¶¶17–19, 136 N. M. 533, 539, 101 P. 3d 799, 805.

Effective Assistance of Counsel and the Consequences of Guilty Pleas, 87 Cornell L. Rev. 697, 706 (2002).[10]

So when we decided *Padilla*, we answered a question about the Sixth Amendment's reach that we had left open, in a way that altered the law of most jurisdictions—and our reasoning reflected that we were doing as much. In the normal *Strickland* case, a court begins by evaluating the reasonableness of an attorney's conduct in light of professional norms, and then assesses prejudice. But as earlier indicated, see *supra*, at 349, *Padilla* had a different starting point. Before asking whether the performance of Padilla's attorney was deficient under *Strickland*, we considered (in a separately numbered part of the opinion) whether *Strickland* applied at all. See 559 U. S., at 364–366. Many courts, we acknowledged, had excluded advice about collateral matters from the Sixth Amendment's ambit; and deportation, because the consequence of a distinct civil proceeding, could well be viewed as such a matter. See *id.*, at 365, and n. 9. But, we continued, no decision of our own committed us to "appl[y] a distinction between direct and collateral consequences to define the scope" of the right to counsel. *Id.*, at 365. And however apt that distinction might be in other contexts, it should not exempt from Sixth Amendment scrutiny a lawyer's advice (or non-advice) about a plea's deportation risk. Deportation, we stated, is "unique." *Ibid.* It is a "particularly severe" penalty, and one "intimately related to the criminal process"; indeed, immigration statutes make it "nearly an automatic result" of some convictions. *Id.*, at 365–366. We thus resolved the threshold question before us by breaching the previously chink-free wall between direct

[10] The dissent is therefore wrong to claim that we emphasize "the absence of lower court authority" holding that an attorney's failure to advise about deportation violated the Sixth Amendment. *Post*, at 368 (opinion of SOTOMAYOR, J.). We instead point to the *presence* of lower court authority—in case after case and jurisdiction after jurisdiction—holding that such a failure, because relating to a collateral matter, could not do so.

and collateral consequences: Notwithstanding the then-dominant view, "*Strickland* applies to Padilla's claim." *Id.*, at 366.

If that does not count as "break[ing] new ground" or "impos[ing] a new obligation," we are hard pressed to know what would. *Teague*, 489 U. S., at 301. Before *Padilla*, we had declined to decide whether the Sixth Amendment had any relevance to a lawyer's advice about matters not part of a criminal proceeding. Perhaps some advice of that kind would have to meet *Strickland*'s reasonableness standard—but then again, perhaps not: No precedent of our own "*dictated*" the answer. *Teague*, 489 U. S., at 301. And as the lower courts filled the vacuum, they almost uniformly insisted on what *Padilla* called the "categorica[l] remov[al]" of advice about a conviction's non-criminal consequences—including deportation—from the Sixth Amendment's scope. 559 U. S., at 366. It was *Padilla* that first rejected that categorical approach—and so made the *Strickland* test operative—when a criminal lawyer gives (or fails to give) advice about immigration consequences.[11] In acknowledging that fact, we do not cast doubt on, or at all denigrate, *Padilla*.

[11] The separate opinions in *Padilla* objected to just this aspect of the Court's ruling. Dissents have been known to exaggerate the novelty of majority opinions; and "the mere existence of a dissent," like the existence of conflicting authority in state or lower federal courts, does not establish that a rule is new. *Beard* v. *Banks*, 542 U. S. 406, 416, n. 5 (2004); see *Williams* v. *Taylor*, 529 U. S. 362, 410 (2000). But the concurring and dissenting opinions in *Padilla* were on to something when they described the line the Court was crossing. "Until today," JUSTICE ALITO wrote, "the longstanding and unanimous position of the federal courts was that reasonable defense counsel generally need only advise a client about the *direct* consequences of a criminal conviction." 559 U. S., at 375–376 (opinion concurring in judgment). Or again, this time from JUSTICE SCALIA: "[U]ntil today," the Sixth Amendment guaranteed only "legal advice directly related to defense against prosecution" of a criminal charge. *Id.*, at 389 (dissenting opinion). One need not agree with any of the separate opinions' criticisms of *Padilla* to concur with their view that it modified governing law.

Courts often need to, and do, break new ground; it is the very premise of *Teague* that a decision can be right and also be novel. All we say here is that *Padilla*'s holding that the failure to advise about a non-criminal consequence could violate the Sixth Amendment would not have been—in fact, was not—"apparent to all reasonable jurists" prior to our decision. *Lambrix*, 520 U. S., at 527–528. *Padilla* thus announced a "new rule."

III

Chaidez offers, and the dissent largely adopts, a different account of *Padilla*, in which we did no more than apply *Strickland* to a new set of facts. On Chaidez's view, *Strickland* insisted "[f]rom its inception" that *all* aspects of a criminal lawyer's performance pass a test of "'reasonableness under prevailing professional norms'": The decision thus foreclosed any "categorical distinction between direct and collateral consequences." Brief for Petitioner 21–22 (quoting *Strickland*, 466 U. S., at 688; emphasis deleted). Indeed, Chaidez contends, courts prior to *Padilla* recognized *Strickland*'s all-encompassing scope and so applied its reasonableness standard to advice concerning deportation. See Brief for Petitioner 25–26; Reply Brief 10–12. She here points to caselaw in three federal appeals courts allowing ineffective assistance claims when attorneys affirmatively misled their clients about the deportation consequences of guilty pleas.[12] The only question left for *Padilla* to resolve, Chaidez claims, was whether professional norms also require criminal lawyers to volunteer advice about the risk of deportation. In addressing that issue, she continues, *Padilla* did a run-of-the-mill *Strickland* analysis. And more: It did an especially easy *Strickland* analysis. We had earlier noted in *INS* v. *St. Cyr*, 533 U. S. 289 (2001)—a case raising an issue of immi-

[12] See *United States* v. *Kwan*, 407 F. 3d 1005, 1015–1017 (CA9 2005); *United States* v. *Couto*, 311 F. 3d 179, 188 (CA2 2002); *Downs-Morgan* v. *United States*, 765 F. 2d 1534, 1540–1541 (CA11 1985).

gration law unrelated to the Sixth Amendment—that a "competent defense counsel" would inform his client about a guilty plea's deportation consequences. *Id.*, at 323, n. 50. All *Padilla* had to do, Chaidez concludes, was recite that prior finding.

But Chaidez's (and the dissent's) story line is wrong, for reasons we have mostly already noted: *Padilla* had to develop new law, establishing that the Sixth Amendment applied at all, before it could assess the performance of Padilla's lawyer under *Strickland*. See *supra*, at 349, 352. Our first order of business was thus to consider whether the widely accepted distinction between direct and collateral consequences categorically foreclosed Padilla's claim, whatever the level of his attorney's performance. We did not think, as Chaidez argues, that *Strickland* barred resort to that distinction. Far from it: Even in *Padilla* we did not eschew the direct-collateral divide across the board. See 559 U. S., at 365 ("Whether that distinction is [generally] appropriate is a question we need not consider in this case"). Rather, we relied on the special "nature of deportation"—the severity of the penalty and the "automatic" way it follows from conviction—to show that "[t]he collateral versus direct distinction [was] ill-suited" to dispose of Padilla's claim. *Id.*, at 365–366. All that reasoning came before we conducted a *Strickland* analysis (by examining professional norms and so forth), and none of it followed ineluctably from prior law.[13]

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[13] The dissent's entire analysis founders on this most basic point. In its lengthy description of *Padilla*, the dissent picks up in the middle—*after* the Court concluded that the direct-collateral distinction did not preclude finding that Padilla's lawyer provided ineffective assistance under the Sixth Amendment. See *post*, at 361–363. The dissent justifies ignoring that threshold conclusion on the ground that "*Padilla* declined to embrace the . . . distinction between collateral and direct consequences" and "stated very clearly that it found the distinction irrelevant" to the case. *Post*, at 364. But it is exactly in refusing to apply the direct-collateral distinction that the *Padilla* Court did something novel. Before then, as the Court forthrightly acknowledged, that distinction would have doomed Padilla's

Predictably, then, the caselaw Chaidez and the dissent cite fails to support their claim that lower courts "accepted that *Strickland* applied to deportation advice." Brief for Petitioner 25; see *post*, at 366–369. True enough, three federal circuits (and a handful of state courts) held before *Padilla* that misstatements about deportation could support an ineffective assistance claim. But those decisions reasoned only that a lawyer may not affirmatively misrepresent his expertise or otherwise actively mislead his client on any important matter, however related to a criminal prosecution. See, *e. g.*, *United States* v. *Kwan*, 407 F. 3d 1005, 1015–1017 (CA9 2005). They co-existed happily with precedent, from the same jurisdictions (and almost all others), holding that deportation is not "so unique as to warrant an exception to the general rule that a defendant need not be advised of the [collateral] consequences of a guilty plea." *United States* v. *Campbell*, 778 F. 2d 764, 769 (CA11 1985).[14] So at most, Chaidez has shown that a minority of courts recognized a separate rule for material misrepresentations, regardless whether they concerned deportation or another collateral matter. That limited rule does not apply to Chaidez's case. And because it lived in harmony with the exclusion of claims like hers from the Sixth Amendment, it does not establish what she needs to—that all reasonable judges, prior to *Padilla*, thought they were living in a *Padilla*-like world.

Nor, finally, does *St. Cyr* have any relevance here. That decision stated what is common sense (and what we again

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claim in well nigh every court in the United States. See 559 U. S., at 364–365, and n. 9; *supra*, at 352.

[14] See also *Resendiz* v. *Kovensky*, 416 F. 3d 952, 957 (CA9 2005) ("[B]ecause immigration consequences remain collateral, the failure of counsel to advise his client of the potential immigration consequences of a conviction does not violate the Sixth Amendment"); *Russo* v. *United States*, 1999 WL 164951, *2 ("[C]ounsel cannot be found ineffective for the mere failure to inform a defendant of the collateral consequences of a plea, such as deportation" (relying on *United States* v. *Santelises*, 509 F. 2d 703, 704 (CA2 1975) (*per curiam*))).

recognized in *Padilla*): A reasonably competent lawyer will tell a non-citizen client about a guilty plea's deportation consequences because "'[p]reserving the client's right to remain in the United States may be more important to the client than any potential jail sentence.'" *Padilla*, 559 U. S., at 368 (quoting *St. Cyr*, 533 U. S., at 322). But in saying that much, *St. Cyr* did not determine that the Sixth Amendment requires a lawyer to provide such information. Courts had held to the contrary not because advice about deportation was insignificant to a client—really, who could think that, whether before or after *St. Cyr*?—but because it concerned a matter collateral to the criminal prosecution.[15] On those courts' view, the Sixth Amendment no more demanded competent advice about a plea's deportation consequences than it demanded competent representation in the deportation process itself. *Padilla* decided that view was wrong. But to repeat: It was *Padilla* that did so. In the years following *St. Cyr*, not a single state or lower federal court considering a lawyer's failure to provide deportation advice abandoned the distinction between direct and collateral consequences, and several courts reaffirmed that divide. See, *e. g.*, *Santos-*

[15] The dissent claims the opposite, averring that lower court "decisions show nothing more than that the underlying professional norms had not yet evolved to require attorneys to provide advice about deportation consequences." *Post*, at 365–366. But the dissent cannot point to a single decision stating that a lawyer's failure to offer advice about deportation met professional norms; all the decisions instead held that a lawyer's breach of those norms was constitutionally irrelevant because deportation was a collateral consequence. See *supra*, at 350. Had courts in fact considered professional standards in the slew of cases before *Padilla* that presented *Padilla*-like claims, they would have discovered as early as 1968 that the American Bar Association instructed criminal lawyers to advise their non-citizen clients about the risks of deportation. See 3 ABA Project on Standards for Criminal Justice, Standards Relating to Pleas of Guilty §3.2(b), Commentary, p. 71 (App. Draft 1968). The difficulty in upholding such claims prior to *Padilla* had nothing to do with courts' view of professional norms and everything to do with their use of the direct-collateral divide.

Sanchez, 548 F. 3d, at 335–336; *Broomes* v. *Ashcroft*, 358 F. 3d 1251, 1256–1257 (CA10 2004); *United States* v. *Fry*, 322 F. 3d 1198, 1200–1201 (CA9 2003). It took *Padilla* to decide that in assessing such a lawyer's performance, the Sixth Amendment sets the standard.[16]

IV

This Court announced a new rule in *Padilla*. Under *Teague*, defendants whose convictions became final prior to *Padilla* therefore cannot benefit from its holding. We accordingly affirm the judgment of the Court of Appeals for the Seventh Circuit.

It is so ordered.

JUSTICE THOMAS, concurring in the judgment.

In *Padilla* v. *Kentucky*, 559 U. S. 356 (2010), this Court held that the Sixth Amendment requires an attorney for a criminal defendant to apprise his client of the risk of deportation created by a guilty plea. I dissented. The Sixth Amendment provides that "[i]n all criminal prosecutions," an accused enjoys the right "to have the Assistance of Counsel for his defence." By its terms, this right extends "to legal

[16] Chaidez makes two back-up arguments in her merits briefs—that *Teague*'s bar on retroactivity does not apply when a petitioner challenges a federal conviction, or at least does not do so when she makes a claim of ineffective assistance. Brief for Petitioner 27–39. But Chaidez did not include those issues in her petition for certiorari. Nor, still more critically, did she adequately raise them in the lower courts. Only her petition for rehearing en banc in the Seventh Circuit at all questioned *Teague*'s applicability, and her argument there—that a "*Teague*-light" standard should apply to challenges to federal convictions—differs from the ones she has made in this Court. See Petition for Rehearing and for Rehearing En Banc in No. 10–3623 (CA7), p. 13. Moreover, we cannot find any case in which a federal court has considered Chaidez's contention that *Teague* should not apply to ineffective assistance claims. "[M]indful that we are a court of review, not of first view," we decline to rule on Chaidez's new arguments. *Cutter* v. *Wilkinson*, 544 U. S. 709, 718, n. 7 (2005).

advice directly related to defense against prosecution of the charged offense," and "[t]here is no basis in text or in principle" to expand the reach of this guarantee to guidance concerning the collateral consequences of a guilty plea. *Id.*, at 389–390 (SCALIA, J., dissenting). Today, the Court finds that *Padilla* announced a new rule of constitutional law and that, under our decision in *Teague* v. *Lane*, 489 U. S. 288 (1989), "defendants whose convictions became final prior to *Padilla* therefore cannot benefit from its holding." *Ante*, at 358. I continue to believe that *Padilla* was wrongly decided and that the Sixth Amendment does not extend—either prospectively or retrospectively—to advice concerning the collateral consequences arising from a guilty plea. I, therefore, believe that the *Teague* analysis is unnecessary and thus concur only in the judgment.

JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, dissenting.

The Court holds today that *Padilla* v. *Kentucky*, 559 U. S. 356 (2010), announced a "new" rule within the meaning of *Teague* v. *Lane*, 489 U. S. 288, 301 (1989), and so does not apply to convictions that became final before its announcement. That is wrong, because *Padilla* did nothing more than apply the existing rule of *Strickland* v. *Washington*, 466 U. S. 668 (1984), in a new setting, the same way the Court has done repeatedly in the past: by surveying the relevant professional norms and concluding that they unequivocally required attorneys to provide advice about the immigration consequences of a guilty plea. Because *Padilla* fell squarely within the metes and bounds established by *Strickland*, I respectfully dissent.

I

A

The majority correctly sets forth the governing legal principles under *Teague* and *Strickland*. *Ante*, at 347–349. The *Teague* inquiry turns centrally on the "nature of the rule" in

question, and for that reason, "[w]here the beginning point is a rule of . . . general application, . . . it will be the infrequent case that yields a result so novel that it forges a new rule." *Wright* v. *West*, 505 U. S. 277, 308–309 (1992) (KENNEDY, J., concurring in judgment); see *ante*, at 347–349. The majority makes the important observation that "when all we do is apply a general standard to the kind of factual circumstances it was meant to address, we will rarely state a new rule." *Ante*, at 348. It makes sense, then, that "garden-variety applications of . . . *Strickland* . . . do not produce new rules." *Ibid.*

In *Strickland*, we did not provide a comprehensive definition of deficient performance, and instead held that "[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms." 466 U. S., at 688. *Strickland*'s reasonableness prong therefore takes its content from the standards by which lawyers judge their professional obligations, *ibid.*, and those standards are subject to change. That is why, despite the many different settings in which it has been applied, we have never found that an application of *Strickland* resulted in a new rule.[1]

Significantly, we have previously found that applications of *Strickland* to new factual scenarios are not barred under 28 U. S. C. § 2254(d)(1) of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Section 2254(d)(1) precludes habeas relief unless a state-court decision violates "clearly

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[1] See, *e. g.*, *Lafler* v. *Cooper*, 566 U. S. 156, 170–172 (2012) (incorrect advice leading to a plea offer's rejection); *Rompilla* v. *Beard*, 545 U. S. 374 (2005) (failure to investigate evidence the prosecution intended to use to prove an aggravating circumstance in a capital case); *Wiggins* v. *Smith*, 539 U. S. 510 (2003) (failure to investigate a defendant's social history in a capital case); *Roe* v. *Flores-Ortega*, 528 U. S. 470 (2000) (failure to consult with a defendant regarding whether to pursue an appeal); *Williams* v. *Taylor*, 529 U. S. 362, 391 (2000) (failure to investigate a defendant's background for the purposes of mitigation evidence in a capital case); *Hill* v. *Lockhart*, 474 U. S. 52 (1985) (failure to provide effective assistance during plea negotiations).

established Federal law," which, as relevant here, largely overlaps with the inquiry under *Teague* of whether a decision was "*dictated* by precedent." 489 U. S., at 301 (plurality opinion).[2] In *Wiggins* v. *Smith*, 539 U. S. 510, 522 (2003), for example, we found that *Williams* v. *Taylor*, 529 U. S. 362 (2000), "made no new law" when it held that *Strickland* extended to an attorney's responsibility to conduct a background investigation in a capital case. Rather, we explained that "in referring to the ABA Standards for Criminal Justice as guides, [*Williams*] applied the same 'clearly established' precedent of *Strickland* we apply today." 539 U. S., at 522. Similarly, in *Lafler* v. *Cooper*, 566 U. S. 156, 162–163 (2012), we rejected the argument advanced by the Solicitor General that the Sixth Amendment did not extend to advice about a plea offer because it did not impact the fairness of the trial. Instead, we simply held that *Strickland* applied to this form of attorney misconduct.

In short, where we merely apply *Strickland* in a way that corresponds to an evolution in professional norms, we make no new law.

B

Contrary to the majority's reconstruction, *Padilla* is built squarely on the foundation laid out by *Strickland*. *Padilla* relied upon controlling precedent. It began by reciting the basic rule that "[u]nder *Strickland*, we first determine whether counsel's representation 'fell below an objective standard of reasonableness.'" *Padilla*, 559 U. S., at 366 (quoting *Strickland*, 466 U. S., at 688). We recognized that "[t]he first prong—constitutional deficiency—is necessarily linked to the practice and expectations of the legal com-

[2] AEDPA of course differs from the *Teague* rule in other important respects. See, *e. g.*, *Greene* v. *Fisher*, 565 U. S. 34, 39 (2011). But these differences aside, the fact that we have repeatedly found AEDPA cases involving *Strickland* to be controlled by established precedent underscores that the application of *Strickland* in a new context should almost never result in a new rule.

munity: 'The proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'" *Padilla*, 559 U. S., at 366 (quoting *Strickland*, 466 U. S., at 688).

We therefore examined the substantial changes in federal immigration law that provided the backdrop to the relevant professional standards. *Padilla*, 559 U. S., at 360–364. Pursuant to the Immigration Act of 1917, 39 Stat. 889–890, a judge could recommend that a defendant who had committed a deportable offense not be removed from the country. Congress entirely eliminated this procedure in 1990. 104 Stat. 5050. Then the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), 110 Stat. 3009–596, abolished the Attorney General's authority to grant discretionary relief from removal for all but a small number of offenses. *Padilla*, 559 U. S., at 363. These changes in immigration law meant that for a noncitizen who committed a removable offense, "removal [had become] practically inevitable." *Id.*, at 364.

In parallel with these developments, the standards of professional responsibility relating to immigration had become more demanding. "For at least the past 15 years," we observed in *Padilla*, "professional norms have generally imposed an obligation on counsel to provide advice on the deportation consequences of a client's plea." *Id.*, at 372. Citing an array of practice guides and professional responsibility manuals, we noted that "[t]he weight of prevailing professional norms supports the view that counsel must advise her client regarding the risk of deportation." *Id.*, at 367. Indeed, "authorities of every stripe—including the American Bar Association, criminal defense and public defender organizations, authoritative treatises, and state and city bar publications—universally require defense attorneys to advise as to the risk of deportation consequences for non-citizen clients." *Ibid.* (internal quotation marks omitted).

We drew further support for our conclusion that professional standards required advice about deportation conse-

quences from our decision in *INS* v. *St. Cyr*, 533 U. S. 289 (2001). See *Padilla*, 559 U. S., at 368 (citing *St. Cyr*, 533 U. S., at 323). In *St. Cyr*, we had explained that the availability of discretionary relief from removal was critical to a noncitizen's decision to accept a plea offer, and expected counsel to follow the instructions of "'numerous practice guides,'" such as the ABA's Standards for Criminal Justice, to inform themselves of the possible immigration consequences of a plea. *Padilla*, 559 U. S., at 368 (citing *St. Cyr*, 533 U. S., at 323, n. 50); see *id.*, at 322, n. 48. And we there found that many States already required that a trial judge advise defendants of the same. *Ibid.* *St. Cyr* thus "recognized that 'preserving the client's right to remain in the United States may be more important to the client than any potential jail sentence.'" *Padilla*, 559 U. S., at 368 (quoting *St. Cyr*, 533 U. S., at 322).

Our application of *Strickland* in *Padilla* followed naturally from these earlier observations about changes in immigration law and the accompanying evolution of professional norms. When we decided *St. Cyr* and *Padilla*, nothing about *Strickland*'s substance or applicability had changed. The only difference from prior law was that the underlying professional norms had changed such that counsel's failure to give this advice now amounted to constitutionally deficient performance.[3] Both before *Padilla* and after, counsel was obligated to follow the relevant professional norms. It was only because those norms reflected changes in immigration law that *Padilla* reached the result it did, not because the Sixth Amendment right had changed at all.

[3] Even before IIRIRA and *St. Cyr*, lawyers of course understood that it was good practice to inform clients of the deportation consequences of a plea. See *ante*, at 357, n. 15 (citing 3 ABA Project on Standards for Criminal Justice, Standards Relating to Pleas of Guilty § 3.2(b), Commentary, p. 71 (App. Draft 1968)). Following the sea change in immigration law, however, the professional norms had become so established and universally recognized that the measure of constitutionally adequate performance now included giving such advice in the form *Padilla* recognized. See 559 U. S., at 367–368.

II

A

Accepting that routine applications of *Strickland* do not result in new rules, the majority nevertheless holds that *Padilla* went a step further. In its view, *Padilla* "'br[oke] new ground'" by addressing the threshold question whether advice about deportation is a collateral consequence of a criminal conviction that falls within the scope of the Sixth Amendment. *Ante*, at 353–354. But that is wrong, because *Padilla* declined to embrace the very distinction between collateral and direct consequences of a criminal conviction that the majority says it did. In fact, the Court stated very clearly that it found the distinction irrelevant for the purposes of determining a defense lawyer's obligation to provide advice about the immigration consequences of a plea. 559 U. S., at 364–365, n. 8. We asserted that we had "never applied a distinction between direct and collateral consequences to define the scope of constitutionally 'reasonable professional assistance' required under *Strickland*," and concluded that "[w]hether that distinction is appropriate *is a question we need not consider* in this case." *Id.*, at 365 (emphasis added). The distinction was "ill suited" to the task at hand, we explained, because deportation has a "close connection to the criminal process," and is "uniquely difficult to classify as either a direct or a collateral consequence." *Id.*, at 366. Indeed, "[o]ur law ha[d] enmeshed criminal convictions and the penalty of deportation for nearly a century," and we had "long recognized" that deportation is "particularly severe." *Id.*, at 365.[4]

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[4] See, *e. g.*, *INS* v. *St. Cyr*, 533 U. S. 289, 322 (2001) (noting that "[p]reserving the client's right to remain in the United States may be more important . . . than any potential jail sentence" (internal quotation marks omitted)); *Jordan* v. *De George*, 341 U. S. 223, 243 (1951) (Jackson, J., dissenting) (deportation proceedings "practically . . . are [criminal] for they extend the criminal process of sentencing to include on the same convictions an additional punishment"); *Fong Haw Tan* v. *Phelan*, 333 U. S. 6, 10

At bottom, then, the majority's argument hinges upon a distinction the Court has never embraced and that *Padilla* found irrelevant to the issue it ultimately decided. Without this revision to our recent decisional history, the majority's analysis unravels.

B

The majority finds that the "legal landscape," *Graham* v. *Collins*, 506 U. S. 461, 468 (1993), before *Padilla* was nearly uniform in its rejection of *Strickland*'s application to the deportation consequences of a plea. *Ante*, at 350–354. It concludes that the lower courts were generally in agreement that the Sixth Amendment did not require attorneys to inform clients of the collateral consequences of a plea, and that this weighs heavily in favor of finding that *Padilla* announced a new rule. *Ante*, at 350–351, nn. 7, 8. But the majority's discussion of these precedents operates at too high a level of generality and fails to account for the development of professional standards over time. *St. Cyr* noted the importance of advising clients about immigration consequences was of recent vintage, indeed more recent than some of the cases the majority cites. See 533 U. S., at 322–323. The Court relies upon decisions issued over a period that spans more than 30 years. See *ante*, at 350–351, nn. 7, 8. Nearly half of them (17) were decided before the enactment of IIRIRA. See *ibid.* And all but two of the Federal Court of Appeals cases were decided before *St. Cyr*. See *ante*, at 350–351, nn. 7, 8. These earlier decisions show nothing more than that the underlying professional norms had not yet

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(1948) ("[D]eportation is a drastic measure and at times the equivalent of banishment or exile"); *Ng Fung Ho* v. *White*, 259 U. S. 276, 284 (1922) (deportation may result in "loss of both property and life; or of all that makes life worth living"); *Fong Yue Ting* v. *United States*, 149 U. S. 698, 740 (1893) (Brewer, J., dissenting) ("Every one knows that to be forcibly taken away from home, and family, and friends, and business, and property, and sent across the ocean to a distant land, is punishment; and that oftentimes most severe and cruel").

evolved to require attorneys to provide advice about deportation consequences.

Cases from the period following IIRIRA and *St. Cyr* undermine the majority's generalizations about the state of the law before *Padilla*. Deportation had long been understood by lower courts to present "the most difficult" penalty to classify as either a collateral or direct consequence. *United States* v. *Russell*, 686 F. 2d 35, 38 (CADC 1982); cf. *Janvier* v. *United States*, 793 F. 2d 449, 455 (CA2 1986) (holding that *Strickland* applied to advice about a judicial recommendation against deportation). Eventually, and in parallel with changes in federal immigration law and the corresponding professional norms, the lower courts had acknowledged an important qualification to the collateral-consequences rule. After the passage of IIRIRA and this Court's decision in *St. Cyr*, many courts concluded that a lawyer's affirmative misstatements about the immigration consequences of a guilty plea can constitute deficient performance under *Strickland*. Indeed, each Federal Court of Appeals to address the question after *St. Cyr* so held. See *United States* v. *Couto*, 311 F. 3d 179, 188 (CA2 2002); *United States* v. *Kwan*, 407 F. 3d 1005, 1015 (CA9 2005); cf. *Downs-Morgan* v. *United States*, 765 F. 2d 1534, 1540–1541 (CA11 1985).[5] State-court decisions from this period were in accord and relied upon similar reasoning.[6]

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[5] See *United States* v. *Mora-Gomez*, 875 F. Supp. 1208, 1212 (ED Va. 1995) ("[T]he clear consensus is that an affirmative misstatement regarding deportation may constitute ineffective assistance").

[6] See *Rubio* v. *State*, 124 Nev. 1032, 1041, 194 P. 3d 1224, 1230 (2008) (*per curiam*) ("Like other jurisdictions, we recognize the particularly harsh and penal nature of deportation. The Supreme Court of the United States has described deportation as 'a drastic measure and at times the equivalent of banishment or exile' and further depicted it as 'a penalty.' . . . Perhaps understanding the harshness of deportation, a growing number of jurisdictions have adopted the affirmative misrepresentation exception to the collateral consequence rule"); *People* v. *Correa*, 108 Ill. 2d 541, 550–552, 485 N. E. 2d 307, 311 (1985); *People* v. *McDonald*, 1 N. Y. 3d 109, 113–

These decisions created an important exception to the collateral/direct consequences distinction. They also foreshadowed the Court's reasoning in *Padilla* by basing their analysis of the relevant professional norms on the special nature of deportation, the ABA standards governing immigration practice, and the Court's assessment of those standards in *St. Cyr*. See *Kwan*, 407 F. 3d, at 1016 ("That counsel may have misled [the defendant] out of ignorance is no excuse. It is a basic rule of professional conduct that a lawyer must . . . [remain] abreast of changes in the law and its practice. . . . Counsel's performance . . . fell below the [ABA]'s ethical standard for criminal defense attorneys with respect to immigration consequences. The Supreme Court noted this standard in [*St. Cyr*]"); *Couto*, 311 F. 3d, at 187–191 (citing *St. Cyr* and the relevant ABA standards, and concluding that "recent Supreme Court authority supports [a] broader view of attorney responsibility" that encompasses affirmative misrepresentations about deportation consequences); see also *Downs-Morgan*, 765 F. 2d, at 1541 ("[D]eportation and exclusion [are] harsh consequences").

The majority believes that these decisions did not meaningfully alter the state of the law in the lower courts before *Padilla*, because they merely applied the age-old principle that a lawyer may not affirmatively mislead a client. *Ante*, at 355–356. But, as explained, the reasoning of these cases renders that characterization at best incomplete. See, *e. g.*, *Kwan*, 407 F. 3d, at 1016. While these lower court precedents are consistent with the general principle that attorneys should not mislead clients by providing incorrect advice, they did not rest primarily on that rule. Rather, they recognized the significant changes in professional norms that predated *Padilla* and that we had noted in *St. Cyr*. As a

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115, 802 N. E. 2d 131, 134–135 (2003); see also *Alguno* v. *State*, 892 So. 2d 1200, 1201 (Fla. App. 2005) (*per curiam*); *State* v. *Rojas-Martinez*, 2005 UT 86, ¶¶ 15–20, 125 P. 3d 930, 933–935; *In re Yim*, 139 Wash. 2d 581, 588, 989 P. 2d 512, 516 (1999).

consequence, the "wall between direct and collateral consequences" that the lower courts had erected, *ante*, at 352–353, had already been dealt a serious blow by the time the Court decided *Padilla*.

As the majority points out, these misrepresentation cases stopped short of imposing an affirmative obligation on lawyers to consult with clients about the consequences of deportation. *Ante*, at 356. But the majority places too much emphasis on the absence of lower court authority finding that an attorney's omissions with respect to deportation resulted in ineffective assistance. The distinction between omissions and affirmative misrepresentations on which these lower court cases depended cannot be reconciled with *Strickland*. In *Padilla* itself, we rejected the Solicitor General's suggestion that *Strickland* should apply to advice about the immigration consequences of a plea only in cases where defense counsel makes an affirmative misstatement. *Padilla*, 559 U. S., at 369–370. We did so because we found that *Strickland* was incompatible with the distinction between an obligation to give advice and a prohibition on affirmative misstatements. 559 U. S., at 370 (citing *Strickland*, 466 U. S., at 690). *Strickland* made clear that its standard of attorney performance applied to both "acts" and "omissions," and that a rule limiting the performance inquiry to one or the other was too narrow. 466 U. S., at 690. Thus, the distinction between misrepresentations and omissions, on which the majority relies in classifying lower court precedent, implies a categorical rule that is inconsistent with *Strickland*'s requirement of a case-by-case assessment of an attorney's performance.[7] *Id.*, at 688–689; see, *e. g.*, *Roe* v. *Flores-Ortega*,

[7] The majority cites a law review article for the proposition that the categorical consequences rule is "one of 'the most widely recognized rules of American law.' " *Ante*, at 351 (quoting Chin & Holmes, Effective Assistance of Counsel and the Consequences of Guilty Pleas, 87 Cornell L. Rev. 697, 706 (2002)). But the article was, in fact, quite critical of the rule. The authors explained that "[t]he real work of the conviction is performed

528 U. S. 470, 479 (2000). In short, that some courts have differentiated between misleading by silence and affirmative misrepresentation hardly establishes the rationality of the distinction. Notably, the Court offers no reasoned basis for believing that such a distinction can be extracted from *Strickland*.

To be sure, lower courts did continue to apply the distinction between collateral and direct consequences after *St. Cyr*. See *ante*, at 356–358; see, *e. g.*, *Broomes* v. *Ashcroft*, 358 F. 3d 1251, 1256–1257 (CA10 2004). Even so, and even assuming the misrepresentation cases did not call the distinction into question, the existence of these lower court decisions is not dispositive. "[T]he standard for determining when a case establishes a new rule is 'objective,' and the mere existence of conflicting authority does not necessarily mean a rule is new." *Wright*, 505 U. S., at 304 (O'Connor, J., concurring in judgment) (citing *Stringer* v. *Black*, 503 U. S. 222, 237 (1992)); see *Graham* v. *Collins*, 506 U. S. 461, 506 (1993) (Souter, J., dissenting).

Where the application of *Strickland* was straightforward, rooted in 15 years of professional standards and the Court's prior *St. Cyr* decision, there is no reason to put these lower court cases, many from more than a decade earlier, ahead of this Court's simple and clear reasoning in *Padilla*. Nevertheless, the majority reaches the paradoxical conclusion that by declining to apply a collateral-consequence doctrine the Court had never adopted, *Padilla* announced a new rule.

III

What truly appears to drive the majority's analysis is its sense that *Padilla* occasioned a serious disruption in lower court decisional reasoning. See, *e. g.*, *ante*, at 353 ("If that

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by the collateral consequences," and that the direct/collateral distinction in the context of ineffective-assistance claims was "surprising because it seems inconsistent with the framework that the Supreme Court . . . laid out" in *Strickland*. Chin & Holmes, 87 Cornell L. Rev., at 700–701.

does not count as 'break[ing] new ground' . . . we are hard pressed to know what would" (quoting *Teague*, 489 U. S., at 301)). The concurring and dissenting opinions in *Padilla* similarly reflected the impression that it was a significant and destabilizing decision. See 559 U. S., at 377 (ALITO, J., concurring in judgment); *id.*, at 392 (SCALIA, J., dissenting) (describing the majority opinion as a "sledge hammer"); *ante*, at 352, n. 10. But the fact that a decision was perceived as momentous or consequential, particularly by those who disagreed with it, does not control in the *Teague* analysis. Faithfully applying the *Teague* rule depends instead on an examination of this Court's reasoning and an objective assessment of the precedent at issue. *Stringer*, 503 U. S., at 237. In *Padilla*, we did nothing more than apply *Strickland*. By holding to the contrary, today's decision deprives defendants of the fundamental protection of *Strickland*, which requires that lawyers comply with professional norms with respect to any advice they provide to clients.

* * *

Accordingly, I would reverse the judgment of the Seventh Circuit and hold that *Padilla* applies retroactively on collateral review to convictions that became final before its announcement. With respect, I dissent.

Syllabus

MARX *v.* GENERAL REVENUE CORP.

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

No. 11–1175. Argued November 7, 2012—Decided February 26, 2013

Petitioner Marx filed suit, alleging that General Revenue Corporation (GRC) violated the Fair Debt Collection Practices Act (FDCPA) by harassing and falsely threatening her in order to collect on a debt. The District Court ruled against Marx and awarded GRC costs pursuant to Federal Rule of Civil Procedure (FRCP) 54(d)(1), which gives district courts discretion to award costs to prevailing defendants "[u]nless a federal statute . . . provides otherwise." Marx sought to vacate the award, arguing that the court's discretion under Rule 54(d)(1) was displaced by 15 U. S. C. § 1692k(a)(3), which provides, in pertinent part, that "[o]n a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs." The District Court rejected Marx's argument. The Tenth Circuit affirmed, in pertinent part, agreeing that costs are allowed under the Rule and concluding that nothing in the statute's text, history, or purpose indicates that it was meant to displace the Rule.

Held: Section 1692k(a)(3) is not contrary to, and, thus, does not displace a district court's discretion to award costs under, Rule 54(d)(1). Pp. 376–388.

(a) Rule 54(d)(1) gives courts discretion to award costs to prevailing parties, but this discretion can be displaced by a federal statute or FRCP that "provides otherwise," *i. e.*, is "contrary" to Rule 54(d)(1). Contrary to the argument of Marx and the United States, as *amicus*, language of the original 1937 version of the Rule does not suggest that any "express provision" for costs should displace Rule 54(d)(1), regardless of whether it is contrary to the Rule. Pp. 376–379.

(b) Section 1692k(a)(3)'s language and context demonstrate that the provision is not contrary to Rule 54(d)(1). Pp. 380–387.

(1) GRC argues that since § 1692k(a)(3) does not address whether costs may be awarded in an FDCPA case brought in good faith, it does not set forth a standard that is contrary to the Rule and therefore does not displace the presumption that a court has discretion to award costs. Marx and the United States concede that the statute does not expressly limit a court's discretion to award costs under the Rule, but argue that it does so by negative implication. They claim that unless § 1692k(a)(3)

sets forth the exclusive basis on which to award costs, the phrase "and costs" would be superfluous with Rule 54(d)(1). And the United States also argues that § 1692k(a)(3)'s more specific cost statute displaces Rule 54(d)(1)'s more general rule. Pp. 380–381.

(2) The argument of Marx and the United States depends critically on whether § 1692k(a)(3)'s allowance of costs creates a negative implication that costs are unavailable in any other circumstances. The *expressio unius* canon that they invoke does not apply "unless it is fair to suppose that Congress considered the unnamed possibility and meant to say no to it," *Barnhart* v. *Peabody Coal Co.*, 537 U. S. 149, 168, and can be overcome by "contrary indications that adopting a particular rule or statute was probably not meant to signal any exclusion," *United States* v. *Vonn*, 535 U. S. 55, 65. Here, context indicates that Congress did not intend § 1692k(a)(3) to foreclose courts from awarding costs under the Rule. First, under the American Rule, each litigant generally pays his own attorney's fees, but the Court has long recognized that federal courts have inherent power to award attorney's fees in a narrow set of circumstances, *e. g.*, when a party brings an action in bad faith. The statute is thus best read as codifying a court's pre-existing authority to award both attorney's fees and costs. Next, § 1692k(a)(3)'s second sentence must be understood in light of its first, which provides an award of attorney's fees and costs, but to prevailing plaintiffs. By adding "and costs" to the second sentence, Congress foreclosed the argument that defendants can only recover attorney's fees when plaintiffs bring an action in bad faith and removed any doubt that defendants may recover costs as well as attorney's fees in such cases. Finally, § 1692k(a)(3)'s language sharply contrasts with that of other statutes in which Congress has placed conditions on awarding costs to prevailing defendants. See, *e. g.*, 28 U. S. C. § 1928. Pp. 381–384.

(3) Even assuming that their surplusage argument is correct, the canon against surplusage is not absolute. First, the canon "assists only where a competing interpretation gives effect to every clause and word of a statute." *Microsoft Corp.* v. *i4i Ltd. Partnership*, 564 U. S. 91, 106 (internal quotation marks omitted). Here, no interpretation of § 1692k(a)(3) gives effect to every word. Second, redundancy is not unusual in statutes addressing costs. See, *e. g.*, 12 U. S. C. § 2607(d)(5). Finally, the canon is strongest when an interpretation would render superfluous another part of the same statutory scheme. Because § 1692k(a)(3) is not part of Rule 54(d)(1), the force of this canon is diminished. Pp. 385–386.

(4) Lastly, contrary to the United States' claim that specific cost-shifting standards displace general ones, the context of the statute indicates that Congress was simply confirming the background presumption

that courts may award to defendants attorney's fees and costs when the plaintiff brings an action in bad faith. Because Marx did not bring this suit in bad faith, the specific provision is not applicable. Pp. 386–387.

668 F. 3d 1174, affirmed.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, GINSBURG, BREYER, and ALITO, JJ., joined. SOTOMAYOR, J., filed a dissenting opinion, in which KAGAN, J., joined, *post*, p. 388.

Allison M. Zieve argued the cause for petitioner. With her on the briefs were *Scott Michelman*, *Scott L. Nelson*, and *David M. Larson*.

Eric J. Feigin argued the cause for the United States as *amicus curiae* in support of petitioner. With him on the brief were *Solicitor General Verrilli*, *Acting Assistant Attorney General Delery*, *Deputy Solicitor General Stewart*, *Michael Jay Singer*, *Michael E. Robinson*, *Meredith Fuchs*, *David M. Gossett*, *Willard K. Tom*, and *John F. Daly*.

Lisa S. Blatt argued the cause for respondent. With her on the brief were *Robert J. Katerberg*, *Anthony J. Franze*, *Dirk C. Phillips*, *R. Reeves Anderson*, *Adam L. Plotkin*, *Steven J. Wienczkowski*, *Eric D. Reicin*, and *Kevin T. Dreyer*.*

JUSTICE THOMAS delivered the opinion of the Court.

Federal Rule of Civil Procedure 54(d)(1) gives district courts discretion to award costs to prevailing defendants "[u]nless a federal statute . . . provides otherwise." The Fair Debt Collection Practices Act (FDCPA), 91 Stat. 881, 15 U. S. C. § 1692k(a)(3), provides that "[o]n a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award

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**Julie Nepveu*, *Michael Schuster*, and *Seth E. Mermin* filed a brief for AARP et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for ACA International by *Roy T. Englert, Jr.*, *Mark T. Stancil*, and *Daniel N. Lerman*; and for the National Association of Retail Collection Attorneys by *Donald S. Maurice, Jr.*

to the defendant attorney's fees reasonable in relation to the work expended and costs." This case presents the question whether § 1692k(a)(3) "provides otherwise" than Rule 54(d)(1). We conclude that § 1692k(a)(3) does not "provid[e] otherwise," and, thus, a district court may award costs to prevailing defendants in FDCPA cases without finding that the plaintiff brought the case in bad faith and for the purpose of harassment.

I

Petitioner Olivea Marx defaulted on a student loan guaranteed by EdFund, a division of the California Student Aid Commission. In September 2008, EdFund hired respondent General Revenue Corporation (GRC) to collect the debt. One month later, Marx filed an FDCPA enforcement action against GRC.[1] Marx alleged that GRC had violated the FDCPA by harassing her with phone calls several times a day and falsely threatening to garnish up to 50% of her wages and to take the money she owed directly from her bank account. Shortly after the complaint was filed, GRC made an offer of judgment under Federal Rule of Civil Procedure 68 to pay Marx $1,500, plus reasonable attorney's fees and costs, to settle any claims she had against it. Marx did not respond to the offer. She subsequently amended her complaint to add a claim that GRC unlawfully sent a fax to her workplace that requested information about her employment status.

Following a 1-day bench trial, the District Court found that Marx had failed to prove any violation of the FDCPA. As the prevailing party, GRC submitted a bill of costs seeking $7,779.16 in witness fees, witness travel expenses, and deposition transcript fees. The court disallowed several

[1] The FDCPA is a consumer protection statute that prohibits certain abusive, deceptive, and unfair debt collection practices. See 15 U. S. C. § 1692. The FDCPA's private-enforcement provision, § 1692k, authorizes any aggrieved person to recover damages from "any debt collector who fails to comply with any provision" of the FDCPA. § 1692k(a).

items of costs and, pursuant to Federal Rule of Civil Procedure 54(d)(1), ordered Marx to pay GRC $4,543.03. Marx filed a motion to vacate the award of costs, arguing that the court lacked authority to award costs under Rules 54(d)(1) and 68(d) because 15 U. S. C. § 1692k(a)(3) sets forth the exclusive basis for awarding costs in FDCPA cases.[2] Section 1692k(a)(3) provides, in relevant part: "On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs." Marx argued that because the court had not found that she brought the case in bad faith and for the purpose of harassment, GRC was not entitled to costs. The District Court rejected Marx's argument, concluding that § 1692k(a)(3) does not displace a court's discretion to award costs under Rule 54(d)(1) and that costs should also be awarded under Rule 68(d).

The Tenth Circuit affirmed but agreed only with part of the District Court's reasoning. In particular, the court disagreed that costs were allowed under Rule 68(d). 668 F. 3d 1174, 1182 (2011). It explained that "Rule 68 applies only where the district court enters judgment in favor of a plaintiff" for less than the amount of the settlement offer and not where the plaintiff loses outright. *Ibid.* (citing *Delta Air Lines, Inc.* v. *August*, 450 U. S. 346, 352 (1981)). Because the District Court had not entered judgment in favor of Marx, the court concluded that costs were not allowed under Rule 68(d). 668 F. 3d, at 1182. Nevertheless, the court found that costs were allowed under Rule 54(d)(1), which

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[2] Under Rule 68(d), if a defendant makes a settlement offer, and the plaintiff rejects it and later obtains a judgment that is less favorable than the one offered her, the plaintiff must pay the costs incurred by the defendant after the offer was made. See Fed. Rule Civ. Proc. 68(d) ("If the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made").

grants district courts discretion to award costs to prevailing parties unless a federal statute or the Federal Rules of Civil Procedure provide otherwise. *Id.*, at 1178, 1182. After describing the "venerable" presumption that prevailing parties are entitled to costs, *id.*, at 1179, the court concluded that nothing in the text, history, or purpose of § 1692k(a)(3) indicated that it was meant to displace Rule 54(d)(1), *id.*, at 1178–1182. Judge Lucero dissented, arguing that "[t]he only sensible reading of [§ 1692k(a)(3)] is that the district court may *only* award costs to a defendant" upon finding that the action was brought in bad faith and for the purpose of harassment and that to read it otherwise rendered the phrase "and costs" superfluous. *Id.*, at 1187 (emphasis in original).

We granted certiorari, 566 U. S. 1021 (2012), to resolve a conflict among the Circuits regarding whether a prevailing defendant in an FDCPA case may be awarded costs where the lawsuit was not brought in bad faith and for the purpose of harassment. Compare 668 F. 3d, at 1182 (case below), with *Rouse* v. *Law Offices of Rory Clark*, 603 F. 3d 699, 701 (CA9 2010). We now affirm the judgment of the Tenth Circuit.

II

As in all statutory construction cases, we "'assum[e] that the ordinary meaning of [the statutory] language accurately expresses the legislative purpose.'" *Hardt* v. *Reliance Standard Life Ins. Co.*, 560 U. S. 242, 251 (2010) (quoting *Gross* v. *FBL Financial Services, Inc.*, 557 U. S. 167, 175 (2009); alteration in original). In this case, we must construe both Rule 54(d)(1) and § 1692k(a)(3) and assess the relationship between them.

A

Rule 54(d)(1) is straightforward. It provides, in relevant part: "Unless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney's fees—should be allowed to the prevailing party."

As the Tenth Circuit correctly recognized, Rule 54(d)(1) codifies a venerable presumption that prevailing parties are entitled to costs.[3] Notwithstanding this presumption, the word "should" makes clear that the decision whether to award costs ultimately lies within the sound discretion of the district court. See *Taniguchi* v. *Kan Pacific Saipan, Ltd.*, 566 U. S. 560, 565 (2012) ("Federal Rule of Civil Procedure 54(d) gives courts the discretion to award costs to prevailing parties"). Rule 54(d)(1) also makes clear, however, that this discretion can be displaced by a federal statute or a Federal Rule of Civil Procedure that "provides otherwise."

A statute "provides otherwise" than Rule 54(d)(1) if it is "contrary" to the Rule. See 10 J. Moore, Moore's Federal Practice § 54.101[1][c], p. 54–159 (3d ed. 2012) (hereinafter 10 Moore's). Because the Rule grants district courts discretion to award costs, a statute is contrary to the Rule if it limits that discretion. A statute may limit a court's discretion in several ways, and it need not expressly state that it is displacing Rule 54(d)(1) to do so. For instance, a statute providing that "plaintiffs shall not be liable for costs" is contrary to Rule 54(d)(1) because it precludes a court from awarding costs to prevailing defendants. See, *e. g.*, 7 U. S. C. § 18(d)(1) (2006 ed., Supp. V) ("The petitioner shall not be liable for costs in the district court"). Similarly, a statute providing that plaintiffs may recover costs only under certain condi-

[3] Prior to the adoption of the Federal Rules, prevailing parties were entitled to costs as of right in actions at law while courts had discretion to award costs in equity proceedings. See *Ex parte Peterson*, 253 U. S. 300, 317–318 (1920) ("While in equity proceedings the allowance and imposition of costs is, unless controlled by statute or rule of court, a matter of discretion, it has been uniformly held that in actions at law the prevailing party is entitled to costs as of right, except in those few cases where by express statutory provision or by established principles costs are denied" (citation omitted)); *Mansfield, C. & L. M. R. Co.* v. *Swan*, 111 U. S. 379, 387 (1884) ("[B]y the long established practice and universally recognized rule of the common law, in actions at law, the prevailing party is entitled to recover a judgment for costs . . . ").

tions is contrary to Rule 54(d) because it precludes a court from awarding costs to prevailing plaintiffs when those conditions have not been satisfied. See, *e. g.*, 28 U. S. C. § 1928 ("[N]o costs shall be included in such judgment, unless the proper disclaimer has been filed in the United States Patent and Trademark Office").

Importantly, not all statutes that provide for costs are contrary to Rule 54(d)(1). A statute providing that "the court may award costs to the prevailing party," for example, is not contrary to the Rule because it does not limit a court's discretion. See 10 Moore's § 54.101[1][c], at 54–159 ("A number of statutes state simply that the court may award costs in its discretion. Such a provision is not contrary to Rule 54(d)(1) and does not displace the court's discretion under the Rule").

Marx and the United States as *amicus curiae* suggest that any statute that specifically provides for costs displaces Rule 54(d)(1), regardless of whether it is contrary to the Rule. Brief for Petitioner 17; Brief for United States as *Amicus Curiae* 11–12 (hereinafter Brief for United States). The United States relies on the original 1937 version of Rule 54(d)(1), which provided, "'Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs.'" *Id.*, at 12 (quoting Rule). Though the Rules Committee updated the language of Rule 54(d)(1) in 2007, the change was "stylistic only." Advisory Committee's Notes, 28 U. S. C. App., p. 734 (2006 ed., Supp. V). Accordingly, the United States asserts that any "express provision" for costs should displace Rule 54(d)(1).

We are not persuaded, however, that the original version of Rule 54(d) should be interpreted as Marx and the United States suggest. The original language was meant to ensure that Rule 54(d) did not displace existing costs provisions that were contrary to the Rule. Under the prior language,

statutes that simply permitted a court to award costs did not displace the Rule. See 6 J. Moore, Moore's Federal Practice § 54.71[1], p. 54–304 (2d ed. 1996) ("[W]hen permissive language is used [in a statute regarding costs] the district court may, pursuant to Rule 54(d), exercise a sound discretion relative to the allowance of costs"). Rather, statutes had to set forth a standard for awarding costs that was different from Rule 54(d)(1) in order to displace the Rule. See *Friedman* v. *Ganassi*, 853 F. 2d 207, 210 (CA3 1988) (holding that 15 U. S. C. § 77k(e) is not an "express provision" under Rule 54(d) because it does not provide an "alternative standard" for awarding taxable costs). The original version of Rule 54(d) is consistent with our conclusion that a statute must be contrary to Rule 54(d)(1) in order to displace it.[4]

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[4] The dissent provides no stable definition of "provides otherwise." First, it argues that a statute "provides otherwise" if it is "different" from Rule 54(d)(1). *Post*, at 390 (opinion of SOTOMAYOR, J.). That interpretation renders the Rule meaningless because every statute is "different" insofar as it is not an exact copy of the Rule. Next, it argues that a statute "provides otherwise" if it is an "'express provision' relating to costs." *Post*, at 389. Under that view, a statute providing that "the court may award costs to the prevailing party" would "provide otherwise." We do not think such a statute provides otherwise—it provides "samewise," and the treatise on which the dissent relies supports our view. See 10 C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2670, p. 258 (3d ed. 1998 and Supp. 2012) ("[Statutes that] are permissive in character . . . are not inconsistent with the discretion given the district court by Rule 54(d)"). Finally, the dissent seems to implicitly accept that "otherwise" means "to the contrary" in the course of arguing that a doctor's instruction to take medication "'in the morning'" would supersede an instruction on the medication label to "'take [it] twice a day unless otherwise directed,'" because the patient would understand the doctor's advice to mean that he should take the medicine "once a day, each morning." *Post*, at 391. If the patient understands the doctor to mean "once a day, each morning," we agree that such advice would "provide otherwise," because the doctor's order would be "contrary" to the label's instruction. For the reasons set forth in Part II–B, however, we are not convinced that § 1692k(a)(3) is "contrary" to Rule 54(d)(1).

B

We now turn to whether § 1692k(a)(3) is contrary to Rule 54(d)(1). The language of § 1692k(a)(3) and the context surrounding it persuade us that it is not.

1

The second sentence of § 1692k(a)(3) provides: "On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs." [5]

GRC contends that the statute does not address whether costs may be awarded in this case—where the plaintiff brought the case in good faith—and thus it does not set forth a standard for awarding costs that is contrary to Rule 54(d)(1). In its view, Congress intended § 1692k(a)(3) to deter plaintiffs from bringing nuisance lawsuits. It, therefore, expressly provided that when plaintiffs bring an action in bad faith and for the purpose of harassment, the court may award attorney's fees and costs to the defendant. The statute does address this type of case—*i. e.*, cases in which the plaintiff brings the action in bad faith and for the purpose of harassment. But it is silent where bad faith and purpose of harassment are absent, and silence does not displace the background rule that a court has discretion to award costs.

Marx and the United States take the contrary view. They concede that the language does not expressly limit a court's discretion to award costs under Rule 54(d)(1), Brief for Petitioner 10; Brief for United States 19, but argue that it does so by negative implication. Invoking the *expressio unius*

[5] It is undisputed that GRC is not entitled to costs under § 1692k(a)(3) because the District Court did not find that Marx brought this action in bad faith. But Rule 54(d)(1) independently authorizes district courts to award costs to prevailing parties. The question in this case is not whether costs are allowed under § 1692k(a)(3) but whether § 1692k(a)(3) precludes an award of costs under Rule 54(d)(1).

canon of statutory construction, they contend that by specifying that a court may award attorney's fees and costs when an action is brought in bad faith and for the purpose of harassment, Congress intended to preclude a court from awarding fees and costs when bad faith and purpose of harassment are absent. They further argue that unless § 1692k(a)(3) sets forth the exclusive basis on which a court may award costs, the phrase "and costs" would be superfluous. According to this argument, Congress would have had no reason to specify that a court may award costs when a plaintiff brings an action in bad faith if it could have nevertheless awarded costs under Rule 54(d)(1). Finally, the United States argues that § 1692k(a)(3) is a more specific cost statute that displaces Rule 54(d)(1)'s more general rule.

The context surrounding § 1692k(a)(3) persuades us that GRC's interpretation is correct.

2

The argument of Marx and the United States depends critically on whether § 1692k(a)(3)'s allowance of costs creates a negative implication that costs are unavailable in any other circumstances. The force of any negative implication, however, depends on context. We have long held that the *expressio unius* canon does not apply "unless it is fair to suppose that Congress considered the unnamed possibility and meant to say no to it," *Barnhart* v. *Peabody Coal Co.*, 537 U. S. 149, 168 (2003), and that the canon can be overcome by "contrary indications that adopting a particular rule or statute was probably not meant to signal any exclusion," *United States* v. *Vonn*, 535 U. S. 55, 65 (2002). In this case, context persuades us that Congress did not intend § 1692k(a)(3) to foreclose courts from awarding costs under Rule 54(d)(1).

First, the background presumptions governing attorney's fees and costs are a highly relevant contextual feature. As already explained, under Rule 54(d)(1) a prevailing party is entitled to recover costs from the losing party unless a fed-

eral statute, the Federal Rules of Civil Procedure, or a court order "provides otherwise." The opposite presumption exists with respect to attorney's fees. Under the "bedrock principle known as the '"American Rule,"' " "[e]ach litigant pays his own attorney's fees, win or lose, unless a statute or contract provides otherwise." *Hardt*, 560 U. S., at 253 (quoting *Ruckelshaus* v. *Sierra Club*, 463 U. S. 680, 683 (1983)). Notwithstanding the American Rule, however, we have long recognized that federal courts have inherent power to award attorney's fees in a narrow set of circumstances, including when a party brings an action in bad faith. See *Chambers* v. *NASCO, Inc.*, 501 U. S. 32, 45–46 (1991) (explaining that a court has inherent power to award attorney's fees to a party whose litigation efforts directly benefit others, to sanction the willful disobedience of a court order, and to sanction a party who has acted in bad faith, vexatiously, wantonly, or for oppressive reasons); *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U. S. 240, 257–259 (1975) (same).

It is undisputed that § 1692k(a)(3) leaves the background rules for attorney's fees intact. The statute provides that when the plaintiff brings an action in bad faith, the court may award attorney's fees to the defendant. But, as noted, a court has inherent power to award fees based on a litigant's bad faith even without § 1692k(a)(3). See *Chambers*, *supra*, at 45–46. Because § 1692k(a)(3) codifies the background rule for attorney's fees, it is dubious to infer congressional intent to override the background rule with respect to costs. The statute is best read as codifying a court's pre-existing authority to award both attorney's fees and costs.[6]

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[6] Indeed, had Congress intended § 1692k(a)(3) to foreclose a court's discretion to award costs, it could not have chosen a more circuitous way to do so. The statute sets forth the circumstances in which a court "may" award costs. But under Marx's and the United States' view, the only consequence of the statute is to set forth the circumstances in which it may not award costs.

Next, the second sentence of § 1692k(a)(3) must be understood in light of the sentence that precedes it.[7] The first sentence of § 1692k(a)(3) provides that defendants who violate the FDCPA are liable for the plaintiff's attorney's fees and costs. The second sentence of § 1692k(a)(3) similarly provides that plaintiffs who bring an action in bad faith and for the purpose of harassment may be liable for the defendant's fees and costs.

If Congress had excluded "and costs" in the second sentence, plaintiffs might have argued that the expression of costs in the first sentence and the exclusion of costs in the second meant that defendants could only recover attorney's fees when plaintiffs bring an action in bad faith. By adding "and costs" to the second sentence, Congress foreclosed that argument, thereby removing any doubt that defendants may recover costs as well as attorney's fees when plaintiffs bring suits in bad faith. See *Ali* v. *Federal Bureau of Prisons*, 552 U. S. 214, 226 (2008) (explaining that a phrase is not superfluous if used to "remove . . . doubt" about an issue); *Fort*

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[7] Section 1692k(a) provides:

"Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

"(1) any actual damages sustained by such person as a result of such failure;

"(2)(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; or

"(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and

"(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs."

Stewart Schools v. *FLRA*, 495 U. S. 641, 646 (1990) (explaining that "technically unnecessary" examples may have been "inserted out of an abundance of caution"). The fact that there might have been a negative implication that costs are precluded, depending on whether Congress included or excluded the phrase "and costs," weighs against giving effect to any implied limitation.

Finally, the language in § 1692k(a)(3) sharply contrasts with other statutes in which Congress has placed conditions on awarding costs to prevailing defendants. See, *e. g.*, 28 U. S. C. § 1928 ("[N]o costs shall be included in such judgment, *unless* the proper disclaimer has been filed in the United States Patent and Trademark Office prior to the commencement of the action" (emphasis added)); 42 U. S. C. § 1988(b) ("[I]n any action brought against a judicial officer . . . such officer shall not be held liable for any costs . . . *unless* such action was clearly in excess of such officer's jurisdiction" (emphasis added)).

Although Congress need not use explicit language to limit a court's discretion under Rule 54(d)(1), its use of explicit language in other statutes cautions against inferring a limitation in § 1692k(a)(3). These statutes confirm that Congress knows how to limit a court's discretion under Rule 54(d)(1) when it so desires. See *Small* v. *United States*, 544 U. S. 385, 398 (2005) (THOMAS, J., dissenting) (explaining that "Congress' explicit use of [language] in other provisions shows that it specifies such restrictions when it wants to do so"). Had Congress intended the second sentence of § 1692k(a)(3) to displace Rule 54(d)(1), it could have easily done so by using the word "only" before setting forth the condition "[o]n a finding by the court that an action . . . was brought in bad faith and for the purpose of harassment . . . ." [8]

[8] Marx also suggests that § 1692k(a)(3) is similar to the Pipeline Safety Act, 49 U. S. C. § 60121(b), which provides: "The court may award costs to a prevailing defendant when the action is unreasonable, frivolous, or

As the above discussion suggests, we also are not persuaded by Marx's objection that our interpretation renders the phrase "and costs" superfluous. As noted, *supra*, at 383, the phrase "and costs" would not be superfluous if Congress included it to remove doubt that defendants may recover costs when plaintiffs bring suits in bad faith. But even assuming that our interpretation renders the phrase "and costs" superfluous, that would not alter our conclusion. The canon against surplusage is not an absolute rule, see *Arlington Central School Dist. Bd. of Ed.* v. *Murphy*, 548 U. S. 291, 299, n. 1 (2006) ("While it is generally presumed that statutes do not contain surplusage, instances of surplusage are not unknown"); *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 253 (1992) ("Redundancies across statutes are not unusual events in drafting . . . "), and it has considerably less force in this case.

First, the canon against surplusage "assists only where a competing interpretation gives effect to every clause and word of a statute." *Microsoft Corp.* v. *i4i Ltd. Partnership*, 564 U. S. 91, 106 (2011) (internal quotation marks omitted). But, in this case, no interpretation of § 1692k(a)(3) gives effect to every word. Both Marx and the United States admit that a court has inherent power to award attorney's fees to a defendant when the plaintiff brings an action in bad faith. Because there was, consequently, no need for Congress to specify that courts have this power, § 1692k(a)(3) is superfluous insofar as it addresses attorney's fees. In light of this redundancy, we are not overly concerned that the reference to costs may be redundant as well.

Second, redundancy is "hardly unusual" in statutes addressing costs. See *id.*, at 107. Numerous statutes overlap with Rule 54(d)(1). See, *e. g.*, 12 U. S. C. § 2607(d)(5) ("[T]he

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meritless." We have never had occasion to interpret § 60121(b) and its interaction with Rule 54(d)(1).

court may award to the prevailing party the court costs of the action"); § 5565(b) (2006 ed., Supp. V) ("[T]he [Consumer Financial Protection] Bureau . . . may recover its costs in connection with prosecuting such action if [it] . . . is the prevailing party in the action"); 15 U. S. C. § 6104(d) (2006 ed.) ("The court . . . may award costs of suit and reasonable fees for attorneys and expert witnesses to the prevailing party"); § 7706(f)(4) ("In the case of any successful action . . . the court, in its discretion, may award the costs of the action"); § 7805(b)(3) ("[T]he court may award to the prevailing party costs"); § 8131(2) (2006 ed., Supp. V) ("The court may also, in its discretion, award costs and attorneys fees to the prevailing party"); 29 U. S. C. § 431(c) (2006 ed.) ("The court . . . may, in its discretion, . . . allow a reasonable attorney's fee to be paid by the defendant, and costs of the action"); 42 U. S. C. § 3612(p) ("[T]he court, . . . in its discretion, may allow the prevailing party . . . a reasonable attorney's fee and costs"); § 3613(c)(2) ("[T]he court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee and costs"); 47 U. S. C. § 551(f)(2) ("[T]he court may award . . . other litigation costs reasonably incurred").

Finally, the canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme. Cf. *United States* v. *Jicarilla Apache Nation*, 564 U. S. 162, 185 (2011) ("'As our cases have noted in the past, we are hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law'" (quoting *Mackey* v. *Lanier Collection Agency & Service, Inc.*, 486 U. S. 825, 837 (1988))). Because § 1692k(a)(3) is not part of Rule 54(d)(1), the force of this canon is diminished.

4

Lastly, the United States contends that § 1692k(a)(3) "establishes explicit cost-shifting standards that displace Rule 54(d)(1)'s more general default standard." Brief for United States 17; see also *EC Term of Years Trust* v. *United States*,

550 U. S. 429, 433 (2007) (" '[A] precisely drawn, detailed statute pre-empts more general remedies' " (quoting *Brown* v. *GSA*, 425 U. S. 820, 834 (1976))). Were we to accept the argument that § 1692k(a)(3) has a negative implication, this argument might be persuasive. But the context of § 1692k(a)(3) indicates that Congress was simply confirming the background rule that courts may award to defendants attorney's fees and costs when the plaintiff brings an action in bad faith. The statute speaks to one type of case—the case of the bad-faith and harassing plaintiff. Because Marx did not bring this suit in bad faith, this case does not "fal[l] within the ambit of the more specific provision." Brief for United States 13; see also *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U. S. 639, 648 (2012) ("When the conduct at issue falls within the scope of *both* provisions, the specific presumptively governs . . . " (emphasis in original)).[9] Accordingly, this canon is inapplicable.

III

Because we conclude that the second sentence of § 1692k(a)(3) is not contrary to Rule 54(d)(1), and, thus, does not displace a district court's discretion to award costs under

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[9] Marx, the United States, and GRC also spar over the purpose of § 1692k(a)(3). Brief for Petitioner 14–16; Brief for United States 21–28; Reply Brief 11–14; Brief for Respondent 30–43. Marx and the United States contend that Congress intended to limit a court's discretion to award costs to prevailing defendants because FDCPA plaintiffs are often poor and may be deterred from challenging unlawful debt collection practices by the possibility of being held liable for the defendant's costs. This purposive argument cannot overcome the language and context of § 1692k(a)(3), but even if it could, we find it unpersuasive. Rule 54(d)(1) does not *require* courts to award costs to prevailing defendants. District courts may appropriately consider an FDCPA plaintiff's indigency in deciding whether to award costs. See *Badillo* v. *Central Steel & Wire Co.*, 717 F. 2d 1160, 1165 (CA7 1983) ("[I]t is within the discretion of the district court to consider a plaintiff's indigency in denying costs under Rule 54(d)").

the Rule, we need not address GRC's alternative argument that costs were required under Rule 68.

The judgment of the Court of Appeals is affirmed.

It is so ordered.

JUSTICE SOTOMAYOR, with whom JUSTICE KAGAN joins, dissenting.

Federal Rule of Civil Procedure 54(d)(1) is a default standard that grants district courts discretion to award litigation costs to a prevailing party. This default, however, gives way when a federal statute includes a costs provision that "provides otherwise." The Fair Debt Collection Practices Act (FDCPA), 91 Stat. 874, 15 U. S. C. § 1692 *et seq.*, contains a costs provision, § 1692k(a)(3), and it "provides otherwise." That is apparent from the statute's plain language, which limits a court's discretion to award costs to prevailing defendants to cases "brought in bad faith and for the purpose of harassment." In reaching the opposite conclusion, the Court ignores the plain meaning of both the FDCPA and Rule 54(d)(1) and renders the statutory language at issue in this case meaningless. I respectfully dissent.

I

The majority correctly recognizes, see *ante*, at 376, the fundamental principle of statutory construction that we begin "with the language of the statute itself." *United States* v. *Ron Pair Enterprises, Inc.*, 489 U. S. 235, 241 (1989); *Ingalls Shipbuilding, Inc.* v. *Director, Office of Workers' Compensation Programs*, 519 U. S. 248, 255 (1997); *Caminetti* v. *United States*, 242 U. S. 470, 485 (1917). We presume that Congress "means in a statute what it says there," *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 254 (1992), and "where . . . the statute's language is plain, the sole function of the courts is to enforce it according to its terms." *Ron Pair*, 489 U. S., at 241 (internal quotation marks omitted). This basic tenet

is the appropriate starting point for interpreting both Rule 54(d)(1) and § 1692k(a)(3). After invoking this principle, however, the majority casts it aside entirely in interpreting the statute and the Rule.

A

Rule 54(d)(1) states, as relevant here, that "[u]nless a federal statute . . . provides otherwise, costs—other than attorney's fees—should be allowed to the prevailing party." The first question is what it means for a statute to "provid[e] otherwise" than Rule 54(d)(1).

Because the phrase "provides otherwise" is not defined in the Federal Rules of Civil Procedure, we look to its ordinary meaning. *Asgrow Seed Co.* v. *Winterboer*, 513 U. S. 179, 187 (1995). In common usage, to "provide otherwise" means to "make a . . . stipulation" that is "differen[t]." Webster's Third New International Dictionary 1598, 1827 (2002) (Webster's Third) (defining "provide" and "otherwise," respectively); see Random House Dictionary of the English Language 1372, 1556 (2d ed. 1987) (Random House) ("to arrange for or stipulate" "in another manner"); 10 Oxford English Dictionary 984 (2d ed. 1989) (Oxford Dictionary); 12 *id.*, at 713 ("to stipulate" "[i]n another way . . . ; in a different manner"). This reading of the plain text is confirmed by the original 1937 codification of the Rule, which made clear that any "express provision" relating to costs in a statute is sufficient to displace the default.[1]

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[1] The original codification of the Rule provided that "[e]xcept when *express provision therefor* is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs." *Ante*, at 378 (quoting the Rule; emphasis added; internal quotation marks omitted). The language in the Rule was later revised to its current form in 2007, but as the majority acknowledges, the Rules Committee indicated the changes were "'stylistic only.'" *Ibid.* (quoting Advisory Committee's Notes, 28 U. S. C. App., p. 734 (2006 ed., Supp. V)).

Accordingly, to displace Rule 54(d)(1), a federal statute need only address costs in a way different from, but not necessarily inconsistent with, the default.[2] The reason is straightforward. If Congress has enacted a provision with respect to costs in a statute, there is no longer any need for the default, so it gives way. This design of the Rule is sensible, because many statutes contain specific costs provisions. 10 J. Moore, Moore's Federal Practice § 54.101[1][c], p. 54–160 (3d ed. 2012) (noting that such statutes "are far too numerous to list comprehensively"). Rule 54(d)(1) is therefore consistent with the canon of statutory interpretation that "a precisely drawn, detailed statute pre-empts more general remedies." *Hinck* v. *United States*, 550 U. S. 501, 506 (2007) (internal quotations marks omitted); *Crawford Fitting Co.* v. *J. T. Gibbons, Inc.*, 482 U. S. 437, 445 (1987); *United States* v. *Erika, Inc.*, 456 U. S. 201, 208 (1982).

While purporting to interpret the "ordinary meaning" of Rule 54(d)(1), *ante*, at 376, the majority immediately abandons the ordinary meaning. The majority concludes that a statute provides otherwise for purposes of Rule 54(d)(1) only if it is "contrary" to the default. *Ante*, at 377. But the majority does not cite even a single dictionary definition in support of that reading, despite the oft-cited principle that a definition widely reflected in dictionaries generally governs over other possible meanings.[3] Lacking any dictionary support for its interpretation, the majority relies instead upon a treatise

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[2] See 10 C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure § 2665, p. 200 (3d ed. 1998 and Supp. 2012) (hereinafter Wright & Miller) (Rule 54 "provides that ordinarily the prevailing party shall be allowed costs other than attorney's fees unless . . . *some other provision* for costs is made by a federal statute or the civil rules" (emphasis added)).

[3] See, *e. g.*, *MCI Telecommunications Corp.* v. *American Telephone & Telegraph Co.*, 512 U. S. 218, 225 (1994) (opinion for the Court by SCALIA, J.) (rejecting the argument that an alternative definition should control the meaning of "modify" where "[v]irtually every dictionary we are aware of says that 'to modify' means to change moderately or in minor fashion").

published nearly 60 years after the Rule's adoption. See *ante*, at 378–379 (citing 6 J. Moore, Moore's Federal Practice, p. 54–304 (2d ed. 1996)).

"Otherwise" means "different." Webster's Third 1598; see *supra*, at 390. The majority's preferred term of art, "contrary," sets a higher bar; it signifies "the opposite," or "a proposition, fact, or condition *incompatible* with another." Webster's Third 495 (emphasis added). See also American Heritage Dictionary of the English Language 399 (5th ed. 2011) ("[o]pposed, as in character or purpose"); 3 Oxford Dictionary 844 ("[o]pposed in nature or tendency; diametrically different, extremely unlike"); Random House 442 ("[o]pposite in nature or character; diametrically or mutually opposed").

Indeed, the majority's reading does not square with the everyday meaning of "otherwise." Consider, for example, a medication labeled with the instruction, "take twice a day unless otherwise directed." If a doctor advises her patient to take the medicine "in the morning," the patient would understand her to mean that he should take the medicine once a day, each morning. Although the instruction to take the medication in the morning is not incompatible with taking it twice a day—it could be taken in the evening as well—an ordinary English speaker would interpret "otherwise" to mean that the doctor's more specific instructions entirely supersede what is printed on the bottle. Rule 54(d)(1) is just the same: Its default is supplanted whenever Congress provides more specific instructions, not only when they are diametrically opposed to it.

B

1

Thus, the straightforward question in this case is whether § 1692k(a)(3) implements a "different" standard with respect to costs than Rule 54(d)(1), and so "provides otherwise." As relevant, § 1692k(a)(3) states: "On a finding by the court that

an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs."

It is readily apparent that this provision is different from the default of Rule 54(d)(1). In § 1692k(a)(3), Congress described with specificity a single circumstance in which costs may be awarded. Far from merely restating a district court's discretion to award costs, this provision imposes a prerequisite to the exercise of that discretion: a finding by the court that an action was brought in bad faith and for the purpose of harassment.

Because the text is plain, there is no need to proceed any further. Even so, relevant canons of statutory interpretation lend added support to reading § 1692k(a)(3) as having a negative implication. That reading accords with the *expressio unius, exclusio alterius* canon, which instructs that when Congress includes one possibility in a statute, it excludes another by implication. See *Chevron U. S. A. Inc.* v. *Echazabal*, 536 U. S. 73, 80–81 (2002). This rule reinforces what the text makes clear. By limiting a court's discretion to award costs to cases brought in bad faith or for the purpose of harassment, Congress foreclosed the award of costs in other circumstances.[4]

Petitioner's interpretation of the statute is also strongly favored by the rule that statutes should be read to avoid superfluity. Under this "most basic of interpretative canons, . . . '"[a] statute should be construed so that effect is

[4] The majority suggests that this canon does not apply to § 1692k(a)(3) because it only aids where "'it is fair to suppose that Congress considered the unnamed possibility and meant to say no to it.'" *Ante*, at 381 (quoting *Barnhart* v. *Peabody Coal Co.*, 537 U. S. 149, 168 (2003)). The best evidence of congressional intent, however, is the statutory text that Congress enacted. *West Virginia Univ. Hospitals, Inc.* v. *Casey*, 499 U. S. 83, 98 (1991). And here, the plain language of § 1692k(a)(3) makes it clear that Congress meant to foreclose other possible meanings. See *supra* this page.

given to all of its provisions, so that no part will be inoperative or superfluous, void or insignificant.'" *Corley* v. *United States*, 556 U. S. 303, 314 (2009) (quoting *Hibbs* v. *Winn*, 542 U. S. 88, 101 (2004)). Respondent's reading, as it mostly acknowledges, renders the entire sentence meaningless because it reiterates powers that federal courts already possess with respect to both costs and attorney's fees. See Brief for Respondent 22–24.

The majority rejects this argument, citing the rule that this canon "'assists only where a competing interpretation gives effect to every clause and word of a statute.'" *Ante*, at 385 (quoting *Microsoft Corp.* v. *i4i Ltd. Partnership*, 564 U. S. 91, 106 (2011)). In its view, neither of the available interpretations can eliminate superfluity because the attorney's fees provision is redundant under any reading. *Ante*, at 385. But the canon against superfluity surely counsels against an interpretation that renders the entire provision at issue superfluous when a competing interpretation would at least render part of the provision meaningful. Nor does the majority's observation that redundancy is "'hardly unusual,'" *ibid.*, in provisions relating to costs make the canon inapplicable. While Congress sometimes drafts redundant language with respect to costs, Congress did not do so in § 1692k(a)(3).[5] Instead, it drafted specific language that permits a court to award costs only on the satisfaction of a condition.

Interpreting § 1692k(a)(3) as having a negative implication is consistent with our construction of another statute that includes similar language. In *Cooper Industries, Inc.* v.

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[5] See, *e. g.*, 15 U. S. C. § 6104(d) (Telemarketing and Consumer Fraud and Abuse Prevention Act) ("The court . . . may award costs of suit and reasonable fees for attorneys and expert witnesses to the prevailing party"); 42 U. S. C. § 3613(c)(2) (Fair Housing Act) ("In a civil action . . . the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee and costs"); see also 28 U. S. C. § 1332(b) (failure to recover jurisdictional amount).

Aviall Services, Inc., 543 U. S. 157, 166 (2004) (opinion for the Court by THOMAS, J.), we considered a provision in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U. S. C. § 9613(f)(1), that provided: "Any person *may* seek contribution . . . *during* . . . *any civil action* under section 9606 of this title." (Emphasis added.) We rejected the argument that the word "may" indicated that "during a civil action" was one but not the exclusive circumstance in which the right of contribution was available. 543 U. S., at 166. We instead adopted the natural reading of the text, holding that a party's ability to seek contribution was limited by the phrase "during any civil action" and that contribution was only available while a lawsuit is pending. *Ibid.* The same logic applies here, because § 1692k(a)(3) imposes a closely analogous condition on a court's discretion to award costs.

2

The first sentence of § 1692k(a)(3) underscores that Congress implemented a different rule than Rule 54(d)(1). That sentence provides that a debt collector who violates the FDCPA is "liable to" a prevailing plaintiff for "the costs of the action, together with a reasonable attorney's fee as determined by the court." This sentence makes a losing defendant always liable for the "costs of the action," which is a clear departure from the Rule 54(d)(1) discretionary default. Cf. *Taniguchi* v. *Kan Pacific Saipan, Ltd.*, 566 U. S. 560, 565–566 (2012). Because Congress deviated from Rule 54(d)(1) in the first sentence of § 1692k(a)(3), the most reasonable reading is that the sentence that immediately follows, which states the rule for prevailing defendants, takes a similar path.

The majority believes that its reading of the costs provision follows from the first sentence as well, but for a different reason. *Ante*, at 383–384. It suggests that if Congress had not included costs in the second sentence, a plaintiff might

have been able to argue that the inclusion of costs in the first sentence and the exclusion of costs in the second indicated that defendants could recover only fees when an action is brought in bad faith. The majority then speculates that Congress included costs in the second sentence to foreclose that argument.

The text of the previous sentence makes plain, however, that the second sentence departs from the Rule 54(d)(1) default, and the majority offers no evidence in support of its supposition that Congress intended a different meaning.[6] Moreover, I see no basis for invoking potential confusion or indulging in speculation to explain away the words Congress chose. *Ante*, at 383–384. Some Members of the majority have expressed doubt about the relevance of legislative history, claiming that relying upon it is analogous to "entering a crowded cocktail party and looking . . . for one's friends." *Conroy* v. *Aniskoff*, 507 U. S. 511, 519 (1993) (SCALIA, J., concurring in judgment). But speculating whole cloth about congressional intent, as the majority does, is surely more problematic. The majority is saved the trouble of having to look for its friends at the party; it simply invites them.

II

Reduced to its essence, the majority's analysis turns on reading § 1692k(a)(3) in the context of what it calls the "venerable presumption" that prevailing parties are entitled to

[6] The majority does not explain why its speculation about legislative intent is more persuasive than the Solicitor General's view that saddling potential plaintiffs with costs would undermine the FDCPA's "'calibrated scheme'" of enforcement. Brief for United States as *Amicus Curiae* 10 (quoting *Jerman* v. *Carlisle, McNellie, Rini, Kramer & Ulrich, L. P. A.*, 559 U. S. 573, 603 (2010)). Under the Solicitor General's interpretation, because the recoveries in these cases are not certain to be large, consumers may be deterred from bringing FDCPA claims if they are faced with the risk of paying costs. See Brief for United States 21–28. This outcome would thwart Congress' expectation that the FDCPA was to be primarily enforced by consumers. *Ibid.*

costs. See *ante*, at 377. Even if it were appropriate to consider a background presumption rather than reading the plain text at issue, the majority's characterization of the presumption is at best incomplete.

First, the Court's suggestion that the presumption regarding costs is a "venerable" one in American law is an overstatement. *Ibid.* It is true, as the majority points out, that prior to the federal rules, "prevailing parties were entitled to costs as of right in actions at law while courts had discretion to award costs in equity proceedings." *Ante*, at 377, n. 3; see Wright & Miller § 2665, at 199. But the doctrine governing costs at law carved out an important exception for statutory provisions that set forth a different rule.[7] Where there was such a statute, courts would simply apply it. In its assessment of the background principles underlying its approach, the majority glosses over the longstanding expectation that Congress often enacts different rules with respect to costs, and when it does, these rules govern.

Second, Rule 54(d)(1) embraces this long-recognized exception because it specifies that a statute can displace its default rule. To repeat, Rule 54(d)(1) merely enacts a default standard that applies unless, among other things, a statute or rule "provides otherwise." Here, for the reasons explained, Congress enacted exactly such a statute. That is clear from the text, because § 1692k(a)(3) conditions the award of costs on

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[7] See *Ex parte Peterson*, 253 U. S. 300, 318 (1920) ("[I]n actions at law the prevailing party is entitled to costs as of right . . . , *except in those few cases where by express statutory provision or established principles costs are denied*" (emphasis added)); see also *United States* v. *Treadwell*, 15 F. 532, 534 (SDNY 1883) ("[T]he prevailing party shall be entitled to costs in all cases, unless *otherwise expressly provided by law*" (emphasis added; internal quotation marks omitted)); Payne, Costs in Common Law Actions in the Federal Courts, 21 Va. L. Rev. 397, 430 (1934) ("By reason of the numerous changes in the acts of Congress respecting costs, many of the older cases are not now safe precedents. Care should be exercised, therefore, to make an intelligent use of the cases decided prior to the enactment of various statutes").

the satisfaction of a condition, and because the previous sentence of the same provision breaks from the default.

* * *

The plain text of Rule 54(d)(1) and § 1692k(a)(3) dictates the result in this case. Accordingly, I would reverse the Tenth Circuit and hold that § 1692k(a)(3) "provides otherwise" than Rule 54(d)(1), such that a district court cannot award costs to a prevailing defendant in an FDCPA action except upon a showing that the action was brought in bad faith and for the purpose of harassment. I respectfully dissent.

Syllabus

CLAPPER, DIRECTOR OF NATIONAL INTELLIGENCE, ET AL. *v.* AMNESTY INTERNATIONAL USA ET AL.

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

No. 11–1025. Argued October 29, 2012—Decided February 26, 2013

Section 702 of the Foreign Intelligence Surveillance Act of 1978 (FISA), 50 U. S. C. § 1881a, added by the FISA Amendments Act of 2008, permits the Attorney General and the Director of National Intelligence to acquire foreign intelligence information by jointly authorizing the surveillance of individuals who are not "United States persons" and are reasonably believed to be located outside the United States. Before doing so, the Attorney General and the Director of National Intelligence normally must obtain the Foreign Intelligence Surveillance Court's (FISC) approval. Surveillance under § 1881a is subject to statutory conditions, judicial authorization, congressional supervision, and compliance with the Fourth Amendment. Respondents—attorneys and human rights, labor, legal, and media organizations—are United States persons who claim that they engage in sensitive international communications with individuals who they believe are likely targets of § 1881a surveillance. On the day that the FISA Amendments Act was enacted, they filed suit, seeking a declaration that § 1881a is facially unconstitutional and a permanent injunction against § 1881a-authorized surveillance. The District Court found that respondents lacked standing, but the Second Circuit reversed, holding that respondents showed (1) an "objectively reasonable likelihood" that their communications will be intercepted at some time in the future, and (2) that they are suffering present injuries resulting from costly and burdensome measures they take to protect the confidentiality of their international communications from possible § 1881a surveillance.

Held: Respondents do not have Article III standing. Pp. 408–422.

(a) To establish Article III standing, an injury must be "concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling." *Monsanto Co.* v. *Geertson Seed Farms*, 561 U. S. 139, 149. "[T]hreatened injury must be '"certainly impending"' to constitute injury in fact," and "[a]llegations of possible future injury" are not sufficient. *Whitmore* v. *Arkansas*, 495 U. S. 149, 158. Pp. 408–409.

(b) Respondents assert that they have suffered injury in fact that is fairly traceable to § 1881a because there is an objectively reasonable

likelihood that their communications with their foreign contacts will be intercepted under § 1881a at some point. This argument fails. Initially, the Second Circuit's "objectively reasonable likelihood" standard is inconsistent with this Court's "threatened injury" requirement. Respondents' standing theory also rests on a speculative chain of possibilities that does not establish that their potential injury is certainly impending or is fairly traceable to § 1881a. First, it is highly speculative whether the Government will imminently target communications to which respondents are parties. Since respondents, as U. S. persons, cannot be targeted under § 1881a, their theory necessarily rests on their assertion that their foreign contacts will be targeted. Yet they have no actual knowledge of the Government's § 1881a targeting practices. Second, even if respondents could demonstrate that the targeting of their foreign contacts is imminent, they can only speculate as to whether the Government will seek to use § 1881a-authorized surveillance instead of one of the Government's numerous other surveillance methods, which are not challenged here. Third, even if respondents could show that the Government will seek the FISC's authorization to target respondents' foreign contacts under § 1881a, they can only speculate as to whether the FISC will authorize the surveillance. This Court is reluctant to endorse standing theories that require guesswork as to how independent decisionmakers will exercise their judgment. See, *e. g.*, *Whitmore*, *supra*, at 159–160. Fourth, even if the Government were to obtain the FISC's approval to target respondents' foreign contacts under § 1881a, it is unclear whether the Government would succeed in acquiring those contacts' communications. And fifth, even if the Government were to target respondents' foreign contacts, respondents can only speculate as to whether their own communications with those contacts would be incidentally acquired. Pp. 410–414.

(c) Respondents' alternative argument is also unpersuasive. They claim that they suffer ongoing injuries that are fairly traceable to § 1881a because the risk of § 1881a surveillance requires them to take costly and burdensome measures to protect the confidentiality of their communications. But respondents cannot manufacture standing by choosing to make expenditures based on hypothetical future harm that is not certainly impending. Because they do not face a threat of certainly impending interception under § 1881a, their costs are simply the product of their fear of surveillance, which is insufficient to create standing. See *Laird* v. *Tatum*, 408 U. S. 1, 10–15. Accordingly, any ongoing injuries that respondents are suffering are not fairly traceable to § 1881a. Pp. 415–418.

(d) Respondents' remaining arguments are likewise unavailing. Contrary to their claim, their alleged injuries are not the same kinds of

Syllabus

injuries that supported standing in cases such as *Friends of the Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, *Meese* v. *Keene*, 481 U. S. 465, and *Monsanto*, *supra.* And their suggestion that they should be held to have standing because otherwise the constitutionality of § 1881a will never be adjudicated is both legally and factually incorrect. First, "'[t]he assumption that if respondents have no standing to sue, no one would have standing, is not a reason to find standing.'" *Valley Forge Christian College* v. *Americans United for Separation of Church and State, Inc.*, 454 U. S. 464, 489. Second, the holding in this case by no means insulates § 1881a from judicial review. Pp. 418–422.

638 F. 3d 118, reversed and remanded.

ALITO, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, and THOMAS, JJ., joined. BREYER, J., filed a dissenting opinion, in which GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined, *post*, p. 422.

Solicitor General Verrilli argued the cause for petitioners. With him on the briefs were *Acting Assistant Attorney General Delery*, *Deputy Solicitor General Kneedler*, *Anthony A. Yang*, *Douglas N. Letter*, *Thomas M. Bondy*, *Henry C. Whitaker*, *Robert S. Litt*, *Tricia S. Wellman*, and *Bradley A. Brooker.*

Jameel Jaffer argued the cause for respondents. With him on the brief were *Steven R. Shapiro*, *Alexander A. Abdo*, *Arthur N. Eisenberg*, *Christopher T. Dunn*, and *Charles S. Sims.**

**Richard A. Samp*, *Megan L. Brown*, and *Claire J. Evans* filed a brief for John D. Ashcroft et al. as *amici curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the Canadian Civil Liberties Association et al. by *Carmine D. Boccuzzi* and *Michael R. Lazerwitz*; for the Center for Constitutional Rights et al. by *Shayana Kadidal*; for the Constitutional Accountability Center by *Douglas T. Kendall*, *Elizabeth B. Wydra*, and *Rochelle Bobroff*; for the Electronic Privacy Information Center et al. by *Marc Rotenberg*; for Former Church Committee Members and Staff by *Sidney S. Rosdeitcher*, *Jonathan Hafetz*, and *Barbara Moses*; for the Gun Owners Foundation et al. by *William J. Olson*, *Herbert W. Titus*, *John S. Miles*, *Jeremiah L. Morgan*, and *Gary G. Kreep*; for the National Association of Criminal Defense Lawyers by

JUSTICE ALITO delivered the opinion of the Court.

Section 702 of the Foreign Intelligence Surveillance Act of 1978, 50 U. S. C. § 1881a (2006 ed., Supp. V), allows the Attorney General and the Director of National Intelligence to acquire foreign intelligence information by jointly authorizing the surveillance of individuals who are not "United States persons"[1] and are reasonably believed to be located outside the United States. Before doing so, the Attorney General and the Director of National Intelligence normally must obtain the Foreign Intelligence Surveillance Court's approval. Respondents are United States persons whose work, they allege, requires them to engage in sensitive international communications with individuals who they believe are likely targets of surveillance under § 1881a. Respondents seek a declaration that § 1881a is unconstitutional, as well as an injunction against § 1881a-authorized surveillance. The question before us is whether respondents have Article III standing to seek this prospective relief.

Respondents assert that they can establish injury in fact because there is an objectively reasonable likelihood that their communications will be acquired under § 1881a at some point in the future. But respondents' theory of *future* injury is too speculative to satisfy the well-established requirement that threatened injury must be "certainly impending." *E. g.*, *Whitmore* v. *Arkansas*, 495 U. S. 149, 158 (1990). And even if respondents could demonstrate that the threatened injury is certainly impending, they still would not be able

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John D. Cline and *Joshua L. Dratel*; and for the Reporters Committee for Freedom of the Press by *Bruce D. Brown* and *Gregg P. Leslie*.

Briefs of *amici curiae* were filed for the Committee on Civil Rights of the Association of the Bar of the City of New York by *Peter T. Barbur* and *James G. Felakos*; and for the New York State Bar Association by *Seymour W. James, Jr.*, and *Gregory L. Diskant*.

[1] The term "United States person" includes citizens of the United States, aliens admitted for permanent residence, and certain associations and corporations. 50 U. S. C. § 1801(i); see § 1881(a).

to establish that this injury is fairly traceable to § 1881a. As an alternative argument, respondents contend that they are suffering *present* injury because the risk of § 1881a-authorized surveillance already has forced them to take costly and burdensome measures to protect the confidentiality of their international communications. But respondents cannot manufacture standing by choosing to make expenditures based on hypothetical future harm that is not certainly impending. We therefore hold that respondents lack Article III standing.

I

A

In 1978, after years of debate, Congress enacted the Foreign Intelligence Surveillance Act (FISA) to authorize and regulate certain governmental electronic surveillance of communications for foreign intelligence purposes. See 92 Stat. 1783, 50 U. S. C. § 1801 *et seq.*; 1 D. Kris & J. Wilson, National Security Investigations & Prosecutions §§ 3.1, 3.7 (2d ed. 2012) (hereinafter Kris & Wilson). In enacting FISA, Congress legislated against the backdrop of our decision in *United States* v. *United States Dist. Court for Eastern Dist. of Mich.*, 407 U. S. 297 (1972) (*Keith*), in which we explained that the standards and procedures that law enforcement officials must follow when conducting "surveillance of 'ordinary crime' " might not be required in the context of surveillance conducted for domestic national-security purposes. *Id.*, at 322–323. Although the *Keith* opinion expressly disclaimed any ruling "on the scope of the President's surveillance power with respect to the activities of foreign powers," *id.*, at 308, it implicitly suggested that a special framework for foreign intelligence surveillance might be constitutionally permissible, see *id.*, at 322–323.

In constructing such a framework for foreign intelligence surveillance, Congress created two specialized courts. In FISA, Congress authorized judges of the Foreign Intelli-

gence Surveillance Court (FISC) to approve electronic surveillance for foreign intelligence purposes if there is probable cause to believe that "the target of the electronic surveillance is a foreign power or an agent of a foreign power," and that each of the specific "facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power." § 105(a)(3), 92 Stat. 1790; see §§ 105(b)(1)(A), (b)(1)(B), *ibid.*; 1 Kris & Wilson § 7:2, at 194–195; *id.*, § 16:2, at 528–529. Additionally, Congress vested the Foreign Intelligence Surveillance Court of Review with jurisdiction to review any denials by the FISC of applications for electronic surveillance. § 103(b), 92 Stat. 1788; 1 Kris & Wilson § 5:7, at 151–153.

In the wake of the September 11th attacks, President George W. Bush authorized the National Security Agency (NSA) to conduct warrantless wiretapping of telephone and e-mail communications where one party to the communication was located outside the United States and a participant in "the call was reasonably believed to be a member or agent of al Qaeda or an affiliated terrorist organization," App. to Pet. for Cert. 403a. See *id.*, at 263a–265a, 268a, 273a–279a, 292a–293a; *American Civil Liberties Union* v. *NSA*, 493 F. 3d 644, 648 (CA6 2007) (*ACLU*) (opinion of Batchelder, J.). In January 2007, the FISC issued orders authorizing the Government to target international communications into or out of the United States where there was probable cause to believe that one participant to the communication was a member or agent of al Qaeda or an associated terrorist organization. App. to Pet. for Cert. 312a, 398a, 405a. These FISC orders subjected any electronic surveillance that was then occurring under the NSA's program to the approval of the FISC. *Id.*, at 405a; see *id.*, at 312a, 404a. After a FISC Judge subsequently narrowed the FISC's authorization of such surveillance, however, the Executive asked Congress to amend FISA so that it would provide the intelligence community with additional authority to meet the challenges

of modern technology and international terrorism. *Id.*, at 315a–318a, 331a–333a, 398a; see *id.*, at 262a, 277a–279a, 287a.

When Congress enacted the FISA Amendments Act of 2008 (FISA Amendments Act), 122 Stat. 2436, it left much of FISA intact, but it "established a new and independent source of intelligence collection authority, beyond that granted in traditional FISA." 1 Kris & Wilson § 9:11, at 349–350. As relevant here, § 702 of FISA, 50 U. S. C. § 1881a (2006 ed., Supp. V), which was enacted as part of the FISA Amendments Act, supplements pre-existing FISA authority by creating a new framework under which the Government may seek the FISC's authorization of certain foreign intelligence surveillance targeting the communications of non-U. S. persons located abroad. Unlike traditional FISA surveillance, § 1881a does not require the Government to demonstrate probable cause that the target of the electronic surveillance is a foreign power or agent of a foreign power. Compare §§ 1805(a)(2)(A), (a)(2)(B), with §§ 1881a(d)(1), (i)(3)(A); 638 F. 3d 118, 126 (CA2 2011); 1 Kris & Wilson § 16:16, at 584. And, unlike traditional FISA, § 1881a does not require the Government to specify the nature and location of each of the particular facilities or places at which the electronic surveillance will occur. Compare §§ 1805(a)(2)(B), (c)(1) (2006 ed. and Supp. V) with §§ 1881a(d)(1), (g)(4), (i)(3)(A); 638 F. 3d, at 125–126; 1 Kris & Wilson § 16:16, at 585.[2]

The present case involves a constitutional challenge to § 1881a. Surveillance under § 1881a is subject to statutory conditions, judicial authorization, congressional supervision, and compliance with the Fourth Amendment. Section 1881a provides that, upon the issuance of an order from the FISC, "the Attorney General and the Director of National Intelligence may authorize jointly, for a period of up to 1 year . . . , the targeting of persons reasonably believed to be located

[2] Congress recently reauthorized the FISA Amendments Act for another five years. See 126 Stat. 1631.

outside the United States to acquire foreign intelligence information." § 1881a(a). Surveillance under § 1881a may not be intentionally targeted at any person known to be in the United States or any U. S. person reasonably believed to be located abroad. §§ 1881a(b)(1)–(3); see also § 1801(i). Additionally, acquisitions under § 1881a must comport with the Fourth Amendment. § 1881a(b)(5). Moreover, surveillance under § 1881a is subject to congressional oversight and several types of Executive Branch review. See §§ 1881a(f)(2), (*l*); *Amnesty Int'l USA* v. *McConnell*, 646 F. Supp. 2d 633, 640–641 (SDNY 2009).

Section 1881a mandates that the Government obtain the FISC's approval of "targeting" procedures, "minimization" procedures, and a governmental certification regarding proposed surveillance. §§ 1881a(a), (c)(1), (i)(2), (i)(3). Among other things, the Government's certification must attest that (1) procedures are in place "that have been approved, have been submitted for approval, or will be submitted with the certification for approval by the [FISC] that are reasonably designed" to ensure that an acquisition is "limited to targeting persons reasonably believed to be located outside" the United States; (2) minimization procedures adequately restrict the acquisition, retention, and dissemination of nonpublic information about unconsenting U. S. persons, as appropriate; (3) guidelines have been adopted to ensure compliance with targeting limits and the Fourth Amendment; and (4) the procedures and guidelines referred to above comport with the Fourth Amendment. § 1881a(g)(2); see § 1801(h).

The FISC's role includes determining whether the Government's certification contains the required elements. Additionally, the court assesses whether the targeting procedures are "reasonably designed" (1) to "ensure that an acquisition . . . is limited to targeting persons reasonably believed to be located outside the United States" and (2) to "prevent the intentional acquisition of any communication as

to which the sender and all intended recipients are known . . . to be located in the United States." § 1881a(i)(2)(B). The court analyzes whether the minimization procedures "meet the definition of minimization procedures under section 1801(h) . . . , as appropriate." § 1881a(i)(2)(C). The court also assesses whether the targeting and minimization procedures are consistent with the statute and the Fourth Amendment. See § 1881a(i)(3)(A).[3]

B

Respondents are attorneys and human rights, labor, legal, and media organizations whose work allegedly requires them to engage in sensitive and sometimes privileged telephone and e-mail communications with colleagues, clients, sources, and other individuals located abroad. Respondents believe that some of the people with whom they exchange foreign intelligence information are likely targets of surveillance under § 1881a. Specifically, respondents claim that they communicate by telephone and e-mail with people the Government "believes or believed to be associated with terrorist organizations," "people located in geographic areas that are a special focus" of the Government's counterterrorism or diplomatic efforts, and activists who oppose governments that are supported by the United States Government. App. to Pet. for Cert. 399a.

Respondents claim that § 1881a compromises their ability to locate witnesses, cultivate sources, obtain information, and communicate confidential information to their clients. Respondents also assert that they "have ceased engaging" in certain telephone and e-mail conversations. *Id.*, at 400a.

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[3] The dissent attempts to downplay the safeguards established by § 1881a. See *post*, at 425 (opinion of BREYER, J.). Notably, the dissent does not directly acknowledge that § 1881a surveillance must comport with the Fourth Amendment, see § 1881a(b)(5), and that the FISC must assess whether targeting and minimization procedures are consistent with the Fourth Amendment, see § 1881a(i)(3)(A).

According to respondents, the threat of surveillance will compel them to travel abroad in order to have in-person conversations. In addition, respondents declare that they have undertaken "costly and burdensome measures" to protect the confidentiality of sensitive communications. *Ibid.*

C

On the day when the FISA Amendments Act was enacted, respondents filed this action seeking (1) a declaration that § 1881a, on its face, violates the Fourth Amendment, the First Amendment, Article III, and separation-of-powers principles and (2) a permanent injunction against the use of § 1881a. Respondents assert what they characterize as two separate theories of Article III standing. First, they claim that there is an objectively reasonable likelihood that their communications will be acquired under § 1881a at some point in the future, thus causing them injury. Second, respondents maintain that the risk of surveillance under § 1881a is so substantial that they have been forced to take costly and burdensome measures to protect the confidentiality of their international communications; in their view, the costs they have incurred constitute present injury that is fairly traceable to § 1881a.

After both parties moved for summary judgment, the District Court held that respondents do not have standing. 646 F. Supp. 2d, at 635. On appeal, however, a panel of the Second Circuit reversed. The panel agreed with respondents' argument that they have standing due to the objectively reasonable likelihood that their communications will be intercepted at some time in the future. 638 F. 3d, at 133, 134, 139. In addition, the panel held that respondents have established that they are suffering "*present* injuries in fact—economic and professional harms—stemming from a reasonable fear of *future* harmful government conduct." *Id.*, at 138. The Second Circuit denied rehearing en banc by an equally divided vote. 667 F. 3d 163 (2011).

Because of the importance of the issue and the novel view of standing adopted by the Court of Appeals, we granted certiorari, 566 U. S. 1009 (2012), and we now reverse.

II

Article III of the Constitution limits federal courts' jurisdiction to certain "Cases" and "Controversies." As we have explained, "[n]o principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *DaimlerChrysler Corp.* v. *Cuno*, 547 U. S. 332, 341 (2006) (internal quotation marks omitted); *Raines* v. *Byrd*, 521 U. S. 811, 818 (1997) (internal quotation marks omitted); see, *e. g.*, *Summers* v. *Earth Island Institute*, 555 U. S. 488, 492–493 (2009). "One element of the case-or-controversy requirement" is that plaintiffs "must establish that they have standing to sue." *Raines*, *supra*, at 818; see also *Summers*, *supra*, at 492–493; *DaimlerChrysler Corp.*, *supra*, at 342; *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560 (1992).

The law of Article III standing, which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches. *Summers*, *supra*, at 492–493; *DaimlerChrysler Corp.*, *supra*, at 341–342, 353; *Raines*, *supra*, at 818–820; *Valley Forge Christian College* v. *Americans United for Separation of Church and State, Inc.*, 454 U. S. 464, 471–474 (1982); *Schlesinger* v. *Reservists Comm. to Stop the War*, 418 U. S. 208, 221–222 (1974). In keeping with the purpose of this doctrine, "our standing inquiry has been especially rigorous when reaching the merits of the dispute would force us to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional." *Raines*, *supra*, at 819–820; see *Valley Forge Christian College*, *supra*, at 473–474; *Schlesinger*, *supra*, at 221–222. "Relaxation of standing re-

quirements is directly related to the expansion of judicial power," *United States* v. *Richardson*, 418 U. S. 166, 188 (1974) (Powell, J., concurring); see also *Summers*, *supra*, at 492–493; *Schlesinger*, *supra*, at 222, and we have often found a lack of standing in cases in which the Judiciary has been requested to review actions of the political branches in the fields of intelligence gathering and foreign affairs, see, *e. g.*, *Richardson*, *supra*, at 167–170 (plaintiff lacked standing to challenge the constitutionality of a statute permitting the Central Intelligence Agency to account for its expenditures solely on the certificate of the CIA Director); *Schlesinger*, *supra*, at 209–211 (plaintiffs lacked standing to challenge the Armed Forces Reserve membership of Members of Congress); *Laird* v. *Tatum*, 408 U. S. 1, 11–16 (1972) (plaintiffs lacked standing to challenge an Army intelligence-gathering program).

To establish Article III standing, an injury must be "concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling." *Monsanto Co.* v. *Geertson Seed Farms*, 561 U. S. 139, 149 (2010); see also *Summers*, *supra*, at 493; *Defenders of Wildlife*, 504 U. S., at 560–561. "Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly* impending." *Id.*, at 565, n. 2 (internal quotation marks omitted). Thus, we have repeatedly reiterated that "threatened injury must be *certainly impending* to constitute injury in fact," and that "[a]llegations of *possible* future injury" are not sufficient. *Whitmore*, 495 U. S., at 158 (emphasis added; internal quotation marks omitted); see also *Defenders of Wildlife*, *supra*, at 565, n. 2, 567, n. 3; see *DaimlerChrysler Corp.*, *supra*, at 345; *Friends of the Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 190 (2000); *Babbitt* v. *Farm Workers*, 442 U. S. 289, 298 (1979).

III

A

Respondents assert that they can establish injury in fact that is fairly traceable to § 1881a because there is an objectively reasonable likelihood that their communications with their foreign contacts will be intercepted under § 1881a at some point in the future. This argument fails. As an initial matter, the Second Circuit's "objectively reasonable likelihood" standard is inconsistent with our requirement that "threatened injury must be certainly impending to constitute injury in fact." *Whitmore*, *supra*, at 158 (internal quotation marks omitted); see also *DaimlerChrysler Corp.*, *supra*, at 345; *Laidlaw*, *supra*, at 190; *Defenders of Wildlife*, *supra*, at 565, n. 2; *Babbitt*, *supra*, at 298. Furthermore, respondents' argument rests on their highly speculative fear that: (1) the Government will decide to target the communications of non-U. S. persons with whom they communicate; (2) in doing so, the Government will choose to invoke its authority under § 1881a rather than utilizing another method of surveillance; (3) the Article III judges who serve on the FISC will conclude that the Government's proposed surveillance procedures satisfy § 1881a's many safeguards and are consistent with the Fourth Amendment; (4) the Government will succeed in intercepting the communications of respondents' contacts; and (5) respondents will be parties to the particular communications that the Government intercepts. As discussed below, respondents' theory of standing, which relies on a highly attenuated chain of possibilities, does not satisfy the requirement that threatened injury must be certainly impending. See *Summers*, *supra*, at 496 (rejecting a standing theory premised on a speculative chain of possibilities); *Whitmore*, *supra*, at 157–160 (same). Moreover, even if respondents could demonstrate injury in fact, the second link in the above-described chain of contingencies—which amounts to mere speculation about whether surveillance

would be under § 1881a or some other authority—shows that respondents cannot satisfy the requirement that any injury in fact must be fairly traceable to § 1881a.

First, it is speculative whether the Government will imminently target communications to which respondents are parties. Section 1881a expressly provides that respondents, who are U. S. persons, cannot be targeted for surveillance under § 1881a. See §§ 1881a(b)(1)–(3); 667 F. 3d, at 173 (Raggi, J., dissenting from denial of rehearing en banc). Accordingly, it is no surprise that respondents fail to offer any evidence that their communications have been monitored under § 1881a, a failure that substantially undermines their standing theory. See *ACLU*, 493 F. 3d, at 655–656, 673–674 (opinion of Batchelder, J.) (concluding that plaintiffs who lacked evidence that their communications had been intercepted did not have standing to challenge alleged NSA surveillance). Indeed, respondents do not even allege that the Government has sought the FISC's approval for surveillance of their communications. Accordingly, respondents' theory necessarily rests on their assertion that the Government will target *other individuals*—namely, their foreign contacts.

Yet respondents have no actual knowledge of the Government's § 1881a targeting practices. Instead, respondents merely speculate and make assumptions about whether their communications with their foreign contacts will be acquired under § 1881a. See 667 F. 3d, at 185–187 (opinion of Raggi, J.). For example, journalist Christopher Hedges states: "I have no choice but to *assume* that any of my international communications *may* be subject to government surveillance, and I have to make decisions . . . in light of that *assumption*." App. to Pet. for Cert. 366a (emphasis added and deleted). Similarly, attorney Scott McKay asserts that, "[b]ecause of the [FISA Amendments Act], we now have to *assume* that every one of our international communications *may* be monitored by the government." *Id.*, at 375a (emphasis added); see also *id.*, at 337a, 343a–344a, 350a, 356a. "The party in-

voking federal jurisdiction bears the burden of establishing" standing—and, at the summary judgment stage, such a party "can no longer rest on . . . 'mere allegations,' but must 'set forth' by affidavit or other evidence 'specific facts.'" *Defenders of Wildlife*, 504 U. S., at 561. Respondents, however, have set forth no specific facts demonstrating that the communications of their foreign contacts will be targeted. Moreover, because § 1881a at most *authorizes*—but does not *mandate* or *direct*—the surveillance that respondents fear, respondents' allegations are necessarily conjectural. See *United Presbyterian Church in U. S. A.* v. *Reagan*, 738 F. 2d 1375, 1380 (CADC 1984) (Scalia, J.); 667 F. 3d, at 187 (opinion of Raggi, J.). Simply put, respondents can only speculate as to how the Attorney General and the Director of National Intelligence will exercise their discretion in determining which communications to target.[4]

Second, even if respondents could demonstrate that the targeting of their foreign contacts is imminent, respondents can only speculate as to whether the Government will seek to use § 1881a-authorized surveillance (rather than other methods) to do so. The Government has numerous other

[4] It was suggested at oral argument that the Government could help resolve the standing inquiry by disclosing to a court, perhaps through an *in camera* proceeding, (1) whether it is intercepting respondents' communications and (2) what targeting or minimization procedures it is using. See Tr. of Oral Arg. 13–14, 44, 56. This suggestion is puzzling. As an initial matter, it is *respondents'* burden to prove their standing by pointing to specific facts, *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 561 (1992), not the Government's burden to disprove standing by revealing details of its surveillance priorities. Moreover, this type of hypothetical disclosure proceeding would allow a terrorist (or his attorney) to determine whether he is currently under U. S. surveillance simply by filing a lawsuit challenging the Government's surveillance program. Even if the terrorist's attorney were to comply with a protective order prohibiting him from sharing the Government's disclosures with his client, the court's postdisclosure decision about whether to dismiss the suit for lack of standing would surely signal to the terrorist whether his name was on the list of surveillance targets.

methods of conducting surveillance, none of which is challenged here. Even after the enactment of the FISA Amendments Act, for example, the Government may still conduct electronic surveillance of persons abroad under the older provisions of FISA so long as it satisfies the applicable requirements, including a demonstration of probable cause to believe that the person is a foreign power or agent of a foreign power. See § 1805. The Government may also obtain information from the intelligence services of foreign nations. Brief for Petitioners 33. And, although we do not reach the question, the Government contends that it can conduct FISA-exempt human and technical surveillance programs that are governed by Executive Order 12333. See Exec. Order No. 12333, §§ 1.4, 2.1–2.5, 3 CFR 202, 210–212 (1981), reprinted as amended, note following 50 U. S. C. § 401, pp. 543, 547–548. Even if respondents could demonstrate that their foreign contacts will imminently be targeted—indeed, even if they could show that interception of their own communications will imminently occur—they would still need to show that their injury is fairly traceable to § 1881a. But, because respondents can only speculate as to whether any (asserted) interception would be under § 1881a or some other authority, they cannot satisfy the "fairly traceable" requirement.

Third, even if respondents could show that the Government will seek the FISC's authorization to acquire the communications of respondents' foreign contacts under § 1881a, respondents can only speculate as to whether that court will authorize such surveillance. In the past, we have been reluctant to endorse standing theories that require guesswork as to how independent decisionmakers will exercise their judgment. In *Whitmore*, for example, the plaintiff's theory of standing hinged largely on the probability that he would obtain federal habeas relief and be convicted upon retrial. In holding that the plaintiff lacked standing, we explained that "[i]t is just not possible for a litigant to prove in advance

that the judicial system will lead to any particular result in his case." 495 U. S., at 159–160; see *Defenders of Wildlife*, *supra*, at 562.

We decline to abandon our usual reluctance to endorse standing theories that rest on speculation about the decisions of independent actors. Section 1881a mandates that the Government must obtain the FISC's approval of targeting procedures, minimization procedures, and a governmental certification regarding proposed surveillance. §§ 1881a(a), (c)(1), (i)(2), (i)(3). The court must, for example, determine whether the Government's procedures are "reasonably designed . . . to minimize the acquisition and retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons." § 1801(h); see §§ 1881a(i)(2), (i)(3)(A). And, critically, the court must also assess whether the Government's targeting and minimization procedures comport with the Fourth Amendment. § 1881a(i)(3)(A).

Fourth, even if the Government were to obtain the FISC's approval to target respondents' foreign contacts under § 1881a, it is unclear whether the Government would succeed in acquiring the communications of respondents' foreign contacts. And fifth, even if the Government were to conduct surveillance of respondents' foreign contacts, respondents can only speculate as to whether *their own communications* with their foreign contacts would be incidentally acquired.

In sum, respondents' speculative chain of possibilities does not establish that injury based on potential future surveillance is certainly impending or is fairly traceable to § 1881a.[5]

[5] Our cases do not uniformly require plaintiffs to demonstrate that it is literally certain that the harms they identify will come about. In some instances, we have found standing based on a "substantial risk" that the harm will occur, which may prompt plaintiffs to reasonably incur costs to mitigate or avoid that harm. *Monsanto Co.* v. *Geertson Seed Farms*, 561 U. S. 139, 153 (2010). See also *Pennell* v. *San Jose*, 485 U. S. 1, 8 (1988); *Blum* v. *Yaretsky*, 457 U. S. 991, 1000–1001 (1982); *Babbitt* v. *Farm Workers*, 442 U. S. 289, 298 (1979). But to the extent that the "substantial risk" standard is relevant and is distinct from the "certainly impending"

B

Respondents' alternative argument—namely, that they can establish standing based on the measures that they have undertaken to avoid § 1881a-authorized surveillance—fares no better. Respondents assert that they are suffering ongoing injuries that are fairly traceable to § 1881a because the risk of surveillance under § 1881a requires them to take costly and burdensome measures to protect the confidentiality of their communications. Respondents claim, for instance, that the threat of surveillance sometimes compels them to avoid certain e-mail and phone conversations, to "tal[k] in generalities rather than specifics," or to travel so that they can have in-person conversations. Tr. of Oral Arg. 38; App. to Pet. for Cert. 338a, 345a, 367a, 400a.[6] The Second Circuit panel concluded that, because respondents are already suffering such ongoing injuries, the likelihood of interception under § 1881a is relevant only to the question whether respondents' ongoing injuries are "fairly traceable" to § 1881a. See 638 F. 3d, at 133–134; 667 F. 3d, at 180 (opinion of Raggi, J.). Analyzing the "fairly traceable" element of standing under a relaxed reasonableness standard, see 638 F. 3d, at 133–134, the Second Circuit then held that "plaintiffs

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requirement, respondents fall short of even that standard, in light of the attenuated chain of inferences necessary to find harm here. See *supra*, at 411–414. In addition, plaintiffs bear the burden of pleading and proving concrete facts showing that the defendant's actual action has caused the substantial risk of harm. Plaintiffs cannot rely on speculation about "'the unfettered choices made by independent actors not before the courts.'" *Defenders of Wildlife*, 504 U. S., at 562.

[6] For all the focus on respondents' supposed need to travel abroad in light of potential § 1881a surveillance, respondents cite only one specific instance of travel: an attorney's trip to New York City to meet with other lawyers. See App. to Pet. for Cert. 352a. This domestic travel had but a tenuous connection to § 1881a, because § 1881a-authorized acquisitions "may not intentionally target any person known at the time of acquisition to be located in the United States." § 1881a(b)(1); see also 667 F. 3d 163, 202 (CA2 2011) (Jacobs, C. J., dissenting from denial of rehearing en banc); *id.*, at 185 (opinion of Raggi, J. (same)).

have established that they suffered *present* injuries in fact—economic and professional harms—stemming from a reasonable fear of *future* harmful government conduct," *id.*, at 138.

The Second Circuit's analysis improperly allowed respondents to establish standing by asserting that they suffer present costs and burdens that are based on a fear of surveillance, so long as that fear is not "fanciful, paranoid, or otherwise unreasonable." See *id.*, at 134. This improperly waters down the fundamental requirements of Article III. Respondents' contention that they have standing because they incurred certain costs as a reasonable reaction to a risk of harm is unavailing—because the harm respondents seek to avoid is not certainly impending. In other words, respondents cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending. See *Pennsylvania* v. *New Jersey*, 426 U. S. 660, 664 (1976) (*per curiam*); *National Family Planning & Reproductive Health Assn., Inc.* v. *Gonzales*, 468 F. 3d 826, 831 (CADC 2006). Any ongoing injuries that respondents are suffering are not fairly traceable to § 1881a.

If the law were otherwise, an enterprising plaintiff would be able to secure a lower standard for Article III standing simply by making an expenditure based on a nonparanoid fear. As Judge Raggi accurately noted, under the Second Circuit panel's reasoning, respondents could, "for the price of a plane ticket, . . . transform their standing burden from one requiring a showing of actual or imminent . . . interception to one requiring a showing that their subjective fear of such interception is not fanciful, irrational, or clearly unreasonable." 667 F. 3d, at 180 (internal quotation marks omitted). Thus, allowing respondents to bring this action based on costs they incurred in response to a speculative threat would be tantamount to accepting a repackaged version of respondents' first failed theory of standing. See *ACLU*, 493 F. 3d, at 656–657 (opinion of Batchelder, J.).

Another reason that respondents' present injuries are not fairly traceable to § 1881a is that even before § 1881a was enacted, they had a similar incentive to engage in many of the countermeasures that they are now taking. See *id.*, at 668–670. For instance, respondent Scott McKay's declaration describes—and the dissent heavily relies on—McKay's "knowledge" that thousands of communications involving one of his clients were monitored in the past. App. to Pet. for Cert. 370a; *post*, at 425–426, 429. But this surveillance was conducted pursuant to FISA authority that predated § 1881a. See Brief for Petitioners 32, n. 11; *Al-Kidd* v. *Gonzales*, No. 05–cv–93, 2008 WL 5123009 (D Idaho, Dec. 4, 2008). Thus, because the Government was allegedly conducting surveillance of McKay's client before Congress enacted § 1881a, it is difficult to see how the safeguards that McKay now claims to have implemented can be traced to § 1881a.

Because respondents do not face a threat of certainly impending interception under § 1881a, the costs that they have incurred to avoid surveillance are simply the product of their fear of surveillance,[7] and our decision in *Laird* makes it clear that such a fear is insufficient to create standing. See 408 U. S., at 10–15. The plaintiffs in *Laird* argued that their exercise of First Amendment rights was being "chilled by the mere existence, without more, of [the Army's] investigative and data-gathering activity." *Id.*, at 10. While acknowledging that prior cases had held that constitutional violations may arise from the chilling effect of "regulations that fall short of a direct prohibition against the exercise of

[7] Although respondents' alternative theory of standing rests primarily on choices that *they* have made based on their subjective fear of surveillance, respondents also assert that third parties might be disinclined to speak with them due to a fear of surveillance. See App. to Pet. for Cert. 372a–373a, 352a–353a. To the extent that such assertions are based on anything other than conjecture, see *Defenders of Wildlife*, 504 U. S., at 560, they do not establish injury that is fairly traceable to § 1881a, because they are based on third parties' subjective fear of surveillance, see *Laird* v. *Tatum*, 408 U. S. 1, 10–14 (1972).

First Amendment rights," the Court declared that none of those cases involved a "chilling effect aris[ing] merely from the individual's knowledge that a governmental agency was engaged in certain activities or from the individual's concomitant fear that, armed with the fruits of those activities, the agency might in the future take some *other* and additional action detrimental to that individual." *Id.*, at 11. Because "[a]llegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm," *id.*, at 13–14, the plaintiffs in *Laird*—and respondents here—lack standing. See *ibid.*; *ACLU*, *supra*, at 661–662 (opinion of Batchelder, J.) (holding that plaintiffs lacked standing because they "allege[d] only a subjective apprehension" of alleged NSA surveillance and "a personal (self-imposed) unwillingness to communicate"); *United Presbyterian Church*, 738 F. 2d, at 1378 (holding that plaintiffs lacked standing to challenge the legality of an Executive Order relating to surveillance because "the 'chilling effect' which is produced by their fear of being subjected to illegal surveillance and which deters them from conducting constitutionally protected activities, is foreclosed as a basis for standing" by *Laird*).

For the reasons discussed above, respondents' self-inflicted injuries are not fairly traceable to the Government's purported activities under § 1881a, and their subjective fear of surveillance does not give rise to standing.

IV

A

Respondents incorrectly maintain that "[t]he kinds of injuries incurred here—injuries incurred because of [respondents'] reasonable efforts to avoid greater injuries that are otherwise likely to flow from the conduct they challenge—are the same kinds of injuries that this Court held to support standing in cases such as" *Laidlaw*, *Meese* v. *Keene*, 481 U. S.

465 (1987), and *Monsanto*. Brief for Respondents 24. As an initial matter, none of these cases holds or even suggests that plaintiffs can establish standing simply by claiming that they experienced a "chilling effect" that resulted from a governmental policy that does not regulate, constrain, or compel any action on their part. Moreover, each of these cases was very different from the present case.

In *Laidlaw*, plaintiffs' standing was based on "the proposition that a company's continuous and pervasive illegal discharges of pollutants into a river would cause nearby residents to curtail their recreational use of that waterway and would subject them to other economic and aesthetic harms." 528 U. S., at 184. Because the unlawful discharges of pollutants were "concededly ongoing," the only issue was whether "nearby residents"—who were members of the organizational plaintiffs—acted reasonably in refraining from using the polluted area. *Id.*, at 183–184. *Laidlaw* is therefore quite unlike the present case, in which it is not "concede[d]" that respondents would be subject to unlawful surveillance but for their decision to take preventive measures. See *ACLU*, 493 F. 3d, at 686 (opinion of Batchelder, J.) (distinguishing *Laidlaw* on this ground); *id.*, at 689–690 (Gibbons, J., concurring) (same); 667 F. 3d, at 182–183 (opinion of Raggi, J.) (same). *Laidlaw* would resemble this case only if (1) it were undisputed that the Government was using § 1881a-authorized surveillance to acquire respondents' communications and (2) the sole dispute concerned the reasonableness of respondents' preventive measures.

In *Keene*, the plaintiff challenged the constitutionality of the Government's decision to label three films as "political propaganda." 481 U. S., at 467. The Court held that the plaintiff, who was an attorney and a state legislator, had standing because he demonstrated, through "detailed affidavits," that he "could not exhibit the films without incurring a risk of injury to his reputation and of an impairment of his

political career." *Id.*, at 467, 473–475. Unlike the present case, *Keene* involved "more than a 'subjective chill'" based on speculation about potential governmental action; the plaintiff in that case was unquestionably regulated by the relevant statute, and the films that he wished to exhibit had already been labeled as "political propaganda." See *ibid.*; *ACLU*, 493 F. 3d, at 663–664 (opinion of Batchelder, J.); *id.*, at 691 (Gibbons, J., concurring).

Monsanto, on which respondents also rely, is likewise inapposite. In *Monsanto*, conventional alfalfa farmers had standing to seek injunctive relief because the agency's decision to deregulate a variety of genetically engineered alfalfa gave rise to a "significant risk of gene flow to non-genetically-engineered varieties of alfalfa." 561 U. S., at 155. The standing analysis in that case hinged on evidence that genetically engineered alfalfa "'seed fields [we]re currently being planted in all the major alfalfa seed production areas'"; the bees that pollinate alfalfa "'have a range of at least two to ten miles'"; and the alfalfa seed farms were concentrated in an area well within the bees' pollination range. *Id.*, at 154, and n. 3. Unlike the conventional alfalfa farmers in *Monsanto*, however, respondents in the present case present no concrete evidence to substantiate their fears, but instead rest on mere conjecture about possible governmental actions.

B

Respondents also suggest that they should be held to have standing because otherwise the constitutionality of § 1881a could not be challenged. It would be wrong, they maintain, to "insulate the government's surveillance activities from meaningful judicial review." Brief for Respondents 60. Respondents' suggestion is both legally and factually incorrect. First, "'[t]he assumption that if respondents have no standing to sue, no one would have standing, is not a reason to find standing.'" *Valley Forge Christian College*, 454 U. S., at 489; *Schlesinger*, 418 U. S., at 227; see also *Richard-*

son, 418 U. S., at 179; *Raines*, 521 U. S., at 835 (Souter, J., joined by GINSBURG, J., concurring in judgment).

Second, our holding today by no means insulates § 1881a from judicial review. As described above, Congress created a comprehensive scheme in which the FISC evaluates the Government's certifications, targeting procedures, and minimization procedures—including assessing whether the targeting and minimization procedures comport with the Fourth Amendment. §§ 1881a(a), (c)(1), (i)(2), (i)(3). Any dissatisfaction that respondents may have about the FISC's rulings—or the congressional delineation of that court's role—is irrelevant to our standing analysis.

Additionally, if the Government intends to use or disclose information obtained or derived from a § 1881a acquisition in judicial or administrative proceedings, it must provide advance notice of its intent, and the affected person may challenge the lawfulness of the acquisition. §§ 1806(c), (e), 1881e(a) (2006 ed. and Supp. V).[8] Thus, if the Government were to prosecute one of respondent-attorney's foreign clients using § 1881a-authorized surveillance, the Government would be required to make a disclosure. Although the foreign client might not have a viable Fourth Amendment claim, see, *e. g.*, *United States* v. *Verdugo-Urquidez*, 494 U. S. 259, 261 (1990), it is possible that the monitoring of the target's conversations with his or her attorney would provide grounds for a claim of standing on the part of the attorney. Such an attorney would certainly have a stronger evidentiary basis for establishing standing than do respondents in the present case. In such a situation, unlike in the pres-

[8] The possibility of judicial review in this context is not farfetched. In *United States* v. *Damrah*, 412 F. 3d 618 (CA6 2005), for example, the Government made a pretrial disclosure that it intended to use FISA evidence in a prosecution; the defendant (unsuccessfully) moved to suppress the FISA evidence, even though he had not been the *target* of the surveillance; and the Sixth Circuit ultimately held that FISA's procedures are consistent with the Fourth Amendment. See *id.*, at 622, 623, 625.

ent case, it would at least be clear that the Government had acquired the foreign client's communications using § 1881a-authorized surveillance.

Finally, any electronic communications service provider that the Government directs to assist in § 1881a surveillance may challenge the lawfulness of that directive before the FISC. §§ 1881a(h)(4), (h)(6). Indeed, at the behest of a service provider, the Foreign Intelligence Surveillance Court of Review previously analyzed the constitutionality of electronic surveillance directives issued pursuant to a now-expired set of FISA amendments. See *In re Directives Pursuant to Section 105B of Foreign Intelligence Surveillance Act*, 551 F. 3d 1004, 1006–1016 (2008) (holding that the provider had standing and that the directives were constitutional).

* * *

We hold that respondents lack Article III standing because they cannot demonstrate that the future injury they purportedly fear is certainly impending and because they cannot manufacture standing by incurring costs in anticipation of nonimminent harm. We therefore reverse the judgment of the Second Circuit and remand the case for further proceedings consistent with this opinion.

It is so ordered.

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

The plaintiffs' standing depends upon the likelihood that the Government, acting under the authority of 50 U. S. C. § 1881a (2006 ed., Supp. V), will harm them by intercepting at least some of their private, foreign, telephone, or e-mail conversations. In my view, this harm is not "speculative." Indeed it is as likely to take place as are most future events that commonsense inference and ordinary knowledge of human nature tell us will happen. This Court has often found the occurrence of similar future events sufficiently cer-

tain to support standing. I dissent from the Court's contrary conclusion.

I

Article III specifies that the "judicial Power" of the United States extends only to actual "Cases" and "Controversies." § 2. It thereby helps to ensure that the legal questions presented to the federal courts will not take the form of abstract intellectual problems resolved in the "rarified atmosphere of a debating society" but instead those questions will be presented "in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action." *Valley Forge Christian College* v. *Americans United for Separation of Church and State, Inc.*, 454 U. S. 464, 472 (1982) (purpose of Article III); *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560 (1992) (similar); *Babbitt* v. *Farm Workers*, 442 U. S. 289, 297 (1979) (similar).

The Court has recognized that the precise boundaries of the "case or controversy" requirement are matters of "degree . . . not discernible by any precise test." *Ibid.* At the same time, the Court has developed a subsidiary set of legal rules that help to determine when the Constitution's requirement is met. See *Lujan*, 504 U. S., at 560–561; *id.*, at 583 (Stevens, J., concurring in judgment). Thus, a plaintiff must have "standing" to bring a legal claim. And a plaintiff has that standing, the Court has said, only if the action or omission that the plaintiff challenges has caused, or will cause, the plaintiff to suffer an injury that is "concrete and particularized," "actual or imminent," and "redress[able] by a favorable decision." *Id.*, at 560–561 (internal quotation marks omitted).

No one here denies that the Government's interception of a private telephone or e-mail conversation amounts to an injury that is "concrete and particularized." Moreover, the plaintiffs, respondents here, seek as relief a judgment declaring unconstitutional (and enjoining enforcement of) a statutory provision authorizing those interceptions; and, such a

judgment would redress the injury by preventing it. Thus, the basic question is whether the injury, *i. e.*, the interception, is "actual or imminent."

II

A

Since the plaintiffs fear interceptions of a kind authorized by § 1881a, it is important to understand just what kind of surveillance that section authorizes. Congress enacted § 1881a in 2008, as an amendment to the pre-existing Foreign Intelligence Surveillance Act of 1978, 50 U. S. C. § 1801 *et seq.* Before the amendment, the Act authorized the Government (acting within the United States) to monitor private electronic communications between the United States and a foreign country if (1) the Government's purpose was, in significant part, to obtain foreign intelligence information (which includes information concerning a "foreign power" or "territory" related to our "national defense" or "security" or the "conduct of . . . foreign affairs"), (2) the Government's surveillance target was "a foreign power or an agent of a foreign power," and (3) the Government used surveillance procedures designed to "minimize the acquisition and retention, and prohibit the dissemination, of" any private information acquired about Americans. §§ 1801(e), (h), 1804(a).

In addition, the Government had to obtain the approval of the Foreign Intelligence Surveillance Court. To do so, it had to submit an application describing (1) each "specific target," (2) the "nature of the information sought," and (3) the "type of communications or activities to be subjected to the surveillance." § 1804(a). It had to certify that, in significant part, it sought to obtain foreign intelligence information. *Ibid.* It had to demonstrate probable cause to believe that each specific target was "a foreign power or an agent of a foreign power." §§ 1804(a), 1805(a). It also had to describe instance-specific procedures to be used to minimize intrusions upon Americans' privacy (compliance

with which the court subsequently could assess). §§ 1804(a), 1805(d)(3).

The addition of § 1881a in 2008 changed this prior law in three important ways. First, it eliminated the requirement that the Government describe to the court each specific target and identify each facility at which its surveillance would be directed, thus permitting surveillance on a programmatic, not necessarily individualized, basis. § 1881a(g). Second, it eliminated the requirement that a target be a "foreign power or an agent of a foreign power." *Ibid.* Third, it diminished the court's authority to insist upon, and eliminated its authority to supervise, instance-specific privacy-intrusion minimization procedures (though the Government still must use court-approved general minimization procedures). § 1881a(e). Thus, using the authority of § 1881a, the Government can obtain court approval for its surveillance of electronic communications between places within the United States and targets in foreign territories by showing the court (1) that "a significant purpose of the acquisition is to obtain foreign intelligence information," and (2) that it will use general targeting and privacy-intrusion minimization procedures of a kind that the court had previously approved. § 1881a(g).

B

It is similarly important to understand the kinds of communications in which the plaintiffs say they engage and which they believe the Government will intercept. Plaintiff Scott McKay, for example, says in an affidavit (1) that he is a lawyer; (2) that he represented "Mr. Sami Omar Al-Hussayen, who was acquitted in June 2004 on terrorism charges"; (3) that he continues to represent "Mr. Al-Hussayen, who, in addition to facing criminal charges after September 11, was named as a defendant in several civil cases"; (4) that he represents Khalid Sheik Mohammed, a detainee, "before the Military Commissions at Guantánamo Bay, Cuba"; (5) that in representing these clients he "commu-

nicate[s] by telephone and email with people outside the United States, including Mr. Al-Hussayen himself," "experts, investigators, attorneys, family members . . . and others who are located abroad"; and (6) that prior to 2008 "the U. S. government had intercepted some 10,000 telephone calls and 20,000 email communications involving [his client] Al-Hussayen." App. to Pet. for Cert. 369a–371a.

Another plaintiff, Sylvia Royce, says in her affidavit (1) that she is an attorney; (2) that she "represent[s] Mohammedou Ould Salahi, a prisoner who has been held at Guantánamo Bay as an enemy combatant"; (3) that, "[i]n connection with [her] representation of Mr. Salahi, [she] receive[s] calls from time to time from Mr. Salahi's brother, . . . a university student in Germany"; and (4) that she has been told that the Government has threatened Salahi "that his family members would be arrested and mistreated if he did not cooperate." *Id.*, at 349a–351a.

The plaintiffs have noted that McKay no longer represents Mohammed and Royce no longer represents Ould Salahi. Brief for Respondents 15, n. 11. But these changes are irrelevant, for we assess standing as of the time a suit is filed, see *Davis* v. *Federal Election Comm'n*, 554 U. S. 724, 734 (2008), and in any event McKay himself continues to represent Al Hussayen, his partner now represents Mohammed, and Royce continues to represent individuals held in the custody of the U. S. military overseas.

A third plaintiff, Joanne Mariner, says in her affidavit (1) that she is a human rights researcher; (2) that "some of the work [she] do[es] involves trying to track down people who were rendered by the CIA to countries in which they were tortured"; (3) that many of those people "the CIA has said are (or were) associated with terrorist organizations"; and (4) that, to do this research, she "communicate[s] by telephone and e-mail with . . . former detainees, lawyers for detainees, relatives of detainees, political activists, journalists, and fixers" "all over the world, including in Jordan, Egypt, Paki-

stan, Afghanistan, [and] the Gaza Strip." App. to Pet. for Cert. 343a–344a.

Other plaintiffs, including lawyers, journalists, and human rights researchers, say in affidavits (1) that they have jobs that require them to gather information from foreigners located abroad; (2) that they regularly communicate electronically (*e. g.*, by telephone or e-mail) with foreigners located abroad; and (3) that in these communications they exchange "foreign intelligence information" as the Act defines it. *Id.*, at 334a–375a.

III

Several considerations, based upon the record along with commonsense inferences, convince me that there is a very high likelihood that the Government, *acting under the authority of § 1881a*, will intercept at least some of the communications just described. First, the plaintiffs have engaged, and continue to engage, in electronic communications of a kind that the 2008 amendment, but not the prior Act, authorizes the Government to intercept. These communications include discussions with family members of those detained at Guantanamo, friends and acquaintances of those persons, and investigators, experts, and others with knowledge of circumstances related to terrorist activities. These persons are foreigners located outside the United States. They are not "foreign power[s]" or "agent[s] of . . . foreign power[s]." And the plaintiffs state that they exchange with these persons "foreign intelligence information," defined to include information that "relates to" "international terrorism" and "the national defense or the security of the United States." See 50 U. S. C. § 1801 (2006 ed. and Supp. V); see, *e. g.*, App. to Pet. for Cert. 342a, 366a, 373a–374a.

Second, the plaintiffs have a strong *motive* to engage in, and the Government has a strong *motive* to listen to, conversations of the kind described. A lawyer representing a client normally seeks to learn the circumstances surrounding the crime (or the civil wrong) of which the client is accused.

A fair reading of the affidavit of Scott McKay, for example, taken together with elementary considerations of a lawyer's obligation to his client, indicates that McKay will engage in conversations that concern what suspected foreign terrorists, such as his client, have done; in conversations that concern his clients' families, colleagues, and contacts; in conversations that concern what those persons (or those connected to them) have said and done, at least in relation to terrorist activities; in conversations that concern the political, social, and commercial environments in which the suspected terrorists have lived and worked; and so forth. See, *e. g.*, *id.*, at 373a–374a. Journalists and human rights workers have strong similar motives to conduct conversations of this kind. See, *e. g.*, *id.*, at 342a (declaration of Joanne Mariner, stating that "some of the information [she] exchange[s] by telephone and e-mail relates to terrorism and counterterrorism, and much of the information relates to the foreign affairs of the United States").

At the same time, the Government has a strong motive to conduct surveillance of conversations that contain material of this kind. The Government, after all, seeks to learn as much as it can reasonably learn about suspected terrorists (such as those detained at Guantanamo), as well as about their contacts and activities, along with those of friends and family members. See Executive Office of the President, Office of Management and Budget, Statement of Administration Policy on S. 2248, p. 4 (Dec. 17, 2007) ("Part of the value of the [new authority] is to enable the Intelligence Community to collect expeditiously the communications of terrorists in foreign countries who may contact an associate in the United States"). And the Government is motivated to do so, not simply by the desire to help convict those whom the Government believes guilty, but also by the critical, overriding need to protect America from terrorism. See *id.*, at 1 ("Protection of the American people and American interests at home and abroad requires access to timely, accurate, and

insightful intelligence on the capabilities, intentions, and activities of . . . terrorists").

Third, the Government's *past behavior* shows that it has sought, and hence will in all likelihood continue to seek, information about alleged terrorists and detainees through means that include surveillance of electronic communications. As just pointed out, plaintiff Scott McKay states that the Government (under the authority of the pre-2008 law) "intercepted some 10,000 telephone calls and 20,000 email communications involving [his client] Mr. Al-Hussayen." App. to Pet. for Cert. 370a.

Fourth, the Government has the *capacity* to conduct electronic surveillance of the kind at issue. To some degree this capacity rests upon technology available to the Government. See 1 D. Kris & J. Wilson, National Security Investigations & Prosecutions § 16:6, p. 562 (2d ed. 2012) ("NSA's technological abilities are legendary"); *id.*, § 16:12, at 572–577 (describing the National Security Agency's capacity to monitor "*very* broad facilities" such as international switches). See, *e. g.*, Lichtblau & Risen, Spy Agency Mined Vast Data Trove, Officials Report, N. Y. Times, Dec. 24, 2005, p. A1 (describing capacity to trace and to analyze large volumes of communications into and out of the United States); Lichtblau & Shane, Bush Is Pressed Over New Report on Surveillance, N. Y. Times, May 12, 2006, p. A1 (reporting capacity to obtain access to records of many, if not most, telephone calls made in the United States); Priest & Arkin, A Hidden World, Growing Beyond Control, Washington Post, July 19, 2010, p. A1 (reporting that every day, collection systems at the National Security Agency intercept and store 1.7 billion e-mails, telephone calls, and other types of communications). Cf. Statement of Administration Policy on S. 2248, *supra*, at 3 (rejecting a provision of the Senate bill that would require intelligence analysts to count "the number of persons located in the United States whose communications were reviewed" as "impossible to implement" (internal quotation marks

omitted)). This capacity also includes the Government's authority to obtain the kind of information here at issue from private carriers such as AT&T and Verizon. See 50 U. S. C. § 1881a(h). We are further told by *amici* that the Government is expanding that capacity. See Brief for Electronic Privacy Information Center et al. 22–23 (National Security Agency will be able to conduct surveillance of most electronic communications between domestic and foreign points).

Of course, to exercise this capacity the Government must have intelligence court authorization. But the Government rarely files requests that fail to meet the statutory criteria. See Letter from Ronald Weich, Assistant Attorney General, to Joseph R. Biden, Jr., 1 (Apr. 30, 2012) (In 2011, of the 1,676 applications to the intelligence court, 2 were withdrawn by the Government, and the remaining 1,674 were approved, 30 with some modification), online at http://www.justice.gov/nsd/foia/foia_library/2011fisa-ltr.pdf. (as visited Feb. 22, 2013, and available in Clerk of Court's case file). As the intelligence court itself has stated, its review under § 1881a is "'narrowly circumscribed.'" In re Proceedings Required by § 702(i) of the FISA Amendments Act of 2008, No. Misc. 08–01 (Aug. 27, 2008), p. 3. There is no reason to believe that the communications described would all fail to meet the conditions necessary for approval. Moreover, compared with prior law, § 1881a simplifies and thus expedites the approval process, making it more likely that the Government will use § 1881a to obtain the necessary approval.

The upshot is that (1) similarity of content, (2) strong motives, (3) prior behavior, and (4) capacity all point to a very strong likelihood that the Government will intercept at least some of the plaintiffs' communications, including some that the 2008 amendment, § 1881a, but not the pre-2008 Act, authorizes the Government to intercept.

At the same time, nothing suggests the presence of some special factor here that might support a contrary conclusion.

The Government does not deny that it has both the motive and the capacity to listen to communications of the kind described by the plaintiffs. Nor does it describe any system for avoiding the interception of an electronic communication that happens to include a party who is an American lawyer, journalist, or human rights worker. One can, of course, always imagine some special circumstance that negates a virtual likelihood, no matter how strong. But the same is true about most, if not all, ordinary inferences about future events. Perhaps, despite pouring rain, the streets will remain dry (due to the presence of a special chemical). But ordinarily a party that seeks to defeat a strong natural inference must bear the burden of showing that some such special circumstance exists. And no one has suggested any such special circumstance here.

Consequently, we need only assume that the Government is doing its job (to find out about, and combat, terrorism) in order to conclude that there is a high probability that the Government will intercept at least some electronic communication to which at least some of the plaintiffs are parties. The majority is wrong when it describes the harm threatened the plaintiffs as "speculative."

IV

A

The majority more plausibly says that the plaintiffs have failed to show that the threatened harm is "*certainly impending*." *Ante*, at 409 (internal quotation marks omitted). But, as the majority appears to concede, see *ante*, at 414, and n. 5, *certainty* is not, and never has been, the touchstone of standing. The future is inherently uncertain. Yet federal courts frequently entertain actions for injunctions and for declaratory relief aimed at preventing future activities that are reasonably likely or highly likely, but not absolutely certain, to take place. And that degree of certainty is all that is needed to support standing here.

The Court's use of the term "certainly impending" is not to the contrary. Sometimes the Court has used the phrase "certainly impending" as if the phrase described a *sufficient*, rather than a *necessary*, condition for jurisdiction. See *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 593 (1923) ("If the injury is certainly impending that is enough"). See also *Babbitt*, 442 U. S., at 298 (same). On other occasions, it has used the phrase as if it concerned *when*, not *whether*, an alleged injury would occur. Thus, in *Lujan*, 504 U. S., at 564, n. 2, the Court considered a threatened future injury that consisted of harm that the plaintiffs would suffer when they "soon" visited a government project area that (they claimed) would suffer environmental damage. The Court wrote that a "mere profession of an intent, some day, to return" to the project area did not show the harm was "*imminent*," for "soon" might mean nothing more than "in this lifetime." *Id.*, at 564–565, n. 2 (internal quotation marks omitted). Similarly, in *McConnell* v. *Federal Election Comm'n*, 540 U. S. 93 (2003), the Court denied standing because the Senator's future injury (stemming from a campaign finance law) would not affect him until his reelection. That fact, the Court said, made the injury "too remote temporally to satisfy Article III standing." *Id.*, at 225–226.

On still other occasions, recognizing that "'imminence' is concededly a somewhat elastic concept," *Lujan*, *supra*, at 565, n. 2, the Court has referred to, or used (sometimes along with "certainly impending"), other phrases such as "reasonable probability" that suggest less than absolute, or literal, certainty. See *Babbitt*, *supra*, at 298 (plaintiff "must demonstrate a *realistic danger* of sustaining a direct injury" (emphasis added)); *Friends of the Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. 167, 190 (2000) ("[I]t is the plaintiff's burden to establish standing by demonstrating that . . . the defendant's allegedly wrongful behavior will likely occur or continue"). See also *Monsanto Co.* v. *Geertson Seed Farms*, 561 U. S. 139, 153 (2010) ("'"reason-

able probability"'" and "substantial risk"); *Davis*, 554 U. S., at 734 ("realistic and impending threat of direct injury"); *MedImmune, Inc.* v. *Genentech, Inc.*, 549 U. S. 118, 129 (2007) ("genuine threat of enforcement"); *Department of Commerce* v. *United States House of Representatives*, 525 U. S. 316, 333 (1999) ("substantially likely" (internal quotation marks omitted)); *Clinton* v. *City of New York*, 524 U. S. 417, 432 (1998) ("sufficient likelihood of economic injury"); *Pennell* v. *San Jose*, 485 U. S. 1, 8 (1988) ("realistic danger" (internal quotation marks omitted)); *Blum* v. *Yaretsky*, 457 U. S. 991, 1001 (1982) ("quite realistic" threat); *Bryant* v. *Yellen*, 447 U. S. 352, 367–368 (1980) ("likely"); *Buckley* v. *Valeo*, 424 U. S. 1, 74 (1976) (*per curiam*) ("reasonable probability"). Taken together the case law uses the word "certainly" as if it emphasizes, rather than literally defines, the immediately following term "impending."

B

1

More important, the Court's holdings in standing cases show that standing exists here. The Court has often *found* standing where the occurrence of the relevant injury was far *less* certain than here. Consider a few, fairly typical, cases. Consider *Pennell*, *supra*. A city ordinance forbade landlords to raise the rent charged to a tenant by more than 8 percent where doing so would work an unreasonably severe hardship on that tenant. *Id.*, at 4–5. A group of landlords sought a judgment declaring the ordinance unconstitutional. The Court held that, to have standing, the landlords had to demonstrate a "'*realistic danger of sustaining a direct injury* as a result of the statute's operation.'" *Id.*, at 8 (emphasis added). It found that the landlords had done so by showing a likelihood of enforcement and a "probability," *ibid.*, that the ordinance would make the landlords charge lower rents—even though the landlords had not shown (1) that they intended to raise the relevant rents to the point of

causing unreasonably severe hardship; (2) that the tenants would challenge those increases; or (3) that the city's hearing examiners and arbitrators would find against the landlords. Here, even more so than in *Pennell*, there is a "*realistic danger*" that the relevant harm will occur.

Or, consider *Blum*, *supra.* A group of nursing home residents receiving Medicaid benefits challenged the constitutionality (on procedural grounds) of a regulation that permitted their nursing home to transfer them to a less desirable home. *Id.*, at 999–1000. Although a Medicaid committee had recommended transfers, Medicaid-initiated transfer had been enjoined and the nursing home itself had not threatened to transfer the plaintiffs. But the Court found "standing" because "the threat of transfers" was "not 'imaginary or speculative'" but "quite realistic," hence "sufficiently substantial." *Id.*, at 1000–1001 (quoting *Younger* v. *Harris*, 401 U. S. 37, 42 (1971)). The plaintiffs' injury here is not imaginary or speculative, but "quite realistic."

Or, consider *Davis*, *supra.* The plaintiff, a candidate for the United States House of Representatives, self-financed his campaigns. He challenged the constitutionality of an election law that relaxed the limits on an opponent's contributions when a self-financed candidate's spending itself exceeded certain other limits. His opponent, in fact, had decided not to take advantage of the increased contribution limits that the statute would have allowed. *Id.*, at 734. But the Court nonetheless found standing because there was a "realistic and impending threat," not a certainty, that the candidate's opponent would do so at the time the plaintiff filed the complaint. *Id.*, at 734–735. The threat facing the plaintiffs here is as "realistic and impending."

Or, consider *MedImmune*, *supra.* The plaintiff, a patent licensee, sought a declaratory judgment that the patent was invalid. But, the plaintiff did not face an imminent threat of suit because it continued making royalty payments to the patent holder. In explaining why the plaintiff had standing,

we (1) assumed that if the plaintiff stopped making royalty payments it would have standing (despite the fact that the patent holder might not bring suit), (2) rejected the Federal Circuit's "reasonable apprehension of *imminent* suit" requirement, and (3) instead suggested that a "genuine threat of enforcement" was likely sufficient. *Id.*, at 128, 129, 132, n. 11 (internal quotation marks omitted). A "genuine threat" is present here.

Moreover, courts have often found *probabilistic* injuries sufficient to support standing. In *Duke Power Co.* v. *Carolina Environmental Study Group, Inc.*, 438 U. S. 59 (1978), for example, the plaintiffs, a group of individuals living near a proposed nuclear powerplant, challenged the constitutionality of the Price-Anderson Act, a statute that limited the plant's liability in the case of a nuclear accident. The plaintiffs said that, without the Act, the defendants would not build a nuclear plant. And the building of the plant would harm them, in part, by emitting "non-natural radiation into [their] environment." *Id.*, at 74. The Court found standing in part due to "our generalized concern about exposure to radiation and the apprehension flowing from the *uncertainty* about the health and genetic consequences of even small emissions." *Ibid.* (emphasis added). See also *Monsanto Co.*, 561 U. S., at 153–154 ("A *substantial risk* of gene flow injures respondents in several ways" (emphasis added)).

See also lower court cases, such as *Mountain States Legal Foundation* v. *Glickman*, 92 F. 3d 1228, 1234–1235 (CADC 1996) (plaintiffs attack Government decision to limit timber harvesting; standing based upon increased *risk* of wildfires); *Natural Resources Defense Council* v. *EPA*, 464 F. 3d 1, 7 (CADC 2006) (plaintiffs attack Government decision deregulating methyl bromide; standing based upon increased lifetime *risk* of developing skin cancer); *Constellation Energy Commodities Group, Inc.* v. *FERC*, 457 F. 3d 14, 20 (CADC 2006) (standing based on increased *risk* of nonrecovery inherent in the reduction of collateral securing a debt of uncer-

tain amount); *Sutton* v. *St. Jude Medical S. C., Inc.*, 419 F. 3d 568, 570–575 (CA6 2005) (standing based on increased *risk* of harm caused by implantation of defective medical device); *Johnson* v. *Allsteel, Inc.*, 259 F. 3d 885, 888–891 (CA7 2001) (standing based on increased *risk* that Employee Retirement Income Security Act of 1974 beneficiary will not be covered due to increased amount of discretion given to ERISA administrator).

How could the law be otherwise? Suppose that a federal court faced a claim by homeowners that (allegedly) unlawful dam-building practices created a high risk that their homes would be flooded. Would the court deny them standing on the ground that the risk of flood was only 60, rather than 90, percent?

Would federal courts deny standing to a plaintiff in a diversity action who claims an anticipatory breach of contract where the future breach depends on probabilities? The defendant, say, has threatened to load wheat onto a ship bound for India despite a promise to send the wheat to the United States. No one can know for certain that this will happen. Perhaps the defendant will change his mind; perhaps the ship will turn and head for the United States. Yet, despite the uncertainty, the Constitution does not prohibit a federal court from hearing such a claim. See 23 R. Lord, Williston on Contracts § 63:35 (4th ed. 2002) (plaintiff may bring an anticipatory breach suit even though the defendant's promise is one to perform in the future, it has not yet been broken, and defendant may still retract the repudiation). *E. g.*, *Wisconsin Power & Light Co.* v. *Century Indemnity Co.*, 130 F. 3d 787, 792–793 (CA7 1997) (plaintiff could sue insurer that disclaimed liability for all costs that would be incurred in the future *if* environmental agencies required cleanup); *Combs* v. *International Ins. Co.*, 354 F. 3d 568, 598–601 (CA6 2004) (similar).

Would federal courts deny standing to a plaintiff who seeks to enjoin as a nuisance the building of a nearby pond

which, the plaintiff believes, will very likely, but not inevitably, overflow his land? See 42 Am. Jur. 2d, Injunctions §§ 2, 5 (2010) (noting that an injunction is ordinarily preventive in character and restrains actions that have not yet been taken, but threaten injury). *E. g.*, *Central Delta Water Agency* v. *United States*, 306 F. 3d 938, 947–950 (CA9 2002) (standing to seek injunction where method of operating dam was highly likely to severely hamper plaintiffs' ability to grow crops); *Consolidated Companies, Inc.* v. *Union Pacific R. Co.*, 499 F. 3d 382, 386 (CA5 2007) (standing to seek injunction requiring cleanup of land adjacent to plaintiff's tract because of threat that contaminants might migrate to plaintiff's tract).

Neither do ordinary declaratory judgment actions always involve the degree of certainty upon which the Court insists here. See, *e. g.*, *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U. S. 270, 273 (1941) (insurance company could seek declaration that it need not pay claim against insured automobile driver who was in an accident even though the driver had not yet been found liable for the accident); *Aetna Life Ins. Co.* v. *Haworth*, 300 U. S. 227, 239–244 (1937) (insurance company could seek declaration that it need not pay plaintiff for disability although plaintiff had not yet sought disability payments). See also, *e. g.*, *Associated Indemnity Corp.* v. *Fairchild Industries, Inc.*, 961 F. 2d 32, 35–36 (CA2 1992) (insured could seek declaration that insurance company must pay liability even before insured found liable).

2

In some standing cases, the Court has found that a reasonable probability of *future* injury comes accompanied with *present* injury that takes the form of reasonable efforts to mitigate the threatened effects of the future injury or to prevent it from occurring. Thus, in *Monsanto Co.*, 561 U. S., at 153–156, the plaintiffs, a group of conventional alfalfa growers, challenged an agency decision to deregulate genetically

engineered alfalfa. They claimed that deregulation would harm them because their neighbors would plant the genetically engineered seed, bees would obtain pollen from the neighbors' plants, and the bees would then (harmfully) contaminate their own conventional alfalfa with the genetically modified gene. The lower courts had found a "reasonable probability" that this injury would occur. *Ibid.* (internal quotation marks omitted).

Without expressing views about that probability, we found standing because the plaintiffs would suffer present harm by trying to combat the threat. *Ibid.* The plaintiffs, for example, "would have to conduct testing to find out whether and to what extent their crops have been contaminated." *Id.*, at 154. And they would have to take "measures to minimize the likelihood of potential contamination and to ensure an adequate supply of non-genetically-engineered alfalfa." *Ibid.* We held that these "harms, which [the plaintiffs] will suffer even if their crops are not actually infected with" the genetically modified gene, "are sufficiently concrete to satisfy the injury-in-fact prong of the constitutional standing analysis." *Id.*, at 155.

Virtually identical circumstances are present here. Plaintiff McKay, for example, points out that, when he communicates abroad about, or in the interests of, a client (*e. g.*, a client accused of terrorism), he must "make an assessment" whether his "client's interest would be compromised" should the Government "acquire the communications." App. to Pet. for Cert. 375a. If so, he must either forgo the communication or travel abroad. *Id.*, at 371a–372a ("I have had to take measures to protect the confidentiality of information that I believe is particularly sensitive," including "travel that is both time-consuming and expensive").

Since travel is expensive, since forgoing communication can compromise the client's interests, since McKay's assessment itself takes time and effort, this case does not differ significantly from *Monsanto*. And that is so whether we

consider the plaintiffs' present necessary expenditure of time and effort as a separate concrete, particularized, imminent harm, or consider it as additional evidence that the future harm (an interception) is likely to occur. See also *Friends of the Earth, Inc.*, 528 U. S., at 183–184 (holding that plaintiffs who curtailed their recreational activities on a river due to reasonable concerns about the effect of pollutant discharges into that river had standing); *Meese* v. *Keene*, 481 U. S. 465, 475 (1987) (stating that "the need to take . . . affirmative steps to avoid the risk of harm . . . constitutes a cognizable injury").

3

The majority cannot find support in cases that use the words "certainly impending" to *deny* standing. While I do not claim to have read every standing case, I have examined quite a few, and not yet found any such case. The majority refers to *Whitmore* v. *Arkansas*, 495 U. S. 149 (1990). But in that case the Court denied standing to a prisoner who challenged the validity of a death sentence given to a *different* prisoner who refused to challenge his own sentence. The plaintiff feared that in the absence of an appeal, his fellow prisoner's death sentence would be missing from the State's death penalty database and thereby skew the database against him, making it less likely his challenges to his own death penalty would succeed. The Court found no standing. *Id.*, at 161. But the fellow prisoner's lack of appeal would have harmed the plaintiff only if (1) the plaintiff separately obtained federal habeas relief and was then reconvicted and resentenced to death, (2) he sought review of his new sentence, and (3) during that review, his death sentence was affirmed only because it was compared to an artificially skewed database. *Id.*, at 156–157. These events seemed not very likely to occur.

In *DaimlerChrysler Corp.* v. *Cuno*, 547 U. S. 332 (2006), taxpayers challenged the constitutionality of a tax break offered by state and local governments to a car manufacturer.

We found no standing. But the plaintiffs would have suffered resulting injury only if the tax break had depleted state and local treasuries and the legislature had responded by raising their taxes. *Id.*, at 344.

In *Lujan*, the case that may come closest to supporting the majority, the Court also found no standing. But, as I pointed out, *supra*, at 432, *Lujan* is a case where the Court considered *when*, not *whether*, the threatened harm would occur. 504 U. S., at 564, n. 2. The relevant injury there consisted of a visit by an environmental group's members to a project site where they would find (unlawful) environmental depredation. *Id.*, at 564. The Court pointed out that members had alleged that they would visit the project sites "soon." But it wrote that "soon" might refer to almost any time in the future. *Ibid.*, n. 2. By way of contrast, the ongoing threat of terrorism means that here the relevant interceptions will likely take place imminently, if not now.

The Court has, of course, denied standing in other cases. But they involve injuries *less* likely, not more likely, to occur than here. In a recent case, *Summers* v. *Earth Island Institute*, 555 U. S. 488 (2009), for example, the plaintiffs challenged a regulation exempting certain timber sales from public comment and administrative appeal. The plaintiffs claimed that the regulations injured them by interfering with their esthetic enjoyment and recreational use of the forests. The Court found this harm too unlikely to occur to support standing. *Id.*, at 496. The Court noted that one plaintiff had not pointed to a specific affected forest that he would visit. The Court concluded that "[t]here may be a chance, but . . . *hardly a likelihood*," that the plaintiff's "wanderings will bring him to a parcel about to be affected by a project unlawfully subject to the regulations." *Id.*, at 495 (emphasis added).

4

In sum, as the Court concedes, see *ante*, at 414, and n. 5, the word "certainly" in the phrase "certainly impending"

does not refer to absolute certainty. As our case law demonstrates, what the Constitution requires is something more akin to "reasonable probability" or "high probability." The use of some such standard is all that is necessary here to ensure the actual concrete injury that the Constitution demands. The considerations set forth in Parts II and III, *supra*, make clear that the standard is readily met in this case.

* * *

While I express no view on the merits of the plaintiffs' constitutional claims, I do believe that at least some of the plaintiffs have standing to make those claims. I dissent, with respect, from the majority's contrary conclusion.

Syllabus

GABELLI ET AL. *v.* SECURITIES AND EXCHANGE COMMISSION

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

No. 11–1274. Argued January 8, 2013—Decided February 27, 2013

The Investment Advisers Act makes it illegal for investment advisers to defraud their clients, 15 U. S. C. §§ 80b–6(1), (2), and authorizes the Securities and Exchange Commission to bring enforcement actions against investment advisers who violate the Act, or against individuals who aid and abet such violations, § 80b–9(d). If the SEC seeks civil penalties as part of those actions, it must file suit "within five years from the date when the claim first accrued," pursuant to a general statute of limitations that governs many penalty provisions throughout the U. S. Code, 28 U. S. C. § 2462.

In 2008, the SEC sought civil penalties from petitioners Alpert and Gabelli. The complaint alleged that they aided and abetted investment adviser fraud from 1999 until 2002. Petitioners moved to dismiss, arguing in part that the civil penalty claim was untimely. Invoking the five-year statute of limitations in § 2462, they pointed out that the complaint alleged illegal activity up until August 2002 but was not filed until April 2008. The District Court agreed and dismissed the civil penalty claim as time barred. The Second Circuit reversed, accepting the SEC's argument that because the underlying violations sounded in fraud, the "discovery rule" applied, meaning that the statute of limitations did not begin to run until the SEC discovered or reasonably could have discovered the fraud.

Held: The five-year clock in § 2462 begins to tick when the fraud occurs, not when it is discovered. Pp. 447–454.

(a) This is the most natural reading of the statute. "In common parlance a right accrues when it comes into existence." *United States* v. *Lindsay*, 346 U. S. 568, 569. The "standard rule" is that a claim accrues "when the plaintiff has '"a complete and present cause of action."'" *Wallace* v. *Kato*, 549 U. S. 384, 388. Such an understanding appears in cases and dictionaries from the 19th century, when the predecessor to § 2462 was enacted. And this reading sets a fixed date when exposure to the specified Government enforcement efforts ends, advancing "the basic policies of all limitations provisions: repose, elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a

defendant's potential liabilities." *Rotella* v. *Wood*, 528 U. S. 549, 555. Pp. 447–449.

(b) The Government nonetheless argues that the discovery rule should apply here. That doctrine is an "exception" to the standard rule, and delays accrual "until a plaintiff has 'discovered' " his cause of action. *Merck & Co.* v. *Reynolds*, 559 U. S. 633, 644. It arose from the recognition that "something different was needed in the case of fraud, where a defendant's deceptive conduct may prevent a plaintiff from even *knowing* that he or she has been defrauded." *Ibid.* Thus "where a plaintiff has been injured by fraud and 'remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered.' " *Holmberg* v. *Armbrecht*, 327 U. S. 392, 397. This Court, however, has never applied the discovery rule in this context, where the plaintiff is not a defrauded victim seeking recompense, but is instead the Government bringing an enforcement action for civil penalties. The Government's case is not saved by *Exploration Co.* v. *United States*, 247 U. S. 435. There, the discovery rule was applied in favor of the Government, but the Government was itself a victim; it had been defrauded and was suing to recover its loss. It was not bringing an enforcement action for penalties.

There are good reasons why the fraud discovery rule has not been extended to Government civil penalty enforcement actions. The discovery rule exists in part to preserve the claims of parties who have no reason to suspect fraud. The Government is a different kind of plaintiff. The SEC's very purpose, for example, is to root out fraud, and it has many legal tools at hand to aid in that pursuit. The Government in these types of cases also seeks a different type of relief. The discovery rule helps to ensure that the injured receive recompense, but civil penalties go beyond compensation, are intended to punish, and label defendants wrongdoers. Emphasizing the importance of time limits on penalty actions, Chief Justice Marshall admonished that it "would be utterly repugnant to the genius of our laws" if actions for penalties could "be brought at any distance of time." *Adams* v. *Woods*, 2 Cranch 336, 342. Yet grafting the discovery rule onto § 2462 would raise similar concerns. It would leave defendants exposed to Government enforcement action not only for five years after their misdeeds, but for an additional uncertain period into the future. And repose would hinge on speculation about what the Government knew, when it knew it, and when it should have known it. Deciding when the Government knew or reasonably should have known of a fraud would also present particular challenges for the courts, such as determining who the relevant actor is in assessing Government knowledge, whether and how to consider

agency priorities and resource constraints in deciding when the Government reasonably should have known of a fraud, and so on. Applying a discovery rule to Government penalty actions is far more challenging than applying the rule to suits by defrauded victims, and the Court declines to do so. Pp. 449–454.

653 F. 3d 49, reversed and remanded.

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

Lewis J. Liman argued the cause for petitioners. With him on the briefs were *Michael R. Lazerwitz*, *Edward A. McDonald*, *Kathleen N. Massey*, and *Joshua I. Sherman*.

Jeffrey B. Wall argued the cause for respondent. With him on the brief were *Solicitor General Verrilli*, *Deputy Solicitor General Stewart*, *Mark D. Cahn*, *Michael A. Conley*, *Jacob H. Stillman*, and *Dominick V. Freda*.*

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

The Investment Advisers Act makes it illegal for investment advisers to defraud their clients, and authorizes the Securities and Exchange Commission to seek civil penalties from advisers who do so. Under the general statute of limitations for civil penalty actions, the SEC has five years to seek such penalties. The question is whether the five-year

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*Briefs of *amici curiae* urging reversal were filed for the American Bankers Association by *Clifford M. Sloan*, *Joseph L. Barloon*, *Anand S. Raman*, and *Thomas Pinder*; for the Association of the Bar of the City of New York by *John F. Savarese*, *George T. Conway III*, and *Kevin S. Schwartz*; for the Cato Institute by *Brian J. Murray* and *Ilya Shapiro*; for DRI–The Voice of the Defense Bar by *Mary Massaron Ross*, *Lisa S. Blatt*, and *Christopher S. Rhee*; for Former SEC Commissioners and Officials by *Lee S. Richards*; for the National Association of Criminal Defense Lawyers by *Paul R. Q. Wolfson*, *Shirley Cassin Woodward*, *Joshua M. Salzman*, and *Joshua L. Dratel*; and for the Securities Industry and Financial Markets Association et al. by *Mark A. Perry*, *Joshua S. Lipshutz*, *Kevin Carroll*, *Robin S. Conrad*, and *Rachel Brand*.

Akshat Tewary filed a brief for Occupy the SEC as *amicus curiae*.

clock begins to tick when the fraud is complete or when the fraud is discovered.

I

A

Under the Investment Advisers Act of 1940, it is unlawful for an investment adviser "to employ any device, scheme, or artifice to defraud any client or prospective client" or "to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client." 54 Stat. 852, as amended, 15 U. S. C. §§ 80b–6(1), (2). The SEC is authorized to bring enforcement actions against investment advisers who violate the Act, or individuals who aid and abet such violations. § 80b–9(d).

As part of such enforcement actions, the SEC may seek civil penalties, §§ 80b–9(e), (f) (2006 ed. and Supp. V), in which case a five-year statute of limitations applies:

> "Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon." 28 U. S. C. § 2462.

This statute of limitations is not specific to the Investment Advisers Act, or even to securities law; it governs many penalty provisions throughout the U. S. Code. Its origins date back to at least 1839, and it took on its current form in 1948. See Act of Feb. 28, 1839, ch. 36, § 4, 5 Stat. 322.

B

Gabelli Funds, LLC, is an investment adviser to a mutual fund formerly known as Gabelli Global Growth Fund (GGGF). Petitioner Bruce Alpert is Gabelli Funds' chief op-

erating officer, and petitioner Marc Gabelli used to be GGGF's portfolio manager.

In 2008, the SEC brought a civil enforcement action against Alpert and Gabelli. According to the complaint, from 1999 until 2002 Alpert and Gabelli allowed one GGGF investor—Headstart Advisers, Ltd.—to engage in "market timing" in the fund.

As this Court has explained, "[m]arket timing is a trading strategy that exploits time delay in mutual funds' daily valuation system." *Janus Capital Group, Inc.* v. *First Derivative Traders*, 564 U. S. 135, 139, n. 1 (2011). Mutual funds are typically valued once a day, at the close of the New York Stock Exchange. Because funds often hold securities traded on different exchanges around the world, their reported valuation may be based on stale information. If a mutual fund's reported valuation is artificially low compared to its real value, market timers will buy that day and sell the next to realize quick profits. Market timing is not illegal but can harm long-term investors in a fund. See *id.*, at 139, and n. 1.

The SEC's complaint alleged that Alpert and Gabelli permitted Headstart to engage in market timing in exchange for Headstart's investment in a hedge fund run by Gabelli. According to the SEC, petitioners did not disclose Headstart's market timing or the *quid pro quo* agreement, and instead banned others from engaging in market timing and made statements indicating that the practice would not be tolerated. The complaint stated that during the relevant period, Headstart earned rates of return of up to 185%, while "the rate of return for long-term investors in GGGF was no more than negative 24.1 percent." App. 73.

The SEC alleged that Alpert and Gabelli aided and abetted violations of §§ 80b–6(1) and (2), and it sought civil penalties under § 80b–9. Petitioners moved to dismiss, arguing in part that the claim for civil penalties was untimely. They invoked the five-year statute of limitations in § 2462, pointing

out that the complaint alleged market timing up until August 2002 but was not filed until April 2008. The District Court agreed and dismissed the SEC's civil penalty claim as time barred.[1]

The Second Circuit reversed. It acknowledged that § 2462 required an action for civil penalties to be brought within five years "from the date when the claim first accrued," but accepted the SEC's argument that because the underlying violations sounded in fraud, the "discovery rule" applied to the statute of limitations. As explained by the Second Circuit, "[u]nder the discovery rule, the statute of limitations for a particular claim does not accrue until that claim is discovered, or could have been discovered with reasonable diligence, by the plaintiff." 653 F. 3d 49, 59 (2011). The court concluded that while "this rule does not govern the accrual of most claims," it *does* govern the claims at issue here. *Ibid.* As the court explained, "for claims that sound in fraud a discovery rule is read into the relevant statute of limitation." *Id.*, at 60.[2]

We granted certiorari. 567 U. S. 968 (2012).

II

A

This case centers around the meaning of 28 U. S. C. § 2462: "an action . . . for the enforcement of any civil fine, penalty,

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[1] The SEC also sought injunctive relief and disgorgement, claims the District Court found timely on the ground that they were not subject to § 2462. Those issues are not before us.

[2] The court distinguished the discovery rule, which governs when a claim accrues, from doctrines that toll the running of an applicable limitations period when the defendant takes steps beyond the challenged conduct itself to conceal that conduct from the plaintiff. 653 F. 3d, at 59–60. The SEC abandoned any reliance on such doctrines below, and they are not before us. See Response and Reply Brief for SEC Appellant/Cross-Appellee in No. 10–3581 (CA2), p. 34 ("The Commission is not seeking application of the fraudulent concealment doctrine or other equitable tolling principles").

or forfeiture . . . shall not be entertained unless commenced within five years from the date when the claim first accrued." Petitioners argue that a claim based on fraud accrues—and the five-year clock begins to tick—when a defendant's allegedly fraudulent conduct occurs.

That is the most natural reading of the statute. "In common parlance a right accrues when it comes into existence . . . ." *United States* v. *Lindsay*, 346 U. S. 568, 569 (1954). Thus the "standard rule" is that a claim accrues "when the plaintiff has a complete and present cause of action." *Wallace* v. *Kato*, 549 U. S. 384, 388 (2007) (internal quotation marks omitted); see also, *e. g.*, *Bay Area Laundry and Dry Cleaning Pension Trust Fund* v. *Ferbar Corp. of Cal.*, 522 U. S. 192, 201 (1997); *Clark* v. *Iowa City*, 20 Wall. 583, 589 (1875). That rule has governed since the 1830's when the predecessor to § 2462 was enacted. See, *e. g.*, *Bank of United States* v. *Daniel*, 12 Pet. 32, 56 (1838); *Evans* v. *Gee*, 11 Pet. 80, 84 (1837). And that definition appears in dictionaries from the 19th century up until today. See, *e. g.*, 1 A. Burrill, A Law Dictionary and Glossary 17 (1850) ("an action *accrues* when the plaintiff has a right to commence it"); Black's Law Dictionary 23 (9th ed. 2009) (defining "accrue" as "[t]o come into existence as an enforceable claim or right").

This reading sets a fixed date when exposure to the specified Government enforcement efforts ends, advancing "the basic policies of all limitations provisions: repose, elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities." *Rotella* v. *Wood*, 528 U. S. 549, 555 (2000). Statutes of limitations are intended to "promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Railroad Telegraphers* v. *Railway Express Agency, Inc.*, 321 U. S. 342, 348–349 (1944). They provide "security and stability to human affairs."

Wood v. *Carpenter*, 101 U. S. 135, 139 (1879). We have deemed them "vital to the welfare of society," *ibid.*, and concluded that "even wrongdoers are entitled to assume that their sins may be forgotten," *Wilson* v. *Garcia*, 471 U. S. 261, 271 (1985).

B

Notwithstanding these considerations, the Government argues that the discovery rule should apply instead. Under this rule, accrual is delayed "until the plaintiff has 'discovered' " his cause of action. *Merck & Co.* v. *Reynolds*, 559 U. S. 633, 644 (2010). The doctrine arose in 18th-century fraud cases as an "exception" to the standard rule, based on the recognition that "something different was needed in the case of fraud, where a defendant's deceptive conduct may prevent a plaintiff from even *knowing* that he or she has been defrauded." *Ibid.* This Court has held that "where a plaintiff has been injured by fraud and 'remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered.' " *Holmberg* v. *Armbrecht*, 327 U. S. 392, 397 (1946) (quoting *Bailey* v. *Glover*, 21 Wall. 342, 348 (1875)). And we have explained that "fraud is deemed to be discovered when, in the exercise of reasonable diligence, it could have been discovered." *Merck & Co.*, *supra*, at 645 (internal quotation marks and alterations omitted).

But we have never applied the discovery rule in this context, where the plaintiff is not a defrauded victim seeking recompense, but is instead the Government bringing an enforcement action for civil penalties. Despite the discovery rule's centuries-old roots, the Government cites no lower court case before 2008 employing a fraud-based discovery rule in a Government enforcement action for civil penalties. See Brief for Respondent 23 (citing *SEC* v. *Tambone*, 550 F. 3d 106, 148–149 (CA1 2008); *SEC* v. *Koenig*, 557 F. 3d 736, 739 (CA7 2009)). When pressed at oral argument, the Government conceded that it was aware of no such case. Tr.

of Oral Arg. 25. The Government was also unable to point to any example from the first 160 years after enactment of this statute of limitations where it had even asserted that the fraud discovery rule applied in such a context. *Id.*, at 26–27 (citing only *United States* v. *Maillard*, 26 F. Cas. 1140, 1142 (No. 15,709) (SDNY 1871), a "fraudulent concealment" case, see n. 2, *supra*).

Instead the Government relies heavily on *Exploration Co.* v. *United States*, 247 U. S. 435 (1918), in an attempt to show that the discovery rule should benefit the Government to the same extent as private parties. See, *e. g.*, Brief for Respondent 10–11, 16, 17, 33–34, 41–45. In that case, a company had fraudulently procured land from the United States, and the United States sued to undo the transaction. The company raised the statute of limitations as a defense, but this Court allowed the case to proceed, concluding that the rule "that statutes of limitations upon suits to set aside fraudulent transactions shall not begin to run until the discovery of the fraud" applied "in favor of the Government as well as a private individual." *Exploration Co.*, *supra*, at 449. But in *Exploration Co.*, the Government was itself a victim; it had been defrauded and was suing to recover its loss. The Government was not bringing an enforcement action for penalties. *Exploration Co.* cannot save the Government's case here.

There are good reasons why the fraud discovery rule has not been extended to Government enforcement actions for civil penalties. The discovery rule exists in part to preserve the claims of victims who do not know they are injured and who reasonably do not inquire as to any injury. Usually when a private party is injured, he is immediately aware of that injury and put on notice that his time to sue is running. But when the injury is self-concealing, private parties may be unaware that they have been harmed. Most of us do not live in a state of constant investigation; absent any reason to think we have been injured, we do not typically spend our

days looking for evidence that we were lied to or defrauded. And the law does not require that we do so. Instead, courts have developed the discovery rule, providing that the statute of limitations in fraud cases should typically begin to run only when the injury is or reasonably could have been discovered.

The same conclusion does not follow for the Government in the context of enforcement actions for civil penalties. The SEC, for example, is not like an individual victim who relies on apparent injury to learn of a wrong. Rather, a central "mission" of the SEC is to "investigat[e] potential violations of the federal securities laws." SEC, Enforcement Manual 1 (2012). Unlike the private party who has no reason to suspect fraud, the SEC's very purpose is to root it out, and it has many legal tools at hand to aid in that pursuit. It can demand that securities brokers and dealers submit detailed trading information. *Id.*, at 44. It can require investment advisers to turn over their comprehensive books and records at any time. 15 U. S. C. § 80b–4 (2006 ed. and Supp. V). And even without filing suit, it can subpoena any documents and witnesses it deems relevant or material to an investigation. See §§ 77s(c), 78u(b), 80a–41(b), 80b–9(b) (2006 ed.).

The SEC is also authorized to pay monetary awards to whistleblowers, who provide information relating to violations of the securities laws. § 78u–6 (2006 ed., Supp. V). In addition, the SEC may offer "cooperation agreements" to violators to procure information about others in exchange for more lenient treatment. See Enforcement Manual, at 119–137. Charged with this mission and armed with these weapons, the SEC as enforcer is a far cry from the defrauded victim the discovery rule evolved to protect.

In a civil penalty action, the Government is not only a different kind of plaintiff, it seeks a different kind of relief. The discovery rule helps to ensure that the injured receive recompense. But this case involves penalties, which go be-

yond compensation, are intended to punish, and label defendants wrongdoers. See *Meeker* v. *Lehigh Valley R. Co.*, 236 U. S. 412, 423 (1915) (a penalty covered by the predecessor to § 2462 is "something imposed in a punitive way for an infraction of a public law"); see also *Tull* v. *United States*, 481 U. S. 412, 422 (1987) (penalties are "intended to punish culpable individuals," not "to extract compensation or restore the status quo").

Chief Justice Marshall used particularly forceful language in emphasizing the importance of time limits on penalty actions, stating that it "would be utterly repugnant to the genius of our laws" if actions for penalties could "be brought at any distance of time." *Adams* v. *Woods*, 2 Cranch 336, 342 (1805). Yet grafting the discovery rule onto § 2462 would raise similar concerns. It would leave defendants exposed to Government enforcement action not only for five years after their misdeeds, but for an additional uncertain period into the future. Repose would hinge on speculation about what the Government knew, when it knew it, and when it should have known it. See *Rotella*, 528 U. S., at 554 (disapproving a rule that would have "extended the limitations period to many decades" because such a rule was "beyond any limit that Congress could have contemplated" and "would have thwarted the basic objective of repose underlying the very notion of a limitations period").

Determining when the Government, as opposed to an individual, knew or reasonably should have known of a fraud presents particular challenges for the courts. Agencies often have hundreds of employees, dozens of offices, and several levels of leadership. In such a case, when does "the Government" know of a violation? Who is the relevant actor? Different agencies often have overlapping responsibilities; is the knowledge of one attributed to all?

In determining what a plaintiff should have known, we ask what facts "a reasonably diligent plaintiff would have discovered." *Merck & Co.*, 559 U. S., at 644. It is unclear

whether and how courts should consider agency priorities and resource constraints in applying that test to Government enforcement actions. See *3M Co.* v. *Browner*, 17 F. 3d 1453, 1461 (CADC 1994) ("An agency may experience problems in detecting statutory violations because its enforcement effort is not sufficiently funded; or because the agency has not devoted an adequate number of trained personnel to the task; or because the agency's enforcement program is ill designed or inefficient; or because the nature of the statute makes it difficult to uncover violations; or because of some combination of these factors and others"). And in the midst of any inquiry as to what it knew when, the Government can be expected to assert various privileges, such as law enforcement, attorney-client, work product, or deliberative process, further complicating judicial attempts to apply the discovery rule. See, *e. g.*, App. in No. 10–3581 (CA2), p. 147 (Government invoking such privileges in this case, in response to a request for documents relating to the SEC's investigation of Headstart); see also *Rotella*, *supra*, at 559 (rejecting a rule in part due to "the controversy inherent in divining when a plaintiff should have discovered" a wrong).

To be sure, Congress has expressly required such inquiries in some statutes. But in many of those instances, the Government is itself an injured victim looking for recompense, not a prosecutor seeking penalties. See, *e. g.*, 28 U. S. C. §§ 2415, 2416(c) (Government suits for money damages founded on contracts or torts). Moreover, statutes applying a discovery rule in the context of Government suits often couple that rule with an absolute provision for repose, which a judicially imposed discovery rule would lack. See, *e. g.*, 21 U. S. C. § 335b(b)(3) (limiting certain Government civil penalty actions to "6 years after the date when facts material to the act are known or reasonably should have been known by the Secretary but in no event more than 10 years after the date the act took place"). And several statutes applying a discovery rule to the Government make some effort to iden-

tify the official whose knowledge is relevant. See 31 U. S. C. § 3731(b)(2) (relevant knowledge is that of "the official of the United States charged with responsibility to act in the circumstances").

Applying a discovery rule to Government penalty actions is far more challenging than applying the rule to suits by defrauded victims, and we have no mandate from Congress to undertake that challenge here.

* * *

As we held long ago, the cases in which "a statute of limitation may be suspended by causes not mentioned in the statute itself . . . are very limited in character, and are to be admitted with great caution; otherwise the court would make the law instead of administering it." *Amy* v. *Watertown (No. 2)*, 130 U. S. 320, 324 (1889) (internal quotation marks omitted). Given the lack of textual, historical, or equitable reasons to graft a discovery rule onto the statute of limitations of § 2462, we decline to do so.

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

It is so ordered.

Syllabus

AMGEN INC. ET AL. *v.* CONNECTICUT RETIREMENT PLANS AND TRUST FUNDS

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

No. 11–1085. Argued November 5, 2012—Decided February 27, 2013

To recover damages in a private securities-fraud action under § 10(b) of the Securities Exchange Act of 1934 and Securities and Exchange Commission Rule 10b–5, a plaintiff must prove, among other things, reliance on a material misrepresentation or omission made by the defendant. *Matrixx Initiatives, Inc.* v. *Siracusano*, 563 U. S. 27, 37–38. Requiring proof of direct reliance "would place an unnecessarily unrealistic evidentiary burden on [a] plaintiff who has traded on an impersonal market." *Basic Inc.* v. *Levinson*, 485 U. S. 224, 245. Thus, this Court has endorsed a "fraud-on-the-market" theory, which permits securities-fraud plaintiffs to invoke a rebuttable presumption of reliance on public, material misrepresentations regarding securities traded in an efficient market. *Id.*, at 241–249. The fraud-on-the-market theory facilitates the certification of securities-fraud class actions by permitting reliance to be proved on a classwide basis.

Invoking the fraud-on-the-market theory, respondent Connecticut Retirement Plans and Trust Funds (Connecticut Retirement) sought certification of a securities-fraud class action under Federal Rule of Civil Procedure 23(b)(3) against biotechnology company Amgen Inc. and several of its officers (collectively, Amgen). The District Court certified the class, and the Ninth Circuit affirmed. The Ninth Circuit rejected Amgen's argument that Connecticut Retirement was required to prove the materiality of Amgen's alleged misrepresentations and omissions before class certification in order to satisfy Rule 23(b)(3)'s requirement that "questions of law or fact common to class members predominate over any questions affecting only individual members." The Ninth Circuit also held that the District Court did not err in refusing to consider rebuttal evidence that Amgen had presented on the issue of materiality at the class-certification stage.

Held: Proof of materiality is not a prerequisite to certification of a securities-fraud class action seeking money damages for alleged violations of § 10(b) and Rule 10b–5. Pp. 465–482.

(a) The pivotal inquiry in this case is whether proof of materiality is needed to ensure that the questions of law or fact common to the class will "predominate over any questions affecting only individual mem-

bers" as the litigation progresses. For two reasons, the answer to this question is "no." First, because materiality is judged according to an objective standard, it can be proved through evidence common to the class. *TSC Industries, Inc.* v. *Northway, Inc.*, 426 U. S. 438, 445. Thus, it is a common question for Rule 23(b)(3) purposes. Second, a failure of proof on the common question of materiality would not result in individual questions predominating. Instead, it would end the case, for materiality is an essential element of a securities-fraud claim. Pp. 465–470.

(b) Amgen's arguments to the contrary are unpersuasive. Pp. 470–480.

(1) Amgen points to the Court's statement in *Erica P. John Fund, Inc.* v. *Halliburton Co.*, 563 U. S. 804, 811, that "securities fraud plaintiffs must prove certain things in order to invoke *Basic*'s rebuttable presumption of reliance," including "that the alleged misrepresentations were publicly known . . . , that the stock traded in an efficient market, and that the relevant transaction took place 'between the time the misrepresentations were made and the time the truth was revealed.'" If these fraud-on-the-market predicates must be proved before class certification, Amgen contends, materiality—another fraud-on-the-market predicate—should be treated no differently. The Court disagrees. The requirement that a putative class representative establish that it executed trades "between the time the misrepresentations were made and the time the truth was revealed" relates primarily to the Rule 23(a)(3) and (a)(4) inquiries into typicality and adequacy of representation, not to the Rule 23(b)(3) predominance inquiry. And unlike materiality, market efficiency and the public nature of the alleged misrepresentations are not indispensable elements of a Rule 10b–5 claim. While the failure of common, classwide proof of market efficiency or publicity leaves open the prospect of individualized proof of reliance, the failure of common proof on the issue of materiality ends the case for all class members. Pp. 471–474.

(2) Amgen also contends that "policy considerations" militate in favor of requiring precertification proof of materiality. Because class certification can exert substantial pressure on the defendant to settle rather than risk ruinous liability, Amgen asserts, materiality may never be addressed by a court if it is not required to be evaluated at the class-certification stage. In this regard, however, materiality does not differ from other essential elements of a Rule 10b–5 claim, notably, the requirements that the statements or omissions on which the plaintiff's claims are based were false or misleading and that the alleged statements or omissions caused the plaintiff to suffer economic loss. Sig-

Syllabus

nificantly, while addressing the settlement pressures associated with securities-fraud class actions, Congress has rejected calls to undo the fraud-on-the-market theory. And contrary to Amgen's argument that requiring proof of materiality before class certification would conserve judicial resources, Amgen's position would necessitate time- and resource-intensive minitrials on materiality at the class-certification stage. Pp. 474–478.

(c) Also unavailing is Amgen's claim that the District Court erred by refusing to consider the rebuttal evidence Amgen proffered in opposing Connecticut Retirement's class-certification motion. The Ninth Circuit concluded, and Amgen does not contest, that Amgen's rebuttal evidence aimed to prove that the misrepresentations and omissions alleged in Connecticut Retirement's complaint were immaterial. The potential immateriality of Amgen's alleged misrepresentations and omissions, however, is no barrier to finding that common questions predominate. Just as a plaintiff class's inability to prove materiality creates no risk that individual questions will predominate, a definitive rebuttal on the issue of materiality would not undermine the predominance of questions common to the class. Pp. 480–482.

660 F. 3d 1170, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and BREYER, ALITO, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed a concurring opinion, *post*, p. 482. SCALIA, J., filed a dissenting opinion, *post*, p. 483. THOMAS, J., filed a dissenting opinion, in which KENNEDY, J., joined, and in which SCALIA, J., joined except for Part I–B, *post*, p. 486.

Seth P. Waxman argued the cause for petitioners. With him on the briefs were *Louis R. Cohen*, *Andrew N. Vollmer*, *Daniel S. Volchok*, *Noah A. Levine*, *Steven O. Kramer*, *John P. Stigi III*, *John M. Landry*, and *Jonathan D. Moss*.

David C. Frederick argued the cause for respondent. With him on the brief were *Derek T. Ho*, *Emily T. P. Rosen*, *Edward Labaton*, *Jonathan M. Plasse*, and *Christopher J. McDonald*.

Melissa Arbus Sherry argued the cause for the United States as *amicus curiae* in support of respondent. On the brief were *Solicitor General Verrilli*, *Deputy Solicitor General Stewart*, *Nicole A. Saharsky*, *Mark D. Cahn*, *Michael*

A. Conley, Jacob H. Stillman, John W. Avery, Benjamin L. Schiffrin, and *Jeffrey A. Berger.**

JUSTICE GINSBURG delivered the opinion of the Court.

This case involves a securities-fraud complaint filed by Connecticut Retirement Plans and Trust Funds (Connecticut Retirement) against biotechnology company Amgen Inc. and several of its officers (collectively, Amgen). Seeking class-action certification under Federal Rule of Civil Procedure 23, Connecticut Retirement invoked the "fraud-on-the-market" presumption endorsed by this Court in *Basic Inc.* v. *Levinson*, 485 U. S. 224 (1988), and recognized most recently in *Erica P. John Fund, Inc.* v. *Halliburton Co.*, 563 U. S. 804 (2011). The fraud-on-the-market premise is that the price of a security traded in an efficient market will reflect all publicly available information about a company; accordingly, a buyer of the security may be presumed to have relied on that information in purchasing the security.

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*Briefs of *amici curiae* urging reversal were filed for the Chamber of Commerce of the United States of America et al. by *Aaron M. Streett, David D. Sterling, Robin S. Conrad, Rachel L. Brand, James M. (Mit) Spears,* and *Melissa B. Kimmel*; for Former SEC Commissioners and Officials et al. by *Timothy S. Bishop* and *Joshua D. Yount*; for Law Professors by *John P. Elwood*; for the Securities Industry and Financial Markets Association by *William F. Sullivan, Peter M. Stone, Stephen B. Kinnaird,* and *Kevin M. Carrol*; and for the Washington Legal Foundation et al. by *Cory L. Andrews.*

Briefs of *amici curiae* urging affirmance were filed for AARP by *Jay Sushelsky* and *Michael Schuster*; for the California Public Employees' Retirement System et al. by *Jay W. Eisenhofer*; for Civil Procedure and Securities Law Professors by *Eric Alan Isaacson* and *David Marcus*; for Financial Economists by *Ernest A. Young, William C. Fredericks,* and *Ann M. Lipton*; for the National Association of Shareholder and Consumer Attorneys by *Mr. Fredericks* and *Ms. Lipton*; for the New York City Pension Funds et al. by *Stephen R. McAllister, Lumen N. Mulligan, Darren J. Check, Michael A. Cardozo,* and *Gregory W. Smith*; and for Public Justice, P. C., by *Earl Landers Vickery* and *Arthur H. Bryant.*

Amgen has conceded the efficiency of the market for the securities at issue and has not contested the public character of the allegedly fraudulent statements on which Connecticut Retirement's complaint is based. Nor does Amgen here dispute that Connecticut Retirement meets all of the class-action prerequisites stated in Rule 23(a): (1) the alleged class "is so numerous that joinder of all members is impracticable"; (2) "there are questions of law or fact common to the class"; (3) Connecticut Retirement's claims are "typical of the claims . . . of the class"; and (4) Connecticut Retirement will "fairly and adequately protect the interests of the class."

The issue presented concerns the requirement stated in Rule 23(b)(3) that "the questions of law or fact common to class members predominate over any questions affecting only individual members." Amgen contends that to meet the predominance requirement, Connecticut Retirement must do more than plausibly *plead* that Amgen's alleged misrepresentations and misleading omissions materially affected Amgen's stock price. According to Amgen, certification must be denied unless Connecticut Retirement *proves* materiality, for immaterial misrepresentations or omissions, by definition, would have no impact on Amgen's stock price in an efficient market.

While Connecticut Retirement certainly must prove materiality to prevail on the merits, we hold that such proof is not a prerequisite to class certification. Rule 23(b)(3) requires a showing that *questions* common to the class predominate, not that those questions will be answered, on the merits, in favor of the class. Because materiality is judged according to an objective standard, the materiality of Amgen's alleged misrepresentations and omissions is a question common to all members of the class Connecticut Retirement would represent. The alleged misrepresentations and omissions, whether material or immaterial, would be so equally for all investors composing the class. As vital, the plaintiff class's inability to prove materiality would not result in individual

questions predominating. Instead, a failure of proof on the issue of materiality would end the case, given that materiality is an essential element of the class members' securities-fraud claims. As to materiality, therefore, the class is entirely cohesive: It will prevail or fail in unison. In no event will the individual circumstances of particular class members bear on the inquiry.

Essentially, Amgen, also the dissenters from today's decision, would have us put the cart before the horse. To gain certification under Rule 23(b)(3), Amgen and the dissenters urge, Connecticut Retirement must first establish that it will win the fray. But the office of a Rule 23(b)(3) certification ruling is not to adjudicate the case; rather, it is to select the "metho[d]" best suited to adjudication of the controversy "fairly and efficiently."

I

A

This case involves the interaction between federal securities-fraud laws and Rule 23's requirements for class certification. To obtain certification of a class action for money damages under Rule 23(b)(3), a plaintiff must satisfy Rule 23(a)'s above-mentioned prerequisites of numerosity, commonality, typicality, and adequacy of representation, see *supra*, at 459, and must also establish that "the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." To recover damages in a private securities-fraud action under § 10(b) of the Securities Exchange Act of 1934, 48 Stat. 891, as amended, 15 U. S. C. § 78j(b) (2006 ed., Supp. V), and Securities and Exchange Commission Rule 10b–5, 17 CFR § 240.10b–5 (2011), a plaintiff must prove "(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the

purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation." *Matrixx Initiatives, Inc.* v. *Siracusano*, 563 U. S. 27, 37–38 (2011) (internal quotation marks omitted).

"Reliance," we have explained, "is an essential element of the § 10(b) private cause of action" because "proof of reliance ensures that there is a proper connection between a defendant's misrepresentation and a plaintiff's injury." *Halliburton*, 563 U. S., at 810 (internal quotation marks omitted). "The traditional (and most direct) way" for a plaintiff to demonstrate reliance "is by showing that he was aware of a company's statement and engaged in a relevant transaction . . . based on that specific misrepresentation." *Ibid.* We have recognized, however, that requiring proof of direct reliance "would place an unnecessarily unrealistic evidentiary burden on [a] plaintiff who has traded on an impersonal market." *Basic*, 485 U. S., at 245. Accordingly, in *Basic* the Court endorsed the "fraud-on-the-market" theory, which permits certain Rule 10b–5 plaintiffs to invoke a rebuttable presumption of reliance on material misrepresentations aired to the general public. *Id.*, at 241–249.[1]

The fraud-on-the-market theory rests on the premise that certain well developed markets are efficient processors of public information. In such markets, the "market price of shares" will "reflec[t] all publicly available information." *Id.*, at 246. Few investors in such markets, if any, can consistently achieve above-market returns by trading based on publicly available information alone, for if such above-market returns were readily attainable, it would mean that market

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[1] Part IV of Justice Blackmun's opinion in *Basic*—the part endorsing the fraud-on-the-market theory—was joined by Justices Brennan, Marshall, and Stevens. Together, these Justices composed a majority of the quorum of six Justices who participated in the case. See 28 U. S. C. § 1 ("The Supreme Court of the United States shall consist of a Chief Justice of the United States and eight associate justices, any six of whom shall constitute a quorum.").

prices were not efficiently incorporating the full supply of public information. See R. Brealey, S. Myers, & F. Allen, Principles of Corporate Finance 330 (10th ed. 2011) ("[I]n an efficient market, there is no way for most investors to achieve consistently superior rates of return.").

In *Basic*, we held that if a market is shown to be efficient, courts may presume that investors who traded securities in that market relied on public, material misrepresentations regarding those securities. See 485 U. S., at 245–247. This presumption springs from the very concept of market efficiency. If a market is generally efficient in incorporating publicly available information into a security's market price, it is reasonable to presume that a particular public, material misrepresentation will be reflected in the security's price. Furthermore, it is reasonable to presume that most investors—knowing that they have little hope of outperforming the market in the long run based solely on their analysis of publicly available information—will rely on the security's market price as an unbiased assessment of the security's value in light of all public information. Thus, courts may presume that investors trading in efficient markets indirectly rely on public, material misrepresentations through their "reliance on the integrity of the price set by the market." *Id.*, at 245. "[T]he presumption," however, is "just that, and [can] be rebutted by appropriate evidence." *Halliburton*, 563 U. S., at 811. See also *Basic*, 485 U. S., at 248–249 (providing examples of showings that would rebut the fraud-on-the-market presumption).

Although fraud on the market is a substantive doctrine of federal securities-fraud law that can be invoked by any Rule 10b–5 plaintiff, see, *e. g.*, *Black* v. *Finantra Capital, Inc.*, 418 F. 3d 203, 209 (CA2 2005); *Blackie* v. *Barrack*, 524 F. 2d 891, 908 (CA9 1975), the doctrine has particular significance in securities-fraud class actions. Absent the fraud-on-the-market theory, the requirement that Rule 10b–5 plaintiffs establish reliance would ordinarily preclude certification of a

class action seeking money damages because individual reliance issues would overwhelm questions common to the class. See *Basic*, 485 U. S., at 242. The fraud-on-the-market theory, however, facilitates class certification by recognizing a rebuttable presumption of classwide reliance on public, material misrepresentations when shares are traded in an efficient market. *Ibid.*[2]

B

In its complaint, Connecticut Retirement alleges that Amgen violated § 10(b) and Rule 10b–5 through certain misrepresentations and misleading omissions regarding the safety, efficacy, and marketing of two of its flagship drugs.[3] According to Connecticut Retirement, these misrepresentations and omissions artificially inflated the price of Amgen's stock at the time Connecticut Retirement and numerous other securities buyers purchased the stock. When the truth came to light, Connecticut Retirement asserts, Amgen's stock price declined, resulting in financial losses to those who purchased the stock at the inflated price. In its answer to Connecticut Retirement's complaint, Amgen conceded that "[a]t all relevant times, the market for [its] securities," which are traded on the NASDAQ stock exchange, "was an efficient market"; thus, "the market for Amgen's securities promptly digested current information regarding Amgen from all publicly available sources and reflected such information in Amgen's stock price." Consolidated Amended Class Action Complaint ¶¶199–200 in No. CV–07–2536 (CD Cal.); Answer ¶¶199–200.

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[2] Although describing *Basic*'s adoption of the fraud-on-the-market presumption of reliance as "questionable," JUSTICE THOMAS' dissent acknowledges that "the Court has not been asked to revisit" that issue. *Post*, at 489, n. 4. See also *post*, p. 482 (ALITO, J., concurring).

[3] Amgen's allegedly improper marketing practices have sparked federal and state investigations and several whistleblower lawsuits. See Dye, Amgen To Pay $762 Million in Drug-Marketing Case, Washington Post, Dec. 19, 2012, p. A17.

The District Court granted Connecticut Retirement's motion to certify a class action under Rule 23(b)(3) on behalf of all investors who purchased Amgen stock between the date of the first alleged misrepresentation and the date of the last alleged corrective disclosure. After granting Amgen's request to take an interlocutory appeal from the District Court's class-certification order, see Fed. Rule Civ. Proc. 23(f), the Court of Appeals affirmed. 660 F. 3d 1170 (CA9 2011).

Amgen raised two arguments on appeal. First, Amgen contended that the District Court erred by certifying the proposed class without first requiring Connecticut Retirement to prove that Amgen's alleged misrepresentations and omissions were material. Second, Amgen argued that the District Court erred by refusing to consider certain rebuttal evidence that Amgen had proffered in opposition to Connecticut Retirement's class-certification motion. This evidence, in Amgen's view, demonstrated that the market was well aware of the truth regarding its alleged misrepresentations and omissions at the time the class members purchased their shares.

The Court of Appeals rejected both contentions. Amgen's first argument, the Court of Appeals noted, made the uncontroversial point that immaterial misrepresentations and omissions "by definition [do] not affect . . . stock price[s] in an efficient market." *Id.*, at 1175. Thus, where misrepresentations and omissions are not material, there is no basis for presuming classwide reliance on those misrepresentations and omissions through the information-processing mechanism of the market price. "The problem with that argument," the Court of Appeals observed, is evident: "[B]ecause materiality is an element of the *merits* of their securities fraud claim, the plaintiffs cannot both fail to prove materiality yet still have a viable claim for which they would need to prove reliance individually." *Ibid.* The Court of Appeals thus concluded that "proof of materiality is not nec-

essary" to ensure compliance with Rule 23(b)(3)'s requirement that common questions predominate. *Id.*, at 1177.

With respect to Amgen's second argument, the Court of Appeals determined that Amgen's proffered rebuttal evidence was merely "a method of refuting [the] *materiality*" of the misrepresentations and omissions alleged in Connecticut Retirement's complaint. *Ibid.* Having already concluded that a securities-fraud plaintiff does not need to prove materiality before class certification, the court similarly held that "the district court correctly refused to consider" Amgen's rebuttal evidence "at the class certification stage." *Ibid.*

We granted Amgen's petition for certiorari, 567 U. S. 905 (2012), to resolve a conflict among the Courts of Appeals over whether district courts must require plaintiffs to prove, and must allow defendants to present evidence rebutting, the element of materiality before certifying a class action under § 10(b) and Rule 10b–5. Compare 660 F. 3d 1170 (case below) and *Schleicher* v. *Wendt*, 618 F. 3d 679, 687 (CA7 2010) (materiality need not be proved at the class-certification stage), with *In re Salomon Analyst Metromedia Litigation*, 544 F. 3d 474, 484–485, 486, n. 9 (CA2 2008) (plaintiff must prove, and defendant may present evidence rebutting, materiality before class certification). See also *In re DVI, Inc. Securities Litigation*, 639 F. 3d 623, 631–632, 637–638 (CA3 2011) (plaintiff need not prove materiality before class certification, but defendant may present rebuttal evidence on the issue).

II

A

The only issue before us in this case is whether Connecticut Retirement has satisfied Rule 23(b)(3)'s requirement that "questions of law or fact common to class members predominate over any questions affecting only individual members." Although we have cautioned that a court's class-certification analysis must be "rigorous" and may "entail some overlap

with the merits of the plaintiff's underlying claim," *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U. S. 338, 351 (2011) (internal quotation marks omitted), Rule 23 grants courts no license to engage in free-ranging merits inquiries at the certification stage. Merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied. See *id.*, at 351, n. 6 (a district court has no "'authority to conduct a preliminary inquiry into the merits of a suit'" at class certification unless it is necessary "to determine the propriety of certification" (quoting *Eisen* v. *Carlisle & Jacquelin*, 417 U. S. 156, 177 (1974))); Advisory Committee's 2003 Note on subd. (c)(1) of Fed. Rule Civ. Proc. 23, 28 U. S. C. App., p. 144 ("[A]n evaluation of the probable outcome on the merits is not properly part of the certification decision.").

Bearing firmly in mind that the focus of Rule 23(b)(3) is on the predominance of common *questions*, we turn to Amgen's contention that the courts below erred by failing to require Connecticut Retirement to prove the materiality of Amgen's alleged misrepresentations and omissions before certifying Connecticut Retirement's proposed class. As Amgen notes, materiality is not only an element of the Rule 10b–5 cause of action; it is also an essential predicate of the fraud-on-the-market theory. See *Basic*, 485 U. S., at 247 ("[W]here *materially* misleading statements have been disseminated into an impersonal, well-developed market for securities, the reliance of individual plaintiffs on the integrity of the market price may be presumed." (emphasis added)). That theory, Amgen correctly observes, is premised on the understanding that in an efficient market, all publicly available information is rapidly incorporated into, and thus transmitted to investors through, the market price. See *id.*, at 246–247. Because immaterial information, by definition, does not affect market price, it cannot be relied upon indirectly by investors who, as the fraud-on-the-market theory presumes, rely on

the market price's integrity. Therefore, the fraud-on-the-market theory cannot apply absent a *material* misrepresentation or omission. And without the fraud-on-the-market theory, the element of reliance cannot be proved on a class-wide basis through evidence common to the class. See *id.*, at 242. It thus follows, Amgen contends, that materiality must be proved before a securities-fraud class action can be certified.

Contrary to Amgen's argument, the key question in this case is not whether materiality is an essential predicate of the fraud-on-the-market theory; indisputably it is.[4] Instead, the pivotal inquiry is whether proof of materiality is needed to ensure that the *questions* of law or fact common to the class will "predominate over any questions affecting only individual members" as the litigation progresses. Fed. Rule Civ. Proc. 23(b)(3). For two reasons, the answer to this question is clearly "no."

First, because "[t]he question of materiality . . . is an objective one, involving the significance of an omitted or misrepresented fact to a reasonable investor," materiality can be proved through evidence common to the class. *TSC Industries, Inc.* v. *Northway, Inc.*, 426 U. S. 438, 445 (1976). Consequently, materiality is a "common questio[n]" for purposes of Rule 23(b)(3). *Basic*, 485 U. S., at 242 (listing "materiality" as one of the questions common to the *Basic* class members).

Second, there is no risk whatever that a failure of proof on the common question of materiality will result in individual

[4] We agree with JUSTICE THOMAS that "[m]ateriality was central to the development, analysis, and adoption of the fraud-on-the-market theory both before *Basic* and in *Basic* itself." *Post*, at 502. We disagree, however, that the history of the fraud-on-the-market theory's development "confirms that materiality must be proved at the time that the theory is invoked—*i. e.*, at certification." *Ibid.* As explained below, see *infra*, at 468–470, proof of materiality is not required prior to class certification because such proof is not necessary to ensure satisfaction of Rule 23(b)(3)'s predominance requirement.

questions predominating. Because materiality is an essential element of a Rule 10b–5 claim, see *Matrixx Initiatives*, 563 U. S., at 37, Connecticut Retirement's failure to present sufficient evidence of materiality to defeat a summary-judgment motion or to prevail at trial would not cause individual reliance questions to overwhelm the questions common to the class. Instead, the failure of proof on the element of materiality would end the case for one and for all; no claim would remain in which individual reliance issues could potentially predominate.

Totally misapprehending our essential point, JUSTICE THOMAS' dissent asserts that our "entire argument is based on the assumption that the fraud-on-the-market presumption need not be shown at certification because it will be proved later on the merits." *Post*, at 495, n. 9. Our position is not so based. We rest, instead, entirely on the text of Rule 23(b)(3), which provides for class certification if "the questions of law or fact common to class members predominate over any questions affecting only individual members." A failure of proof on the *common* question of materiality ends the litigation and thus will never cause individual questions of reliance or anything else to overwhelm questions common to the class. Therefore, under the plain language of Rule 23(b)(3), plaintiffs are not required to prove materiality at the class-certification stage. In other words, they need not, at that threshold, prove that the predominating question will be answered in their favor.

JUSTICE THOMAS urges that a plaintiff seeking class certification "must show that the elements of [her] claim are susceptible to classwide proof." *Post*, at 491. See also *post*, at 496 (criticizing the Court for failing to focus its analysis on "whether the element of *reliance* is susceptible to classwide proof"). From this premise, JUSTICE THOMAS concludes that Rule 10b–5 plaintiffs must prove materiality before class certification because (1) "materiality is a necessary component of fraud on the market," and (2) without fraud on

the market, the Rule 10b–5 element of reliance is not "susceptible of a classwide answer." *Post*, at 491, 495. See also *post*, at 496 ("[I]f a plaintiff wishes to use *Basic*'s presumption to prove that reliance is a common question, he must establish the entire presumption, including materiality, at the class certification stage.").

Rule 23(b)(3), however, does *not* require a plaintiff seeking class certification to prove that each "elemen[t] of [her] claim [is] susceptible to classwide proof." *Post*, at 491. What the Rule does require is that common questions "*predominate* over any questions affecting only individual [class] members." Fed. Rule Civ. Proc. 23(b)(3) (emphasis added). Nowhere does JUSTICE THOMAS explain how, in an action invoking the *Basic* presumption, a plaintiff class's failure to prove an essential element of its claim for relief will result in individual questions predominating over common ones. Absent proof of materiality, the claim of the Rule 10b–5 class will fail in its entirety; there will be no remaining individual questions to adjudicate.

Consequently, proof of materiality is not required to establish that a proposed class is "sufficiently cohesive to warrant adjudication by representation"—the focus of the predominance inquiry under Rule 23(b)(3). *Amchem Products, Inc.* v. *Windsor*, 521 U. S. 591, 623 (1997). No doubt a clever mind could conjure up fantastic scenarios in which an individual investor might rely on immaterial information (think of the superstitious investor who sells her securities based on a CEO's statement that a black cat crossed the CEO's path that morning). But such objectively unreasonable reliance does not give rise to a Rule 10b–5 claim. See *TSC Industries*, 426 U. S., at 445 (materiality is judged by an objective standard). Thus, "the individualized questions of reliance," *post*, at 494, n. 8, that hypothetically might arise when a failure of proof on the issue of materiality dooms the fraud-on-the-market class are far more imaginative than real. Such "individualized questions" do not undermine class cohe-

sion and thus cannot be said to "predominate" for purposes of Rule 23(b)(3).[5]

Because the question of materiality is common to the class, and because a failure of proof on that issue would not result in questions "affecting only individual members" predominating, Rule 23(b)(3), Connecticut Retirement was not required to prove the materiality of Amgen's alleged misrepresentations and omissions at the class-certification stage. This is not a case in which the asserted problem—*i. e.*, that the plaintiff class cannot prove materiality—"exhibits some fatal dissimilarity" among class members that would make use of the class-action device inefficient or unfair. Nagareda, Class Certification in the Age of Aggregate Proof, 84 N. Y. U. L. Rev. 97, 107 (2009). Instead, what Amgen alleges is "a fatal similarity—[an alleged] failure of proof as to an element of the plaintiffs' cause of action." *Ibid.* Such a contention is properly addressed at trial or in a ruling on a summary-judgment motion. The allegation should not be resolved in deciding whether to certify a proposed class. *Ibid.* See also *Schleicher*, 618 F. 3d, at 687 ("[W]hether a statement is materially false is a question common to all class members and therefore may be resolved on a class-wide basis after certification.").

B

Insisting that materiality must be proved at the class-certification stage, Amgen relies chiefly on two arguments, neither of which we find persuasive.[6]

[5] JUSTICE THOMAS is also wrong in arguing that a failure of proof on the issue of materiality would demonstrate that a Rule 10b–5 class action "should not have been certified in the first place." *Post*, at 487. Quite the contrary. The fact that such a failure of proof resolves all class members' claims once and for all, leaving no individual issues to be adjudicated, confirms that the original certification decision was proper.

[6] Amgen advances a third argument founded on modern economic research tending to show that market efficiency is not "'a binary, yes or no question.'" Brief for Petitioners 32 (quoting Langevoort, *Basic* at Twenty: Rethinking Fraud on the Market, 2009 Wis. L. Rev. 151,

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Amgen points first to our statement in *Halliburton* that "securities fraud plaintiffs must prove certain things in order to invoke *Basic*'s rebuttable presumption of reliance," including "that the alleged misrepresentations were publicly known . . . , that the stock traded in an efficient market, and that the relevant transaction took place 'between the time

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167). Instead, this research suggests, differences in efficiency can exist within a single market. For example, a market may more readily process certain forms of widely disseminated and easily digestible information, such as public merger announcements, than information more difficult to acquire and understand, such as obscure technical data buried in a filing with the Securities and Exchange Commission. See, *e. g.*, Macey & Miller, Good Finance, Bad Economics: An Analysis of the Fraud-on-the-Market Theory, 42 Stan. L. Rev. 1059, 1083–1087 (1990); Stout, The Mechanisms of Market Inefficiency: An Introduction to the New Finance, 28 J. Corp. L. 635, 653–656 (2003). Amgen, however, never clearly explains how this research on *market efficiency* bolsters its argument that courts should require precertification proof of *materiality*. In any event, this case is a poor vehicle for exploring whatever implications the research Amgen cites may have for the fraud-on-the-market presumption recognized in *Basic*. As noted above, see *supra*, at 463, Amgen conceded in its answer that the market for its securities is "efficient" and thus "promptly digest[s] current information regarding Amgen from all publicly available sources and reflect[s] such information in Amgen's stock price." Consolidated Amended Class Action Complaint ¶¶199–200; Answer ¶¶199–200. See also App. to Pet. for Cert. 40a (relying on the admission in Amgen's answer and an unchallenged expert report submitted by Connecticut Retirement, the District Court expressly found that the market for Amgen's stock was efficient). Amgen remains bound by that concession. See *American Title Ins. Co.* v. *Lacelaw Corp.*, 861 F. 2d 224, 226 (CA9 1988) ("Factual assertions in pleadings and pretrial orders, unless amended, are considered judicial admissions conclusively binding on the party who made them."); cf. *Christian Legal Soc. Chapter of Univ. of Cal., Hastings College of Law* v. *Martinez*, 561 U. S. 661, 677 (2010) ("This Court has . . . refused to consider a party's argument that contradicted a joint 'stipulation [entered] at the outset of th[e] litigation.'" (quoting *Board of Regents of Univ. of Wis. System* v. *Southworth*, 529 U. S. 217, 226 (2000))). We thus find nothing in the cited research that would support requiring precertification proof of materiality in this case.

the misrepresentations were made and the time the truth was revealed.'" 563 U. S., at 811 (quoting *Basic*, 485 U. S., at 248, n. 27). See also *Dukes*, 564 U. S., at 351, n. 6 ("[P]laintiffs seeking 23(b)(3) certification [of a securities-fraud class action] must prove that their shares were traded on an efficient market."). If these fraud-on-the-market predicates must be proved before class certification, Amgen contends, materiality—another fraud-on-the-market predicate—should be treated no differently.

We disagree. As an initial matter, the requirement that a putative class representative establish that it executed trades "between the time the misrepresentations were made and the time the truth was revealed" relates primarily to the Rule 23(a)(3) and (a)(4) inquiries into typicality and adequacy of representation, not to the Rule 23(b)(3) predominance inquiry. *Basic*, 485 U. S., at 248, n. 27.[7] A security's market price cannot be affected by a misrepresentation not yet made, and in an efficient market, a misrepresentation's impact on market price is quickly nullified once the truth comes to light. Thus, a plaintiff whose relevant transactions were not executed between the time the misrepresentation was made and the time the truth was revealed cannot be said to have indirectly relied on the misrepresentation through its reliance on the integrity of the market price.[8] Such a plaintiff's claims, therefore, would not be "typical" of the claims

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[7] As earlier noted, see *supra*, at 459, Amgen does not here contest Connecticut Retirement's satisfaction of Rule 23(a)'s requirements.

[8] Accordingly, "the timing of the relevant stock trades" is indeed an "element" of the fraud-on-the-market theory. *Post*, at 490, n. 6 (opinion of THOMAS, J.). Unlike JUSTICE THOMAS, however, see *ibid.*, we do not understand the United States as *amicus curiae* to take a different view. See Brief for United States 15, n. 2 ("Precise identification of the times when the alleged misrepresentation was made and the truth was subsequently revealed is . . . important to ensure that the named plaintiff has traded stock during the time the stock price allegedly was distorted by the defendant's misrepresentations.").

of investors who did trade during the window between misrepresentation and truth revelation. Fed. Rule Civ. Proc. 23(a)(3). Nor could a court confidently conclude that such a plaintiff would "fairly and adequately protect the interests" of investors who traded during the relevant window. Rule 23(a)(4). The requirement that the fraud-on-the-market theory's trade-timing predicate be established before class certification thus sheds little light on the question whether materiality must also be proved at the class-certification stage.

Amgen is not aided by *Halliburton*'s statement that market efficiency and the public nature of the alleged misrepresentations must be proved before a securities-fraud class action can be certified. As Amgen notes, market efficiency, publicity, and materiality can all be proved on a classwide basis. Furthermore, they are all essential predicates of the fraud-on-the-market theory. Unless those predicates are established, there is no basis for presuming that the defendant's alleged misrepresentations were reflected in the security's market price, and hence no grounding for any contention that investors indirectly relied on those misrepresentations through their reliance on the integrity of the market price. But unlike materiality, market efficiency and publicity are not indispensable elements of a Rule 10b–5 claim. See *Matrixx Initiatives*, 563 U. S., at 37–38 (listing elements of a Rule 10b–5 claim). Thus, where the market for a security is inefficient or the defendant's alleged misrepresentations were not aired publicly, a plaintiff cannot invoke the fraud-on-the-market presumption. She can, however, attempt to establish reliance through the "traditional" mode of demonstrating that she was personally "aware of [the defendant's] statement and engaged in a relevant transaction . . . based on that specific misrepresentation." *Halliburton*, 563 U. S., at 810. Individualized reliance issues would predominate in such a lawsuit. See *Basic*, 485 U. S., at 242. The litigation,

therefore, could not be certified under Rule 23(b)(3) as a class action, but the initiating plaintiff's claim would remain live; it would not be "dead on arrival." 660 F. 3d, at 1175.

A failure of proof on the issue of materiality, in contrast, not only precludes a plaintiff from invoking the fraud-on-the-market presumption of classwide reliance; it also establishes as a matter of law that the plaintiff cannot prevail on the merits of her Rule 10b–5 claim. Materiality thus differs from the market-efficiency and publicity predicates in this critical respect: While the failure of common, classwide proof on the issues of market efficiency and publicity leaves open the prospect of individualized proof of reliance, the failure of common proof on the issue of materiality ends the case for the class and for all individuals alleged to compose the class. See Brief for United States as *Amicus Curiae* 20 ("Unless the failure of *common* proof gives rise to a need for *individualized* proof, it does not cast doubt on the propriety of class certification."). In short, there can be no actionable reliance, individually or collectively, on immaterial information. Because a failure of proof on the issue of materiality, unlike the issues of market efficiency and publicity, does not give rise to any prospect of individual questions overwhelming common ones, materiality need not be proved prior to Rule 23(b)(3) class certification.

2

Amgen also contends that certain "policy considerations" militate in favor of requiring precertification proof of materiality. Brief for Petitioners 28. An order granting class certification, Amgen observes, can exert substantial pressure on a defendant "to settle rather than incur the costs of defending a class action and run the risk of potentially ruinous liability." Advisory Committee's 1998 Note on subd. (f) of Fed. Rule Civ. Proc. 23, 28 U. S. C. App., p. 143. See also *AT&T Mobility LLC* v. *Concepcion*, 563 U. S. 333, 350 (2011) (class actions can entail a "risk of 'in terrorem' settlements"). Absent a requirement to evaluate materiality at the class-

certification stage, Amgen contends, the issue may never be addressed by a court, for the defendant will surrender and settle soon after a class is certified. Insistence on proof of materiality before certifying a securities-fraud class action, Amgen thus urges, ensures that the issue will be adjudicated and not forgone. See also *post*, at 485–486 (SCALIA, J., dissenting) (expressing the same concerns).

In this regard, however, materiality does not differ from other essential elements of a Rule 10b–5 claim, notably, the requirements that the statements or omissions on which the plaintiff's claims are based were false or misleading and that the alleged statements or omissions caused the plaintiff to suffer economic loss. See *Matrixx Initiatives*, 563 U. S., at 37–38. Settlement pressure exerted by class certification may prevent judicial resolution of these issues. Yet this Court has held that loss causation and the falsity or misleading nature of the defendant's alleged statements or omissions are common questions that need not be adjudicated before a class is certified. See *Halliburton*, 563 U. S., at 809 (loss causation need not be proved at the class-certification stage); *Basic*, 485 U. S., at 242 ("the falsity or misleading nature of the . . . public statements" allegedly made by the defendant is a "common questio[n]"). See also *Schleicher*, 618 F. 3d, at 685 (falsity of alleged misstatements need not be proved before certification of a securities-fraud class action).

Congress, we count it significant, has addressed the settlement pressures associated with securities-fraud class actions through means other than requiring proof of materiality at the class-certification stage. In enacting the Private Securities Litigation Reform Act of 1995 (PSLRA), 109 Stat. 737, Congress recognized that although private securities-fraud litigation furthers important public-policy interests, prime among them, deterring wrongdoing and providing restitution to defrauded investors, such lawsuits have also been subject to abuse, including the "extract[ion]" of "extortionate 'settlements' " of frivolous claims. H. R. Conf. Rep. No. 104–369,

pp. 31–32 (1995). The PSLRA's response to the perceived abuses was, *inter alia*, to "impos[e] heightened pleading requirements" for securities-fraud actions, "limit recoverable damages and attorney's fees, provide a 'safe harbor' for forward-looking statements, impose new restrictions on the selection of (and compensation awarded to) lead plaintiffs, mandate imposition of sanctions for frivolous litigation, and authorize a stay of discovery pending resolution of any motion to dismiss." *Merrill Lynch, Pierce, Fenner & Smith Inc.* v. *Dabit*, 547 U. S. 71, 81–82 (2006). See also 15 U. S. C. § 78u–4 (2006 ed. and Supp. V). Congress later fortified the PSLRA by enacting the Securities Litigation Uniform Standards Act of 1998, 112 Stat. 3227, which curtailed plaintiffs' ability to evade the PSLRA's limitations on federal securities-fraud litigation by bringing class-action suits under state rather than federal law. See 15 U. S. C. § 78bb(f)(1) (2006 ed.).

While taking these steps to curb abusive securities-fraud lawsuits, Congress rejected calls to undo the fraud-on-the-market presumption of classwide reliance endorsed in *Basic*. See Langevoort, *Basic* at Twenty: Rethinking Fraud on the Market, 2009 Wis. L. Rev. 151, 153, and n. 8 (noting that the initial version of H. R. 10, 104th Cong., 1st Sess. (1995), an unenacted bill that, like the PSLRA, was designed to curtail abuses in private securities litigation, "would have undone *Basic*"). See also Common Sense Legal Reform Act: Hearings before the Subcommittee on Telecommunications and Finance of the House Committee on Commerce, 104th Cong., 1st Sess., 92, 236–237, 251–252, 272 (1995) (witnesses criticized the fraud-on-the-market presumption and expressed support for H. R. 10's requirement that securities-fraud plaintiffs prove direct reliance). Nor did Congress decree that securities-fraud plaintiffs prove each element of their claim before obtaining class certification. Because Congress has homed in on the precise policy concerns raised in Amgen's brief, "[w]e do not think it appropriate for the judiciary

to make its own further adjustments by reinterpreting Rule 23 to make likely success on the merits essential to class certification in securities-fraud suits." *Schleicher*, 618 F. 3d, at 686; cf. *Smith* v. *Bayer Corp.*, 564 U. S. 299, 317–318 (2011) ("Congress's decision to address the relitigation concerns associated with class actions through the mechanism of removal provides yet another reason for federal courts to adhere in this context to longstanding principles of preclusion.").

In addition to seeking our aid in warding off "in terrorem" settlements, Amgen also argues that requiring proof of materiality before class certification would conserve judicial resources by sparing judges the task of overseeing large class proceedings in which the essential element of reliance cannot be proved on a classwide basis. In reality, however, it is Amgen's position, not the judgments of the lower courts in this case, that would waste judicial resources. Amgen's argument, if embraced, would necessitate a minitrial on the issue of materiality at the class-certification stage. Such preliminary adjudications would entail considerable expenditures of judicial time and resources, costs scarcely anticipated by Federal Rule of Civil Procedure 23(c)(1)(A), which instructs that the decision whether to certify a class action be made "[a]t an early practicable time." If the class is certified, materiality might have to be shown all over again at trial. And if certification is denied for failure to prove materiality, nonnamed class members would not be bound by that determination. See *Smith*, 564 U. S., at 312–318. They would be free to renew the fray, perhaps in another forum, perhaps with a stronger showing of materiality.

Given the tenuousness of Amgen's judicial-economy argument, Amgen's policy arguments ultimately return to the contention that private securities-fraud actions should be hemmed in to mitigate their potentially "vexatiou[s]" character. *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U. S. 723, 739 (1975). We have already noted what Congress has done

to control exorbitant securities-fraud actions. See *supra*, at 476–477. Congress, the Executive Branch, and this Court, moreover, have "recognized that meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions brought, respectively, by the Department of Justice and the Securities and Exchange Commission." *Tellabs, Inc.* v. *Makor Issues & Rights, Ltd.*, 551 U. S. 308, 313 (2007); see H. R. Conf. Rep. No. 104–369, at 31; Brief for United States as *Amicus Curiae* 1. See also *Amchem*, 521 U. S., at 617 ("'The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights.'" (quoting *Mace* v. *Van Ru Credit Corp.*, 109 F. 3d 338, 344 (CA7 1997))). We have no warrant to encumber securities-fraud litigation by adopting an atextual requirement of precertification proof of materiality that Congress, despite its extensive involvement in the securities field, has not sanctioned.

C

JUSTICE SCALIA acknowledges that proof of materiality is not required to satisfy Rule 23(b)(3)'s predominance requirement. See *post*, at 483. Nevertheless, he maintains that full satisfaction of Rule 23's requirements is insufficient to obtain class certification under *Basic*. In JUSTICE SCALIA's view, the Court's decision in *Basic* established a special rule: A securities-fraud class action cannot be certified unless all of the prerequisites of the fraud-on-the-market presumption of reliance, including materiality, have first been established. *Post*, at 484.

The purported rule is JUSTICE SCALIA's invention. It cannot be attributed to anything the Court said in *Basic*. That decision is best known for its endorsement of the fraud-on-the-market theory. But the opinion also established something more. It stated the proper standard for judging

the materiality of misleading statements regarding the existence and status of preliminary merger discussions. See 485 U. S., at 230–241, 250 ("Materiality in the merger context depends on the probability that the transaction will be consummated, and its significance to the issuer of the securities."). The District Court in *Basic* certified a class of investors whose share prices were allegedly depressed by misleading statements that disguised ongoing merger negotiations. *Id.*, at 228. Postcertification, the court granted summary judgment to the defendants on the ground that the alleged misstatements were immaterial as a matter of law. *Id.*, at 228–229. The Court of Appeals affirmed the class certification but reversed the grant of summary judgment. *Id.*, at 229. This Court, in turn, vacated the Court of Appeals' judgment and remanded for further proceedings on the defendants' summary-judgment motion in light of the materiality standard set forth in the Court's opinion. *Id.*, at 240–241, 250. Notably, however, we did not disturb the District Court's class-certification order, which we stated "was appropriate when made." *Id.*, at 250.[9]

If JUSTICE SCALIA were correct that our decision in *Basic* demands proof of materiality before class certification, the Court in *Basic* should have ordered the lower courts to reconsider on remand both the defendants' entitlement to summary judgment and the propriety of class certification. Instead, the Court expressly endorsed the District Court's class-certification order while at the same time recognizing

[9] Scouring the Court's decision in *Basic* for some semblance of support for his position, JUSTICE SCALIA attaches portentous significance to *Basic*'s statement that the District Court's class-certification order, although "'appropriate when made,'" was "'subject on remand to such adjustment, if any, as developing circumstances demand[ed].'" *Post*, at 484 (quoting *Basic*, 485 U. S., at 250). This statement, however, merely reminds that certifications are not frozen once made. Rule 23 empowers district courts to "alte[r] or amen[d]" class-certification orders based on circumstances developing as the case unfolds. Rule 23(c)(1) (1988). See also Rule 23(c)(1)(C) (2013).

that further proceedings were necessary to determine whether the plaintiffs had mustered sufficient evidence to satisfy the relatively lenient standard for avoiding summary judgment. See *Anderson* v. *Liberty Lobby, Inc.*, 477 U. S. 242, 248 (1986) ("[S]ummary judgment will not lie if . . . the evidence is such that a reasonable jury could return a verdict for the nonmoving party."). Unlike JUSTICE SCALIA, we are unwilling to presume that *Basic* announced a rule requiring precertification proof of materiality when *Basic* failed to apply any such rule to the very case before it.[10]

III

Amgen also argues that the District Court erred by refusing to consider the rebuttal evidence Amgen proffered in opposing Connecticut Retirement's class-certification motion. This evidence, Amgen contends, showed that "in light of all the information available to the market," its alleged misrepresentations and misleading omissions "could not be presumed to have altered the market price because they would not have 'significantly altered the total mix of information made available.' " Brief for Petitioners 40–41 (quoting *Basic*, 485 U. S., at 232). For example, Connecticut Retirement's complaint alleges that an Amgen executive misleadingly downplayed the significance of an upcoming Food and Drug Administration advisory committee meeting by incorrectly stating that the meeting would not focus on one of Amgen's leading drugs. See App. to Pet. for Cert. 17a. Amgen responded to this allegation by presenting public

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[10] JUSTICE SCALIA suggests that the Court's approach in *Basic* might have been influenced by the obsolete view that " 'Rule 23 . . . set[s] forth a mere pleading standard.' " *Post*, at 484 (quoting *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U. S. 338, 350 (2011)). The opinion in *Basic*, however, provides no indication that the Court perceived any issue before it to turn on the question whether a plaintiff must merely plead, rather than "affirmatively demonstrate," her satisfaction of Rule 23's certification requirements. *Dukes*, 564 U. S., at 350.

documents—including the committee's meeting agenda, which was published in the Federal Register more than a month before the meeting—stating that safety concerns associated with Amgen's drug would be discussed at the meeting. See *id.*, at 41a–42a. See also 69 Fed. Reg. 16582 (2004).

The District Court did not err, we agree with the Court of Appeals, by disregarding Amgen's rebuttal evidence in deciding whether Connecticut Retirement's proposed class satisfied Rule 23(b)(3)'s predominance requirement. The Court of Appeals concluded, and Amgen does not contest, that Amgen's rebuttal evidence aimed to prove that the misrepresentations and omissions alleged in Connecticut Retirement's complaint were immaterial. 660 F. 3d, at 1177 (characterizing Amgen's rebuttal evidence as an attempt to present a "'truth-on-the-market' defense," which the Court of Appeals explained "is a method of refuting an alleged misrepresentation's *materiality*"). See also Reply Brief 17 (Amgen's evidence was offered to rebut the "materiality predicate" of the fraud-on-the-market theory). As explained above, however, the potential immateriality of Amgen's alleged misrepresentations and omissions is no barrier to finding that common questions predominate. See Part II, *supra*. If the alleged misrepresentations and omissions are ultimately found immaterial, the fraud-on-the-market presumption of classwide reliance will collapse. But again, as earlier explained, see *supra*, at 467–470, individual reliance questions will not overwhelm questions common to the class, for the class members' claims will have failed on their merits, thus bringing the litigation to a close. Therefore, just as a plaintiff class's inability to prove materiality creates no risk that individual questions will predominate, so even a definitive rebuttal on the issue of materiality would not undermine the predominance of questions common to the class.

We recognized as much in *Basic* itself. A defendant could "rebut the [fraud-on-the-market] presumption of reliance,"

we observed in *Basic*, by demonstrating that "news of the [truth] credibly entered the market and dissipated the effects of [prior] misstatements." 485 U. S., at 248–249. We emphasized, however, that "[p]roof of that sort is a matter for trial" (and presumably also for a summary-judgment motion under Federal Rule of Civil Procedure 56). 485 U. S., at 249, n. 29.[11] The District Court thus correctly reserved consideration of Amgen's rebuttal evidence for summary judgment or trial. It was not required to consider the evidence in determining whether common questions predominated under Rule 23(b)(3).

* * *

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

It is so ordered.

JUSTICE ALITO, concurring.

I join the opinion of the Court with the understanding that the petitioners did not ask us to revisit *Basic*'s fraud-on-the-market presumption. See *Basic Inc.* v. *Levinson*, 485 U. S. 224 (1988). As the dissent observes, more recent evidence suggests that the presumption may rest on a faulty economic premise. *Post*, at 489, n. 4 (opinion of THOMAS, J.); see Langevoort, *Basic* at Twenty: Rethinking Fraud on the

[11] Amgen attempts to minimize the import of this statement by noting that it was made prior to a 2003 amendment to Rule 23 that eliminated district courts' authority to conditionally certify class actions. See Advisory Committee's 2003 Note on subd. (c)(1) of Fed. Rule Civ. Proc. 23, 28 U. S. C. App., p. 144. Nothing in our opinion in *Basic*, however, suggests that the statement relied in any way on district courts' conditional-certification authority. To the contrary, the Court in *Basic* stated: "Proof of that sort [*i. e.*, that news of the truth had entered the market and dissipated the effects of prior misstatements] is a matter for trial, throughout which the District Court retains the authority to *amend the certification order as may be appropriate.*" 485 U. S., at 249, n. 29 (emphasis added). Rule 23(c)(1)(C) continues to provide that a class-certification order "may be altered or amended before final judgment."

Market, 2009 Wis. L. Rev. 151, 175–176. In light of this development, reconsideration of the *Basic* presumption may be appropriate.

JUSTICE SCALIA, dissenting.

I join the principal dissent, that of JUSTICE THOMAS, except for Part I–B.

The fraud-on-the-market rule says that purchase or sale of a security in a well functioning market establishes reliance on a material misrepresentation known to the market. This rule is to be found nowhere in the United States Code or in the common law of fraud or deception; it was invented by the Court in *Basic Inc.* v. *Levinson*, 485 U. S. 224 (1988). Today's Court applies to that rule the principles of Federal Rule of Civil Procedure 23(b)(3), and thereby concludes (logically enough) that commonality is established at the certification stage even when materiality has not been shown. That would be a correct procedure if *Basic* meant the rule it announced to govern only the question of substantive liability—what must be shown in order to prevail. If that were so, the new substantive rule, like the more general substantive rule that reliance must be proved, would be subject, at the certification stage, to the commonality analysis of Rule 23(b)(3). In my view, however, the *Basic* rule of fraud on the market—a well functioning market plus purchase or sale in the market plus material misrepresentation known to the market establishes a necessary showing of reliance—governs not only the question of substantive liability, but also the question whether certification is proper. All of the elements of that rule, including materiality, must be established if and when it is relied upon to justify certification. The answer to the question before us today is to be found not in Rule 23(b)(3), but in the opinion of *Basic*.

Basic established a presumption *that the misrepresentation was relied upon*, not a mere presumption that the plaintiffs relied on the market price. And it established that pre-

sumption not just for the question of substantive liability but also for the question of certification. "We granted certiorari . . . to determine whether the courts below properly applied a *presumption of reliance in certifying the class*, rather than requiring each class member to show direct reliance on Basic's statements." 485 U. S., at 230 (emphasis added). Of course it makes no sense to "presume reliance" on the misrepresentation merely because the plaintiff relied on the market price, *unless* the alleged misrepresentation would likely have affected the market price—that is, unless it was material. Thus, as JUSTICE THOMAS' dissent shows, the *Basic* opinion is shot through with references to the necessary materiality. The presumption of reliance does not apply, and hence neither substantive liability will attach nor will certification be proper, unless materiality is shown. The necessity of materiality for certification is demonstrated by the last sentence of the *Basic* opinion, which comes after the Court has decided to remand the case for reconsideration of materiality under the appropriate legal standard: "The District Court's certification of the class here was appropriate when made but is subject on remand to such adjustment, if any, as developing circumstances demand." *Id.*, at 250. Those circumstances are the establishment of facts that rebut the presumption, including of facts that show the misrepresentation was not material, or was not known to the market.

The Court argues that if materiality were a predicate to certification on a fraud-on-the-market theory, the *Basic* Court would not have approved the class certification order while remanding for reconsideration of "whether the plaintiffs had mustered sufficient evidence to satisfy the relatively lenient standard for avoiding summary judgment." *Ante*, at 480. The Court manufactures an inconsistency on the basis of doctrine that did not govern class certification at the time of *Basic*. We recently clarified that "Rule 23 does not set forth a mere pleading standard." *Wal-Mart Stores, Inc.*

v. *Dukes*, 564 U. S. 338, 350 (2011). But review of the *Basic* certification order shows that the District Court's fraud-on-the-market analysis was based exclusively on the pleadings: "[T]he *allegations of plaintiffs' complaint* are sufficient to bring this section 10(b) and Rule 10(b)(5) claim within the so-called 'fraud on the market' theory." App. to Pet. for Cert. in *Basic Inc.* v. *Levinson*, O. T. 1987, No. 86–279, p. 115a (emphasis added); see also *ibid.* (citing complaint paragraphs as establishing fraud on the market). Under a pleadings standard, the District Court found that the plaintiffs had satisfied Rule 23(b)(3) with regard to fraud on the market, including its materiality predicate. See *id.*, at 133a (denial of reconsideration) ("This court ruled on December 10 that transaction causation [*i. e.*, reliance] could be established by the following: *proof of a material misrepresentation* which affected the market price of the stocks with a resulting injury to the plaintiffs" (emphasis added)). Thus, even if the plaintiffs sufficiently pleaded materiality that the certification order "was appropriate when made," *Basic*, *supra*, at 250, the defendants retained an opportunity on remand to rebut the pleading in order to defeat certification.*

Certification of the class is often, if not usually, the prelude to a substantial settlement by the defendant because the costs and risks of litigating further are so high. It does an injustice to the *Basic* Court to presume without clear evidence—and indeed in the face of language to the contrary—that it was establishing a regime in which not only those market class-action suits that have earned the presumption of reliance pass beyond the crucial certification stage, but *all* market-purchase and market-sale class-action suits do so, no

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*As for the Court's contention that I have "[s]cour[ed] the Court's decision in *Basic*" to find "some semblance of support" for my reading of the case, *ante*, at 479, n. 9: It does not take much scouring to come across the Court's opening statement that "[w]e granted certiorari . . . to determine whether the courts below properly applied a *presumption of reliance in certifying the class.*" 485 U. S., at 230 (emphasis added).

matter what the alleged misrepresentation. The opinion need not be read this way, and it should not.

The fraud-on-the-market theory approved by *Basic* envisions a demonstration of materiality not just for substantive recovery but for certification. Today's holding does not merely accept what some consider the regrettable consequences of the four-Justice opinion in *Basic*; it expands those consequences from the arguably regrettable to the unquestionably disastrous.

JUSTICE THOMAS, with whom JUSTICE KENNEDY joins, and with whom JUSTICE SCALIA joins except for Part I–B, dissenting.

I

The Court today allows plaintiffs to obtain certification of securities-fraud class actions without proof that common questions predominate over individualized questions of reliance, in contravention of Federal Rule of Civil Procedure 23(b)(3). The Court does so by all but eliminating materiality as one of the predicates of the fraud-on-the-market theory, which serves as an alternative mode of establishing reliance. See *Basic Inc.* v. *Levinson*, 485 U. S. 224, 241–250 (1988). Without demonstrating materiality at certification, plaintiffs cannot establish *Basic*'s fraud-on-the-market presumption. Without proof of fraud on the market, plaintiffs cannot show that otherwise individualized questions of reliance will predominate, as required by Rule 23(b)(3). And without satisfying Rule 23(b)(3), class certification is improper. Fraud on the market is thus a condition precedent to class certification, without which individualized questions of reliance will defeat certification.

The Court's opinion depends on the following assumption: Plaintiffs will either (1) establish materiality at the merits stage, in which case class certification was proper because reliance turned out to be a common question, or (2) fail to

establish materiality, in which case the claim would fail on the merits, notwithstanding the fact that the class should not have been certified in the first place, because reliance was never a common question. The failure to establish materiality retrospectively confirms that fraud on the market was never established, that questions regarding the element of reliance were not common under Rule 23(b)(3), and, by extension, that certification was never proper. Plaintiffs cannot be excused of their Rule 23 burden to show at certification that questions of reliance are common merely because they might lose later on the merits element of materiality. Because a securities-fraud plaintiff invoking *Basic*'s fraud-on-the-market presumption to satisfy Rule 23(b)(3) should be required to prove each of the predicates of that theory at certification in order to demonstrate that questions of reliance are common to the class, I respectfully dissent.

A

We begin with § 10 of the Securities Exchange Act of 1934, 15 U. S. C. § 78j (2006 ed. and Supp. V).[1] We "have implied a private cause of action from the text and purposes of § 10(b)" and Securities and Exchange Commission Rule 10b–5, 17 CFR § 240.10b–5 (2011).[2] *Matrixx Initiatives, Inc.* v.

[1] Section 10 states, in relevant part:

"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

. . . . . .

"(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange . . . any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe . . . ."

[2] Rule 10b–5 states:

"It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

"(a) To employ any device, scheme, or artifice to defraud,

Siracusano, 563 U. S. 27, 37 (2011). See also *Superintendent of Ins. of N. Y.* v. *Bankers Life & Casualty Co.*, 404 U. S. 6, 13, n. 9 (1971) ("It is now established that a private right of action is implied under § 10(b)"). The elements of an implied § 10(b) cause of action for securities fraud are " '(1) a material misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the misrepresentation or omission; (5) economic loss; and (6) loss causation.' " *Matrixx*, *supra*, at 37–38 (quoting *Stoneridge Investment Partners, LLC* v. *Scientific-Atlanta, Inc.*, 552 U. S. 148, 157 (2008)). This case concerns the reliance element of the § 10(b) claim and its interaction with Rule 23(b)(3).

To prove reliance, a plaintiff, whether proceeding individually or as a class member, must show that his stock transaction was caused by the specific alleged misstatement. "[P]roof of reliance ensures that there is a proper 'connection between a defendant's misrepresentation and a plaintiff's injury.' " *Erica P. John Fund, Inc.* v. *Halliburton Co.*, 563 U. S. 804, 810 (2011) (quoting *Basic*, *supra*, at 243).[3] To satisfy this element, a plaintiff traditionally was required to "sho[w] that he was aware of a company's statement and engaged in a relevant transaction . . . *based on that specific misrepresentation*." *Erica P. John Fund*, *supra*, at

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"(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

"(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security."

[3] Courts have also "referred to the element of reliance . . . as 'transaction causation.' " *Erica P. John Fund*, 563 U. S., at 812 (quoting *Dura Pharmaceuticals, Inc.* v. *Broudo*, 544 U. S. 336, 341–342 (2005), in turn citing *Basic Inc.* v. *Levinson*, 485 U. S. 224, 248–249 (1988)). This alternative phrasing recognizes that the reliance inquiry is directed at determining whether a particular piece of information caused an individual to enter into a given transaction.

810 (emphasis added). In the face-to-face fraud cases from which securities claims historically arose, see, *e. g.*, *Dura Pharmaceuticals, Inc.* v. *Broudo*, 544 U. S. 336, 343–344 (2005) (discussing common-law roots of securities-fraud actions), this requirement was easily met by showing that the seller made statements directly to the purchaser and that the purchaser bought stock in reliance on those statements. However, in a modern securities market many, if not most, individuals who purchase stock from third parties on an impersonal exchange will be unaware of statements made by the issuer of those securities. As a result, such purchaser-plaintiffs are unable to meet the traditional reliance requirement because they cannot establish that they "engaged in a relevant transaction . . . based on [a] specific misrepresentation." *Erica P. John Fund*, *supra*, at 810.

This concern was the driving force behind the development of the fraud-on-the-market theory adopted in *Basic*. Because individuals trading stock on an impersonal market often cannot show reliance even for purposes of an individual securities-fraud action, *Basic* permitted "plaintiffs to invoke a rebuttable presumption of reliance." *Erica P. John Fund*, *supra*, at 811.[4] *Basic* presumes that "'in an open and devel-

[4] The *Basic* decision itself is questionable. Only four Justices joined the portion of the opinion adopting the fraud-on-the-market theory. Justice White, joined by Justice O'Connor, dissented from that section, emphasizing that "[c]onfusion and contradiction in court rulings are inevitable when traditional legal analysis is replaced with economic theorization by the federal courts" and that the Court is "not well equipped to embrace novel constructions of a statute based on contemporary microeconomic theory." 485 U. S., at 252–253 (concurring in part and dissenting in part). Justice White's concerns remain valid today, but the Court has not been asked to revisit *Basic*'s fraud-on-the-market presumption. I thus limit my dissent to demonstrating that the Court is not following *Basic*'s dictates.

Moreover, the Court acknowledges there is disagreement as to whether market efficiency is "'"a binary, yes or no question,"'" or instead operates differently depending on the information at issue, see *ante*, at 470, n. 6 (quoting Brief for Petitioners 32, in turn quoting Langevoort, *Basic* at Twenty: Rethinking Fraud on the Market, 2009 Wis. L. Rev. 151, 167).

oped securities market, the price of a company's stock is determined by the available *material* information regarding the company and its business.'" 485 U. S., at 241 (quoting *Peil* v. *Speiser*, 806 F. 2d 1154, 1160–1161 (CA3 1986); emphasis added).[5] "'Misleading statements will therefore defraud purchasers of stock even if the purchasers do not directly rely on the misstatements.'" 485 U. S., at 241–242. As a result, "[a]n investor who buys or sells stock at the price set by the market does so in reliance on the integrity of that price," and "an investor's reliance *on any public material misrepresentations*" may therefore "be presumed for purposes of a Rule 10b–5 action." *Id.*, at 247 (emphasis added).

If a plaintiff opts to show reliance through fraud on the market, *Basic* is clear that the plaintiff must show the following predicates in order to prevail: (1) an efficient market, (2) a public statement, (3) that the stock was traded after the statement was made but before the truth was revealed, and (4) the materiality of the statement. *Id.*, at 248, n. 27.[6]

[5] *Basic* "adopt[ed] the *TSC Industries* standard of materiality for the § 10(b) and Rule 10b–5 context." 485 U. S., at 232. That standard indicates that "'[a]n omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote.'" *Id.*, at 231 (quoting *TSC Industries, Inc.* v. *Northway, Inc.*, 426 U. S. 438, 449 (1976); alteration in original). "[T]o fulfill the materiality requirement 'there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available.'" 485 U. S., at 231–232 (quoting *TSC Industries*, *supra*, at 449).

[6] The United States as *amicus curiae* invokes Rule 23(a)(3) to suggest that the third element, the timing of the relevant stock trades, is a "limit on the definition of the class." Brief for United States 15, n. 2. But it is also necessary to establish the timing of the allegedly material, public misstatement made into an allegedly efficient market (as well as when the fraud ended due to entry of truth on the market) before the fraud-on-the-market theory can be evaluated under Rule 23(b)(3). Thus, the lower court opinion in *Basic* expressly identified "the time the misrepresentations were made and the time the truth was revealed" as part of fraud on the market. *Levinson* v. *Basic Inc.*, 786 F. 2d 741, 750 (CA6 1986). The *Basic* Court cited the formulation approvingly, 485 U. S., at 248, n. 27, and recently in *Erica P. John Fund, Inc.* v. *Halliburton Co.*, 563 U. S. 804

Both the Court and respondent agree that materiality is a necessary component of fraud on the market. See, *e. g.*, *ante*, at 467 (materiality is "indisputably" "an essential predicate of the fraud-on-the-market theory"); Brief for Respondent 29 ("If the statement is not materially false, then no one in the class can establish reliance via the integrity of the market"). The materiality of a specific statement is, therefore, essential to the fraud-on-the-market presumption, which in turn enables a plaintiff to prove reliance.

B

Basic's fraud-on-the-market presumption is highly significant because it makes securities-fraud class actions possible by converting the inherently individual reliance inquiry into a question common to the class, which is necessary to satisfy the dictates of Rule 23(b)(3).[7] Rule 23(b)(3) requires the party seeking certification to prove that "questions of law or fact common to class members predominate over any questions affecting only individual members." A plaintiff seeking class certification is not required to prove the elements of his claim at the certification stage, but he must show that the elements of the claim are susceptible to class-wide proof. See, *e. g.*, *Wal-Mart Stores, Inc.* v. *Dukes*, 564

(2011), the Court cited the same language as part of the "undisputed" elements a securities-fraud plaintiff must prove to invoke *Basic*. 563 U. S., at 811 (citing *Basic*, *supra*, at 248, n. 27). Unless the timing of the misrepresentation and truth is established at certification, there is no framework within which to determine whether fraud on the market renders reliance a common question. Thus, insofar as the majority recognizes that timing is a factor of the fraud-on-the-market theory, *ante*, at 472, n. 8, I agree. It would be incorrect to suggest that timing *solely* relates to Rules 23(a)(3) and (4). It is equally important to establish the timing range at certification for Rule 23(b)(3) reliance purposes. This fact undercuts the majority's attempt to isolate materiality as the only factor of fraud on the market that need not be shown at certification to demonstrate that reliance is a common question.

[7] There is no dispute that respondent meets the prerequisites of Fed. Rule Civ. Proc. 23(a).

U. S. 338, 351, n. 6 (2011) ("[P]laintiffs seeking 23(b)(3) certification must *prove* that their shares were traded on an efficient market," an element of the fraud-on-the-market theory (emphasis added)). Without that proof, there is no justification for certifying a class because there is no "'capacity of a class-wide proceeding to generate common *answers* apt to drive the resolution of the litigation.'" *Id.*, at 350 (quoting Nagareda, Class Certification in the Age of Aggregate Proof, 84 N. Y. U. L. Rev. 97, 132 (2009)).

If plaintiffs fail to show that *reliance* is a common question at the time of certification, certification is improper. For if reliance is not a common question, each plaintiff would be required to prove that he in fact relied on a misstatement, a showing which is simply not susceptible to classwide proof. Individuals make stock transactions for divergent, even idiosyncratic, reasons. As the leading pre-*Basic* fraud-on-the-market case recognized, "[a] purchaser on the stock exchanges may be either unaware of a specific false representation, or may not directly rely on it; he may purchase because of a favorable price trend, price earnings ratio, or some other factor." *Blackie* v. *Barrack*, 524 F. 2d 891, 907 (CA9 1975). The inquiry's inherently individualized nature renders it impossible to generate the common answers necessary for certification under Rule 23(b)(3). See *Basic*, 485 U. S., at 242 ("Requiring proof of individualized reliance from each member of the proposed plaintiff class effectively would have prevented respondents from proceeding with a class action, since individual issues then would have overwhelmed the common ones").

The Court's solution in *Basic* was to allow putative class members to prove reliance through the fraud-on-the-market presumption. *Id.*, at 241–250. As the Court today recognizes, failure to establish fraud on the market "leaves open the prospect of individualized proof of reliance." *Ante*, at 474. Notably, the Court and the Ninth Circuit both acknowledge that in order to obtain the benefit of the presumption,

plaintiffs must establish two of the fraud-on-the-market predicates *at class certification*: (1) that the market was generally efficient, and (2) that the alleged misstatement was public. See *ante*, at 473 (acknowledging "that market efficiency and the public nature of the alleged misrepresentations must be proved before a securities-fraud class action can be certified"); 660 F. 3d 1170, 1175 (CA9 2011) (same). See also *Erica P. John Fund*, 563 U. S., at 811 ("It is undisputed that securities fraud plaintiffs must prove," at certification, *inter alia*, "that the alleged misrepresentations were publicly known . . . [and] that the stock traded in an efficient market"). The Court is correct insofar as its statements recognize that fraud on the market is a condition precedent to showing that there are common questions of reliance at the time of class certification.

Nevertheless, the Court asserts that materiality—by its own admission an essential predicate to invoking fraud on the market—need not be established at certification because it will ultimately be proved at the merits stage. *Ante*, at 473–474. This assertion is an express admission that parties *will not know* at certification whether reliance is an individual or common question.

To support its position, the Court transforms the predicate certification inquiry into a novel either-or inquiry occurring much later on the merits. According to the Court, either (1) plaintiffs will prove materiality on the merits, thus demonstrating *ex post* that common questions predominated at certification, or (2) they will fail to prove materiality, at which point we learn *ex post* that certification was inappropriate because reliance was not, in fact, a common question. In the Court's second scenario, fraud on the market was never established, reliance for each class member was inherently individualized, and Rule 23(b)(3) in fact should have barred certification long ago.[8] The Court suggests that the prob-

[8] The majority ignores this explanation of the fundamental flaw in its position, asserting that I never "explain how . . . a plaintiff class's failure

lem created by the second scenario is excusable because the plaintiffs will lose anyway on alternative merits grounds, and the case will be over. See *ante*, at 474 ("[F]ailure of proof on the issue of materiality [at the merits stage] not only precludes a plaintiff from invoking the fraud-on-the-market presumption of classwide reliance; it also establishes as a matter of law that the plaintiff cannot prevail on the merits of her Rule 10b–5 claim"). But nothing in logic or precedent justifies ignoring at certification whether reliance is susceptible to Rule 23(b)(3) classwide proof simply because one predicate of reliance—materiality—will be resolved, if at all, much later in the litigation on an independent merits element.

It is the Court, not Amgen, that "would have us put the cart before the horse," *ante*, at 460, by jumping chronologically to the § 10(b) merits element of materiality. But Rule 23, as well as common sense, requires class certification issues to be addressed first. See Rule 23(c)(1)(A) ("At an early practicable time after a person sues or is sued . . . the court must determine by order whether to certify the action as a class

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to prove an essential element of its claim for relief will result in individual questions predominating over common ones." *Ante*, at 469. But a plaintiff, who is excused from his burden of showing at certification that reliance is a common question, fails to demonstrate that common questions predominate over the individualized questions of reliance that are inherent in a securities-fraud claim. A plaintiff must carry this burden at certification for certification to be proper. The majority does not respond to the inherent timing problem in its position. It does not explain how *ignoring* questions of reliance—that undeniably will be individualized in some cases—*at certification* is justified by the fact that those questions will be resolved months or years later on the merits in a way that indicates reliance was indeed an individualized question all along. Far from obeying the dictates of Rule 23(b)(3) as it claims, *ante*, at 469–470, the majority unjustifiably puts off a critical part of the Rule 23(b)(3) inquiry until the merits. The only way the majority can purport to follow Rule 23(b)(3) is by ignoring the fact that, under its own analysis, reliance may be an individualized question that predominates over common questions at certification.

action"). A plaintiff who cannot prove materiality does not simply have a claim that is "'dead on arrival'" at the merits, *ante*, at 474 (quoting 660 F. 3d, at 1175); he has a class that should never have arrived at the merits at all because it failed Rule 23(b)(3) certification from the outset. Without materiality, there is no fraud-on-the-market presumption, questions of reliance remain individualized, and Rule 23(b)(3) certification is impossible. And the fact that evidence of materiality goes to both fraud on the market at certification and an independent merits element is no issue; *Wal-Mart* expressly held that a court at certification may inquire into questions that also have later relevance on the merits. See 564 U. S., at 350–352. The Court reverses that inquiry, effectively saying that certification may be put off until later because an adverse merits determination will retroactively wipe out the entire class. However, a plaintiff who cannot prove materiality cannot prove fraud on the market and, thus, cannot demonstrate that the question of reliance is susceptible of a classwide answer.

The fact that a statement may prove to be material at the merits stage does not justify conflating the doctrinally independent (and distinct) elements of materiality and reliance.[9] The Court's error occurs when, instead of asking

[9] Of course, the Court's assertion that materiality will be resolved on the merits presumes that certification will not bring *in terrorem* settlement pressures to bear, foreclosing any materiality inquiry at all. The Court dismisses this concern, *ante*, at 474–477, attempting to give fraud-on-the-market analysis the *imprimatur* of congressional enactment instead of recognizing it as a judicially created doctrine grafted onto an implied cause of action. But the fact that Congress has enacted legislation to curb excesses in securities litigation while leaving *Basic* intact, see *ante*, at 475–476, says nothing about the proper interpretation of *Basic* at issue here. The Court retains discretion over the contours of *Basic* unless and until Congress sees fit to alter them—a fact Congress must also have realized when it passed the Private Securities Litigation Reform Act of 1995, 109 Stat. 737, and other legislation. The Court's entire argument is based on the assumption that the fraud-on-the-market presumption need not be shown at certification because it will be proved later on the merits; insofar

whether the element of *reliance* is susceptible to classwide proof, the Court focuses on whether *materiality* is susceptible to classwide proof. *Ante,* at 467 ("[T]he pivotal inquiry is whether proof of materiality is needed to ensure that the *questions* of law or fact common to the class will 'predominate' "). The result is that the Court effectively equates § 10(b) materiality with fraud-on-the-market materiality and elides reliance as a § 10(b) element. But a plaintiff seeking certification under Rule 23 bears the burden of proof with regard to all the elements of a § 10(b) claim, which includes materiality *and* reliance. As *Wal-Mart* explained, "[a] party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." 564 U. S., at 350. If the elements of fraud on the market are not proved at certification, a plaintiff has failed to carry his burden of establishing that questions of individualized reliance will not predominate, without which the plaintiff class cannot obtain certification. Cf. *id.*, at 352 (holding in Rule 23(a)(2) context that "[w]ithout some glue holding the alleged *reasons* for all those decisions together, it will be impossible to say that examination of all the class members' claims for relief will produce a common answer"). It is only by establishing all of the elements of the fraud-on-the-market presumption that reliance can be proved on a classwide basis. Therefore, if a plaintiff wishes to use *Basic*'s presumption to prove that reliance is a common question, he must establish the entire presumption, including materiality, at the class certification stage.

Nor is it relevant, as respondent argues, that requiring plaintiffs to establish all predicates of fraud on the market at certification will make it more difficult to obtain certification. See Brief for Respondent 35–38. In *Basic,* four Justices of

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as certification makes that later determination unlikely to occur, it at least counsels against the certitude with which the Court assures us that its gloss on *Basic* is correct.

a six-Justice Court created the fraud-on-the-market presumption from a combination of newly minted economic theories, 485 U. S., at 250–251, n. 1 (White, J., concurring in part and dissenting in part), and "considerations of fairness, public policy, and probability," *id.*, at 245 (majority opinion), to allow claims that otherwise would have been barred due to the plaintiffs' inability to show reliance, *id.*, at 242. *Basic* is a judicially invented doctrine based on an economic theory adopted to ease the burden on plaintiffs bringing claims under an implied cause of action. There is nothing untoward about requiring plaintiffs to take the steps that the *Basic* Court created in an effort to save otherwise inadequate claims.

II

The majority's approach is, thus, doctrinally incorrect under *Basic*. Its shortcomings are further highlighted by the role that materiality played in the pre-*Basic* development of the fraud-on-the-market theory as a condition precedent to showing that there are common questions of reliance in the class-action context. Materiality, at the time of certification, has been a driving force behind the theory from the outset. This fact further supports the need to prove materiality at the time the fraud-on-the-market theory is invoked to show that questions of reliance can be answered on a classwide basis.

A

Before *Basic*, two signposts marked the way for courts applying the fraud-on-the-market theory. Both demonstrate that the materiality of an alleged falsehood was not a mere afterthought but rather one of the primary reasons for allowing traditional proof of reliance to be brushed aside at certification. This fact weighs strongly in favor of the conclusion that materiality must be resolved at certification when the fraud-on-the-market presumption is invoked to show that reliance can be proved on a classwide basis.

The first signpost was the Ninth Circuit's 1975 opinion in *Blackie*, termed by one pre-*Basic* court the "seminal fraud on the market case." *Peil*, 806 F. 2d, at 1163, n. 16. See also *Basic*, *supra*, at 251, n. 1 (opinion of White, J.) ("The earliest Court of Appeals case adopting this theory cited by the Court is *Blackie* v. *Barrack*, 524 F. 2d 891 (CA9 1975), cert. denied, 429 U. S. 816 (1976)").

Blackie arose from a $90 million loss reported by audio equipment manufacturer Ampex Corp. in its 1972 annual report. 524 F. 2d, at 894.[10] Ampex's independent auditors not only refused to certify the 1972 annual report but also withdrew certification of all 1971 financial statements "because of doubts that the loss reported for 1972 was in fact suffered in that year." *Ibid.* In resultant class actions, the defendants argued that reliance stood in the way of class certification under Rule 23(b)(3) because it was not a common question.

The Ninth Circuit disagreed. Instead, it relieved plaintiffs from providing traditional proof of reliance, explaining that "causation is adequately established in the impersonal stock exchange context *by proof of purchase and of the materiality of misrepresentations*, without direct proof of reliance." *Id.*, at 906 (emphasis added). The court left no doubt that the materiality of the $90 million shortfall in Ampex's financial statements was central to its determination that reliance could be presumed. It asserted that "[m]ateriality circumstantially establishes the reliance of some market traders and hence the inflation in the stock price—when the purchase is made[,] the causational chain between defendant's conduct and plaintiff's loss is sufficiently established to make out a prima facie case." *Ibid.* Materiality was not merely an important factor that allowed reliance to

[10] Ampex's sales for 1971 were just under $284 million. See Reckert, A. & P. Registers Deficit for First Fiscal Quarter, N. Y. Times, July 1, 1972, p. 27 (discussing Ampex's revenue and net loss in its 1972 annual report).

be presumed at certification; materiality was *the* factor. It demonstrated that the defendants had committed a fraud on the market, that all putative class plaintiffs had relied on it in purchasing stock, and, therefore, that questions of reliance would be susceptible to common answers.[11]

The second fraud-on-the-market signpost prior to *Basic* was a note in the Harvard Law Review, which described the nascent theory. See Note, The Fraud-on-the-Market Theory, 95 Harv. L. Rev. 1143 (1982) (hereinafter Harv. L. Rev. Note). The Sixth Circuit opinion reviewed in *Basic* termed the Note "[t]he clearest statement of the theory of presumption of reliance." *Levinson* v. *Basic Inc.*, 786 F. 2d 741, 750 (1986). Indeed, in the briefing for *Basic* itself, the plaintiffs, the United States, and plaintiffs' *amici* cited the article repeatedly as an authoritative statement on the subject. See Brief for Respondents 43, n. 18, 46, n. 20 (cited in *Peil*, *supra*, at 1160), Brief for Securities and Exchange Commission as *Amicus Curiae* 22, n. 25, 24, n. 30, 26, n. 32, and Brief for Joseph Harris et al. as *Amici Curiae* 4–5, n. 2, in *Basic Inc.* v. *Levinson*, O. T. 1987, No. 86–279.

Like *Blackie*, the Note also hinged the fraud-on-the-market presumption of reliance on proof of materiality. Harv. L. Rev. Note 1161 ("In developed markets, which are apparently efficient, reliance should be presumed *from the materiality of the deception*" (emphasis added)). Ultimately, in language that will be familiar to anyone who has

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[11] *Blackie*'s use of materiality to satisfy reliance for purposes of Rule 23(b)(3) predominance continued to form the foundation for the fraud-on-the-market concept in subsequent pre-*Basic* appellate cases. See, *e. g.*, *Peil* v. *Speiser*, 806 F. 2d 1154, 1161 (CA3 1986) ("[W]e hold that plaintiffs who purchase in an open and developed market need not prove direct reliance on defendants' misrepresentations, but can satisfy their burden of proof on the element of causation by showing that the defendants made material misrepresentations" (footnote omitted)); *Panzirer* v. *Wolf*, 663 F. 2d 365, 368 (CA2 1981) ("*Blackie* held that the materiality of a fraud creates a presumption of reliance through its presumed effect on the market. . . . Our holding is no more than an extension of *Blackie*").

read *Basic*, the Note formulated a "pivotal assumption" underlying the fraud-on-the-market theory as the belief that

> "market prices respond to information disseminated (or *not* disseminated) concerning the companies whose securities are traded. In such a setting—often described as an 'efficient market'—the reliance of some traders upon a material deception influences market prices and thereby affects even traders who never read or hear of the deception." Harv. L. Rev. Note 1154 (footnote omitted).

Again, the materiality of the alleged misstatement was a key component, without which the market could not be presumed to move. As a result, without materiality it is impossible to say that there has been a fraud on the market at all, and if that is not the case there is no reason to believe that the market price at which stock transactions occurred was affected by an alleged misstatement or, by extension, that any market participants relied on it. Materiality should thus be proved when the fraud-on-the-market presumption is invoked, or there is no commonality with respect to questions of reliance.

B

Nor did the importance of materiality diminish in the Sixth Circuit opinion reviewed in *Basic*. Rather, the court followed the path marked by the signposts discussed above. It excused plaintiffs from offering traditional evidence of reliance, so long as "a defendant is shown to have made a *material* public misrepresentation that, if relied on directly, would fraudulently induce an individual to misjudge the value of the stock." *Levinson*, 786 F. 2d, at 750 (emphasis added). The court's analysis made clear that materiality should be demonstrated *at the time the presumption was invoked*: "In order to invoke the presumption of reliance based upon the fraud on the market theory, a plaintiff must allege and prove . . . that the misrepresentations were material . . . ." *Ibid.* (citing *Blackie*, *supra*, at 906).

C

Finally, the briefing before this Court in *Basic* itself built upon this framework and the foundational principle that materiality is an integral part of the theory. Critically, the *Basic* defendants argued that the plaintiffs could not establish fraud on the market at certification even if the theory were valid because the alleged misstatement was immaterial. They "contrast[ed] the likely market impact of disclosure of the [$90 million *Blackie* loss] . . . with the disclosure of the information which respondents contend[ed] rendered Basic's statements materially misleading." See Brief for Petitioners in O. T. 1987, No. 86–279, p. 42. The *Basic* defendants concluded that "the differences between a company's $90 million loss and a company's sporadic contacts with a friendly suitor are substantial. . . . [T]he fraud on the market theory, if it has vitality, should not be applied in a case such as this." *Id.*, at 43.

In response, the plaintiffs in *Basic* did not argue that the defendants misunderstood the role of materiality in the fraud-on-the-market theory. They instead advanced a now-foreclosed interpretation of dicta from *Eisen* v. *Carlisle & Jacquelin*, 417 U. S. 156, 177 (1974):

> "Petitioners' final argument—that respondents will be unable to establish that Basic's repeated false and misleading statements impacted the price of Basic stock over a fourteen month period—represents an effort to litigate the merits of this case on the motion for class certification. . . . As this Court held in *Eisen* v. *Carlisle & Jacquelin*, 417 U. S. 156, 177 (1974): 'We find nothing in either the language or history of Rule 23 that gives a court any authority to conduct a preliminary inquiry into the merits of a suit in order to determine whether it may be maintained as a class action.'" Brief for Respondents in O. T. 1987, No. 86–279, at 54.

The Court rejected this reading of *Eisen* two Terms ago, explaining that the very language the *Basic* plaintiffs quoted

was "sometimes mistakenly cited" as prohibiting inquiry into "the propriety of certification under Rules 23(a) and (b)." *Wal-Mart Stores, Inc.*, 564 U. S., at 351, n. 6. That reading, the Court explained, "is the purest dictum and is contradicted by our other cases." *Ibid.* The *Basic* defendants' reply is consistent with *Wal-Mart*:

> "Putative class representatives, such as respondents, should not be permitted to invoke the fraud on the market theory while, at the same time, arguing that courts may not make any preliminary inquiry into the claimed impact on the market. *See, e. g.*, Resp. Br., p. 54. By seeking the benefit of the presumption, respondents necessarily invite judicial scrutiny of the circumstances in which it is invoked." Reply Brief for Petitioners in O. T. 1987, No. 86–279, p. 18.

Well said. The history of *Basic* is worth the volume of argument offered by the majority. Cf. *New York Trust Co.* v. *Eisner*, 256 U. S. 345, 349 (1921) (majority opinion of Holmes, J.). Materiality was central to the development, analysis, and adoption of the fraud-on-the-market theory both before *Basic* and in *Basic* itself. Materiality, therefore, must be demonstrated to prove fraud on the market, and until materiality of an alleged misstatement is shown there is no reason to believe that all market participants have relied equally on it. Otherwise individualized questions of reliance remain. This history confirms that materiality must be proved at the time that the theory is invoked—*i. e.*, at certification.

III

I, thus, would reverse the judgment of the Ninth Circuit and hold that a plaintiff invoking the fraud-on-the-market presumption bears the burden to establish all the elements of fraud on the market at certification, including the materiality of the alleged misstatement.

Syllabus

LEVIN *v.* UNITED STATES ET AL.

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

No. 11–1351. Argued January 15, 2013—Decided March 4, 2013

The Federal Tort Claims Act (FTCA) waives the Government's sovereign immunity from tort suits, 28 U. S. C. § 1346(b)(1), but excepts from the waiver certain intentional torts, including battery, § 2680(h). The FTCA, as originally enacted, afforded tort victims a remedy against the United States, but did not preclude suit against the alleged tortfeasor as sole or joint defendant. Several agency-specific statutes postdating the FTCA, however, immunized certain federal employees from personal liability for torts committed in the course of their official duties. One such statute, the Gonzalez Act, makes the remedy against the United States under the FTCA preclusive of any suit against Armed Forces medical personnel. 10 U. S. C. § 1089(a). The Act also provides that, "[f]or purposes of this section," the intentional tort exception to the FTCA "shall not apply to any cause of action arising out of a negligent or wrongful act or omission in the performance of medical . . . functions." § 1089(e). Congress subsequently enacted comprehensive legislation, the Federal Employees Liability Reform and Tort Compensation Act (Liability Reform Act), which makes the FTCA's remedy against the United States exclusive for torts committed by federal employees acting within the scope of their employment, 28 U. S. C. § 2679(b)(1). Under the Liability Reform Act, federal employees are shielded without regard to agency affiliation or line of work.

Petitioner Levin suffered injuries as a result of cataract surgery performed at a U. S. Naval Hospital. He filed suit, naming the United States and the surgeon as defendants and asserting, *inter alia*, a claim of battery, based on his alleged withdrawal of consent to operate shortly before the surgery took place. Finding that the surgeon had acted within the scope of his employment, the District Court released him and substituted the United States as sole defendant. The Government moved to dismiss the battery claim, relying on the FTCA's intentional tort exception. Levin countered that the Gonzalez Act, in particular, § 1089(e), renders that exception inapplicable when a plaintiff alleges medical battery by a military physician. The District Court granted the Government's motion to dismiss. Affirming, the Ninth Circuit concluded that § 1089(e) served only to buttress the immunity from personal liability granted military medical personnel in § 1089(a), and did not negate the FTCA's intentional tort exception.

Syllabus

Held: The Gonzalez Act direction in § 1089(e) abrogates the FTCA's intentional tort exception and therefore permits Levin's suit against the United States alleging medical battery by a Navy doctor acting within the scope of his employment. Pp. 512–518.

(a) To determine whether the Government's immunity is waived for batteries, the Court looks to § 1089(e)'s language, "giving the 'words used' their 'ordinary meaning.'" *Moskal* v. *United States*, 498 U. S. 103, 108. Levin claims that the operative clause of § 1089(e), which provides that the FTCA's intentional tort exception "shall not apply" to medical malpractice claims, is qualified by the provision's introductory clause "[f]or purposes of this section," which confines the operative clause to claims alleging malpractice by personnel in the Armed Forces and the other agencies specified in the Gonzalez Act. The Government, in contrast, argues that § 1089(e)'s introductory clause instructs courts to pretend, "[f]or purposes of" the Gonzalez Act, that § 2680(h) does not secure the Government against liability for intentional torts, including battery, even though § 2680(h) does provide that shelter. The choice between the parties' dueling constructions is not a difficult one. Section 1089(e)'s operative clause states, in no uncertain terms, that the FTCA's intentional tort exception, § 2680(h), "shall not apply," and § 1089(e)'s introductory clause confines the abrogation of § 2680(h) to medical personnel employed by the agencies listed in the Gonzalez Act. Had Congress wanted to adopt the Government's counterfactual interpretation, it could have used more precise language, as it did in § 1089(c), a subsection adjacent to § 1089(e). Pp. 512–515.

(b) Under the Government's interpretation of § 1089(e), the Liability Reform Act would displace much of the Gonzalez Act. That reading conflicts with the view the Government stated in *United States* v. *Smith*, 499 U. S. 160. There, the question was whether a person injured abroad due to a military doctor's negligence may seek compensation from the doctor in a U. S. court, for the FTCA gave them no recourse against the Government on a "claim arising in a foreign country," 28 U. S. C. § 2680(k). In arguing that such persons also lacked recourse to a suit against the doctor, the Government contended that the Liability Reform Act made "[t]he remedy against the United States" under the FTCA "exclusive." § 2679(b)(1). This interpretation, the Government argued, would not override the Gonzalez Act, which would continue to serve two important functions: Title 10 U. S. C. § 1089(f)(1) would authorize indemnification of individual military doctors sued abroad where foreign law might govern; and the Gonzalez Act would allow an FTCA suit against the United States if the doctor performed a procedure to which the plaintiff did not consent. Adopting the Government's construction, the Court held that § 2679(b)(1) grants all federal employees,

including medical personnel, immunity for acts within the scope of their employment, even when the FTCA provides no remedy against the United States. 499 U. S., at 166. Under the Government's current reading of § 1089(e), the Liability Reform Act overrides the Gonzalez Act except in the atypical circumstances in which indemnification of the doctor under § 1089(f)(1) remains possible, while under Levin's reading, the Gonzalez Act does just what the Government said it did in *Smith*. Pp. 515–517.

(c) The Government attempts to inject ambiguity into § 1089(e) by claiming that 38 U. S. C. § 7316, a parallel statute that confers immunity on medical personnel of the Department of Veterans Affairs, expresses Congress' intent to abrogate § 2680(h) with the unmistakable clarity the Gonzalez Act lacks. But this Court sees nothing dispositively different about the wording of the two provisions, and neither did the Government when it argued in the District Court that § 1089(e) and § 7316(f) are functionally indistinguishable. Pp. 517–518.

663 F. 3d 1059, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, which was unanimous except insofar as SCALIA, J., did not join footnotes 6 and 7.

James A. Feldman, by invitation of the Court, *post*, p. 935, argued the cause as *amicus curiae* in support of petitioner. With him on the briefs were *Stephanos Bibas*, *Nancy Bregstein*, and *Irving L. Gornstein*.

Pratik A. Shah argued the cause for the United States et al. With him on the brief were *Solicitor General Verrilli*, *Principal Deputy Assistant Attorney General Delery*, *Deputy Solicitor General Srinivasan*, *Mark B. Stern*, and *Daniel Tenny*.

JUSTICE GINSBURG delivered the opinion of the Court.*

Petitioner Steven Alan Levin, a veteran, suffered injuries as a result of cataract surgery performed at the U. S. Naval Hospital in Guam. He asserts that, just prior to the operation, concern about equipment in the operating room led him to withdraw his consent to the surgery. Seeking compensation from the United States, Levin sued under the Federal

*JUSTICE SCALIA joins this opinion, except as to footnotes 6 and 7.

Tort Claims Act (FTCA), 28 U. S. C. §§ 1346(b), 2671–2680, which waives the Government's sovereign immunity from tort suits, but excepts from the waiver certain intentional torts, including battery, § 2680(h). Levin relied on the Gonzalez Act, 10 U. S. C. § 1089, which makes the remedy against the United States under the FTCA preclusive of any suit against Armed Forces medical personnel, § 1089(a). In the provision at issue in this case, § 1089(e), the Gonzalez Act declares that, "[f]or purposes of" the Act, the intentional tort exception to the FTCA "shall not apply to any cause of action arising out of a negligent or wrongful act or omission in the performance of medical . . . functions."

The Government reads § 1089(e) simply to shore up § 1089(a)'s immunization of medical personnel against tort liability. Levin, in contrast, reads § 1089(e) to establish his right to bring a claim of medical battery against the United States under the FTCA without encountering the intentional tort exception. The U. S. District Court for the District of Guam, affirmed by the Ninth Circuit, dismissed Levin's battery claim based on the reading of the Gonzalez Act proffered by the Government. We find the Government's reading strained, and Levin's, far more compatible with the text and purpose of the federal legislation. We therefore reverse the Ninth Circuit's judgment.

I

A

The FTCA, enacted in 1946, "was designed primarily to remove the sovereign immunity of the United States from suits in tort." *Richards* v. *United States*, 369 U. S. 1, 6 (1962). The Act gives federal district courts exclusive jurisdiction over claims against the United States for "injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission" of federal employees acting within the scope of their employment. 28 U. S. C. § 1346(b)(1). Substantively, the FTCA makes the United

States liable "to the same extent as a private individual under like circumstances," § 2674, under the law of the place where the tort occurred, § 1346(b)(1), subject to enumerated exceptions to the immunity waiver, §§ 2680(a)–(n). The exception relevant in this case is § 2680(h), which, *inter alia*, preserves the Government's immunity from suit on "[a]ny claim arising out of . . . battery." We have referred to § 2680(h) as the "intentional tort exception." *E. g.*, *United States* v. *Shearer*, 473 U. S. 52, 54 (1985).[1]

Originally, the FTCA afforded tort victims a remedy against the United States, but did not preclude lawsuits against individual tortfeasors. See *Henderson* v. *Bluemink*, 511 F. 2d 399, 404 (CADC 1974). Judgment against the United States in an FTCA action would bar a subsequent action against the federal employee whose conduct gave rise to the claim, 28 U. S. C. § 2676, but plaintiffs were not obliged to proceed exclusively against the Government. They could sue as sole or joint defendants federal employees alleged to have acted tortiously in the course of performing their official duties.

In time, Congress enacted a series of agency-specific statutes designed to shield precisely drawn classes of employees from the threat of personal liability. *United States* v. *Smith*, 499 U. S. 160, 170 (1991). One such measure was the Medical Malpractice Immunity Act, 90 Stat. 1985, 10 U. S. C. § 1089, passed in 1976 and commonly known as the Gonzalez Act.[2]

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[1] This shorthand description is not entirely accurate. Section 2680(h) does not remove from the FTCA's waiver all intentional torts, *e. g.*, conversion and trespass, and it encompasses certain torts, *e. g.*, misrepresentation, that may arise out of negligent conduct. See *United States* v. *Neustadt*, 366 U. S. 696, 702 (1961).

[2] The agency-specific statutes were patterned on the Federal Drivers Act, 75 Stat. 539, 28 U. S. C. §§ 2679(b)–(e) (1970 ed.), passed in 1961 and amended in 1988 by Pub. L. 100–694, § 5(b), 102 Stat. 4564. The Drivers Act made an action against the United States under the FTCA the "exclusive" remedy for "personal injury . . . resulting from the operation by any employee of the Government of any motor vehicle while acting within

That Act, controlling in this case, makes claims against the United States under the FTCA the "exclusive" remedy for injuries resulting from malpractice committed by medical personnel of the Armed Forces and other specified agencies. 10 U. S. C. § 1089(a).[3]

A subsection of the Gonzalez Act key to the issue before us, § 1089(e), refers to the FTCA's intentional tort exception. It provides: "For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to any cause of action arising out of a negligent or wrongful act or omission

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the scope of his office or employment." § 2679(b). Statutes conferring immunity on medical personnel of the Department of Veterans Affairs, 79 Stat. 1156, 38 U. S. C. § 4116 (1970 ed.), now codified at 38 U. S. C. § 7316 (2006 ed.), and the Public Health Service, 84 Stat. 1870, 42 U. S. C. § 233 (2006 ed.), followed in 1965 and 1970, respectively. In 1976, in addition to the Gonzalez Act, Congress enacted a statute immunizing medical personnel of the National Aeronautics and Space Administration, 90 Stat. 1988, 42 U. S. C. § 2458a (1982 ed.), now codified at 51 U. S. C. § 20137 (2006 ed., Supp. IV). And in 1980, it enacted a personal immunity statute covering medical personnel of the Department of State, 94 Stat. 2155, 22 U. S. C. § 2702 (2006 ed.).

[3] In full, § 1089(a) reads:

"The remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for personal injury, including death, caused by the negligent or wrongful act or omission of any physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (including medical and dental technicians, nursing assistants, and therapists) of the armed forces, the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32, the Department of Defense, the Armed Forces Retirement Home, or the Central Intelligence Agency in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of his duties or employment therein or therefor shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or the estate of such person) whose act or omission gave rise to such action or proceeding. This subsection shall also apply if the physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or the estate of such person) involved is serving under a personal services contract entered into under section 1091 of this title."

in the performance of medical, dental, or related health care functions." Section 1089(e) was patterned on a provision in a statute, enacted six years earlier, that conferred immunity on medical personnel of the Public Health Service. See 84 Stat. 1870–1871, 42 U. S. C. § 233(e) (1976 ed.) ("For purposes of this section, the provisions of [§ 2680(h)] shall not apply to assault or battery arising out of negligence in the performance of medical . . . functions."). Targeted immunity statutes enacted around the same time as the Gonzalez Act similarly shielded medical personnel employed by specific agencies. See *supra*, at 507–508, n. 2. Each such measure contained a provision resembling § 1089(e). See 22 U. S. C. § 2702(e) ("For purposes of this section, the provisions of [§ 2680(h)] shall not apply to any tort enumerated therein arising out of negligence in the furnishing of medical care or related services."); 38 U. S. C. § 7316(f) ("The exception provided in [§ 2680(h)] shall not apply to any claim arising out of a negligent or wrongful act or omission of any person described in subsection (a) in furnishing medical care or treatment . . . while in the exercise of such person's duties in or for the Administration."); 51 U. S. C. § 20137(e) ("For purposes of this section, the provisions of [§ 2680(h)] shall not apply to any cause of action arising out of a negligent or wrongful act or omission in the performance of medical . . . functions.").

In 1988, departing from the above-described agency-specific approach, Congress enacted comprehensive legislation titled the Federal Employees Liability Reform and Tort Compensation Act (Liability Reform Act), 102 Stat. 4563, and often called the Westfall Act. This embracive measure makes the remedy against the United States under the FTCA exclusive for torts committed by federal employees acting within the scope of their employment, 28 U. S. C. § 2679(b)(1). Shielding all federal employees from personal liability without regard to agency affiliation or line of work, the personal immunity provision of the Liability Reform Act

tracks the text of § 1089(a). The comprehensive enactment, however, did not repeal the Gonzalez Act, *Smith*, 499 U. S., at 172, or, presumably, any of the other laws covering medical personnel employed at particular agencies. Unlike the Gonzalez Act and kindred statutes, the Liability Reform Act does not reference, as § 1089(e) does, the FTCA's intentional tort exception, 28 U. S. C. § 2680(h).

B

The petitioner, Steven Alan Levin, a veteran, was diagnosed with a cataract in his right eye. He sought treatment at the United States Naval Hospital in Guam and was evaluated by Lieutenant Commander Frank Bishop, M. D., an ophthalmologist serving in the U. S. Navy. Dr. Bishop recommended that Levin undergo "phacoemulsification with intraocular lens placement," a surgical procedure involving extraction of the cataract and insertion of an artificial replacement lens. Levin signed forms consenting to the operation, which took place on March 12, 2003. Shortly before the surgery began, Levin alleges, he orally withdrew his consent twice, but Dr. Bishop conducted the operation nevertheless. Due to complications occurring while the surgery was underway, Levin developed corneal edema, a condition that left him with diminished eyesight, discomfort, problems with glare and depth-of-field vision, and in need of ongoing medical treatment.

Levin sought compensation for the untoward results of the surgery. After exhausting administrative remedies, he commenced a civil action in the U. S. District Court for the District of Guam. Naming the United States and Dr. Bishop as defendants, Levin asserted claims of battery, based on his alleged withdrawal of consent to the surgery, and negligence, based on alleged flaws in Dr. Bishop's performance of the operation. Accepting the Government's representation that Dr. Bishop was acting within the scope of his employment while performing the surgery, the District Court granted the

Government's motion to release Dr. Bishop and substitute the United States as sole defendant. When Levin failed to produce expert testimony in support of his negligence allegations, the court granted the Government's motion for summary judgment on that claim.

Next, the Government moved to dismiss the battery claim. The District Court no longer had jurisdiction over Levin's case, the Government argued, because the FTCA's intentional tort exception, § 2680(h), disallows suits against the United States for battery. Levin countered that the Gonzalez Act, in particular, § 1089(e), renders the intentional tort exception inapplicable when a plaintiff alleges medical battery by an Armed Forces physician. The District Court rejected Levin's plea and granted the Government's motion to dismiss for lack of subject-matter jurisdiction. App. to Pet. for Cert. 14a–41a.

On appeal to the Ninth Circuit, Levin did not question the adverse judgment on his negligent performance claim, but he renewed the argument that the battery claim, based on his alleged withdrawal of consent, survived. That was so, he maintained, because § 1089(e) negated § 2680(h), the FTCA's intentional tort exception. The Court of Appeals thought Levin's construction of the Gonzalez Act "plausible," but "not the best reading of the statute." 663 F. 3d 1059, 1062 (2011). As perceived by the Ninth Circuit, § 1089(e) had a limited office, serving only to buttress the immunity from personal liability granted military medical personnel in § 1089(a). "[C]lever tort plaintiffs," the court conjectured, might argue in future cases that because the FTCA does not authorize battery claims against the United States, such claims may be asserted against military doctors notwithstanding § 1089(a). *Ibid.* Section 1089(e) foreclosed that argument, but the provision did nothing more, the court concluded. Satisfied that § 1089(e) served the dominant purpose of the Gonzalez Act—to immunize covered medical personnel against malpractice liability—and did not

unequivocally waive the United States' sovereign immunity from battery claims, the Ninth Circuit affirmed the District Court's disposition.[4]

We granted certiorari, 567 U. S. 968 (2012), recognizing that Courts of Appeals have divided on the question whether the controlling provision of the Gonzalez Act, § 1089(e), authorizes battery claims against the United States when military doctors operate without the patient's consent. Compare 663 F. 3d, at 1063 (case below), with *Keir* v. *United States*, 853 F. 2d 398, 409–410 (CA6 1988) (§ 1089(e) waives sovereign immunity for battery suits alleging malpractice by military medical personnel); and *Lojuk* v. *Quandt*, 706 F. 2d 1456, 1463 (CA7 1983) (same). See also *Franklin* v. *United States*, 992 F. 2d 1492, 1501 (CA10 1993) (38 U. S. C. § 7316(f), concerning Department of Veterans Affairs' medical personnel, includes an "essentially identical counterpart" to § 1089(e), which similarly "nullif[ies] § 2680(h) and thereby expand[s] the injured party's remedy against the government under the FTCA").[5]

II

A

We note at the outset that medical malpractice claims may be based on negligence, in which case the FTCA's waiver of

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[4] In accord with the Ninth Circuit, the Government maintains that sovereign immunity is never waived absent unequivocal congressional statement to that effect. See Brief for United States 14–15 (citing *FAA* v. *Cooper*, 566 U. S. 284, 290 (2012)); *United States* v. *Bormes*, *ante*, at 9–10. Levin, on the other hand, urges that, in view of the FTCA's sweeping waiver of immunity, § 1346(b)(1), exceptions to that waiver, contained in § 2680, should not be accorded an unduly generous interpretation. See Brief for Court-Appointed *Amicus Curiae* in Support of Petitioner 40 (citing *Dolan* v. *Postal Service*, 546 U. S. 481, 492 (2006)). We need not settle this dispute. For the reasons stated, *infra*, at 513–518, we conclude that § 1089(e) meets the unequivocal waiver standard.

[5] We appointed James A. Feldman to brief and argue the position of the petitioner as *amicus curiae*. *Post*, p. 935. *Amicus* Feldman has ably discharged his assigned responsibilities, and the Court thanks him for his well-stated arguments.

the Government's sovereign immunity is not in doubt. See 28 U. S. C. § 1346(b)(1); *supra*, at 506. Or they may be based on alleged lack of consent, therefore qualifying as batteries. Whether the Government's immunity is waived for such claims depends on the meaning of 10 U. S. C. § 1089(e). See *supra*, at 508–509.

In determining the meaning of a statute, "we look first to its language, giving the words used their ordinary meaning." *Moskal* v. *United States*, 498 U. S. 103, 108 (1990) (citation and internal quotation marks omitted). The provision of the Gonzalez Act at issue, § 1089(e), has two components: an introductory clause and an operative clause. The introductory clause prefaces § 1089(e) with "[f]or purposes of this section." The operative clause instructs that 28 U. S. C. § 2680(h), the FTCA's intentional tort exception, "shall not apply to any cause of action arising out of . . . negligent or wrongful" conduct taken "in the performance of medical, dental or related health care functions." § 1089(e).

We set out below the parties' dueling constructions of § 1089(e). Levin reads § 1089(e) to negate § 2680(h) for battery claims involving medical personnel of the Armed Forces and other specified agencies. He trains first on the operative clause of § 1089(e), which contains this directive: The intentional tort exception to the FTCA "shall not apply" to claims alleging medical malpractice. But, he points out, if left unqualified, the operative clause would expose the United States to liability for medical malpractice committed by federal employees across all agencies. The introductory clause, Levin maintains, supplies the qualification: It confines the operative clause to claims covered by "this section," *i. e.*, claims alleging malpractice by personnel in the Armed Forces and the other agencies specified in the Gonzalez Act. Because Levin's claim concerning Dr. Bishop's alleged battery fits that category, Levin concludes, he may sue to recover from the United States.

The Government, in contrast, reads § 1089(e)'s introductory clause as instructing courts to pretend, "[f]or purposes

of" the Gonzalez Act, that § 2680(h) does not secure the Government against liability for intentional torts, including battery, even though § 2680(h) does provide that shelter. Congress included this counterfactual instruction in the Gonzalez Act, the Government successfully argued in the Ninth Circuit, "to guard against the negative inference that, if no remedy against the United States were available for a medical battery claim, a remedy against an individual defendant must exist." Brief for United States 8. Warding off this mistaken inference, the Government asserts, § 1089(e) eliminates any doubt that the military medical personnel covered by § 1089(a) are personally immune from malpractice liability. Ensuring that immunity, the Government reminds us, was the very purpose of the Gonzalez Act.

The choice between these alternative readings of § 1089(e) is not difficult to make. Section 1089(e)'s operative clause states, in no uncertain terms, that the intentional tort exception to the FTCA, § 2680(h), "shall not apply," and § 1089(e)'s introductory clause confines the abrogation of § 2680(h) to medical personnel employed by the agencies listed in the Gonzalez Act.[6]

The Government invites us to read the phrase "section 2680(h) . . . shall not apply" to convey "§ 2680(h) does apply," a reading most unnatural. Had Congress wanted to guard against any inference that individual employees may be liable, despite § 1089(a)'s statement that the remedy against the United States is exclusive, see *supra*, at 508, n. 3, Congress might have stated, "subsection (a) applies even when § 2680(h) precludes recovery against the United States under the FTCA." Or, Congress might have provided that § 2680(h) shall be "deemed" or "considered" inapplicable, a formulation commonly employed to direct courts to make

[6] Corroborating this plain reading, the Senate Report on the Gonzalez Act explains that § 1089(e) was enacted to "nullify a provision of the Federal Tort Claims Act which would otherwise exclude any action for assault and battery" from FTCA coverage. S. Rep. No. 94–1264, p. 9 (1976).

counterfactual assumptions. See, *e. g.*, 7 U. S. C. § 7283(b) ("For purposes of this section, raw cane sugar, refined beet sugar, and in-process sugar eligible for a loan . . . shall not be considered an agricultural commodity."); 15 U. S. C. § 78*o*–11(e)(3)(B) (2006 ed., Supp. V) ("For purposes of this subsection, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal home loan banks shall not be considered an agency of the United States."); 42 U. S. C. § 416(b) ("For purposes of subparagraph (C) of section 402(b)(1) of this title, a divorced wife shall be deemed not to be married throughout the month in which she becomes divorced.").

We note, furthermore, that in 10 U. S. C. § 1089(c), a subsection of the Gonzalez Act adjacent to § 1089(e), Congress used the counterfactual formulation absent in § 1089(e). Section 1089(c) provides that certain actions brought against military employees acting within the scope of their employment "shall be . . . deemed a tort action brought against the United States under the provisions of title 28." See *Barnhart* v. *Sigmon Coal Co.*, 534 U. S. 438, 452 (2002) ("[W]hen Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (internal quotation marks omitted)).

B

Were we to accept the Government's interpretation of § 1089(e), the Liability Reform Act would displace much of the Gonzalez Act. To explain why this is so, we describe the situation before the Court in *United States* v. *Smith*, 499 U. S. 160. *Smith* presented the question whether persons injured abroad due to a military doctor's negligence may seek compensation in a U. S. court from the doctor who caused the injury. Because the FTCA excludes from the Government's waiver of immunity "[a]ny claim arising in a foreign country," 28 U. S. C. § 2680(k), the plaintiffs in *Smith*

had no remedy against the United States. They also lacked recourse to a suit in this country against the doctor, the Government urged, for the Liability Reform Act made "[t]he remedy against the United States" under the FTCA "exclusive of any other civil action." § 2679(b)(1). Were that the case, the plaintiffs responded, the Liability Reform Act would effectively repeal the Gonzalez Act. See Brief for Respondents in *Smith*, O. T. 1990, No. 89–1646, pp. 33–46. In particular, they observed, 10 U. S. C. § 1089(f)(1) authorizes the head of an agency to indemnify military doctors "assigned to a foreign country" whose negligent conduct injures a patient. But the indemnification provision would have no work to do, the plaintiffs argued, if the Liability Reform Act foreclosed suit against the doctor.

Not so, the Government responded. The Gonzalez Act would continue to serve two important functions. First, § 1089(f)(1) would authorize indemnification of individual military doctors sued abroad where foreign law, rather than the FTCA, might govern. Brief for United States in *Smith* 34 (citing *Powers* v. *Schultz*, 821 F. 2d 295, 297–298 (CA5 1987)). Second, the Gonzalez Act would allow an FTCA suit against the United States if the doctor's malpractice ranked as "intentional," *i. e.*, if he performed a procedure to which the plaintiff did not consent. See Brief for United States in *Smith* 32–34; Reply Brief in *Smith* 12 ("[T]he provision of the Gonzalez Act waiving sovereign immunity as to medical malpractice claims sounding in intentional tort, 10 U. S. C. § 1089(e), will enable plaintiffs to pursue those claims against the United States."). Thus, the Government told this Court, "in view of the continued need for the provisions of the Gonzalez Act even after the enactment of the [Liability] Reform Act, leaving that statute on the books was an entirely sensible drafting decision." *Id.*, at 13.

Adopting the Government's construction of the Liability Reform Act, we held in *Smith* that § 2679(b)(1) grants all federal employees, including medical personnel, immunity for

acts within the scope of their employment, even when an FTCA exception (such as § 2680(k)) left the plaintiff without a remedy against the United States. 499 U. S., at 166. Our decision in *Smith* was thus informed by the Government's position that the Gonzalez Act would remain "'an operative part of the integrated statutory scheme.'" Reply Brief in *Smith* 12 (quoting *United States* v. *Fausto*, 484 U. S. 439, 453 (1988)).

The Government now disavows the reading of § 1089(e) it advanced in *Smith*. See Brief for United States 24, n. 8. Under its current reading, the Liability Reform Act does indeed override the Gonzalez Act save in two slim applications: If a military doctor employed by the United States is sued in a foreign court, or is detailed to a nonfederal institution, indemnification of the doctor under § 1089(f)(1) would remain possible. See *id.*, at 26. Under Levin's reading of § 1089(e), the Gonzalez Act does just what the Government said that legislation did in briefing *Smith*: It renders § 2680(h) inapplicable to medical batteries committed by military personnel within the scope of their employment, thereby permitting civil actions against the United States by persons situated as Levin is.

C

Endeavoring to inject ambiguity into § 1089(e) notwithstanding its direction that "section 2680(h) . . . shall not apply," the Government refers to 38 U. S. C. § 7316, a parallel statute that confers immunity on medical personnel of the Department of Veterans Affairs (VA). As enacted in 1965, § 7316's statutory predecessor had no provision akin to § 1089(e). See 79 Stat. 1156, 38 U. S. C. § 4116 (1970 ed.). Congress added such a provision in 1988, but it was not a carbon copy of § 1089(e). In particular, the new provision did not include the words that preface § 1089(e). It reads: "The exception provided in section 2680(h) of title 28 shall not apply to any claim arising out of a negligent or wrongful act or omission of any person described in subsection (a) [of

this section] in furnishing medical care or treatment." 38 U. S. C. § 7316(f). This phrasing, which refers to "any person described in [§ 7316(a)]"—*i. e.*, any "health care employee of the" VA—does indeed express Congress' intent to abrogate § 2680(h), the Government acknowledges. But § 7316(f) does so, the Government adds, with the unmistakable clarity the Gonzalez Act lacks.

We see nothing dispositively different about the wording of the two provisions.[7] Neither did the Government earlier on. In the District Court, the Government argued that § 1089(e) and § 7316(f) are functionally indistinguishable. See Record 366 ("§ 1089(e) has language that is identical to . . . § 7316(f)"); *id.*, at 435 ("originally [Levin] talked about the doctor being under the VA; in fact, the doctor is a Navy doctor, but the statute is exactly the same"); *id.*, at 447–448 (Dr. Bishop was "[n]ot an employee of the VA[, but] it's an academic argument because the exact same language [appears in] § 1089(e)"). We agree with the Government's earlier view, and not with the freshly minted revision.

* * *

For the reasons stated, we hold that the Gonzalez Act direction in 10 U. S. C. § 1089(e) abrogates the FTCA's intentional tort exception and therefore permits Levin's suit against the United States alleging medical battery by a Navy doctor acting within the scope of his employment. Accordingly, we reverse the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

It is so ordered.

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[7] See S. Rep. No. 100–215, p. 171 (1987) (§ 7316(f) was "patterned after" § 1089(e)).

Syllabus

KIRTSAENG, DBA BLUECHRISTINE99 *v.* JOHN WILEY & SONS, INC.

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

No. 11–697. Argued October 29, 2012—Decided March 19, 2013

The "exclusive rights" that a copyright owner has "to distribute copies . . . of [a] copyrighted work," 17 U. S. C. § 106(3), are qualified by the application of several limitations set out in §§ 107 through 122, including the "first sale" doctrine, which provides that "the owner of a particular copy or phonorecord lawfully made under this title . . . is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord," § 109(a). Importing a copy made abroad without the copyright owner's permission is an infringement of § 106(3). See § 602(a)(1). In *Quality King Distributors, Inc.* v. *L'anza Research Int'l, Inc.*, 523 U. S. 135, 145, this Court held that § 602(a)(1)'s reference to § 106(3) incorporates the §§ 107 through 122 limitations, including § 109's "first sale" doctrine. However, the copy in *Quality King* was initially manufactured in the United States and then sent abroad and sold.

Respondent, John Wiley & Sons, Inc., an academic textbook publisher, often assigns to its wholly owned foreign subsidiary (Wiley Asia) rights to publish, print, and sell foreign editions of Wiley's English-language textbooks abroad. Wiley Asia's books state that they are not to be taken (without permission) into the United States. When petitioner Kirtsaeng moved from Thailand to the United States to study mathematics, he asked friends and family to buy foreign edition English-language textbooks in Thai bookshops, where they sold at low prices, and to mail them to him in the United States. He then sold the books, reimbursed his family and friends, and kept the profit.

Wiley filed suit, claiming that Kirtsaeng's unauthorized importation and resale of its books was an infringement of Wiley's § 106(3) exclusive right to distribute and § 602's import prohibition. Kirtsaeng replied that because his books were "lawfully made" and acquired legitimately, § 109(a)'s "first sale" doctrine permitted importation and resale without Wiley's further permission. The District Court held that Kirtsaeng could not assert this defense because the doctrine does not apply to goods manufactured abroad. The jury then found that Kirtsaeng had willfully infringed Wiley's American copyrights and assessed damages. The Second Circuit affirmed, concluding that § 109(a)'s "lawfully made

under this title" language indicated that the "first sale" doctrine does not apply to copies of American copyrighted works manufactured abroad.

Held: The "first sale" doctrine applies to copies of a copyrighted work lawfully made abroad. Pp. 528–554.

(a) Wiley reads "lawfully made under this title" to impose a *geographical* limitation that prevents § 109(a)'s doctrine from applying to Wiley Asia's books. Kirtsaeng, however, reads the phrase as imposing the *non*-geographical limitation made "in accordance with" or "in compliance with" the Copyright Act, which would permit the doctrine to apply to copies manufactured abroad with the copyright owner's permission. Pp. 528–530.

(b) Section 109(a)'s language, its context, and the "first sale" doctrine's common-law history favor Kirtsaeng's reading. Pp. 530–545.

(1) Section 109(a) says nothing about geography. "Under" can logically mean "in accordance with." And a nongeographical interpretation provides each word in the phrase "lawfully made under this title" with a distinct purpose: "[L]awfully made" suggests an effort to distinguish copies that were made lawfully from those that were not, and "under this title" sets forth the standard of "lawful[ness]" (*i. e.*, the U. S. Copyright Act). This simple reading promotes the traditional copyright objective of combating piracy and makes word-by-word linguistic sense.

In contrast, the geographical interpretation bristles with linguistic difficulties. Wiley first reads "under" to mean "in conformance with the Copyright Act *where the Copyright Act is applicable.*" Wiley then argues that the Act "is applicable" only in the United States. However, neither "under" nor any other word in "lawfully made under this title" means "where." Nor can a geographical limitation be read into the word "applicable." The fact that the Act does not instantly protect an American copyright holder from unauthorized piracy taking place abroad does not mean the Act is inapplicable to copies made abroad. Indeed, § 602(a)(2) makes foreign-printed pirated copies subject to the Copyright Act. And § 104 says that works "subject to protection" include unpublished works "without regard to the [author's] nationality or domicile" and works "first published" in any of the nearly 180 nations that have signed a copyright treaty with the United States. Pp. 530–533.

(2) Both historical and contemporary statutory context indicate that Congress did not have geography in mind when writing the present version of § 109(a). A comparison of the language in § 109(a)'s predecessor and the present provision supports this conclusion. The former

version referred to those who are not owners of a copy, but mere possessors who "lawfully obtained" a copy, while the present version covers only owners of a "lawfully made" copy. This new language, including the five words at issue, makes clear that a lessee of a copy will not receive "first sale" protection but one who owns a copy will be protected, provided that the copy was "lawfully made." A nongeographical interpretation is also supported by other provisions of the present statute. For example, the "manufacturing clause," which limited importation of many copies printed outside the United States, was phased out in an effort to equalize treatment of copies made in America and copies made abroad. But that "equal treatment" principle is difficult to square with a geographical interpretation that would grant an American copyright holder permanent control over the American distribution chain in respect to copies printed abroad but not those printed in America. Finally, the Court normally presumes that the words "lawfully made under this title" carry the same meaning when they appear in different but related sections, and it is unlikely that Congress would have intended the consequences produced by a geographical interpretation. Pp. 533–538.

(3) A nongeographical reading is also supported by the canon of statutory interpretation that "when a statute covers an issue previously governed by the common law," it is presumed that "Congress intended to retain the substance of the common law." *Samantar* v. *Yousuf*, 560 U. S. 305, 320, n. 13. The common-law "first sale" doctrine, which has an impeccable historic pedigree, makes no geographical distinctions. Nor can such distinctions be found in *Bobbs-Merrill Co.* v. *Straus*, 210 U. S. 339, where this Court first applied the "first sale" doctrine, or in § 109(a)'s predecessor provision, which Congress enacted a year later. Pp. 538–540.

(4) Library associations, used-book dealers, technology companies, consumer-goods retailers, and museums point to various ways in which a geographical interpretation would fail to further basic constitutional copyright objectives, in particular "promot[ing] the Progress of Science and useful Arts," Art. I, § 8, cl. 8. For example, a geographical interpretation of the first sale doctrine would likely require libraries to obtain permission before circulating the many books in their collections that were printed overseas. Wiley counters that such problems have not occurred in the 30 years since a federal court first adopted a geographical interpretation. But the law has not been settled for so long in Wiley's favor. The Second Circuit in this case was the first Court of Appeals to adopt a purely geographical interpretation. Reliance on the "first sale" doctrine is also deeply embedded in the practices of booksell-

Syllabus

ers, libraries, museums, and retailers, who have long relied on its protection. And the fact that harm has proved limited so far may simply reflect the reluctance of copyright holders to assert geographically based resale rights. Thus, the practical problems described by petitioner and his *amici* are too serious, extensive, and likely to come about to be dismissed as insignificant—particularly in light of the ever-growing importance of foreign trade to America. Pp. 540–545.

(c) Several additional arguments that Wiley and the dissent make in support of a geographical interpretation are unpersuasive. Pp. 545–553.

654 F. 3d 210, reversed and remanded.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, ALITO, SOTOMAYOR, and KAGAN, JJ., joined. KAGAN, J., filed a concurring opinion, in which ALITO, J., joined, *post*, p. 554. GINSBURG, J., filed a dissenting opinion, in which KENNEDY, J., joined, and in which SCALIA, J., joined except as to Parts III and V–B–1, *post*, p. 557.

E. Joshua Rosenkranz argued the cause for petitioner. With him on the briefs were *Annette L. Hurst*, *Lisa T. Simpson*, and *Sam P. Israel*.

Theodore B. Olson argued the cause for respondent. With him on the brief were *Matthew D. McGill* and *Scott P. Martin*.

Deputy Solicitor General Stewart argued the cause for the United States as *amicus curiae* in support of respondent. With him on the brief were *Solicitor General Verrilli*, *Acting Assistant Attorney General Delery*, *Melissa Arbus Sherry*, and *Scott R. McIntosh*.*

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*Briefs of *amici curiae* urging reversal were filed for the American Library Association et al. by *Jonathan Band*; for the Association of Art Museum Directors et al. by *Stefan M. Mentzer*, *Owen C. Pell*, and *Edward F. Rover*; for the Association of Service and Computer Dealers International, Inc., by *W. Douglas Kari*; for Costco Wholesale Corp. by *Roy T. Englert, Jr.*, *Alan E. Untereiner*, and *Ariel N. Lavinbuk*; for eBay Inc. et al. by *David B. Salmons* and *Mary Huser*; for the Entertainment Merchants Association et al. by *John T. Mitchell*; for Goodwill Industries International, Inc., by *Gene C. Schaerr*, *Linda Coberly*, *Michael S. Elkin*, and *Thomas Patrick Lane*; for Knowledge Ecology International by *Krista L. Cox*; for Powell's Books Inc. et al. by *Mark A. Lemley* and *Joseph C. Gratz*; for Public Knowledge et al. by *Harold Feld*, *Sherwin Siy*, and

JUSTICE BREYER delivered the opinion of the Court.

Section 106 of the Copyright Act grants "the owner of copyright under this title" certain "exclusive rights," including the right "to distribute copies . . . of the copyrighted work to the public by sale or other transfer of ownership." 17 U. S. C. § 106(3). These rights are qualified, however, by the application of various limitations set forth in the next several sections of the Act, §§ 107 through 122. Those sections, typically entitled "Limitations on exclusive rights," include, for example, the principle of "fair use" (§ 107), permission for limited library archival reproduction (§ 108), and the doctrine at issue here, the "first sale" doctrine (§ 109).

Section 109(a) sets forth the "first sale" doctrine as follows:

> "Notwithstanding the provisions of section 106(3) [the section that grants the owner exclusive distribution rights], the owner of a particular copy or phonorecord *lawfully made under this title* . . . is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord." (Emphasis added.)

Corynne McSherry; for Retail Litigation Center, Inc., et al. by *W. Stephen Cannon* and *Seth D. Greenstein*; and for 25 Intellectual Property Law Professors by *Daryl L. Joseffer* and *Jason Schultz*, *pro se*.

Briefs of *amici curiae* urging affirmance were filed for the American Bar Association by *Laurel G. Bellows*, *Thomas C. Goldstein*, and *Tejinder Singh*; for the American Intellectual Property Law Association by *Kevin Tottis* and *William G. Barber*; for the Association of American Publishers by *Charles S. Sims*; for the Business Software Alliance by *Paul M. Smith*, *Michael B. DeSanctis*, *Matthew S. Hellman*, and *Jessica Ring Amunson*; for the Intellectual Property Owners Association by *George L. Graff*, *Victoria A. Cundiff*, *Rebecca K. Myers*, and *Richard F. Phillips* and *Kevin H. Rhodes*, both *pro se*; for LicenseLogic, LLC, by *Scott E. Bain*; for the Motion Picture Association of America, Inc., et al. by *Seth P. Waxman*, *Randolph D. Moss*, *Catherine M. A. Carroll*, and *Jennifer L. Pariser*; for Omega S. A. by *Michael K. Kellogg* and *Aaron M. Panner*; for the Software and Information Industry Association by *Christopher A. Mohr*; for the Text and Academic Authors Association by *Beth Heifetz*; and for Hugh C. Hansen, by *Mr. Hansen*, *pro se*.

Thus, even though § 106(3) forbids distribution of a copy of, say, the copyrighted novel Herzog without the copyright owner's permission, § 109(a) adds that, once a copy of Herzog has been lawfully sold (or its ownership otherwise lawfully transferred), the buyer of *that copy* and subsequent owners are free to dispose of it as they wish. In copyright jargon, the "first sale" has "exhausted" the copyright owner's § 106(3) exclusive distribution right.

What, however, if the copy of Herzog was printed abroad and then initially sold with the copyright owner's permission? Does the "first sale" doctrine still apply? Is the buyer, like the buyer of a domestically manufactured copy, free to bring the copy into the United States and dispose of it as he or she wishes?

To put the matter technically, an "importation" provision, § 602(a)(1), says that

> "[i]mportation into the United States, without the authority of the owner of copyright under this title, of copies . . . of a work that have been acquired outside the United States is an infringement of the exclusive right to distribute copies . . . *under section 106* . . . ." 17 U. S. C. § 602(a)(1) (2006 ed., Supp. V) (emphasis added).

Thus § 602(a)(1) makes clear that importing a copy without permission violates the owner's exclusive distribution right. But in doing so, § 602(a)(1) refers explicitly to the *§ 106(3)* exclusive distribution right. As we have just said, § 106 is by its terms "[s]ubject to" the various doctrines and principles contained in §§ 107 through 122, including § 109(a)'s "first sale" limitation. Do those same modifications apply—in particular, does the "first sale" modification apply—when considering whether § 602(a)(1) prohibits importing a copy?

In *Quality King Distributors, Inc.* v. *L'anza Research Int'l, Inc.*, 523 U. S. 135, 145 (1998), we held that § 602(a)(1)'s reference to § 106(3)'s exclusive distribution right incorporates the later subsections' limitations, including, in particular, the "first sale" doctrine of § 109. Thus, it might seem

that, § 602(a)(1) notwithstanding, one who buys a copy abroad can freely import that copy into the United States and dispose of it, just as he could had he bought the copy in the United States.

But *Quality King* considered an instance in which the copy, though purchased abroad, was initially manufactured in the United States (and then sent abroad and sold). This case is like *Quality King* but for one important fact. The copies at issue here were manufactured abroad. That fact is important because § 109(a) says that the "first sale" doctrine applies to "a particular copy or phonorecord *lawfully made under this title*." And we must decide here whether the five words, "lawfully made under this title," make a critical legal difference.

Putting section numbers to the side, we ask whether the "first sale" doctrine applies to protect a buyer or other lawful owner of a copy (of a copyrighted work) lawfully manufactured abroad. Can that buyer bring that copy into the United States (and sell it or give it away) without obtaining permission to do so from the copyright owner? Can, for example, someone who purchases, say, at a used bookstore, a book printed abroad subsequently resell it without the copyright owner's permission?

In our view, the answers to these questions are, yes. We hold that the "first sale" doctrine applies to copies of a copyrighted work lawfully made abroad.

I

A

Respondent, John Wiley & Sons, Inc., publishes academic textbooks. Wiley obtains from its authors various foreign and domestic copyright assignments, licenses, and permissions—to the point that we can, for present purposes, refer to Wiley as the relevant American copyright owner. See 654 F. 3d 210, 213, n. 6 (CA2 2011). Wiley often assigns to its wholly owned foreign subsidiary, John Wiley & Sons (Asia) Pte Ltd., rights to publish, print, and sell Wiley's

English-language textbooks abroad. App. to Pet. for Cert. 47a–48a. Each copy of a Wiley Asia foreign edition will likely contain language making clear that the copy is to be sold only in a particular country or geographical region outside the United States. 654 F. 3d, at 213.

For example, a copy of Wiley's American edition says: "Copyright © 2008 John Wiley & Sons, Inc. All rights reserved. . . . Printed in the United States of America." J. Walker, Fundamentals of Physics, p. vi (8th ed. 2008). A copy of Wiley Asia's Asian edition of that book says:

> "Copyright © 2008 John Wiley & Sons (Asia) Pte Ltd[.] All rights reserved. This book is authorized for sale in Europe, Asia, Africa, and the Middle East only and may be not exported [*sic*] out of these territories. Exportation from or importation of this book to another region without the Publisher's authorization is illegal and is a violation of the Publisher's rights. The Publisher may take legal action to enforce its rights. . . . Printed in Asia." J. Walker, Fundamentals of Physics, p. vi (8th ed. 2008 Wiley Int'l Student ed.).

Both the foreign and the American copies say:

> "No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means . . . except as permitted under Sections 107 or 108 of the 1976 United States Copyright Act." Compare, *e. g.*, *ibid.* (Int'l ed.) with Walker, *supra*, at vi (American ed.).

The upshot is that there are two essentially equivalent versions of a Wiley textbook, 654 F. 3d, at 213, each version manufactured and sold with Wiley's permission: (1) an American version printed and sold in the United States, and (2) a foreign version manufactured and sold abroad. And Wiley makes certain that copies of the second version state that they are not to be taken (without permission) into the United States. *Ibid.*

Petitioner, Supap Kirtsaeng, a citizen of Thailand, moved to the United States in 1997 to study mathematics at Cornell University. *Ibid.* He paid for his education with the help of a Thai Government scholarship which required him to teach in Thailand for 10 years on his return. Brief for Petitioner 7. Kirtsaeng successfully completed his undergraduate courses at Cornell, successfully completed a Ph. D. program in mathematics at the University of Southern California, and then, as promised, returned to Thailand to teach. *Ibid.* While he was studying in the United States, Kirtsaeng asked his friends and family in Thailand to buy copies of foreign edition English-language textbooks at Thai bookshops, where they sold at low prices, and mail them to him in the United States. *Id.*, at 7–8. Kirtsaeng would then sell them, reimburse his family and friends, and keep the profit. App. to Pet. for Cert. 48a–49a.

B

In 2008 Wiley brought this federal lawsuit against Kirtsaeng for copyright infringement. 654 F. 3d, at 213. Wiley claimed that Kirtsaeng's unauthorized importation of its books and his later resale of those books amounted to an infringement of Wiley's § 106(3) exclusive right to distribute as well as § 602's related import prohibition. 17 U. S. C. §§ 106(3) (2006 ed.), 602(a) (2006 ed., Supp. V). See also § 501 (2006 ed.) (authorizing infringement action). App. 204–211. Kirtsaeng replied that the books he had acquired were " 'lawfully made' " and that he had acquired them legitimately. Record in No. 1:08–CV–7834–DCP (SDNY), Doc. 14, p. 3. Thus, in his view, § 109(a)'s "first sale" doctrine permitted him to resell or otherwise dispose of the books without the copyright owner's further permission. *Id.*, at 2–3.

The District Court held that Kirtsaeng could not assert the "first sale" defense because, in its view, that doctrine does not apply to "foreign-manufactured goods" (even if made abroad with the copyright owner's permission). App.

to Pet. for Cert. 72a. The jury then found that Kirtsaeng had willfully infringed Wiley's American copyrights by selling and importing without authorization copies of eight of Wiley's copyrighted titles. And it assessed statutory damages of $600,000 ($75,000 per work). 654 F. 3d, at 215.

On appeal, a split panel of the Second Circuit agreed with the District Court. *Id.*, at 222. It pointed out that § 109(a)'s "first sale" doctrine applies only to "the owner of a particular copy . . . *lawfully made under this title.*" *Id.*, at 218–219, and n. 27 (emphasis added). And, in the majority's view, this language means that the "first sale" doctrine does not apply to copies of American copyrighted works manufactured abroad. *Id.*, at 221. A dissenting judge thought that the words "lawfully made under this title" do not refer "to a place of manufacture" but rather "focu[s] on whether a particular copy was manufactured lawfully under" America's copyright statute, and that "the lawfulness of the manufacture of a particular copy should be judged by U. S. copyright law." *Id.*, at 226 (opinion of Murtha, J.).

We granted Kirtsaeng's petition for certiorari to consider this question in light of different views among the Circuits. Compare *id.*, at 221 (case below) ("first sale" doctrine does not apply to copies manufactured outside the United States), with *Omega S. A.* v. *Costco Wholesale Corp.*, 541 F. 3d 982, 986 (CA9 2008) ("first sale" doctrine applies to copies manufactured outside the United States only if an authorized first sale occurs within the United States), aff'd by an equally divided court, 562 U. S. 40 (2010), and *Sebastian Int'l, Inc.* v. *Consumer Contacts (PTY) Ltd.*, 847 F. 2d 1093, 1098, n. 1 (CA3 1988) (limitation of the first sale doctrine to copies made within the United States "does not fit comfortably within the scheme of the Copyright Act").

II

We must decide whether the words "lawfully made under this title" restrict the scope of § 109(a)'s "first sale" doctrine geographically. The Second Circuit, the Ninth Circuit,

Wiley, and the Solicitor General (as *amicus*) all read those words as imposing a form of *geographical* limitation. The Second Circuit held that they limit the "first sale" doctrine to particular copies "made in territories *in which the Copyright Act is law*," which (the Circuit says) are copies "manufactured domestically," not "outside of the United States." 654 F. 3d, at 221–222 (emphasis added). Wiley agrees that those five words limit the "first sale" doctrine "to copies made in conformance with the [United States] Copyright Act *where the Copyright Act is applicable*," which (Wiley says) means it does not apply to copies made "outside the United States" and at least not to "foreign production of a copy for distribution exclusively abroad." Brief for Respondent 15–16. Similarly, the Solicitor General says that those five words limit the "first sale" doctrine's applicability to copies "'*made subject to* and in compliance with [the Copyright Act],'" which (the Solicitor General says) are copies "made in the United States." Brief for United States as *Amicus Curiae* 5 (hereinafter Brief for United States) (emphasis added). And the Ninth Circuit has held that those words limit the "first sale" doctrine's applicability (1) to copies lawfully made in the United States, and (2) to copies lawfully made outside the United States but initially sold in the United States with the copyright owner's permission. *Denbicare U. S. A. Inc.* v. *Toys "R" Us, Inc.*, 84 F. 3d 1143, 1149–1150 (1996).

Under any of these geographical interpretations, § 109(a)'s "first sale" doctrine would not apply to the Wiley Asia books at issue here. And, despite an American copyright owner's permission to *make* copies abroad, one who *buys* a copy of any such book or other copyrighted work—whether at a retail store, over the Internet, or at a library sale—could not resell (or otherwise dispose of) that particular copy without further permission.

Kirtsaeng, however, reads the words "lawfully made under this title" as imposing a *non*-geographical limitation. He says that they mean made "in accordance with" or "in com-

pliance with" the Copyright Act. Brief for Petitioner 26. In that case, § 109(a)'s "first sale" doctrine would apply to copyrighted works as long as their manufacture met the requirements of American copyright law. In particular, the doctrine would apply where, as here, copies are manufactured abroad with the permission of the copyright owner. See § 106 (referring to the owner's right to authorize).

In our view, § 109(a)'s language, its context, and the common-law history of the "first sale" doctrine, taken together, favor a *non*-geographical interpretation. We also doubt that Congress would have intended to create the practical copyright-related harms with which a geographical interpretation would threaten ordinary scholarly, artistic, commercial, and consumer activities. See Part II–D, *infra*. We consequently conclude that Kirtsaeng's nongeographical reading is the better reading of the Act.

A

The language of § 109(a) read literally favors Kirtsaeng's nongeographical interpretation, namely, that "lawfully made under this title" means made "in accordance with" or "in compliance with" the Copyright Act. The language of § 109(a) says nothing about geography. The word "under" can mean "[i]n accordance with." 18 Oxford English Dictionary 950 (2d ed. 1989). See also Black's Law Dictionary 1525 (6th ed. 1990) ("according to"). And a nongeographical interpretation provides each word of the five-word phrase with a distinct purpose. The first two words of the phrase, "lawfully made," suggest an effort to distinguish those copies that were made lawfully from those that were not, and the last three words, "under this title," set forth the standard of "lawful[ness]." Thus, the nongeographical reading is simple, it promotes a traditional copyright objective (combating piracy), and it makes word-by-word linguistic sense.

The geographical interpretation, however, bristles with linguistic difficulties. It gives the word "lawfully" little, if

any, linguistic work to do. (How could a book be *un*-lawfully "made under this title"?) It imports geography into a statutory provision that says nothing explicitly about it. And it is far more complex than may at first appear.

To read the clause geographically, Wiley, like the Second Circuit and the Solicitor General, must first emphasize the word "under." Indeed, Wiley reads "under this title" to mean "in conformance with the Copyright Act *where the Copyright Act is applicable*." Brief for Respondent 15. Wiley must then take a second step, arguing that the Act "is applicable" only in the United States. *Ibid.* And the Solicitor General must do the same. See Brief for United States 6 ("A copy is '*lawfully* made under this title' if Title 17 governs the copy's creation *and* the copy is made in compliance with Title 17's requirements"). See also *post*, at 562 (GINSBURG, J., dissenting) ("under" describes something "governed or regulated by another").

One difficulty is that neither "under" nor any other word in the phrase means "where." See, *e. g.*, 18 Oxford English Dictionary, *supra*, at 947–952 (definition of "under"). It might mean "subject to," see *post*, at 561–562, but as this Court has repeatedly acknowledged, the word evades a uniform, consistent meaning. See *Kucana* v. *Holder*, 558 U. S. 233, 245 (2010) ("'under' is chameleon"); *Ardestani* v. *INS*, 502 U. S. 129, 135 (1991) ("under" has "many dictionary definitions" and "must draw its meaning from its context").

A far more serious difficulty arises out of the uncertainty and complexity surrounding the second step's effort to read the necessary geographical limitation into the word "applicable" (or the equivalent). Where, precisely, is the Copyright Act "applicable"? The Act does not instantly *protect* an American copyright holder from unauthorized piracy taking place abroad. But that fact does not mean the Act is *inapplicable* to copies made abroad. As a matter of ordinary English, one can say that a statute imposing, say, a tariff upon "any rhododendron grown in Nepal" applies to *all*

Nepalese rhododendrons. And, similarly, one can say that the American Copyright Act is *applicable* to *all* pirated copies, including those printed overseas. Indeed, the Act itself makes clear that (in the Solicitor General's language) foreign-printed pirated copies are "subject to" the Act. § 602(a)(2) (2006 ed., Supp. V) (referring to importation of copies "the making of which either constituted an infringement of copyright, or which would have constituted an infringement of copyright if this title had been applicable"); Brief for United States 5. See also *post*, at 561 (suggesting that "made under" may be read as "subject to").

The appropriateness of this linguistic usage is underscored by the fact that § 104 of the Act itself says that works "*subject to protection under this title*" include unpublished works "without regard to the nationality or domicile of the author" and works "first published" in any one of the nearly 180 nations that have signed a copyright treaty with the United States. §§ 104(a), (b) (2006 ed.) (emphasis added); § 101 (2006 ed., Supp. V) (defining "treaty party"); U. S. Copyright Office, Circular No. 38A, International Copyright Relations of the United States (2010). Thus, ordinary English permits us to say that the Act "applies" to an Irish manuscript lying in its author's Dublin desk drawer as well as to an original recording of a ballet performance first made in Japan and now on display in a Kyoto art gallery. Cf. 4 M. Nimmer & D. Nimmer, Copyright § 17.02, pp. 17–18, 17–19 (2012) (hereinafter Nimmer on Copyright) (noting that the principle that "copyright laws do not have any extraterritorial operation" "requires some qualification").

The Ninth Circuit's geographical interpretation produces still greater linguistic difficulty. As we said, that Circuit interprets the "first sale" doctrine to cover both (1) copies manufactured in the United States and (2) copies manufactured abroad but first sold in the United States with the American copyright owner's permission. *Denbicare U. S. A.*, 84 F. 3d, at 1149–1150. See also Brief for Respond-

ent 16 (suggesting that the clause *at least* excludes "the foreign production of a copy for distribution exclusively abroad"); *id.*, at 51 (the Court need "not decide whether the copyright owner would be able to restrict further distribution" in the case of "a downstream domestic purchaser of *authorized* imports"); Brief for Petitioner in *Costco Wholesale Corp.* v. *Omega, S. A.*, O. T. 2010, No. 08–1423, p. 12 (excepting imported copies "made by unrelated foreign copyright holders" (emphasis deleted)).

We can understand why the Ninth Circuit may have thought it necessary to add the second part of its definition. As we shall later describe, see Part II–D, *infra*, without some such qualification a copyright holder could prevent a buyer from domestically reselling or even giving away copies of a video game made in Japan, a film made in Germany, or a dress fabric (with a design copyright) made in China, *even* if the copyright holder has granted permission for the foreign manufacture, importation, and an initial domestic sale of the copy. A publisher such as Wiley would be free to print its books abroad, allow their importation and sale within the United States, but prohibit students from later selling their used texts at a campus bookstore. We see no way, however, to reconcile this half-geographical/half-nongeographical interpretation with the language of the phrase, "lawfully made under this title." As a matter of English, it would seem that those five words either do cover copies lawfully made abroad or they do not.

In sum, we believe that geographical interpretations create more linguistic problems than they resolve. And considerations of simplicity and coherence tip the purely linguistic balance in Kirtsaeng's, nongeographical, favor.

B

Both historical and contemporary statutory context indicate that Congress, when writing the present version of § 109(a), did not have geography in mind. In respect to his-

tory, we compare § 109(a)'s present language with the language of its immediate predecessor. That predecessor said:

> "[N]othing in this Act shall be deemed to forbid, prevent, or restrict the transfer of any copy of a copyrighted work *the possession of which has been lawfully obtained.*" Copyright Act of 1909, § 41, 35 Stat. 1084 (emphasis added).

See also Copyright Act of 1947, § 27, 61 Stat. 660. The predecessor says nothing about geography (and Wiley does not argue that it does). So we ask whether Congress, in changing its language, implicitly *introduced* a geographical limitation that previously was lacking. See also Part II–C, *infra* (discussing 1909 codification of common-law principle).

A comparison of language indicates that it did not. The predecessor says that the "first sale" doctrine protects "the transfer of any copy *the possession of which has been lawfully obtained.*" The present version says that "*the owner* of a particular copy or phonorecord lawfully made under this title is entitled to sell or otherwise dispose of the possession of that copy or phonorecord." What does this change in language accomplish?

The language of the former version referred to those *who are not owners* of a copy, but mere possessors who "lawfully obtained" a copy. The present version covers only those who are *owners* of a "lawfully made" copy. Whom does the change leave out? Who might have lawfully *obtained* a copy of a copyrighted work but not *owned* that copy? One answer is owners of movie theaters, who during the 1970's (and before) often *leased* films from movie distributors or filmmakers. See S. Donahue, American Film Distribution 134, 177 (1987) (describing producer-distributer and distributer-exhibitor agreements); Note, The Relationship Between Motion Picture Distribution and Exhibition: An Analysis of the Effects of Anti-Blind Bidding Legislation, 9 Comm/Ent. L. J. 131, 135 (1986). Because the theater owners had "lawfully

obtained" their copies, the earlier version could be read as allowing them to sell that copy, *i. e.*, it might have given them "first sale" protection. Because the theater owners were lessees, not owners, of their copies, the change in language makes clear that they (like bailees and other lessees) cannot take advantage of the "first sale" doctrine. (Those who find legislative history useful will find confirmation in, *e. g.*, House Committee on the Judiciary, Copyright Law Revision, Supplementary Report of the Register of Copyrights on the General Revision of the U. S. Copyright Law: 1965 Revision Bill, 89th Cong., 1st Sess., pt. 6, p. 30 (Comm. Print 1965) (hereinafter Copyright Law Revision) ("[W]here a person has rented a print of a motion picture from the copyright owner, he would have no right to lend, rent, sell, or otherwise dispose of the print without first obtaining the copyright owner's permission"). See also *Platt & Munk Co.* v. *Republic Graphics, Inc.*, 315 F. 2d 847, 851 (CA2 1963) (Friendly, J.) (pointing out predecessor statute's leasing problem).)

This objective perfectly well explains the new language of the present version, including the five words here at issue. Section 109(a) now makes clear that a lessee of a copy will *not* receive "first sale" protection but one who *owns* a copy *will* receive "first sale" protection, *provided*, of course, that the copy was "*lawfully made*" and not pirated. The new language also takes into account that a copy may be "lawfully made under this title" when the copy, say, of a phonorecord, comes into its owner's possession through use of a compulsory license, which "this title" provides for elsewhere, namely, in § 115. Again, for those who find legislative history useful, the relevant legislative Report makes this clear. H. R. Rep. No. 94–1476, p. 79 (1976) ("For example, any resale of an illegally 'pirated' phonorecord would be an infringement, but the disposition of a phonorecord legally made under the compulsory licensing provisions of section 115 would not").

Other provisions of the present statute also support a nongeographical interpretation. For one thing, the statute phases out the "manufacturing clause," a clause that appeared in earlier statutes and had limited importation of many copies (of copyrighted works) printed outside the United States. § 601, 90 Stat. 2588 ("Prior to July 1, 1982 . . . the importation into or public distribution in the United States of copies of a work consisting preponderantly of nondramatic literary material . . . is prohibited unless the portions consisting of such material have been manufactured in the United States or Canada"). The phasing out of this clause sought to equalize treatment of copies manufactured in America and copies manufactured abroad. See H. R. Rep. No. 94–1476, at 165–166.

The "equal treatment" principle, however, is difficult to square with a geographical interpretation of the "first sale" clause that would grant the holder of an American copyright (perhaps a foreign national, see *supra*, at 532) permanent control over the American distribution chain (sales, resales, gifts, and other distribution) in respect to copies printed abroad but not in respect to copies printed in America. And it is particularly difficult to believe that Congress would have sought this unequal treatment while saying nothing about it and while, in a related clause (the manufacturing phaseout), seeking the opposite kind of policy goal. Cf. *Golan* v. *Holder*, 565 U. S. 302, 333 (2012) (Congress has moved from a copyright regime that, prior to 1891, entirely excluded foreign works from U. S. copyright protection to a regime that now "ensure[s] that most works, whether foreign or domestic, would be *governed by the same legal regime*" (emphasis added)).

Finally, we normally presume that the words "lawfully made under this title" carry the same meaning when they appear in different but related sections. *Department of Revenue of Ore.* v. *ACF Industries, Inc.*, 510 U. S. 332,

342 (1994). But doing so here produces surprising consequences. Consider:

(1) Section 109(c) says that, despite the copyright owner's exclusive right "to display" a copyrighted work (provided in § 106(5)), the owner of a particular copy "lawfully made under this title" may publicly display it without further authorization. To interpret these words geographically would mean that one who buys a copyrighted work of art, a poster, or even a bumper sticker, in Canada, in Europe, in Asia, could not display it in America without the copyright owner's further authorization.

(2) Section 109(e) specifically provides that the owner of a particular copy of a copyrighted video arcade game "lawfully made under this title" may "publicly perform or display that game in coin-operated equipment" without the authorization of the copyright owner. To interpret these words geographically means that an arcade owner could not ("without the authority of the copyright owner") perform or display arcade games (whether new or used) originally made in Japan. Cf. *Red Baron-Franklin Park, Inc.* v. *Taito Corp.*, 883 F. 2d 275 (CA4 1989).

(3) Section 110(1) says that a teacher, without the copyright owner's authorization, is allowed to perform or display a copyrighted work (say, an audiovisual work) "in the course of face-to-face teaching activities"—unless the teacher knowingly used "a copy that was not lawfully made under this title." To interpret these words geographically would mean that the teacher could not (without further authorization) use a copy of a film during class if the copy was lawfully made in Canada, Mexico, Europe, Africa, or Asia.

(4) In its introductory sentence, § 106 provides the Act's basic exclusive rights to an "owner of a copyright

> under this title." The last three words cannot support a geographic interpretation.

Wiley basically accepts the first three readings, but argues that Congress intended the restrictive consequences. And it argues that context simply requires that the words of the fourth example receive a different interpretation. Leaving the fourth example to the side, we shall explain in Part II–D, *infra*, why we find it unlikely that Congress would have intended these and other related consequences.

C

A relevant canon of statutory interpretation favors a non-geographical reading. "[W]hen a statute covers an issue previously governed by the common law," we must presume that "Congress intended to retain the substance of the common law." *Samantar* v. *Yousuf*, 560 U. S. 305, 320, n. 13 (2010). See also *Isbrandtsen Co.* v. *Johnson*, 343 U. S. 779, 783 (1952) ("Statutes which invade the common law . . . are to be read with a presumption favoring the retention of long-established and familiar principles, except when a statutory purpose to the contrary is evident").

The "first sale" doctrine is a common-law doctrine with an impeccable historic pedigree. In the early 17th century Lord Coke explained the common law's refusal to permit restraints on the alienation of chattels. Referring to Littleton, who wrote in the 15th century, Gray, Two Contributions to Coke Studies, 72 U. Chi. L. Rev. 1127, 1135 (2005), Lord Coke wrote:

> "[If] a man be possessed of . . . a horse, or of any other chattell . . . and give or sell his whole interest . . . therein upon condition that the Donee or Vendee shall not alien-[ate] the same, the [condition] is voi[d], because his whole interest . . . is out of him, so as he hath no possibilit[y] of a Reverter, and it is against Trade and Traffi[c], and bargaining and contracting betwee[n] man and man: and

> it is within the reason of our Author that it should ouster him of all power given to him." 1 E. Coke, Institutes of the Laws of England § 360, p. 223 (1628).

A law that permits a copyright holder to control the resale or other disposition of a chattel once sold is similarly "against Trade and Traffi[c], and bargaining and contracting." *Ibid.*

With these last few words, Coke emphasizes the importance of leaving buyers of goods free to compete with each other when reselling or otherwise disposing of those goods. American law too has generally thought that competition, including freedom to resell, can work to the advantage of the consumer. See, *e. g.*, *Leegin Creative Leather Products, Inc.* v. *PSKS, Inc.*, 551 U. S. 877, 886 (2007) (restraints with "manifestly anticompetitive effects" are *per se* illegal; others are subject to the rule of reason (internal quotation marks omitted)); 1 P. Areeda & H. Hovenkamp, Antitrust Law ¶100, p. 4 (3d ed. 2006) ("[T]he principal objective of antitrust policy is to maximize consumer welfare by encouraging firms to behave competitively").

The "first sale" doctrine also frees courts from the administrative burden of trying to enforce restrictions upon difficult-to-trace, readily movable goods. And it avoids the selective enforcement inherent in any such effort. Thus, it is not surprising that for at least a century the "first sale" doctrine has played an important role in American copyright law. See *Bobbs-Merrill Co.* v. *Straus*, 210 U. S. 339 (1908); Copyright Act of 1909, § 41, 35 Stat. 1084. See also Copyright Law Revision, Further Discussions and Comments on Preliminary Draft for Revised U. S. Copyright Law, 88th Cong., 2d Sess., pt. 4, p. 212 (Comm. Print 1964) (Irwin Karp of Authors' League of America expressing concern for "the very basic concept of copyright law that, once you've sold a copy legally, you can't restrict its resale").

The common-law doctrine makes no geographical distinctions; nor can we find any in *Bobbs-Merrill* (where this Court first applied the "first sale" doctrine) or in § 109(a)'s prede-

cessor provision, which Congress enacted a year later. See *supra*, at 533. Rather, as the Solicitor General acknowledges, "a straightforward application of *Bobbs-Merrill*" would not preclude the "first sale" defense from applying to authorized copies made overseas. Brief for United States 27. And we can find no language, context, purpose, or history that would rebut a "straightforward application" of that doctrine here.

The dissent argues that another principle of statutory interpretation works against our reading, and points out that elsewhere in the statute Congress used different words to express something like the nongeographical reading we adopt. *Post*, at 564 (quoting § 602(a)(2) (prohibiting the importation of copies "the making of which either constituted an infringement of copyright, or which would have constituted an infringement of copyright if this title had been applicable" (emphasis deleted))). Hence, Congress, the dissent believes, must have meant § 109(a)'s different language to mean something different (such as the dissent's own geographical interpretation of § 109(a)). We are not aware, however, of any canon of interpretation that forbids interpreting different words used in different parts of the same statute to mean roughly the same thing. Regardless, were there such a canon, the dissent's interpretation of § 109(a) would also violate it. That is because Congress elsewhere in the 1976 Act included the words "manufactured in the United States or Canada," 90 Stat. 2588, which express just about the same geographical thought that the dissent reads into § 109(a)'s very different language.

D

Associations of libraries, used-book dealers, technology companies, consumer-goods retailers, and museums point to various ways in which a geographical interpretation would fail to further basic constitutional copyright objectives, in particular "promot[ing] the Progress of Science and useful Arts." U. S. Const., Art. I, § 8, cl. 8.

The American Library Association tells us that library collections contain at least 200 million books published abroad (presumably, many were first published in one of the nearly 180 copyright-treaty nations and enjoy American copyright protection under 17 U. S. C. § 104, see *supra*, at 532); that many others were first published in the United States but printed abroad because of lower costs; and that a geographical interpretation will likely require the libraries to obtain permission (or at least create significant uncertainty) before circulating or otherwise distributing these books. Brief for American Library Association et al. as *Amici Curiae* 4, 15–20. Cf. *id.*, at 16–20, 28 (discussing limitations of potential defenses, including the fair use and archival exceptions, §§ 107–108). See also Library and Book Trade Almanac 511 (D. Bogart ed., 55th ed. 2010) (during 2000–2009 "a significant amount of book printing moved to foreign nations").

How, the American Library Association asks, are the libraries to obtain permission to distribute these millions of books? How can they find, say, the copyright owner of a foreign book, perhaps written decades ago? They may not know the copyright holder's present address. Brief for American Library Association 15 (many books lack indication of place of manufacture; "no practical way to learn where [a] book was printed"). And, even where addresses can be found, the costs of finding them, contacting owners, and negotiating may be high indeed. Are the libraries to stop circulating or distributing or displaying the millions of books in their collections that were printed abroad?

Used-book dealers tell us that, from the time when Benjamin Franklin and Thomas Jefferson built commercial and personal libraries of foreign books, American readers have bought used books published and printed abroad. Brief for Powell's Books Inc. et al. as *Amici Curiae* 7 (citing M. Stern, Antiquarian Bookselling in the United States (1985)). The dealers say that they have "operat[ed] . . . for centuries" under the assumption that the "first sale" doctrine applies.

Brief for Powell's Books 7. But under a geographical interpretation a contemporary tourist who buys, say, at Shakespeare and Co. (in Paris), a dozen copies of a foreign book for American friends might find that she had violated the copyright law. The used-book dealers cannot easily predict what the foreign copyright holder may think about a reader's effort to sell a used copy of a novel. And they believe that a geographical interpretation will injure a large portion of the used-book business.

Technology companies tell us that "automobiles, microwaves, calculators, mobile phones, tablets, and personal computers" contain copyrightable software programs or packaging. Brief for Public Knowledge et al. as *Amici Curiae* 10. See also Brief for Association of Service and Computer Dealers International, Inc., as *Amicus Curiae* 2. Many of these items are made abroad with the American copyright holder's permission and then sold and imported (with that permission) to the United States. Brief for Retail Litigation Center, Inc., et al. as *Amici Curiae* 4. A geographical interpretation would prevent the resale of, say, a car, without the permission of the holder of each copyright on each piece of copyrighted automobile software. Yet there is no reason to believe that foreign auto manufacturers regularly obtain this kind of permission from their software component suppliers, and Wiley did not indicate to the contrary when asked. See Tr. of Oral Arg. 29–30. Without that permission a foreign car owner could not sell his or her used car.

Retailers tell us that over $2.3 trillion worth of foreign goods were imported in 2011. Brief for Retail Litigation Center 8. American retailers buy many of these goods after a first sale abroad. *Id.*, at 12. And, many of these items bear, carry, or contain copyrighted "packaging, logos, labels, and product inserts and instructions for [the use of] everyday packaged goods from floor cleaners and health and beauty products to breakfast cereals." *Id.*, at 10–11. The

retailers add that American sales of more traditional copyrighted works, "such as books, recorded music, motion pictures, and magazines," likely amount to over $220 billion. *Id.*, at 9. See also *id.*, at 10 (electronic game industry is $16 billion). A geographical interpretation would subject many, if not all, of them to the disruptive impact of the threat of infringement suits. *Id.*, at 12.

Art museum directors ask us to consider their efforts to display foreign-produced works by, say, Cy Twombly, René Magritte, Henri Matisse, Pablo Picasso, and others. See *supra*, at 532 (describing how § 104 often makes such works "subject to" American copyright protection). A geographical interpretation, they say, would require the museums to obtain permission from the copyright owners before they could display the work, see *supra*, at 537—even if the copyright owner has already sold or donated the work to a foreign museum. Brief for Association of Art Museum Directors et al. as *Amici Curiae* 10–11. What are the museums to do, they ask, if the artist retained the copyright, if the artist cannot be found, or if a group of heirs is arguing about who owns which copyright? *Id.*, at 14.

These examples, and others previously mentioned, help explain *why* Lord Coke considered the "first sale" doctrine necessary to protect "Trade and Traffi[c], and bargaining and contracting," and they help explain *why* American copyright law has long applied that doctrine. Cf. *supra*, at 538–539.

Neither Wiley nor any of its many *amici* deny that a geographical interpretation could bring about these "horribles"—at least in principle. Rather, Wiley essentially says that the list is artificially invented. Brief for Respondent 51–52. It points out that a federal court first adopted a geographical interpretation more than 30 years ago. *CBS, Inc.* v. *Scorpio Music Distributors, Inc.*, 569 F. Supp. 47, 49 (ED Pa. 1983), summarily aff'd, 738 F. 2d 424 (CA3 1984) (table). Yet, it adds, these problems have not occurred. Why not? Because, says Wiley, the problems and threats are purely

theoretical; they are unlikely to reflect reality. See also *post*, at 585–586.

We are less sanguine. For one thing, the law has not been settled for long in Wiley's favor. The Second Circuit, in its decision below, is the first Court of Appeals to adopt a purely geographical interpretation. The Third Circuit has favored a nongeographical interpretation. *Sebastian Int'l*, 847 F. 2d 1093. The Ninth Circuit has favored a modified geographical interpretation with a nongeographical (but textually unsustainable) corollary designed to diminish the problem. *Denbicare U. S. A.*, 84 F. 3d 1143. See *supra*, at 532–533. And other courts have hesitated to adopt, and have cast doubt upon, the validity of the geographical interpretation. *Pearson Educ., Inc.* v. *Liu*, 656 F. Supp. 2d 407 (SDNY 2009); *Red Baron-Franklin Park, Inc.* v. *Taito Corp.*, No. 88–0156–A, 1988 WL 167344, *3 (ED Va. 1988), rev'd on other grounds, 883 F. 2d 275 (CA4 1989).

For another thing, reliance upon the "first sale" doctrine is deeply embedded in the practices of those, such as booksellers, libraries, museums, and retailers, who have long relied upon its protection. Museums, for example, are not in the habit of asking their foreign counterparts to check with the heirs of copyright owners before sending, *e. g.*, a Picasso on tour. Brief for Association of Art Museum Directors 11–12. That inertia means a dramatic change is likely necessary before these institutions, instructed by their counsel, would begin to engage in the complex permission-verifying process that a geographical interpretation would demand. And this Court's adoption of the geographical interpretation could provide that dramatic change. These intolerable consequences (along with the absurd result that the copyright owner can exercise downstream control even when it authorized the import or first sale) have understandably led the Ninth Circuit, the Solicitor General as *amicus*, and the dissent to adopt textual readings of the statute that attempt to mitigate these harms. Brief for United States 27–28; *post*,

at 579–582. But those readings are not defensible, for they require too many unprecedented jumps over linguistic and other hurdles that in our view are insurmountable. See, *e. g.*, *post*, at 581 (acknowledging that its reading of § 106(3) "significantly curtails the independent effect of § 109(a)").

Finally, the fact that harm has proved limited so far may simply reflect the reluctance of copyright holders so far to assert geographically based resale rights. They may decide differently if the law is clarified in their favor. Regardless, a copyright law that can work in practice only if unenforced is not a sound copyright law. It is a law that would create uncertainty, would bring about selective enforcement, and, if widely unenforced, would breed disrespect for copyright law itself.

Thus, we believe that the practical problems that petitioner and his *amici* have described are too serious, too extensive, and too likely to come about for us to dismiss them as insignificant—particularly in light of the ever-growing importance of foreign trade to America. See The World Bank, Imports of Goods and Services (% of GDP) (imports in 2011 18% of U. S. gross domestic product compared to 11% in 1980), online at http://data.worldbank.org/indicator/NE.IMP.GNFS.ZS? (as visited Mar. 15, 2013, and available in Clerk of Court's case file). The upshot is that copyright-related consequences along with language, context, and interpretive canons argue strongly against a geographical interpretation of § 109(a).

III

Wiley and the dissent make several additional important arguments in favor of the geographical interpretation. *First*, they say that our *Quality King* decision strongly supports its geographical interpretation. In that case we asked whether the Act's "importation provision," now § 602(a)(1) (then § 602(a)), barred importation (without permission) of a copyrighted item (labels affixed to hair care products) where an American copyright owner authorized the first sale and

export of hair care products with copyrighted labels made in the United States, and where a buyer sought to import them back into the United States without the copyright owner's permission. 523 U. S., at 138–139.

We held that the importation provision did *not* prohibit sending the products back into the United States (without the copyright owner's permission). That section says:

> "Importation into the United States, without the authority of the owner of copyright under this title, of copies or phonorecords of a work that have been acquired outside the United States *is an infringement* of the exclusive right to distribute copies or phonorecords *under section 106*." 17 U. S. C. § 602(a)(1) (2006 ed., Supp. V) (emphasis added).

See also § 602(a) (1994 ed.).

We pointed out that this section makes importation an infringement of the "exclusive right to distribute . . . *under 106*." We noted that § 109(a)'s "first sale" doctrine limits the scope of the § 106 exclusive distribution right. We took as given the fact that the products at issue had at least once been sold. And we held that consequently, importation of the copyrighted labels does not violate § 602(a)(1). 523 U. S., at 145.

In reaching this conclusion we endorsed *Bobbs-Merrill* and its statement that the copyright laws were not "intended to create a right which would permit the holder of the copyright to fasten, by notice in a book . . . a restriction upon the subsequent alienation of the subject-matter of copyright after the owner had parted with the title to one who had acquired full dominion over it." 210 U. S., at 349–350.

We also explained why we rejected the claim that our interpretation would make § 602(a)(1) pointless. Those advancing that claim had pointed out that the 1976 Copyright Act amendments retained a prior antipiracy provision, prohibiting the importation of *pirated* copies. *Quality King*, *supra*, at 146. Thus, they said, § 602(a)(1) must prohibit the

importation of lawfully made copies, for to allow the importation of those lawfully made copies *after a first sale*, as *Quality King*'s holding would do, would leave § 602(a)(1) without much to prohibit. It would become superfluous, without any real work to do.

We do not believe that this argument is a strong one. Under *Quality King*'s interpretation, § 602(a)(1) would still forbid importing (without permission, and subject to the exceptions in § 602(a)(3)) copies lawfully made abroad, for example, where (1) a foreign publisher operating as the licensee of an American publisher prints copies of a book overseas but, prior to any authorized sale, seeks to send them to the United States; (2) a foreign printer or other manufacturer (if not the "owner" for purposes of § 109(a), *e. g.*, before an authorized sale) sought to send copyrighted goods to the United States; (3) "a book publisher transports copies to a wholesaler" and the wholesaler (not yet the owner) sends them to the United States, see Copyright Law Revision, pt. 4, at 211 (giving this example); or (4) a foreign film distributor, having leased films for distribution, or any other licensee, consignee, or bailee sought to send them to the United States. See, *e. g.*, 2 Nimmer on Copyright § 8.12[B][1][a], at 8–159 ("Section 109(a) provides that the distribution right may be exercised solely with respect to the initial disposition of copies of a work, not to prevent or restrict the resale or other further transfer of possession of such copies"). These examples show that § 602(a)(1) retains significance. We concede it has less significance than the dissent believes appropriate, but the dissent also adopts a construction of § 106(3) that "significantly curtails" § 109(a)'s effect, *post*, at 581, and so limits the scope of that provision to a similar, or even greater, degree.

In *Quality King* we rejected the "superfluous" argument for similar reasons. But, when rejecting it, we said that, where an author gives exclusive American distribution rights to an American publisher and exclusive British distri-

bution rights to a British publisher, "presumably *only those [copies] made by the publisher of the United States edition would be 'lawfully made under this title'* within the meaning of § 109(a)." 523 U. S., at 148 (emphasis added). Wiley now argues that this phrase in the *Quality King* opinion means that books published abroad (under license) must fall outside the words "lawfully made under this title" and that we have consequently already given those words the geographical interpretation that it favors.

We cannot, however, give the *Quality King* statement the legal weight for which Wiley argues. The language "lawfully made under this title" was not at issue in *Quality King*; the point before us now was not then fully argued; we did not canvass the considerations we have here set forth; we there said nothing to suggest that the example assumes a "first sale"; and we there hedged our statement with the word "presumably." Most importantly, the statement is pure dictum. It is dictum contained in a rebuttal to a counterargument. And it is *unnecessary* dictum even in that respect. Is the Court having once written dicta calling a tomato a vegetable bound to deny that it is a fruit forever after?

To the contrary, we have written that we are not necessarily bound by dicta should more complete argument demonstrate that the dicta is not correct. *Central Va. Community College* v. *Katz*, 546 U. S. 356, 363 (2006) ("[W]e are not bound to follow our dicta in a prior case in which the point now at issue was not fully debated"); *Humphrey's Executor* v. *United States*, 295 U. S. 602, 627–628 (1935) (rejecting, under *stare decisis*, dicta, "which may be followed if sufficiently persuasive but which are not controlling"). And, given the bit part that our *Quality King* statement played in our *Quality King* decision, we believe the view of *stare decisis* set forth in these opinions applies to the matter now before us.

Second, Wiley and the dissent argue (to those who consider legislative history) that the Act's legislative history supports their interpretation. But the historical events to

which it points took place more than a decade before the enactment of the Act and, at best, are inconclusive.

During the 1960's, representatives of book, record, and film industries, meeting with the Register of Copyrights to discuss copyright revision, complained about the difficulty of dividing international markets. Copyright Law Revision Discussion and Comments on Report of the Register of Copyrights on the General Revision of the U. S. Copyright Law, 88th Cong., 1st Sess., pt. 2, p. 212 (Comm. Print 1963) (English editions of "particular" books "fin[d]" their "way into this country"); *id.*, at 213 (works "publi[shed] in a country where there is no copyright protection of any sort" are put into "the free stream of commerce" and "shipped to the United States"); *ibid.* (similar concern in respect to films).

The then-Register of Copyrights, Abraham Kaminstein, found these examples "very troubl[ing]." *Ibid.* And the Copyright Office released a draft provision that it said "deals with the matter of the importation for distribution in the United States of foreign copies that were made under proper authority but that, if sold in the United States, would be sold in contravention of the rights of the copyright owner who holds the exclusive right to sell copies in the United States." *Id.*, pt. 4, at 203. That draft version, without reference to § 106, simply forbids unauthorized imports. It said:

> "Importation into the United States of copies or records of a work for the purpose of distribution to the public shall, if such articles are imported without the authority of the owner of the exclusive right to distribute copies or records under this title, constitute an infringement of copyright actionable under section 35 [17 U. S. C. § 501]." *Id.*, Preliminary Draft for Revised U. S. Copyright Law and Discussions and Comments, 88th Cong., 2d Sess., pt. 3, pp. 32–33 (Comm. Print 1964).

In discussing the draft, some of those present expressed concern about its effect on the "first sale" doctrine. For example, Irwin Karp, representing the Authors League of

America asked, "If a German jobber lawfully buys copies from a German publisher, are we not running into the problem of restricting his transfer of his lawfully obtained copies?" *Id.*, pt. 4, at 211. The Copyright Office representative replied: "This could vary from one situation to another, I guess. I should guess, for example, that if a book publisher transports [*i. e.*, does not sell] copies to a wholesaler [*i. e.*, a *nonowner*], this is not *yet* the kind of transaction that exhausts the right to control disposition." *Ibid.* (emphasis added).

The Office later withdrew the draft, replacing it with a draft, which, by explicitly referring to § 106, was similar to the provision that became law, now § 602(a)(1). The Office noted in a report that, under the new draft, importation of a copy (without permission) "would violate the exclusive rights of the U. S. copyright owner . . . where the copyright owner had authorized the making of copies in a foreign country for distribution only in that country." *Id.*, pt. 6, at 150.

Still, that part of the report says nothing about the "first sale" doctrine, about § 109(a), or about the five words, "lawfully made under this title." And neither the report nor its accompanying 1960's draft answers the question before us here. Cf. *Quality King*, 523 U. S., at 145 (without those five words, the import clause, via its reference to § 106, imports the "first sale" doctrine).

But to ascertain the best reading of *§ 109(a)*, rather than dissecting the remarks of industry representatives concerning § 602 at congressional meetings held 10 years before the statute was enacted, see *post*, at 568–571, we would give greater weight to the congressional Report accompanying § 109(a), written a decade later when Congress passed the new law. That Report says:

> "Section 109(a) restates and confirms the principle that, where the *copyright* owner has transferred ownership of a particular copy or phonorecord of a work, the person to whom the copy or phonorecord is transferred

> is entitled to dispose of it by sale, rental, or any other means. Under this principle, which has been established by the court decisions and . . . the present law, the copyright owner's exclusive right of public distribution would have no effect upon anyone who owns 'a particular copy or phonorecord lawfully made under this title' and who wishes to transfer it to someone else or to destroy it.
>
> . . . . .
>
> "To come within the scope of section 109(a), a copy or phonorecord must have been 'lawfully made under this title,' though not necessarily with the copyright owner's authorization. For example, any resale of an illegally 'pirated' phonorecord would be an infringement but the disposition of a phonorecord legally made under the compulsory licensing provisions of section 115 would not." H. R. Rep. No. 94–1476, at 79 (emphasis added).

Accord, S. Rep. No. 94–473, pp. 71–72 (1975).

This history reiterates the importance of the "first sale" doctrine. See, *e. g.*, Copyright Law Revision, 1964 Revision Bill with Discussions and Comments, 89th Cong., 1st Sess., pt. 5, p. 66 (Comm. Print 1965) ("[F]ull ownership of a lawfully-made copy authorizes its owner to dispose of it freely"). It explains, as we have explained, the nongeographical purposes of the words "lawfully made under this title." Part II–B, *supra*. And it says nothing about geography. Nor, importantly, did § 109(a)'s predecessor provision. See *supra*, at 534. This means that, contrary to the dissent's suggestion, any lack of legislative history pertaining to the "first sale" doctrine only tends to bolster our position that Congress' 1976 revision did not intend to create a drastic geographical change in its revision to that provision. See *post*, at 573, n. 13. We consequently believe that the legislative history, on balance, supports the nongeographical interpretation.

Third, Wiley and the dissent claim that a nongeographical interpretation will make it difficult, perhaps impossible, for publishers (and other copyright holders) to divide foreign and domestic markets. We concede that is so. A publisher may find it more difficult to charge different prices for the same book in different geographic markets. But we do not see how these facts help Wiley, for we can find no basic principle of copyright law that suggests that publishers are especially entitled to such rights.

The Constitution describes the nature of American copyright law by providing Congress with the power to "secur[e]" to "[a]uthors" "for limited [t]imes" the "*exclusive [r]ight to their . . . [w]ritings*." Art. I, § 8, cl. 8. The Founders, too, discussed the need to grant an author a limited right to exclude competition. Compare Letter from Thomas Jefferson to James Madison (July 31, 1788), in 13 Papers of Thomas Jefferson 440, 442–443 (J. Boyd ed. 1956) (arguing against any monopoly), with Letter from James Madison to Thomas Jefferson (Oct. 17, 1788), in 14 *id.*, at 16, 21 (J. Boyd ed. 1958) (arguing for a limited monopoly to secure production). But the Constitution's language nowhere suggests that its limited exclusive right should include a right to divide markets or a concomitant right to charge different purchasers different prices for the same book, say, to increase or to maximize gain. Neither, to our knowledge, did any Founder make any such suggestion. We have found no precedent suggesting a legal preference for interpretations of copyright statutes that would provide for market divisions. Cf. Copyright Law Revision, pt. 2, at 194 (statement of Barbara Ringer, Copyright Office) (division of territorial markets was "primarily a matter of private contract").

To the contrary, Congress enacted a copyright law that (through the "first sale" doctrine) limits copyright holders' ability to divide domestic markets. And that limitation is consistent with antitrust laws that ordinarily forbid market

divisions. Cf. *Palmer* v. *BRG of Ga., Inc.*, 498 U. S. 46, 49 (1990) (*per curiam*) ("[A]greements between competitors to allocate territories to minimize competition are illegal"). Whether copyright owners should, or should not, have more than ordinary commercial power to divide international markets is a matter for Congress to decide. We do no more here than try to determine what decision Congress has taken.

Fourth, the dissent and Wiley contend that our decision launches United States copyright law into an unprecedented regime of "international exhaustion." *Post*, at 573–578; Brief for Respondent 45–46. But they point to nothing indicative of congressional intent in 1976. The dissent also claims that it is clear that the United States now opposes adopting such a regime, but the Solicitor General as *amicus* has taken no such position in this case. In fact, when pressed at oral argument, the Solicitor General stated that the consequences of Wiley's reading of the statute (perpetual downstream control) were "worse" than those of Kirtsaeng's reading (restriction of market segmentation). Tr. of Oral Arg. 51. And the dissent's reliance on the Solicitor General's position in *Quality King* is undermined by his agreement in that case with our reading of § 109(a). Brief for United States as *Amicus Curiae* in *Quality King*, O. T. 1996, No. 1470, p. 30 ("When . . . Congress wishes to make the location of manufacture relevant to Copyright Act protection, it does so expressly"); *ibid.* (calling it "distinctly unlikely" that Congress would have provided an incentive for overseas manufacturing).

Moreover, the exhaustion regime the dissent apparently favors would provide that "the sale in one country of a good" does not "exhaus[t] the intellectual property owner's right to control the distribution of that good elsewhere." *Post*, at 574. But our holding in *Quality King* that § 109(a) is a defense in U. S. courts even when "the first sale occurred abroad," 523 U. S., at 145, n. 14, has already significantly eroded such a principle.

IV

For these reasons we conclude that the considerations supporting Kirtsaeng's nongeographical interpretation of the words "lawfully made under this title" are the more persuasive. 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 KAGAN, with whom JUSTICE ALITO joins, concurring.

I concur fully in the Court's opinion. Neither the text nor the history of 17 U. S. C. § 109(a) supports removing first-sale protection from every copy of a protected work manufactured abroad. See *ante*, at 530–538, 548–551. I recognize, however, that the combination of today's decision and *Quality King Distributors, Inc.* v. *L'anza Research Int'l, Inc.*, 523 U. S. 135 (1998), constricts the scope of § 602(a)(1)'s ban on unauthorized importation. I write to suggest that any problems associated with that limitation come not from our reading of § 109(a) here, but from *Quality King*'s holding that § 109(a) limits § 602(a)(1).

As the Court explains, the first-sale doctrine has played an integral part in American copyright law for over a century. See *ante*, at 538–540; *Bobbs-Merrill Co.* v. *Straus*, 210 U. S. 339 (1908). No codification of the doctrine prior to 1976 even arguably limited its application to copies made in the United States. See *ante*, at 533–534. And nothing in the text or history of § 109(a)—the Copyright Act of 1976's first-sale provision—suggests that Congress meant to enact the new, geographical restriction John Wiley proposes, which at once would deprive American consumers of important rights and encourage copyright holders to manufacture abroad. See *ante*, at 530–538, 548–551.

That said, John Wiley is right that the Court's decision, when combined with *Quality King*, substantially narrows

§ 602(a)(1)'s ban on unauthorized importation. *Quality King* held that the importation ban does not reach any copies receiving first-sale protection under § 109(a). See 523 U. S., at 151–152. So notwithstanding § 602(a)(1), an "owner of a particular copy . . . lawfully made under this title" can import that copy without the copyright owner's permission. § 109(a). In now holding that copies "lawfully made under this title" include copies manufactured abroad, we unavoidably diminish § 602(a)(1)'s scope—indeed, limit it to a fairly esoteric set of applications. See *ante*, at 546–547.

But if Congress views the shrinking of § 602(a)(1) as a problem, it should recognize *Quality King*—not our decision today—as the culprit. Here, after all, we merely construe § 109(a); *Quality King* is the decision holding that § 109(a) limits § 602(a)(1). Had we come out the opposite way in that case, § 602(a)(1) would allow a copyright owner to restrict the importation of copies irrespective of the first-sale doctrine.[1] That result would enable the copyright owner to divide international markets in the way John Wiley claims Congress intended when enacting § 602(a)(1). But it would do so without imposing downstream liability on those who purchase and resell in the United States copies that happen to have been manufactured abroad. In other words, that outcome would target unauthorized importers alone, and not the "libraries, used-book dealers, technology companies, consumer-

[1] Although *Quality King* concluded that the statute's text foreclosed that outcome, see 523 U. S., at 151–152, the Solicitor General offered a cogent argument to the contrary. He reasoned that § 109(a) does not limit § 602(a)(1) because the former authorizes owners only to "sell" or "dispose" of copies—not to import them: The Act's first-sale provision and its importation ban thus regulate separate, non-overlapping spheres of conduct. See Brief for United States as *Amicus Curiae* in *Quality King*, O. T. 1996, No. 96–1470, pp. 5, 8–10. That reading remains the Government's preferred way of construing the statute. See Tr. of Oral Arg. 44 ("[W]e think that we still would adhere to our view that section 109(a) should not be read as a limitation on section 602(a)(1)"); see also *ante*, at 553; *post*, at 576, n. 15 (GINSBURG, J., dissenting).

goods retailers, and museums" with whom the Court today is rightly concerned. *Ante*, at 540. Assuming Congress adopted § 602(a)(1) to permit market segmentation, I suspect that is how Congress thought the provision would work—not by removing first-sale protection from every copy manufactured abroad (as John Wiley urges us to do here), but by enabling the copyright holder to control imports even when the first-sale doctrine applies (as *Quality King* now prevents).[2]

At bottom, John Wiley (together with the dissent) asks us to misconstrue § 109(a) in order to restore § 602(a)(1) to its purportedly rightful function of enabling copyright holders to segment international markets. I think John Wiley may have a point about what § 602(a)(1) was designed to do; that gives me pause about *Quality King*'s holding that the first-sale doctrine limits the importation ban's scope. But the Court today correctly declines the invitation to save § 602(a)(1) from *Quality King* by destroying the first-sale protection that § 109(a) gives to every owner of a copy manufactured abroad. That would swap one (possible) mistake for a much worse one, and make our reading of the statute only less reflective of congressional intent. If Congress thinks copyright owners need greater power to restrict im-

[2] Indeed, allowing the copyright owner to restrict imports irrespective of the first-sale doctrine—*i. e.*, reversing *Quality King*—would yield a far more sensible scheme of market segmentation than would adopting John Wiley's argument here. That is because only the former approach turns on the *intended market* for copies; the latter rests instead on their *place of manufacture*. To see the difference, imagine that John Wiley prints all its textbooks in New York, but wants to distribute certain versions only in Thailand. Without *Quality King*, John Wiley could do so—*i. e.*, produce books in New York, ship them to Thailand, and prevent anyone from importing them back into the United States. But with *Quality King*, that course is not open to John Wiley even under its reading of § 109(a): To prevent someone like Kirtsaeng from re-importing the books—and so to segment the Thai market—John Wiley would have to move its printing facilities abroad. I can see no reason why Congress would have conditioned a copyright owner's power to divide markets on outsourcing its manufacturing to a foreign country.

portation and thus divide markets, a ready solution is at hand—not the one John Wiley offers in this case, but the one the Court rejected in *Quality King*.

JUSTICE GINSBURG, with whom JUSTICE KENNEDY joins, and with whom JUSTICE SCALIA joins except as to Parts III and V–B–1, dissenting.

"In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress." *United States* v. *American Trucking Assns., Inc.*, 310 U. S. 534, 542 (1940). Instead of adhering to the Legislature's design, the Court today adopts an interpretation of the Copyright Act at odds with Congress' aim to protect copyright owners against the unauthorized importation of low-priced, foreign-made copies of their copyrighted works. The Court's bold departure from Congress' design is all the more stunning, for it places the United States at the vanguard of the movement for "international exhaustion" of copyrights—a movement the United States has steadfastly resisted on the world stage.

To justify a holding that shrinks to insignificance copyright protection against the unauthorized importation of foreign-made copies, the Court identifies several "practical problems." *Ante*, at 545. The Court's parade of horribles, however, is largely imaginary. Congress' objective in enacting 17 U. S. C. § 602(a)(1)'s importation prohibition can be honored without generating the absurd consequences hypothesized in the Court's opinion. I dissent from the Court's embrace of "international exhaustion," and would affirm the sound judgment of the Court of Appeals.

I

Because economic conditions and demand for particular goods vary across the globe, copyright owners have a financial incentive to charge different prices for copies of their works in different geographic regions. Their ability to engage in such price discrimination, however, is undermined if

arbitrageurs are permitted to import copies from low-price regions and sell them in high-price regions. The question in this case is whether the unauthorized importation of foreign-made copies constitutes copyright infringement under U. S. law.

To answer this question, one must examine three provisions of Title 17 of the U. S. Code: §§ 106(3), 109(a), and 602(a)(1). Section 106 sets forth the "exclusive rights" of a copyright owner, including the right "to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending." § 106(3). This distribution right is limited by § 109(a), which provides: "Notwithstanding the provisions of section 106(3), the owner of a particular copy or phonorecord lawfully made under this title . . . is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord." Section 109(a) codifies the "first sale doctrine," a doctrine articulated in *Bobbs-Merrill Co.* v. *Straus*, 210 U. S. 339, 349–351 (1908), which held that a copyright owner could not control the price at which retailers sold lawfully purchased copies of its work. The first sale doctrine recognizes that a copyright owner should not be permitted to exercise perpetual control over the distribution of copies of a copyrighted work. At some point—ordinarily the time of the first commercial sale—the copyright owner's exclusive right under § 106(3) to control the distribution of a particular copy is exhausted, and from that point forward, the copy can be resold or otherwise redistributed without the copyright owner's authorization.

Section 602(a)(1) (2006 ed., Supp. V) [1]—last, but most critical, of the three copyright provisions bearing on this case—is an importation ban. It reads:

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[1] In 2008, Congress renumbered what was previously § 602(a) as § 602(a)(1). See Prioritizing Resources and Organization for Intellectual Property Act of 2008 (PROIPA), § 105(b)(2), 122 Stat. 4259. Like the Court, I refer to the provision by its current numbering.

> "Importation into the United States, without the authority of the owner of copyright under this title, of copies or phonorecords of a work that have been acquired outside the United States is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under section 501."

In *Quality King Distributors, Inc.* v. *L'anza Research Int'l, Inc.*, 523 U. S. 135, 143–154 (1998), the Court held that a copyright owner's right to control importation under § 602(a)(1) is a component of the distribution right set forth in § 106(3) and is therefore subject to § 109(a)'s codification of the first sale doctrine. *Quality King* thus held that the importation of copies *made in the United States* but sold abroad did not rank as copyright infringement under § 602(a)(1). *Id.*, at 143–154. See also *id.*, at 154 (GINSBURG, J., concurring) (*Quality King* "involve[d] a 'round trip' journey, travel of the copies in question from the United States to places abroad, then back again").[2] Important to the Court's holding, the copies at issue in *Quality King* had been "'lawfully made under [Title 17]'"—a prerequisite for application of § 109(a). *Id.*, at 143, n. 9 (quoting § 109(a)). Section 602(a)(1), the Court noted, would apply to "copies that

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[2] Although JUSTICE KAGAN's concurrence suggests that *Quality King* erred in "holding that § 109(a) limits § 602(a)(1)," *ante*, at 555, that recent, unanimous holding must be taken as a given. See *John R. Sand & Gravel Co.* v. *United States*, 552 U. S. 130, 139 (2008) ("*[S]tare decisis* in respect to statutory interpretation has 'special force,' for 'Congress remains free to alter what we have done.'" (quoting *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 172–173 (1989))). The Court's objective in this case should be to avoid unduly "constrict[ing] the scope of § 602(a)(1)'s ban on unauthorized importation," *ante*, at 554 (opinion of KAGAN, J.), while at the same time remaining faithful to *Quality King*'s holding and to the text and history of other Copyright Act provisions. This aim is not difficult to achieve. See Parts II–V, *infra*. JUSTICE KAGAN and I appear to agree to this extent: Congress meant the ban on unauthorized importation to have real force. See *ante*, at 556 (acknowledging that "Wiley may have a point about what § 602(a)(1) was designed to do").

were 'lawfully made' not under the United States Copyright Act, but instead, under the law of some other country." *Id.*, at 147. Drawing on an example discussed during a 1964 public meeting on proposed revisions to the U. S. copyright laws,[3] the Court stated:

> "If the author of [a] work gave the exclusive United States distribution rights—enforceable under the Act—to the publisher of the United States edition and the exclusive British distribution rights to the publisher of the British edition, . . . presumably only those [copies] made by the publisher of the United States edition would be 'lawfully made under this title' within the meaning of § 109(a). The first sale doctrine would not provide the publisher of the British edition who decided to sell in the American market with a defense to an action under § 602(a) (or, for that matter, to an action under § 106(3), if there was a distribution of the copies)." *Id.*, at 148.

As the District Court and the Court of Appeals concluded, see 654 F. 3d 210, 221–222 (CA2 2011); App. to Pet. for Cert. 70a–73a, application of the *Quality King* analysis to the facts of this case would preclude any invocation of § 109(a). Petitioner Supap Kirtsaeng imported and then sold at a profit over 600 copies of copyrighted textbooks printed outside the United States by the Asian subsidiary of respondent John Wiley & Sons, Inc. (Wiley). App. 29–34. See also *ante*, at 525–527 (opinion of the Court). In the words the Court used in *Quality King*, these copies "were 'lawfully made' not under the United States Copyright Act, but instead, under

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[3] See *Quality King Distributors, Inc.* v. *L'anza Research Int'l, Inc.*, 523 U. S. 135, 148, n. 20 (1998) (quoting Copyright Law Revision Part 4: Further Discussions and Comments on Preliminary Draft for Revised U. S. Copyright Law, 88th Cong., 2d Sess., 119 (H. R. Judiciary Comm. Print 1964) (hereinafter Copyright Law Revision Part 4) (statement of Harriet Pilpel)).

the law of some other country." 523 U. S., at 147. Section 109(a) therefore does not apply, and Kirtsaeng's unauthorized importation constitutes copyright infringement under § 602(a)(1).

The Court does not deny that under the language I have quoted from *Quality King*, Wiley would prevail. *Ante*, at 548. Nevertheless, the Court dismisses this language, to which all Members of the *Quality King* Court subscribed, as ill-considered dictum. *Ante*, at 548. I agree that the discussion was dictum in the sense that it was not essential to the Court's judgment. See *Quality King*, 523 U. S., at 154 (GINSBURG, J., concurring) ("[W]e do not today resolve cases in which the allegedly infringing imports were manufactured abroad."). But I disagree with the Court's conclusion that this dictum was ill considered. Instead, for the reasons explained below, I would hold, consistently with *Quality King*'s dictum, that § 602(a)(1) authorizes a copyright owner to bar the importation of a copy manufactured abroad for sale abroad.

II

The text of the Copyright Act demonstrates that Congress intended to provide copyright owners with a potent remedy against the importation of foreign-made copies of their copyrighted works. As the Court recognizes, *ante*, at 525, this case turns on the meaning of the phrase "lawfully made under this title" in § 109(a). In my view, that phrase is most sensibly read as referring to instances in which a copy's creation is governed by, and conducted in compliance with, Title 17 of the U. S. Code. This reading is consistent with the Court's interpretation of similar language in other statutes. See *Florida Dept. of Revenue* v. *Piccadilly Cafeterias, Inc.*, 554 U. S. 33, 52–53 (2008) ("under" in 11 U. S. C. § 1146(a), a Bankruptcy Code provision exempting certain asset transfers from stamp taxes, means "pursuant to"); *Ardestani* v. *INS*, 502 U. S. 129, 135 (1991) (the phrase "under section 554" in the Equal Access to Justice Act means "subject to" or

"governed by" 5 U. S. C. § 554 (internal quotation marks omitted)). It also accords with dictionary definitions of the word "under." See, *e. g.*, American Heritage Dictionary 1887 (5th ed. 2011) ("under" means, among other things, "[s]ubject to the authority, rule, or control of").

Section 109(a), properly read, affords Kirtsaeng no defense against Wiley's claim of copyright infringement. The Copyright Act, it has been observed time and again, does not apply extraterritorially. See *United Dictionary Co.* v. *G. & C. Merriam Co.*, 208 U. S. 260, 264 (1908) (copyright statute requiring that U. S. copyright notices be placed in all copies of a work did not apply to copies published abroad because U. S. copyright laws have no "force" beyond the United States' borders); 4 M. Nimmer & D. Nimmer, Copyright § 17.02, p. 17–18 (2012) (hereinafter Nimmer) ("[C]opyright laws do not have any extraterritorial operation."); 4 W. Patry, Copyright § 13:22, p. 13–66 (2012) (hereinafter Patry) ("Copyright laws are rigorously territorial."). The printing of Wiley's foreign-manufactured textbooks therefore was not governed by Title 17. The textbooks thus were not "lawfully made under [Title 17]," the crucial precondition for application of § 109(a). And if § 109(a) does not apply, there is no dispute that Kirtsaeng's conduct constituted copyright infringement under § 602(a)(1).

The Court's point of departure is similar to mine. According to the Court, the phrase " 'lawfully made under this title' means made 'in accordance with' or 'in compliance with' the Copyright Act." *Ante*, at 530. But the Court overlooks that, according to the very dictionaries it cites, *ante*, at 531, the word "under" commonly signals a relationship of subjection, where one thing is governed or regulated by another. See Black's Law Dictionary 1525 (6th ed. 1990) ("under" "frequently" means "inferior" or "subordinate" (internal quotation marks omitted)); 18 Oxford English Dictionary 950 (2d ed. 1989) ("under" means, among other things, "[i]n accordance with (*some regulative power or principle*)" (emphasis added)).

See also Webster's Third New International Dictionary 2487 (1961) ("under" means, among other things, "in . . . a condition of subjection, regulation, or subordination" and "suffering restriction, restraint, or control by"). Only by disregarding this established meaning of "under" can the Court arrive at the conclusion that Wiley's foreign-manufactured textbooks were "lawfully made under" U. S. copyright law, even though that law did not govern their creation. It is anomalous, however, to speak of particular conduct as "lawful" under an inapplicable law. For example, one might say that driving on the right side of the road in England is "lawful" under U. S. law, but that would be so only because U. S. law has nothing to say about the subject. The governing law is English law, and English law demands that driving be done on the left side of the road.[4]

The logical implication of the Court's definition of the word "under" is that *any* copy manufactured abroad—even a piratical one made without the copyright owner's authorization and in violation of the law of the country where it was created—would fall within the scope of § 109(a). Any such copy would have been made "in accordance with" or "in compliance with" the U. S. Copyright Act, in the sense that manufacturing the copy did not violate the Act (because the Act does not apply extraterritorially).

The Court rightly refuses to accept such an absurd conclusion. Instead, it interprets § 109(a) as applying only to cop-

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[4] The Court asserts that my position gives the word "lawfully" in § 109(a) "little, if any, linguistic work to do." *Ante*, at 530–531. That is not so. My reading gives meaning to each word in the phrase "lawfully made under this title." The word "made" signifies that the conduct at issue is the creation or manufacture of a copy. See Webster's Third New International Dictionary 1356 (1961) (defining "made" as "artificially produced by a manufacturing process"). The word "lawfully" indicates that for § 109(a) to apply, the copy's creation must have complied with some body of law. Finally, the prepositional phrase "under this title" clarifies what that body of law is—namely, the copyright prescriptions contained in Title 17 of the U. S. Code.

ies whose making actually complied with Title 17, or would have complied with Title 17 had Title 17 been applicable (*i. e.*, had the copies been made in the United States). See *ante*, at 530 ("[Section] 109(a)'s 'first sale' doctrine would apply to copyrighted works as long as their manufacture met the requirements of American copyright law."). Congress, however, used express language when it called for such a counterfactual inquiry in 17 U. S. C. §§ 602(a)(2) and (b). See § 602(a)(2) ("Importation into the United States or exportation from the United States, without the authority of the owner of copyright under this title, of copies or phonorecords, the making of which either constituted an infringement of copyright, or *which would have constituted an infringement of copyright if this title had been applicable*, is an infringement of the exclusive right to distribute copies or phonorecords under section 106." (emphasis added)); § 602(b) ("In a case where the making of the copies or phonorecords *would have constituted an infringement of copyright if this title had been applicable*, their importation is prohibited." (emphasis added)). Had Congress intended courts to engage in a similarly hypothetical inquiry under § 109(a), Congress would presumably have included similar language in that section. See *Russello* v. *United States*, 464 U. S. 16, 23 (1983) ("'[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'" (quoting *United States* v. *Wong Kim Bo*, 472 F. 2d 720, 722 (CA5 1972) (*per curiam*); brackets in original)).[5]

[5] Attempting to show that my reading of § 109(a) is susceptible to the same criticism, the Court points to the now-repealed "manufacturing clause," which required "copies of a work consisting preponderantly of nondramatic literary material . . . in the English language" to be "manufactured in the United States or Canada." Copyright Act of 1976, § 601(a), 90 Stat. 2588. Because Congress expressly referred to manufacturing in this provision, the Court contends, the phrase "lawfully made under this title" in § 109(a) cannot mean "manufactured in the United States." *Ante*, at 540. This argument is a non sequitur. I do *not* contend that the

Not only does the Court adopt an unnatural construction of the § 109(a) phrase "lawfully made under this title." Concomitantly, the Court reduces § 602(a)(1) to insignificance. As the Court appears to acknowledge, see *ante*, at 547, the only independent effect § 602(a)(1) has under today's decision is to prohibit unauthorized importations carried out by persons who merely have possession of, but do not own, the imported copies. See 17 U. S. C. § 109(a) (§ 109(a) applies to any "*owner* of a particular copy or phonorecord lawfully made under this title" (emphasis added)).[6] If this is enough to avoid rendering § 602(a)(1) entirely "superfluous," *ante*, at 547, it hardly suffices to give the owner's importation right the scope Congress intended it to have. Congress used

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phrases "lawfully made under this title" and "manufactured in the United States" are interchangeable. To repeat, I read the phrase "lawfully made under this title" as referring to instances in which a copy's creation is governed by, and conducted in compliance with, Title 17 of the U. S. Code. See *supra*, at 561. Not all copies "manufactured in the United States" will satisfy this standard. For example, piratical copies manufactured in the United States without the copyright owner's authorization are not "lawfully made under [Title 17]." Nor would the phrase "lawfully manufactured in the United States" be an exact substitute for "lawfully made under this title." The making of a copy may be lawful under Title 17 yet still violate some other provision of law. Consider, for example, a copy made with the copyright owner's authorization by workers who are paid less than minimum wage. The copy would be "lawfully made under [Title 17]" in the sense that its creation would not violate any provision of that title, but the copy's manufacturing would nonetheless be unlawful due to the violation of the minimum-wage laws.

[6] When § 602(a)(1) was originally enacted in 1976, it played an additional role—providing a private cause of action against importers of piratical goods. See *Quality King*, 523 U. S., at 146. In 2008, however, Congress amended § 602 to provide for such a cause of action in § 602(a)(2), which prohibits the unauthorized "[i]mportation into the United States . . . of copies or phonorecords, the making of which either constituted an infringement of copyright, or which would have constituted an infringement of copyright if [Title 17] had been applicable." See PROIPA, § 105(b)(3), 122 Stat. 4259–4260. Thus, under the Court's interpretation, the only conduct reached by § 602(a)(1) but not § 602(a)(2) is a nonowner's unauthorized importation of a nonpiratical copy.

broad language in § 602(a)(1); it did so to achieve a broad objective. Had Congress intended simply to provide a copyright remedy against larcenous lessees, licensees, consignees, and bailees of films and other copyright-protected goods, see *ante*, at 534–535, 547, it likely would have used language tailored to that narrow purpose. See 2 Nimmer § 8.12[B][6][c], at 8–184.31, n. 432 ("It may be wondered whether . . . potential causes of action [against licensees and the like] are more than theoretical."). See also *ante*, at 555 (KAGAN, J., concurring) (the Court's decision limits § 602(a)(1) "to a fairly esoteric set of applications").[7]

The Court's decision also overwhelms 17 U. S. C. § 602(a)(3)'s exceptions to § 602(a)(1)'s importation prohibition. 2 P. Goldstein, Copyright § 7.6.1.2(a), p. 7:141 (3d ed. 2012) (hereinafter Goldstein).[8] Those exceptions permit the

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[7] Notably, the Court ignores the history of § 602(a)(1), which reveals that the primary purpose of the prescription was not to provide a remedy against rogue licensees, consignees, and bailees, against whom copyright owners could frequently assert breach-of-contract claims even in the absence of § 602(a)(1). Instead, the primary purpose of § 602(a)(1) was to reach third-party importers, enterprising actors like Kirtsaeng, against whom copyright owners could not assert contract claims due to lack of privity. See Part III, *infra*.

[8] Section 602(a)(3) provides:

"This subsection [*i. e.*, § 602(a)] does not apply to—

"(A) importation or exportation of copies or phonorecords under the authority or for the use of the Government of the United States or of any State or political subdivision of a State, but not including copies or phonorecords for use in schools, or copies of any audiovisual work imported for purposes other than archival use;

"(B) importation or exportation, for the private use of the importer or exporter and not for distribution, by any person with respect to no more than one copy or phonorecord of any one work at any one time, or by any person arriving from outside the United States or departing from the United States with respect to copies or phonorecords forming part of such person's personal baggage; or

"(C) importation by or for an organization operated for scholarly, educational, or religious purposes and not for private gain, with respect to no more than one copy of an audiovisual work solely for its archival purposes,

importation of copies without the copyright owner's authorization for certain governmental, personal, scholarly, educational, and religious purposes. 17 U. S. C. § 602(a)(3). Copies imported under these exceptions "will often be lawfully made gray market goods purchased through normal market channels abroad." 2 Goldstein § 7.6.1.2(a), at 7:141.[9] But if, as the Court holds, such copies can in any event be imported by virtue of § 109(a), § 602(a)(3)'s work has already been done. For example, had Congress conceived of § 109(a)'s sweep as the Court does, what earthly reason would there be to provide, as Congress did in § 602(a)(3)(C), that a library may import "no more than five copies" of a nonaudiovisual work for its "lending or archival purposes"?

The far more plausible reading of §§ 109(a) and 602(a), then, is that Congress intended § 109(a) to apply to copies made in the United States, not to copies manufactured and sold abroad. That reading of the first sale and importation provisions leaves § 602(a)(3)'s exceptions with real, meaningful work to do. See *TRW Inc.* v. *Andrews*, 534 U. S. 19, 31 (2001) ("It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." (internal quotation marks omitted)). In the range of circumstances covered by the exceptions, § 602(a)(3) frees individuals and entities who purchase foreign-made copies abroad from the requirement they

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and no more than five copies or phonorecords of any other work for its library lending or archival purposes, unless the importation of such copies or phonorecords is part of an activity consisting of systematic reproduction or distribution, engaged in by such organization in violation of the provisions of section 108(g)(2)."

[9] The term "gray market good" refers to a good that is "imported outside the distribution channels that have been contractually negotiated by the intellectual property owner." Forsyth & Rothnie, Parallel Imports, in The Interface Between Intellectual Property Rights and Competition Policy 429 (S. Anderman ed. 2007). Such goods are also commonly called "parallel imports." *Ibid.*

would otherwise face under § 602(a)(1) of obtaining the copyright owner's permission to import the copies into the United States.[10]

III

The history of § 602(a)(1) reinforces the conclusion I draw from the text of the relevant provisions: § 109(a) does not apply to copies manufactured abroad. Section 602(a)(1) was enacted as part of the Copyright Act of 1976, 90 Stat. 2589–2590. That Act was the product of a lengthy revision effort overseen by the U. S. Copyright Office. See *Mills Music, Inc.* v. *Snyder*, 469 U. S. 153, 159–160 (1985). In its initial 1961 report on recommended revisions, the Copyright Office noted that publishers had "suggested that the [then-existing] import ban on piratical copies should be extended to bar the importation of . . . foreign edition[s]" in violation of "agree-

[10] The Court asserts that its reading of § 109(a) is bolstered by § 104, which extends the copyright "protection[s]" of Title 17 to a wide variety of foreign works. See *ante*, at 532. The "protection under this title" afforded by § 104, however, is merely protection against infringing conduct within the United States, the only place where Title 17 applies. See 4 W. Patry, Copyright § 13:44.10, pp. 13–128 to 13–129 (2012) (hereinafter Patry). Thus, my reading of the phrase "under this title" in § 109(a) is consistent with Congress' use of that phrase in § 104. Furthermore, § 104 describes which *works* are entitled to copyright protection under U. S. law. But no one disputes that Wiley's copyrights in the works at issue in this case are valid. The only question is whether Kirtsaeng's importation of *copies* of those works infringed Wiley's copyrights. It is basic to copyright law that "[o]wnership of a copyright . . . is distinct from ownership of any material object in which the work is embodied." 17 U. S. C. § 202. See also § 101 ("'Copies' are material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device."). Given the distinction copyright law draws between works and copies, § 104 is inapposite to the question here presented. 4 Patry § 13:44.10, at 13–129 ("There is no connection, linguistically or substantively, between Section[s] 104 and 109: Section 104 deals with national eligibility for the *intangible* work of authorship; Section 109(a) deals with the *tangible*, physical embodiment of the work, the 'copy.'").

ments to divide international markets for copyrighted works." Copyright Law Revision: Report of the Register of Copyrights on the General Revision of the U. S. Copyright Law, 87th Cong., 1st Sess., 126 (H. R. Judiciary Comm. Print 1961) (hereinafter Copyright Law Revision). See Copyright Act of 1947, § 106, 61 Stat. 663 ("The importation into the United States . . . of any piratical copies of any work copyrighted in the United States . . . is prohibited."). The Copyright Office originally recommended against such an extension of the importation ban, reasoning that enforcement of territorial restrictions was best left to contract law. Copyright Law Revision 126.

Publishing-industry representatives argued strenuously against the position initially taken by the Copyright Office. At a 1962 panel discussion on the Copyright Office's report, for example, Horace Manges of the American Book Publishers Council stated:

> "When a U. S. book publisher enters into a contract with a British publisher to acquire exclusive U. S. rights for a particular book, he often finds that the English edition . . . of that particular book finds its way into this country. Now it's all right to say, 'Commence a lawsuit for breach of contract.' But this is expensive, burdensome, and, for the most part, ineffective." Copyright Law Revision Part 2: Discussion and Comments on Report of the Register of Copyrights on the General Revision of the U. S. Copyright Law, 88th Cong., 1st Sess., 212 (H. R. Judiciary Comm. Print 1963).

Sidney Diamond, representing London Records, elaborated on Manges' statement. "There are many situations," he explained, "in which it is not necessarily a question of the inadequacy of a contract remedy—in the sense that it may be difficult or not quick enough to solve the particular problem." *Id.*, at 213. "Very frequently," Diamond stated, publishers "run into a situation where . . . copies of [a] work . . . produced

in a foreign country . . . may be shipped [to the United States] without violating any contract of the U. S. copyright proprietor." *Ibid.* To illustrate, Diamond noted, if a "British publisher [sells a copy] to an individual who in turn ship[s] it over" to the United States, the individual's conduct would not "violate [any] contract between the British and the American publisher." *Ibid.* In such a case, "no possibility of any contract remedy" would exist. *Ibid.* The facts of Kirtsaeng's case fit Diamond's example, save that the copies at issue here were printed and initially sold in Asia rather than Great Britain.

After considering comments on its 1961 report, the Copyright Office "prepared a preliminary draft of provisions for a new copyright statute." Copyright Law Revision Part 3: Preliminary Draft for Revised U. S. Copyright Law and Discussions and Comments on the Draft, 88th Cong., 2d Sess., v (H. R. Judiciary Comm. Print 1964). Section 44 of the draft statute addressed the concerns raised by publishing-industry representatives. In particular, § 44(a) provided:

> "Importation into the United States of copies or records of a work for the purpose of distribution to the public shall, if such articles are imported without the authority of the owner of the exclusive right to distribute copies or records under this title, constitute an infringement of copyright actionable under section 35 [*i. e.*, the section providing for a private cause of action for copyright infringement]." *Id.*, at 32–33.

In a 1964 panel discussion regarding the draft statute, Abe Goldman, the Copyright Office's General Counsel, left no doubt about the meaning of § 44(a). It represented, he explained, a "shif[t]" from the Copyright Office's 1961 report, which had recommended against using copyright law to facilitate publishers' efforts to segment international markets. Copyright Law Revision Part 4: Further Discussions and

Comments on Preliminary Draft for Revised U. S. Copyright Law, 88th Cong., 2d Sess., 203 (H. R. Judiciary Comm. Print 1964). Section 44(a), Goldman stated, would allow copyright owners to bring infringement actions against importers of "foreign copies that were made under proper authority." *Ibid.* See also *id.*, at 205–206 (Goldman agreed with a speaker's comment that § 44(a) "enlarge[d]" U. S. copyright law by extending import prohibitions "to works legally produced in Europe" and other foreign countries).[11]

The next step in the copyright revision process was the introduction in Congress of a draft bill on July 20, 1964. See Copyright Law Revision Part 5: 1964 Revision Bill with Discussions and Comments, 89th Cong., 1st Sess., III (H. R. Judiciary Comm. Print 1965). After another round of public comments, a revised bill was introduced on February 4, 1965. See Copyright Law Revision Part 6: Supplementary Report of the Register of Copyrights on the General Revision of the U. S. Copyright Law: 1965 Revision Bill, 89th Cong., 1st Sess., v (H. R. Judiciary Comm. Print 1965) (hereinafter Copyright Law Revision Part 6). In language closely resembling the statutory text later enacted by Congress, § 602(a) of the 1965 bill provided:

> "Importation into the United States, without the authority of the owner of copyright under this title, of copies or phonorecords of a work for the purpose of distribution to the public is an infringement of the exclusive right

[11] As the Court observes, *ante*, at 549–550, Irwin Karp of the Authors League of America stated at the 1964 panel discussion that § 44(a) ran counter to "the very basic concept of copyright law that, once you've sold a copy legally, you can't restrict its resale." Copyright Law Revision Part 4, at 212. When asked if he was "presenting . . . an argument against" § 44(a), however, Karp responded that he was "neutral on th[e] provision." *Id.*, at 211. There is thus little reason to believe that any changes to the wording of § 44(a) before its codification in § 602(a) were made in response to Karp's discussion of "the problem of restricting [the] transfer of . . . lawfully obtained [foreign] copies." *Ibid.*

> to distribute copies or phonorecords under section 106, actionable under section 501." *Id.*, at 292.[12]

The Court implies that the 1965 bill's "explici[t] refer[ence] to § 106" showed a marked departure from § 44(a) of the Copyright Office's prior draft. *Ante*, at 550. The Copyright Office, however, did not see it that way. In its summary of the 1965 bill's provisions, the Copyright Office observed that § 602(a) of the 1965 bill, like § 44(a) of the Copyright Office's prior draft, see *supra*, at 571 and this page, permitted copyright owners to bring infringement actions against unauthorized importers in cases "where the copyright owner had authorized the making of [the imported] copies in a foreign country for distribution only in that country." Copyright Law Revision Part 6, at 149–150. See also *id.*, at XXVI (Under § 602(a) of the 1965 bill, "[a]n unauthorized importer could be enjoined and sued for damages both where the copies or phonorecords he was importing were 'piratical' (that is, where their making would have constituted an infringement if the U. S. copyright law could have been applied), and where their making was 'lawful.' ").

The current text of § 602(a)(1) was finally enacted into law in 1976. See Copyright Act of 1976, § 602(a), 90 Stat. 2589–2590. The House and Senate Committee Reports on the 1976 Act demonstrate that Congress understood, as did the Copyright Office, just what that text meant. Both Reports state:

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[12] There is but one difference between this language from the 1965 bill and the corresponding language in the current version of § 602(a)(1): In the current version, the phrase "for the purpose of distribution to the public" is omitted and the phrase "that have been acquired outside the United States" appears in its stead. There are no material differences between the quoted language from the 1965 bill and the corresponding language contained in the 1964 bill. See Copyright Law Revision Part 6: Supplementary Report of the Register of Copyrights on the General Revision of the U. S. Copyright Law: 1965 Revision Bill, 89th Cong., 1st Sess., 292–293 (H. R. Judiciary Comm. Print 1965).

> "Section 602 [deals] with two separate situations: importation of 'piratical' articles (that is, copies or phonorecords made without any authorization of the copyright owner), and unauthorized importation of copies or phonorecords that were lawfully made. *The general approach of section 602 is to make unauthorized importation an act of infringement in both cases*, but to permit the Bureau of Customs to prohibit importation only of 'piratical' articles." S. Rep. No. 94–473, p. 151 (1975) (emphasis added). See also H. R. Rep. No. 94–1476, p. 169 (1976) (same).

In sum, the legislative history of the Copyright Act of 1976 is hardly "inconclusive." *Ante*, at 549. To the contrary, it confirms what the plain text of the Act conveys: Congress intended § 602(a)(1) to provide copyright owners with a remedy against the unauthorized importation of foreign-made copies of their works, even if those copies were made and sold abroad with the copyright owner's authorization.[13]

IV

Unlike the Court's holding, my position is consistent with the stance the United States has taken in international-trade negotiations. This case bears on the highly contentious trade issue of interterritorial exhaustion. The issue arises because intellectual property law is territorial in nature, see *supra*, at 562, which means that creators of intellectual property "may hold a set of parallel" intellectual property rights under the laws of different nations. Chiappetta, The Desirability of Agreeing To Disagree: The WTO, TRIPS, International IPR Exhaustion and a Few Other Things, 21 Mich. J.

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[13] The Court purports to find support for its position in the House and Senate Committee Reports on the 1976 Copyright Act. *Ante*, at 550–551. It fails to come up with anything in the Act's legislative history, however, showing that Congress understood the words "lawfully made under this title" in § 109(a) to encompass foreign-made copies.

Int'l L. 333, 340–341 (2000) (hereinafter Chiappetta). There is no international consensus on whether the sale in one country of a good incorporating protected intellectual property exhausts the intellectual property owner's right to control the distribution of that good elsewhere. Indeed, the members of the World Trade Organization, "agreeing to disagree,"[14] provided in Article 6 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Apr. 15, 1994, 33 I. L. M. 1197, 1200, that "nothing in this Agreement shall be used to address the issue of . . . exhaustion." See Chiappetta 346 (observing that exhaustion of intellectual property rights was "hotly debated" during the TRIPS negotiations and that Article 6 "reflects [the negotiators'] ultimate inability to agree" on a single international standard). Similar language appears in other treaties to which the United States is a party. See World Intellectual Property Organization (WIPO) Copyright Treaty, Art. 6(2), Dec. 20, 1996, S. Treaty Doc. No. 105–17, p. 7 ("Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right [to control distribution of copies of a copyrighted work] applies after the first sale or other transfer of ownership of the original or a copy of the work with the authorization of the author."); WIPO Performances and Phonograms Treaty, Art. 8(2), Dec. 20, 1996, S. Treaty Doc. No. 105–17, p. 28 (containing language nearly identical to Article 6(2) of the WIPO Copyright Treaty).

In the absence of agreement at the international level, each country has been left to choose for itself the exhaustion framework it will follow. One option is a national-exhaustion regime, under which a copyright owner's right to

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[14] Chiappetta, The Desirability of Agreeing To Disagree: The WTO, TRIPS, International IPR Exhaustion and a Few Other Things, 21 Mich. J. Int'l L. 333, 340 (2000) (hereinafter Chiappetta) (internal quotation marks omitted).

control distribution of a particular copy is exhausted only within the country in which the copy is sold. See Forsyth & Rothnie, Parallel Imports, in The Interface Between Intellectual Property Rights and Competition Policy 429, 430 (S. Anderman ed. 2007) (hereinafter Forsyth & Rothnie). Another option is a rule of international exhaustion, under which the authorized distribution of a particular copy anywhere in the world exhausts the copyright owner's distribution right everywhere with respect to that copy. See *ibid.* The European Union has adopted the intermediate approach of regional exhaustion, under which the sale of a copy anywhere within the European Economic Area exhausts the copyright owner's distribution right throughout that region. See *id.*, at 430, 445. Section 602(a)(1), in my view, ties the United States to a national-exhaustion framework. The Court's decision, in contrast, places the United States solidly in the international-exhaustion camp.

Strong arguments have been made both in favor of, and in opposition to, international exhaustion. See Chiappetta 360 ("[r]easonable people making valid points can, and do, reach conflicting conclusions" regarding the desirability of international exhaustion). International exhaustion subjects copyright-protected goods to competition from lower priced imports and, to that extent, benefits consumers. Correspondingly, copyright owners profit from a national-exhaustion regime, which also enlarges the monetary incentive to create new copyrightable works. See Forsyth & Rothnie 432–437 (surveying arguments for and against international exhaustion).

Weighing the competing policy concerns, our Government reached the conclusion that widespread adoption of the international-exhaustion framework would be inconsistent with the long-term economic interests of the United States. See Brief for United States as *Amicus Curiae* in *Quality King*, O. T. 1997, No. 96–1470, pp. 22–26 (hereinafter *Quality*

King Brief).[15] Accordingly, the United States has steadfastly "taken the position in international trade negotiations that domestic copyright owners should . . . have the right to prevent the unauthorized importation of copies of their work sold abroad." *Id.*, at 22. The United States has "advanced this position in multilateral trade negotiations," including the negotiations on the TRIPS Agreement. *Id.*, at 24. See also D. Gervais, The TRIPS Agreement: Drafting History and Analysis § 2.63, p. 199 (3d ed. 2008). It has also taken a dim view of our trading partners' adoption of legislation incorporating elements of international exhaustion. See Clapperton & Corones, Locking in Customers, Locking Out Competitors: Anti-Circumvention Laws in Australia and Their Potential Effect on Competition in High Technology Markets, 30 Melbourne U. L. Rev. 657, 664 (2006) (United States expressed concern regarding international-exhaustion legislation in Australia); Montén, Comment, The Inconsistency Between Section 301 and TRIPS: Counterproductive With Respect to the Future of International Protection of Intellectual Property Rights? 9 Marq. Intellectual Property

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[15] The Court states that my "reliance on the Solicitor General's position in *Quality King* is undermined by his agreement in that case with [the] reading of § 109(a)" that the Court today adopts. *Ante*, at 553. The United States' principal concern in both *Quality King* and this case, however, has been to protect copyright owners' "right to prevent parallel imports." Brief for United States as *Amicus Curiae* in *Quality King*, O. T. 1997, No. 96–1470, p. 6 (hereinafter *Quality King* Brief). See also Brief for United States as *Amicus Curiae* 14 (arguing that Kirtsaeng's interpretation of § 109(a), which the Court adopts, would "subver[t] Section 602(a)(1)'s ban on unauthorized importation"). In *Quality King*, the Solicitor General urged this Court to hold that § 109(a)'s codification of the first sale doctrine does not limit the right to control importation set forth in § 602(a). *Quality King* Brief 7–30. After *Quality King* rejected that contention, the United States reconsidered its position, and it now endorses the interpretation of the § 109(a) phrase "lawfully made under this title" I would adopt. Brief for United States as *Amicus Curiae* 6–7, 13–14.

L. Rev. 387, 417–418 (2005) (same with respect to New Zealand and Taiwan).

Even if the text and history of the Copyright Act were ambiguous on the answer to the question this case presents—which they are not, see Parts II–III, *supra*[16]—I would resist a holding out of accord with the firm position the United States has taken on exhaustion in international negotiations. *Quality King*, I acknowledge, discounted the Government's concerns about potential inconsistency with United States obligations under certain bilateral trade agreements. See 523 U. S., at 153–154. See also *Quality King* Brief 22–24 (listing the agreements). That decision, however, dealt only with copyright-protected products made in the United States. See 523 U. S., at 154 (GINSBURG, J., concurring). *Quality King* left open the question whether owners of U. S. copyrights could retain control over the importation of copies manufactured and sold abroad—a point the Court obscures, see *ante*, at 553 (arguing that *Quality King* "significantly eroded" the national-exhaustion principle that, in my view, § 602(a)(1) embraces). The Court today answers that question with a resounding "no," and in doing so, it risks undermining the United States' credibility on the world stage. While the Government has urged our trading partners to refrain from adopting international-exhaustion regimes that could benefit consumers within their borders but would impact adversely on intellectual property producers in the United States, the Court embraces an international-exhaustion rule that could benefit U. S. consumers but would likely disadvantage foreign holders of U. S.

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[16] Congress hardly lacks capacity to provide for international exhaustion when that is its intent. Indeed, Congress has expressly provided for international exhaustion in the narrow context of semiconductor chips embodying protected "mask works." See 17 U. S. C. §§ 905(2), 906(b). See also 2 M. Nimmer & D. Nimmer, Copyright § 8A.06[E], p. 8A–37 (2012) (hereinafter Nimmer) ("[T]he first sale doctrine under [§ 906(b)] expressly immunizes unauthorized importation.").

copyrights. This dissonance scarcely enhances the United States' "role as a trusted partner in multilateral endeavors." *Vimar Seguros y Reaseguros, S. A.* v. *M/V Sky Reefer*, 515 U. S. 528, 539 (1995).

V

I turn now to the Court's justifications for a decision difficult to reconcile with the Copyright Act's text and history.

A

The Court asserts that its holding "is consistent with antitrust laws that ordinarily forbid market divisions." *Ante*, at 552–553. See also *ante*, at 539 (again referring to antitrust principles). Section 602(a)(1), however, read as I do and as the Government does, simply facilitates copyright owners' efforts to impose "vertical restraints" on distributors of copies of their works. See Forsyth & Rothnie 435 ("Parallel importation restrictions enable manufacturers and distributors to erect 'vertical restraints' in the market through exclusive distribution agreements."). See generally *Leegin Creative Leather Products, Inc.* v. *PSKS, Inc.*, 551 U. S. 877 (2007) (discussing vertical restraints). We have held that vertical restraints are not *per se* illegal under § 1 of the Sherman Act, 15 U. S. C. § 1, because such "restraints can have procompetitive effects." 551 U. S., at 881–882.[17]

[17] Despite the Court's suggestion to the contrary, this case in no way implicates the *per se* antitrust prohibition against *horizontal* "'[a]greements between competitors to allocate territories to minimize competition.'" *Ante*, at 553 (quoting *Palmer* v. *BRG of Ga., Inc.*, 498 U. S. 46, 49 (1990) (*per curiam*)). Wiley is not requesting authority to enter into collusive agreements with other textbook publishers that would, for example, make Wiley the exclusive supplier of textbooks on particular subjects within particular geographic regions. Instead, Wiley asserts no more than the prerogative to impose *vertical* restraints on the distribution of its own textbooks. See Hovenkamp, Post-Sale Restraints and Competitive Harm: The First Sale Doctrine in Perspective, 66 N. Y. U. Ann. Survey Am. L. 487, 488 (2011) ("vertical restraints" include "limits [on] the way a seller's own product can be distributed").

B

The Court sees many "horribles" following from a holding that the § 109(a) phrase "lawfully made under this title" does not encompass foreign-made copies. *Ante*, at 543 (internal quotation marks omitted). If § 109(a) excluded foreign-made copies, the Court fears, then copyright owners could exercise perpetual control over the downstream distribution or public display of such copies. A ruling in Wiley's favor, the Court asserts, would shutter libraries, put used-book dealers out of business, cripple art museums, and prevent the resale of a wide range of consumer goods, from cars to calculators. *Ante*, at 540–543. See also *ante*, at 555 (KAGAN, J., concurring) (expressing concern about "imposing downstream liability on those who purchase and resell in the United States copies that happen to have been manufactured abroad"). Copyright law and precedent, however, erect barriers to the anticipated horribles.[18]

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Recognizing that foreign-made copies fall outside the ambit of § 109(a) would not mean they are forever free of the first sale doctrine. As earlier observed, see *supra*, at 558, the Court stated that doctrine initially in its 1908 *Bobbs-Merrill* decision. At that time, no statutory provision expressly codified the first sale doctrine. Instead, copyright law merely provided that copyright owners had "the sole liberty of printing, reprinting, publishing, completing, copying, exe-

[18] As the Court observes, *ante*, at 553, the United States stated at oral argument that the types of "horribles" predicted in the Court's opinion would, if they came to pass, be "worse than the frustration of market segmentation" that will result from the Court's interpretation of § 109(a). Tr. of Oral Arg. 51. The United States, however, recognized that this purported dilemma is a false one. As the United States explained, the Court's horribles can be avoided while still giving meaningful effect to § 602(a)(1)'s ban on unauthorized importation. *Ibid.*

cuting, finishing, and vending" their works. Copyright Act of 1891, § 1, 26 Stat. 1107.

In *Bobbs-Merrill*, the Court addressed the scope of the statutory right to "ven[d]." In granting that right, the Court held, Congress did not intend to permit copyright owners "to fasten . . . a restriction upon the subsequent alienation of the subject-matter of copyright after the owner had parted with the title to one who had acquired full dominion over it and had given a satisfactory price for it." 210 U. S., at 349–350. "[O]ne who has sold a copyrighted article . . . without restriction," the Court explained, "has parted with all right to control the sale of it." *Id.*, at 350. Thus, "[t]he purchaser of a book, once sold by authority of the owner of the copyright, may sell it again, although he could not publish a new edition of it." *Ibid.*

Under the logic of *Bobbs-Merrill*, the sale of a foreign-manufactured copy in the United States carried out with the copyright owner's authorization would exhaust the copyright owner's right to "vend" that copy. The copy could thenceforth be resold, lent out, or otherwise redistributed without further authorization from the copyright owner. Although § 106(3) uses the word "distribute" rather than "vend," there is no reason to think Congress intended the word "distribute" to bear a meaning different from the construction the Court gave to the word "vend" in *Bobbs-Merrill*. See *ibid.* (emphasizing that the question before the Court was "purely [one] of statutory construction").[19] Thus, in accord with *Bobbs-Merrill*, the first authorized distribution of a foreign-made copy in the United States exhausts the copyright own-

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[19] It appears that the Copyright Act of 1976 omitted the word "vend" and introduced the word "distribute" to avoid the "redundan[cy]" present in pre-1976 law. Copyright Law Revision: Report of the Register of Copyrights on the General Revision of the U. S. Copyright Law, 87th Cong., 1st Sess., 21 (H. R. Judiciary Comm. Print 1961) (noting that the exclusive rights to "publish" and "vend" works under the Copyright Act of 1947, § 1(a), 61 Stat. 652–653, were "redundant").

er's distribution right under § 106(3). After such an authorized distribution, a library may lend, or a used-book dealer may resell, the foreign-made copy without seeking the copyright owner's permission. Cf. *ante*, at 541–542.

For example, if Wiley, rather than Kirtsaeng, had imported into the United States and then sold the foreign-made textbooks at issue in this case, Wiley's § 106(3) distribution right would have been exhausted under the rationale of *Bobbs-Merrill*. Purchasers of the textbooks would thus be free to dispose of the books as they wished without first gaining a license from Wiley.

This line of reasoning, it must be acknowledged, significantly curtails the independent effect of § 109(a). If, as I maintain, the term "distribute" in § 106(3) incorporates the first sale doctrine by virtue of *Bobbs-Merrill*, then § 109(a)'s codification of that doctrine adds little to the regulatory regime.[20] Section 109(a), however, does serve as a statutory

[20] My position that *Bobbs-Merrill* lives on as a limiting construction of the § 106(3) distribution right does not leave § 109(a) with no work to do. There can be little doubt that the books at issue in *Bobbs-Merrill* were published and first sold in the United States. See *Bobbs-Merrill Co.* v. *Straus*, 139 F. 155, 157 (CC SDNY 1905) (the publisher claiming copyright infringement in *Bobbs-Merrill* was incorporated and had its principal office in Indiana). See also Copyright Act of 1891, § 3, 26 Stat. 1107–1108 (generally prohibiting importation, even by the copyright owner, of foreign-manufactured copies of copyrighted books); 4 Patry § 13:40, at 13–111 (under the Copyright Act of 1891, "copies of books by both foreign *and* U. S. authors had to be printed in the United States"). But cf. *ante*, at 539 (asserting, without acknowledging the 1891 Copyright Act's general prohibition against the importation of foreign-made copies of copyrighted books, that the Court is unable to find any "geographical distinctions . . . in *Bobbs-Merrill*"). Thus, exhaustion occurs under *Bobbs-Merrill* only when a copy is distributed within the United States with the copyright owner's permission, not when it is distributed abroad. But under § 109(a), as interpreted in *Quality King*, any authorized distribution of a U. S.-made copy, even a distribution occurring in a foreign country, exhausts the copyright owner's distribution right under § 106(3). See 523 U. S., at 145, n. 14. Section 109(a) therefore provides for exhaustion in a circumstance not reached by *Bobbs-Merrill*.

bulwark against courts deviating from *Bobbs-Merrill* in a way that increases copyright owners' control over downstream distribution, and legislative history indicates that is precisely the role Congress intended § 109(a) to play. Congress first codified the first sale doctrine in § 41 of the Copyright Act of 1909, 35 Stat. 1084.[21] It did so, the House Committee Report on the 1909 Act explains, "in order to make . . . clear that [Congress had] no intention [of] enlarg[ing] in any way the construction to be given to the word 'vend.'" H. R. Rep. No. 2222, 60th Cong., 2d Sess., 19 (1909). According to the Committee Report, § 41 was "not intended to change [existing law] in any way." *Ibid.* The position I have stated and explained accords with this expression of congressional intent. In enacting § 41 and its successors, I would hold, Congress did not "change . . . existing law," *ibid.*, by stripping the word "vend" (and thus its substitute "distribute") of the limiting construction imposed in *Bobbs-Merrill*.

In any event, the reading of the Copyright Act to which I subscribe honors Congress' aim in enacting § 109(a) while the Court's reading of the Act severely diminishes § 602(a)(1)'s role. See *supra*, at 566–568. My position in no way tugs against the principle underlying § 109(a)—*i. e.*, that certain conduct by the copyright owner exhausts the owner's § 106(3) distribution right. The Court, in contrast, fails to give meaningful effect to Congress' manifest intent in § 602(a)(1) to grant copyright owners the right to control the importation of foreign-made copies of their works.

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[21] Section 41 of the 1909 Act provided: "[N]othing in this Act shall be deemed to forbid, prevent, or restrict the transfer of any copy of a copyrighted work the possession of which has been lawfully obtained." 35 Stat. 1084. This language was repeated without material change in § 27 of the Copyright Act of 1947, 61 Stat. 660. As noted above, see *supra*, at 558, 17 U. S. C. § 109(a) sets out the current codification of the first sale doctrine.

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Other statutory prescriptions provide further protection against the absurd consequences imagined by the Court. For example, § 602(a)(3)(C) permits "an organization operated for scholarly, educational, or religious purposes" to import, without the copyright owner's authorization, up to five foreign-made copies of a nonaudiovisual work—notably, a book—for "library lending or archival purposes." But cf. *ante*, at 541 (suggesting that affirming the Second Circuit's decision might prevent libraries from lending foreign-made books).[22]

The Court also notes that *amici* representing art museums fear that a ruling in Wiley's favor would prevent museums from displaying works of art created abroad. *Ante*, at 543 (citing Brief for Association of Art Museum Directors et al.). These *amici* observe that a museum's right to display works of art often depends on 17 U. S. C. § 109(c). See Brief for Association of Art Museum Directors et al. 11–13.[23] That provision addresses exhaustion of a copyright owner's exclusive right under § 106(5) to publicly display the owner's work. Because § 109(c), like § 109(a), applies only to copies "lawfully made under this title," *amici* contend that a ruling in Wiley's

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[22] A group of *amici* representing libraries expresses the concern that lower courts might interpret § 602(a)(3)(C) as authorizing only the importing, but not the lending, of foreign-made copies of nonaudiovisual works. See Brief for American Library Association et al. 20. The United States maintains, and I agree, however, that § 602(a)(3)(C) "is fairly (and best) read as implicitly authorizing lending, in addition to importation, of all works other than audiovisual works." Brief for United States as *Amicus Curiae* 30, n. 6.

[23] Title 17 U. S. C. § 109(c) provides: "Notwithstanding the provisions of section 106(5), the owner of a particular copy lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to display that copy publicly, either directly or by the projection of no more than one image at a time, to viewers present at the place where the copy is located."

favor would prevent museums from invoking § 109(c) with respect to foreign-made works of art. *Id.*, at 11–13.[24]

Limiting § 109(c) to U. S.-made works, however, does not bar art museums from lawfully displaying works made in other countries. Museums can, of course, seek the copyright owner's permission to display a work. Furthermore, the sale of a work of art to a U. S. museum may carry with it an implied license to publicly display the work. See 2 Patry § 5:131, at 5–280 ("[C]ourts have noted the potential availability of an implied nonexclusive licens[e] when the circumstances . . . demonstrate that the parties intended that the work would be used for a specific purpose."). Displaying a work of art as part of a museum exhibition might also qualify as a "fair use" under 17 U. S. C. § 107. Cf. *Bouchat* v. *Baltimore Ravens Ltd. Partnership*, 619 F. 3d 301, 313–316 (CA4 2010) (display of copyrighted logo in museum-like exhibition constituted "fair use").

The Court worries about the resale of foreign-made consumer goods "contain[ing] copyrightable software programs or packaging." *Ante*, at 542. For example, the Court observes that a car might be programmed with diverse forms of software, the copyrights to which might be owned by individuals or entities other than the manufacturer of the car. *Ibid.* Must a car owner, the Court asks, obtain permission from all of these various copyright owners before reselling her car? *Ibid.* Although this question strays far from the one presented in this case and briefed by the parties, principles of fair use and implied license (to the extent that express licenses do not exist) would likely permit the car to be resold without the copyright owners' authorization.[25]

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[24] The word "copy," as it appears in § 109(c), applies to the original of a work of art because the Copyright Act defines the term "copies" to "includ[e] the material object . . . in which the work is first fixed." § 101.

[25] Principles of fair use and implied license may also allow a U. S. tourist "who buys a copyrighted work of art, a poster, or . . . a bumper sticker" abroad to publicly "display it in America without the copyright owner's further authorization." *Ante*, at 537. (The tourist could lawfully bring

Most telling in this regard, no court, it appears, has been called upon to answer any of the Court's "horribles" in an actual case. Three decades have passed since a federal court first published an opinion reading § 109(a) as applicable exclusively to copies made in the United States. See *Columbia Broadcasting System, Inc.* v. *Scorpio Music Distributors, Inc.*, 569 F. Supp. 47, 49 (ED Pa. 1983), summarily aff'd, 738 F. 2d 424 (CA3 1984) (table). Yet Kirtsaeng and his supporting *amici* cite not a single case in which the owner of a consumer good authorized for sale in the United States has been sued for copyright infringement after reselling the item or giving it away as a gift or to charity. The absence of such lawsuits is unsurprising. Routinely suing one's customers is hardly a best business practice.[26] Manufacturers, moreover, may be hesitant to do business with

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the work of art, poster, or bumper sticker into the United States under 17 U. S. C. § 602(a)(3)(B), which provides that § 602(a)(1)'s importation ban does not apply to "importation . . . by any person arriving from outside the United States . . . with respect to copies . . . forming part of such person's personal baggage.") Furthermore, an individual clearly would not incur liability for infringement merely by displaying a foreign-made poster or other artwork in her home. See § 106(5) (granting the owners of copyrights in "literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works" the exclusive right "to display the copyrighted work *publicly*" (emphasis added)). See also § 101 (a work is displayed "publicly" if it is displayed "at a place open to the public or at any place where a substantial number of persons *outside of a normal circle of a family and its social acquaintances* is gathered" (emphasis added)). Cf. 2 Nimmer § 8.14[C][1], at 8–192.2(1) ("[A] performance limited to members of the family and invited guests is not a public performance." (footnote omitted)).

[26] Exerting extensive control over secondary markets may not always be in a manufacturer's best interest. Carmakers, for example, often trumpet the resale value of their vehicles. See, *e. g.*, Nolan, UD Grad Leads Cadillac Marketing, Dayton Daily News, Apr. 2, 2009, p. A8 ("Cadillac plays up its warranty coverage and reliable resale value to prospective customers."). If the transaction costs of reselling vehicles were to rise, consumers' perception of a new car's value, and thus the price they are willing to pay for such a car, might fall—an outcome hardly favorable to automobile manufacturers.

software programmers taken to suing consumers. Manufacturers may also insist that software programmers agree to contract terms barring such lawsuits.

The Court provides a different explanation for the absence of the untoward consequences predicted in its opinion—namely, that lower court decisions regarding the scope of § 109(a)'s first sale prescription have not been uniform. *Ante*, at 544. Uncertainty generated by these conflicting decisions, the Court notes, may have deterred some copyright owners from pressing infringement claims. *Ante*, at 544–545. But if, as the Court suggests, there are a multitude of copyright owners champing at the bit to bring lawsuits against libraries, art museums, and consumers in an effort to exercise perpetual control over the downstream distribution and public display of foreign-made copies, might one not expect that at least a handful of such lawsuits would have been filed over the past 30 years? The absence of such suits indicates that the "practical problems" hypothesized by the Court are greatly exaggerated. *Ante*, at 545.[27] They surely do

[27] It should not be overlooked that the ability to prevent importation of foreign-made copies encourages copyright owners such as Wiley to offer copies of their works at reduced prices to consumers in less developed countries who might otherwise be unable to afford them. The Court's holding, however, prevents copyright owners from barring the importation of such low-priced copies into the United States, where they will compete with the higher priced editions copyright owners make available for sale in this country. To protect their profit margins in the U. S. market, copyright owners may raise prices in less developed countries or may withdraw from such markets altogether. See Brief for United States as *Amicus Curiae* 26; Brief for Text and Academic Authors Association as *Amicus Curiae* 12; Brief for Association of American Publishers as *Amicus Curiae* 37. See also Chiappetta 357–358 (a rule of national exhaustion "encourages entry and participation in developing markets at lower, locally more affordable prices by eliminating them as risky sources of cheaper parallel imports back into premium markets"). Such an outcome would disserve consumers—and especially students—in developing nations and would hardly advance the "American foreign policy goals" of supporting educa-

not warrant disregarding Congress' intent, expressed in § 602(a)(1), to grant copyright owners the authority to bar the importation of foreign-made copies of their works. Cf. *Hartford Underwriters Ins. Co.* v. *Union Planters Bank, N. A.*, 530 U. S. 1, 6 (2000) ("[W]hen the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." (internal quotation marks omitted)).

VI

To recapitulate, the objective of statutory interpretation is "to give effect to the intent of Congress." *American Trucking Assns.*, 310 U. S., at 542. Here, two congressional aims are evident. First, in enacting § 602(a)(1), Congress intended to grant copyright owners permission to segment international markets by barring the importation of foreign-made copies into the United States. Second, as codification of the first sale doctrine underscores, Congress did not want the exclusive distribution right conferred in § 106(3) to be boundless. Instead of harmonizing these objectives, the Court subordinates the first entirely to the second. It is unsurprising that none of the three major treatises on U. S. copyright law embrace the Court's construction of § 109(a). See 2 Nimmer § 8.12[B][6][c], at 8–184.34 to 8–184.35; 2 Goldstein § 7.6.1.2(a), at 7:141; 4 Patry §§ 13:22, 13:44, 13:44.10.

Rather than adopting the very international-exhaustion rule the United States has consistently resisted in international-trade negotiations, I would adhere to the national-exhaustion framework set by the Copyright Act's text and history. Under that regime, codified in § 602(a)(1), Kirtsaeng's unauthorized importation of the foreign-made textbooks involved in this case infringed Wiley's copyrights. I would therefore affirm the Second Circuit's judgment.

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tion and economic development in such countries. *Quality King* Brief 25–26.

Syllabus

STANDARD FIRE INSURANCE CO. *v.* KNOWLES

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

No. 11–1450. Argued January 7, 2013—Decided March 19, 2013

The Class Action Fairness Act of 2005 (CAFA) gives federal district courts original jurisdiction over class actions in which, among other things, the matter in controversy exceeds $5 million in sum or value, 28 U. S. C. §§ 1332(d)(2), (5), and provides that to determine whether a matter exceeds that amount the "claims of the individual class members shall be aggregated," § 1332(d)(6). When respondent Knowles filed a proposed class action in Arkansas state court against petitioner Standard Fire Insurance Company, he stipulated that he and the class would seek less than $5 million in damages. Pointing to CAFA, petitioner removed the case to the Federal District Court, but it remanded to the state court, concluding that the amount in controversy fell below the CAFA threshold in light of Knowles' stipulation, even though it found that the amount would have fallen above the threshold absent the stipulation. The Eighth Circuit declined to hear petitioner's appeal.

Held: Knowles' stipulation does not defeat federal jurisdiction under CAFA. Pp. 592–596.

(a) Here, the precertification stipulation can tie Knowles' hands because stipulations are binding on the party who makes them, see *Christian Legal Soc. Chapter of Univ. of Cal., Hastings College of Law* v. *Martinez*, 561 U. S. 661. However, the stipulation does not speak for those Knowles purports to represent, for a plaintiff who files a proposed class action cannot legally bind members of the proposed class before the class is certified. See *Smith* v. *Bayer Corp.*, 564 U. S. 299, 315. Because Knowles lacked authority to concede the amount in controversy for absent class members, the District Court wrongly concluded that his stipulation could overcome its finding that the CAFA jurisdictional threshold had been met. Pp. 592–593.

(b) Knowles concedes that federal jurisdiction cannot be based on contingent future events. Yet, because a stipulation must be binding and a named plaintiff cannot bind precertification class members, the amount he stipulated is in effect contingent. CAFA does not forbid a federal court to consider the possibility that a nonbinding, amount-limiting, stipulation may not survive the class certification process. To hold otherwise would, for CAFA jurisdictional purposes, treat a nonbinding stipulation as if it were binding, exalt form over substance, and run counter

Syllabus

to CAFA's objective: ensuring "Federal court consideration of interstate cases of national importance." § 2(b)(2), 119 Stat. 5.

It may be simpler for a federal district court to value the amount in controversy on the basis of a stipulation, but ignoring a nonbinding stipulation merely requires the federal judge to do what she must do in cases with no stipulation: aggregate the individual class members' claims. While individual plaintiffs may avoid removal to federal court by stipulating to amounts that fall below the federal jurisdictional threshold, the key characteristic of such stipulations—missing here—is that they are legally binding on all plaintiffs. Pp. 593–596.

Vacated and remanded.

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

Theodore J. Boutrous, Jr., argued the cause for petitioner. With him on the briefs were *Theane Evangelis Kapur*, *Joshua S. Lipshutz*, *Amir C. Tayrani*, *Stephen E. Goldman*, *Wystan M. Ackerman*, and *Lyn P. Pruitt*.

David C. Frederick argued the cause for respondent. With him on the brief were *Brendan J. Crimmins*, *Jonathan S. Massey*, and *Richard E. Norman*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Alabama et al. by *Luther Strange*, Attorney General of Alabama, *John C. Neiman, Jr.*, Solicitor General, *Andrew L. Brasher*, Deputy Solicitor General, and *Kasdin E. Miller*, Assistant Solicitor General, and by the Attorneys General for their respective States as follows: *Tom Horne* of Arizona, *John Suthers* of Colorado, *George Jepsen* of Connecticut, *Pamela Jo Bondi* of Florida, *Samuel S. Olens* of Georgia, *Gregory F. Zoeller* of Indiana, *Derek Schmidt* of Kansas, *Bill Schuette* of Michigan, *Jon Bruning* of Nebraska, *Wayne Stenehjem* of North Dakota, *Michael DeWine* of Ohio, *Scott Pruitt* of Oklahoma, *Marty J. Jackley* of South Dakota, *Greg Abbott* of Texas, *Mark Shurtleff* of Utah, *Robert M. McKenna* of Washington, and *Darrell V. McGraw, Jr.*, of West Virginia; for the Arkansas State Chamber of Commerce by *Jess Askew III*, *Andrew King*, and *Jamie K. Fugitt*; for the Cato Institute by *David B. Rivkin, Jr.*, *Deborah H. Renner*, *John B. Lewis*, and *Ilya Shapiro*; for the Center for Class Action Fairness by *J. Tracy Walker IV* and *Lisa M. Sharp*; for the Chamber of Commerce of the United States of America et al. by *Jeffrey A. Lamken*, *Michael G. Pattillo, Jr.*, *Robin S. Conrad*, *Kate Comerford Todd*, *Sheldon Gilbert*, and *Deborah White*; for Hartford Underwriters Insurance Co. by *Paul H. Schwartz*; for Partnership for America by *Charles J. Cooper* and *Howard*

JUSTICE BREYER delivered the opinion of the Court.

The Class Action Fairness Act of 2005 (CAFA) provides that the federal "district courts shall have original jurisdiction" over a civil "class action" if, among other things, the "matter in controversy exceeds the sum or value of $5,000,000." 28 U. S. C. §§ 1332(d)(2), (5). The statute adds that "to determine whether the matter in controversy exceeds the sum or value of $5,000,000," the "claims of the individual class members shall be aggregated." § 1332(d)(6).

The question presented concerns a class-action plaintiff who stipulates, prior to certification of the class, that he, and the class he seeks to represent, will not seek damages that exceed $5 million in total. Does that stipulation remove the case from CAFA's scope? In our view, it does not.

I

In April 2011 respondent, Greg Knowles, filed this proposed class action in an Arkansas state court against petitioner, the Standard Fire Insurance Company. Knowles claimed that, when the company had made certain homeowner's insurance loss payments, it had unlawfully failed to

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C. Nielson, Jr.; for the Washington Legal Foundation et al. by *Cory L. Andrews* and *Mary-Christine Sungaila*; and for E. Donald Elliott et al. by *G. Eric Brunstad, Jr.*, *Collin O'Connor Udell*, and *Matthew J. Delude.*

Briefs of *amici curiae* urging affirmance were filed for the State of Arkansas et al. by *Dustin McDaniel*, Attorney General of Arkansas, and *Eric B. Estes*, Senior Assistant Attorney General, and by the Attorneys General for their respective States as follows: *Joseph R. Biden III* of Delaware and *Jim Hood* of Mississippi; and for Public Citizen, Inc., et al. by *Scott L. Nelson* and *Allison M. Zieve.*

Briefs of *amici curiae* were filed for the Arkansas Trial Lawyers Association by *Brian G. Brooks*; for the Defense Research Institute by *Mary Massaron Ross*, *Paul D. Clement*, and *Erin Morrow Hawley*; for the Manufactured Housing Institute et al. by *Jeremy B. Rosen*, *Peder K. Batalden*, and *Brett D. Watson*; for the National Association of Manufacturers by *Gregory G. Katsas*, *Jeffrey A. Mandell*, and *Quentin Riegel*; and for 21st Century Casualty Co. et al. by *Thomas T. Rogers.*

include a general contractor fee. And Knowles sought to certify a class of "hundreds, and possibly thousands," of similarly harmed Arkansas policyholders. App. to Pet. for Cert. 66. In describing the relief sought, the complaint says that the "Plaintiff and Class stipulate they will seek to recover total aggregate damages of less than five million dollars." *Id.*, at 60. An attached affidavit stipulates that Knowles "will not at any time during this case . . . seek damages for the class . . . in excess of $5,000,000 in the aggregate." *Id.*, at 75.

On May 18, 2011, the company, pointing to CAFA's jurisdictional provision, removed the case to Federal District Court. See 28 U. S. C. § 1332(d); § 1453. Knowles argued for remand on the ground that the District Court lacked jurisdiction. He claimed that the "sum or value" of the "amount in controversy" fell beneath the $5 million threshold. App. to Pet. for Cert. 2. On the basis of evidence presented by the company, the District Court found that the "sum or value" of the "amount in controversy" would, in the absence of the stipulation, have fallen just above the $5 million threshold. *Id.*, at 2, 8. Nonetheless, in light of Knowles' stipulation, the court concluded that the amount fell beneath the threshold. The court consequently ordered the case remanded to the state court. *Id.*, at 15.

The company appealed from the remand order, but the Eighth Circuit declined to hear the appeal. *Id.*, at 1. See 28 U. S. C. § 1453(c)(1) (2006 ed., Supp. V) (providing discretion to hear an appeal from a remand order). The company petitioned for a writ of certiorari. And, in light of divergent views in the lower courts, we granted the writ. Compare *Frederick* v. *Hartford Underwriters Ins. Co.*, 683 F. 3d 1242, 1247 (CA10 2012) (a proposed class-action representative's "attempt to limit damages in the complaint is not dispositive when determining the amount in controversy"), with *Rolwing* v. *Nestle Holdings, Inc.*, 666 F. 3d 1069, 1072 (CA8 2012) (a precertification "binding stipulation limiting dam-

ages sought to an amount not exceeding $5 million can be used to defeat CAFA jurisdiction").

II

CAFA provides the federal district courts with "original jurisdiction" to hear a "class action" if the class has more than 100 members, the parties are minimally diverse, and the "matter in controversy exceeds the sum or value of $5,000,000." 28 U. S. C. §§ 1332(d)(2), (5)(B). To "determine whether the matter in controversy" exceeds that sum, "the claims of the individual class members shall be aggregated." § 1332(d)(6). And those "class members" include "persons (named or unnamed) who fall within the definition of the *proposed* or certified class." § 1332(d)(1)(D) (emphasis added).

As applied here, the statute tells the District Court to determine whether it has jurisdiction by adding up the value of the claim of each person who falls within the definition of Knowles' proposed class and determine whether the resulting sum exceeds $5 million. If so, there is jurisdiction and the court may proceed with the case. The District Court in this case found that resulting sum would have exceeded $5 million *but for* the stipulation. And we must decide whether the stipulation makes a critical difference.

In our view, it does not. Our reason is a simple one: Stipulations must be binding. See 9 J. Wigmore, Evidence § 2588, p. 821 (J. Chadbourn rev. 1981) (defining a "judicial admission or stipulation" as an "express waiver made . . . by the party or his attorney conceding for the purposes of the trial the truth of some alleged fact" (emphasis deleted)); *Christian Legal Soc. Chapter of Univ. of Cal., Hastings College of Law* v. *Martinez*, 561 U. S. 661, 677 (2010) (describing a stipulation as "'binding and conclusive'" and "'not subject to subsequent variation'" (quoting 83 C. J. S., Stipulations § 93 (2000))); 9 Wigmore, *supra*, § 2590, at 822 (the "vital feature" of a judicial admission is "universally conceded to be its *conclusiveness* upon the party making it"). The stipulation

Knowles proffered to the District Court, however, does not speak for those he purports to represent.

That is because a plaintiff who files a proposed class action cannot legally bind members of the proposed class before the class is certified. See *Smith* v. *Bayer Corp.*, 564 U. S. 299, 315 (2011) ("Neither a proposed class action nor a rejected class action may bind nonparties"); *id.*, at 313 ("'[A] nonnamed class member is [not] a party to the class-action litigation *before the class is certified*'" (quoting *Devlin* v. *Scardelletti*, 536 U. S. 1, 16, n. 1 (2002) (SCALIA, J., dissenting))); Brief for Respondent 12 (conceding that "a damages limitation . . . cannot have a binding effect on the merits of absent class members' claims unless and until the class is certified").

Because his precertification stipulation does not bind anyone but himself, Knowles has not reduced the value of the putative class members' claims. For jurisdictional purposes, our inquiry is limited to examining the case "as of the time it was filed in state court," *Wisconsin Dept. of Corrections* v. *Schacht*, 524 U. S. 381, 390 (1998). At that point, Knowles lacked the authority to concede the amount-in-controversy issue for the absent class members. The Federal District Court, therefore, wrongly concluded that Knowles' precertification stipulation could overcome its finding that the CAFA jurisdictional threshold had been met.

Knowles concedes that "[f]ederal jurisdiction cannot be based on contingent future events." Brief for Respondent 20. Yet the two legal principles to which we have just referred—that stipulations must be binding and that a named plaintiff cannot bind precertification class members—mean that the amount to which Knowles has stipulated is in effect contingent.

If, for example, as Knowles' complaint asserts, "hundreds, and possibly thousands," of persons in Arkansas have similar claims, App. to Pet. for Cert. 66, and if each of those claims places a significant sum in controversy, the state court might certify the class and permit the case to proceed, but only on

the condition that the stipulation be excised. Or a court might find that Knowles is an inadequate representative due to the artificial cap he purports to impose on the class' recovery. *E. g.*, *Back Doctors Ltd.* v. *Metropolitan Property & Cas. Ins. Co.*, 637 F. 3d 827, 830–831 (CA7 2011) (noting a class representative's fiduciary duty not to "throw away what could be a major component of the class's recovery"). Similarly, another class member could intervene with an amended complaint (without a stipulation), and the District Court might permit the action to proceed with a new representative. See 5 A. Conte & H. Newberg, Class Actions § 16:7, p. 154 (4th ed. 2002) ("[M]embers of a class have a right to intervene if their interests are not adequately represented by existing parties"). Even were these possibilities remote in Knowles' own case, there is no reason to think them farfetched in other cases where similar stipulations could have more dramatic amount-lowering effects.

The strongest counterargument, we believe, takes a syllogistic form: First, *this* complaint contains a presently nonbinding stipulation that the class will seek damages that amount to less than $5 million. Second, if the state court eventually certifies that class, the stipulation will bind those who choose to remain as class members. Third, if the state court eventually insists upon modification of the stipulation (thereby permitting class members to obtain more than $5 million), it will have in effect created a new, *different* case. Fourth, CAFA, however, permits the federal court to consider only the complaint that the plaintiff has filed, *i. e.*, *this* complaint, not a new, modified (or amended) complaint that might eventually emerge.

Our problem with this argument lies in its conclusion. We do not agree that CAFA forbids the federal court to consider, for purposes of determining the amount in controversy, the very real possibility that a nonbinding, amount-limiting, stipulation may not survive the class certification process. This potential outcome does not result in the creation of a new

case not now before the federal court. To hold otherwise would, for CAFA jurisdictional purposes, treat a nonbinding stipulation as if it were binding, exalt form over substance, and run directly counter to CAFA's primary objective: ensuring "Federal court consideration of interstate cases of national importance." § 2(b)(2), 119 Stat. 5. It would also have the effect of allowing the subdivision of a $100 million action into 21 just-below-$5-million state-court actions simply by including nonbinding stipulations; such an outcome would squarely conflict with the statute's objective.

We agree with Knowles that a federal district court might find it simpler to value the amount in controversy on the basis of a stipulation than to aggregate the value of the individual claims of all who meet the class description. We also agree that, when judges must decide jurisdictional matters, simplicity is a virtue. See *Hertz Corp.* v. *Friend*, 559 U. S. 77, 94 (2010). But to ignore a nonbinding stipulation does no more than require the federal judge to do what she must do in cases without a stipulation and what the statute requires, namely, "aggregat[e]" the "claims of the individual class members." 28 U. S. C. § 1332(d)(6).

Knowles also points out that federal courts permit individual plaintiffs, who are the masters of their complaints, to avoid removal to federal court, and to obtain a remand to state court, by stipulating to amounts at issue that fall below the federal jurisdictional requirement. That is so. See *St. Paul Mercury Indemnity Co.* v. *Red Cab Co.*, 303 U. S. 283, 294 (1938) ("If [a plaintiff] does not desire to try his case in the federal court he may resort to the expedient of suing for less than the jurisdictional amount, and though he would be justly entitled to more, the defendant cannot remove"). But the key characteristic about those stipulations is that they are legally binding on all plaintiffs. See 14AA C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3702.1, p. 335 (4th ed. 2011) (federal court, as condition for remand, can insist on a "*binding* affidavit or stipulation

that the plaintiff will continue to claim less than the jurisdictional amount" (emphasis added)). That essential feature is missing here, as Knowles cannot yet bind the absent class.

Knowles argues in the alternative that a stipulation is binding to the extent it limits attorney's fees so that the amount in controversy remains below the CAFA threshold. We do not consider this issue because Knowles' stipulation did not provide for that option.

In sum, the stipulation at issue here can tie Knowles' hands, but it does not resolve the amount-in-controversy question in light of his inability to bind the rest of the class. For this reason, we believe the District Court, when following the statute to aggregate the proposed class members' claims, should have ignored that stipulation. Because it did not, we vacate the judgment below and remand the case for further proceedings consistent with this opinion.

It is so ordered.

Syllabus

DECKER, OREGON STATE FORESTER, ET AL. *v.* NORTHWEST ENVIRONMENTAL DEFENSE CENTER

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

No. 11–338. Argued December 3, 2012—Decided March 20, 2013*

The Clean Water Act (Act) requires that National Pollutant Discharge Elimination System (NPDES) permits be secured before pollutants are discharged from any point source into the navigable waters of the United States. See 33 U. S. C. §§ 1311(a), 1362(12). One of the Environmental Protection Agency's (EPA or Agency) implementing regulations, the Silvicultural Rule, specifies which types of logging-related discharges are point sources. 40 CFR § 122.27(b)(1). These discharges require NPDES permits unless some other federal statutory provision exempts them from coverage. One such statutory provision exempts "discharges composed entirely of stormwater," 33 U. S. C. § 1342(p)(1), unless the discharge is "associated with industrial activity," § 1342(p)(2)(B). Under the EPA's Industrial Stormwater Rule, the term "associated with industrial activity" covers only discharges "from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant." 40 CFR § 122.26(b)(14). Shortly before oral argument in the instant cases, the EPA issued a final version of an amendment to the Industrial Stormwater Rule, clarifying that the NPDES permit requirement applies only to logging operations involving rock crushing, gravel washing, log sorting, and log storage facilities, which are all listed in the Silvicultural Rule.

Petitioner Georgia-Pacific West has a contract with Oregon to harvest timber from a state forest. When it rains, water runs off two logging roads used by petitioner into ditches, culverts, and channels that discharge the water into nearby rivers and streams. The discharges often contain large amounts of sediment, which evidence shows may be harmful to fish and other aquatic organisms. Respondent Northwest Environmental Defense Center (NEDC) filed suit against petitioner and state and local governments and officials, including petitioner Decker,

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*Together with No. 11–347, *Georgia-Pacific West, Inc., et al.* v. *Northwest Environmental Defense Center,* also on certiorari to the same court.

invoking the Act's citizen-suit provision, 33 U. S. C. § 1365, and alleging that the defendants had not obtained NPDES permits before discharging stormwater runoff into two Oregon rivers. The District Court dismissed the action for failure to state a claim, concluding that NPDES permits were not required because the ditches, culverts, and channels were not point sources of pollution under the Act and the Silvicultural Rule. The Ninth Circuit reversed. It held that the conveyances were point sources under the Silvicultural Rule. It also concluded that the discharges were "associated with industrial activity" under the Industrial Stormwater Rule, despite the EPA's contrary conclusion that the regulation excludes the type of stormwater discharges from logging roads at issue. Thus, the court held, the discharges were not exempt from the NPDES permitting scheme.

Held:

1. A provision of the Act governing challenges to Agency actions, § 1369(b), is not a jurisdictional bar to this suit. That provision is the exclusive vehicle for suits seeking to invalidate certain Agency decisions, such as the establishment of effluent standards and the issuance of permits. It does not bar a district court from entertaining a citizen suit under § 1365 when the suit is against an alleged violator and seeks to enforce an obligation imposed by the Act or its regulations. The present action falls within the scope of § 1365. Pp. 607–609.

2. The EPA's recent amendment to the Industrial Stormwater Rule does not make the cases moot. A live controversy continues to exist regarding whether petitioners may be held liable for unlawful discharges under the earlier version of the Industrial Stormwater Rule. That version governed petitioners' past discharges, which might be the basis for the imposition of penalties even if, in the future, those types of discharges will not require a permit. These cases thus remain live and justiciable. See *Gwaltney of Smithfield, Ltd.* v. *Chesapeake Bay Foundation, Inc.*, 484 U. S. 49, 64–65. The fact that the District Court might rule that NEDC's arguments lack merit, or that relief is not warranted on the facts of these cases, does not make the cases moot. Pp. 609–610.

3. The preamendment version of the Industrial Stormwater Rule, as permissibly construed by the EPA, exempts discharges of channeled stormwater runoff from logging roads from the NPDES permitting scheme. The regulation is a reasonable interpretation of the statutory term "associated with industrial activity," § 1342(p)(2)(B), and the Agency has construed the regulation to exempt the discharges at issue here. When an agency interprets its own regulation, the Court, as a general rule, defers to it "unless that interpretation is 'plainly erroneous or inconsistent with the regulation.'" *Chase Bank USA, N. A.* v. *McCoy*, 562 U. S. 195, 208 (quoting *Auer* v. *Robbins*, 519 U. S. 452, 461).

Syllabus

Here, it was reasonable for the EPA to conclude that the conveyances at issue are "directly related" only to the harvesting of raw materials, rather than to "manufacturing, processing or raw materials storage areas at an industrial plant." 40 CFR § 122.26(b)(14). The regulatory scheme, taken as a whole, leaves open the rational interpretation that the regulation extends only to traditional industrial buildings such as factories and associated sites and other relatively fixed facilities.

Another reason to accord *Auer* deference to the EPA's interpretation is that there is no indication that the Agency's current view is a change from prior practice or is a *post hoc* justification adopted in response to litigation. See *Christopher* v. *SmithKline Beecham Corp.*, 567 U. S. 142, 155. Rather, the EPA has been consistent in its view that the types of discharges at issue do not require NPDES permits. Its decision also exists against a background of state regulation with respect to stormwater runoff from logging roads. In exercising the broad discretion the Act gives the EPA in the realm of stormwater runoff, the Agency could reasonably have concluded that further federal regulation would be duplicative or counterproductive in light of Oregon's extensive rules on the subject. Pp. 611–615.

640 F. 3d 1063, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, GINSBURG, ALITO, SOTOMAYOR, and KAGAN, JJ., joined, and in which SCALIA, J., joined as to Parts I and II. ROBERTS, C. J., filed a concurring opinion, in which ALITO, J., joined, *post*, p. 615. SCALIA, J., filed an opinion concurring in part and dissenting in part, *post*, p. 616. BREYER, J., took no part in the consideration or decision of the cases.

Timothy S. Bishop argued the cause for petitioners in both cases. With him on the briefs for petitioners in No. 11–347 were *Jeffrey W. Sarles*, *Richard Bulger*, *Chad Clamage*, *Michael B. Kimberly*, *Per A. Ramfjord*, *Leonard J. Feldman*, *Jason T. Morgan*, and *Willliam K. Sargent*. *Ellen F. Rosenblum*, Attorney General of Oregon, *Mary H. Williams*, Deputy Attorney General, *Anna M. Joyce*, Solicitor General, and *Erin C. Lagesen*, Assistant Attorney General, filed briefs for petitioners in No. 11–338.

Deputy Solicitor General Stewart argued the cause for the United States as *amicus curiae* urging reversal in both cases. With him on the brief were *Solicitor General Verrilli*, *Assistant Attorney General Moreno*, *Deputy Assistant*

Attorney General Shenkman, *Pratik A. Shah*, and *Aaron P. Avila*.

Jeffrey L. Fisher argued the cause for respondent in both cases. With him on the brief were *Pamela S. Karlan*, *Deborah A. Sivas*, *Paul A. Kampmeier*, *Christopher G. Winter*, and *Kevin K. Russell*.†

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†Briefs of *amici curiae* urging reversal in both cases were filed for the State of Arkansas et al. by *Dustin McDaniel*, Attorney General of Arkansas, *Charles Moulton* and *Eric Estes*, Senior Assistant Attorneys General, and *Kendra Akin Jones*, Assistant Attorney General, and by the Attorneys General for their respective States as follows: *Luther Strange* of Alabama, *Michael C. Geraghty* of Alaska, *Pamela Jo Bondi* of Florida, *Samuel S. Olens* of Georgia, *Lawrence G. Wasden* of Idaho, *Greg F. Zoeller* of Indiana, *Derek Schmidt* of Kansas, *Jack Conway* of Kentucky, *James D. "Buddy" Caldwell* of Louisiana, *William J. Schneider* of Maine, *Bill Schuette* of Michigan, *Jim Hood* of Mississippi, *Chris Koster* of Missouri, *Steve Bullock* of Montana, *Jon Bruning* of Nebraska, *Catherine Cortez Masto* of Nevada, *Michael A. Delaney* of New Hampshire, *Roy Cooper* of North Carolina, *Michael DeWine* of Ohio, *E. Scott Pruitt* of Oklahoma, *Linda L. Kelly* of Pennsylvania, *Alan Wilson* of South Carolina, *Marty J. Jackley* of South Dakota, *Robert E. Cooper, Jr.*, of Tennessee, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, *Kenneth T. Cuccinelli II* of Virginia, *Robert M. McKenna* of Washington, *Darrell McGraw* of West Virginia, and *Gregory A. Phillips* of Wyoming; for the American Forest Resource Council et al. by *Scott W. Horngren* and *Caroline M. Lobdell*; for the Association of Oregon Counties et al. by *Ronald S. Yockim* and *Daniel Gail Chadwick*; for Law Professors by *Brian J. Murray* and *Kevin P. Holewinski*; for the National Alliance of Forest Owners et al. by *Clifton S. Elgarten*, *Kirsten L. Nathanson*, *David Y. Chung*, and *William R. Murray*; for the National Governors Association et al. by *Roderick E. Walston* and *Lisa E. Soronen*; for the Pacific Legal Foundation et al. by *M. Reed Hopper* and *Damien M. Schiff*; for the Ruffed Grouse Society by *Ryan L. Woody*; and for the Society of American Foresters et al. by *Virginia S. Albrecht*, *Eric J. Murdock*, and *Ryan A. Shores*.

Thomas J. Ward and *Quentin Riegel* filed a brief of *amici curiae* for the National Association of Home Builders et al. urging reversal in No. 11–338.

Briefs of *amici curiae* urging reversal in No. 11–347 were filed for the American Farm Bureau Federation et al. by *James T. Banks*, *Christopher T. Handman*, *Mary Helen Wimberly*, *Ellen Steen*, and *Michael C. For-*

JUSTICE KENNEDY delivered the opinion of the Court.

These cases present the question whether the Clean Water Act and its implementing regulations require permits before channeled stormwater runoff from logging roads can be discharged into the navigable waters of the United States. Under the statute and its implementing regulations, a permit is required if the discharges are deemed to be "associated with industrial activity." 33 U. S. C. § 1342(p)(2)(B). The Environmental Protection Agency (EPA or Agency), with the responsibility to enforce the Act, has issued a regulation defining the term "associated with industrial activity" to cover only discharges "from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant." 40 CFR § 122.26(b)(14) (2006). The EPA interprets its regulation to exclude the type of stormwater discharges from logging roads at issue here. See Brief for United States as *Amicus Curiae* 24–27. For reasons now to be explained, the Court concludes the EPA's determination is a reasonable interpretation of its own regulation; and, in consequence, deference is accorded to the interpretation under *Auer* v. *Robbins*, 519 U. S. 452, 461 (1997).

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mica; and for the National Federation of Independent Business Small Business Legal Center by *Karen R. Harned*.

Briefs of *amici curiae* urging affirmance in both cases were filed for the Environmental Protection Information Center et al. by *Michael R. Lozeau* and *Sharon E. Duggan*; for Law Professors by *Sanne H. Knudsen* and *Amy J. Wildermuth*; for Northwest Environmental Advocates et al. by *James S. Coon*; for the Pacific Coast Federation of Fishermen's Associations et al. by *Eric R. Glitzenstein*; for the Western Division of the American Fisheries Society et al. by *Kristen L. Boyles*; for Kevin Boston by *Shaun A. Goho*; and for Robert Wayland et al. by *Stephanie Tai*.

Briefs of *amici curiae* were filed in both cases for the Chamber of Commerce of the United States of America by *Robert R. Gasaway, Jeffrey Bossert Clark, Aaron L. Nielson, Robin S. Conrad, Rachel L. Brand*, and *Sheldon Gilbert*; for Law Professors by *Allison M. LaPlante*; and for the Mountain States Legal Foundation by *Steven J. Lechner*.

I

A

Congress passed the Clean Water Act in 1972 to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 86 Stat. 816, 33 U. S. C. § 1251(a). A central provision of the Act is its requirement that individuals, corporations, and governments secure National Pollutant Discharge Elimination System (NPDES) permits before discharging pollution from any point source into the navigable waters of the United States. See §§ 1311(a), 1362(12); *EPA* v. *California ex rel. State Water Resources Control Bd.*, 426 U. S. 200, 205 (1976). The Act defines "point source" as

> "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture." § 1362(14).

When the Act took effect, the EPA found it difficult to process permit applications from countless owners and operators of point sources throughout the country. The Agency issued regulations exempting certain types of point-source discharges from the NPDES permitting scheme, but in 1977 those directives were found invalid. The Court of Appeals for the District of Columbia Circuit ruled that the statute did not give the EPA "authority to exempt categories of point sources from the permit requirements" of the Act. *Natural Resources Defense Council, Inc.* v. *Costle*, 568 F. 2d 1369, 1377. In response the EPA issued new regulations to define with more precision which categories of discharges qualified as point sources in the first place. Among these

regulations was the so-called Silvicultural Rule. This rule is at issue here. It provides:

> "*Silvicultural point source* means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff." 40 CFR § 122.27(b)(1) (2006).

Under the quoted rule, any discharge from a logging-related source that qualifies as a point source requires an NPDES permit unless some other federal statutory provision exempts it from that coverage. In one such provision, 33 U. S. C. § 1342(p), Congress has exempted certain discharges of stormwater runoff. The statutory exemptions were considered necessary because, from the outset, the EPA had encountered recurring difficulties in determining how best to manage discharges of this kind. See, *e. g.*, *Natural Resources Defense Council, Inc.* v. *EPA*, 966 F. 2d 1292, 1295–1296 (CA9 1992). In 1987, Congress responded to these problems and adopted various stormwater-related amendments to the Act. § 405, 101 Stat. 69, 33 U. S. C. § 1342(p).

The 1987 amendments exempt from the NPDES permitting scheme most "discharges composed entirely of stormwater." § 1342(p)(1). The general exemption, however, does not extend to all stormwater discharges. As relevant here, Congress directed the EPA to continue to require permits for stormwater discharges "associated with industrial activ-

ity." § 1342(p)(2)(B). The statute does not define that term, but the EPA adopted a regulation (hereinafter Industrial Stormwater Rule) in which it defined it as

> "the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under this part 122. For the categories of industries identified in this section, the term includes, but is not limited to, storm water discharges from . . . immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility . . . ." 40 CFR § 122.26(b)(14).

The Industrial Stormwater Rule also specified that, with one exception not relevant here, "[f]acilities classified as Standard Industrial Classificatio[n] 24" are "considered to be engaging in 'industrial activity' for purposes of paragraph (b)(14)." *Ibid.* The Standard Industrial Classifications are a system used by federal agencies to categorize firms engaged in different types of business activity. See Dept. of Labor, Standard Industrial Classifications Manual, online at http://www.osha.gov/pls/imis/sic_manual.html (as visited Mar. 14, 2013, and available in Clerk of Court's case file). Standard Industrial Classification 24 identifies industries involved in the field of "Lumber and Wood Products." 2 App. 64. This includes the "Logging" industry, defined as "[e]stablishments primarily engaged in cutting timber and in producing . . . primary forest or wood raw materials." *Ibid.*

On November 30, 2012—three days before the instant cases were argued in this Court—the EPA issued its final version of an amendment to the Industrial Stormwater Rule. The amendment was the Agency's response to the Court of Appeals' ruling now under review. The amended version

seeks to clarify the types of facilities within Standard Industrial Classification 24 that are deemed to be engaged in industrial activity for purposes of the rule. The amended Industrial Stormwater Rule does not cover all facilities within Standard Industrial Classification 24. It limits covered stormwater discharges to

> "[f]acilities classified within Standard Industrial Classification 24, Industry Group 241 that are rock crushing, gravel washing, log sorting, or log storage facilities operated in connection with silvicultural activities . . . and Industry Groups 242 through 249." 77 Fed. Reg. 72974, pt. 122, subpt. B (2012).

It should be noted, by way of explanation, that an Industry Group is a subcategory of businesses within a Standard Industrial Classification. Industry Group 241 is "Logging," while Industry Groups 242 through 245 are, respectively, "Sawmills and Planing Mills," "Millwork, Veneer, Plywood, and Structural Wood," "Wood Containers," and "Wood Buildings and Mobile Homes." Industry Group 249 is "Miscellaneous Wood Products." Industry Groups 246 through 248 are blank categories. Standard Industrial Classifications Manual, *supra*, Major Group 24.

It is fair to say the purpose of the amended regulation is to bring within the NPDES permit process only those logging operations that involve the four types of activity (rock crushing, gravel washing, log sorting, and log storage facilities) that are defined as point sources by the explicit terms of the Silvicultural Rule.

Up to this stage in the litigation, of course, the cases have been concerned with the Industrial Stormwater Rule before the amendment adopted on November 30, 2012. The amended regulation will determine whether from this point forward NPDES permits will be required for the stormwater discharges at issue. The parties disagree about the significance of the amended rule for purposes of these cases.

Before reaching this and other preliminary points, however, it is appropriate to set forth the facts and history of the cases leading to the proceedings in this Court.

B

At issue are discharges of channeled stormwater runoff from two logging roads in Oregon's Tillamook State Forest, lying in the Pacific Coast Range about 40 miles west of Portland. Petitioner Georgia-Pacific West, along with other logging and paper-products companies, has a contract with the State of Oregon to harvest timber from the forest. It uses the roads for that purpose. When it rains (which it does often in the mountains of northwest Oregon, averaging in some areas more than 100 inches per year), water runs off the graded roads into a system of ditches, culverts, and channels that discharge the water into nearby rivers and streams. The discharges often contain large amounts of sediment, in the form of dirt and crushed gravel from the roads. There is evidence that this runoff can harm fish and other aquatic organisms.

In September 2006, respondent Northwest Environmental Defense Center (NEDC) filed suit in the United States District Court for the District of Oregon. It invoked the Clean Water Act's citizen-suit provision, 33 U. S. C. § 1365, and named as defendants certain firms involved in logging and paper-products operations (including petitioner Georgia-Pacific West), as well as state and local governments and officials (including the state forester of Oregon, who is now petitioner Doug Decker). The suit alleged that the defendants caused discharges of channeled stormwater runoff into two waterways—the South Fork Trask River and the Little South Fork Kilchis River. The defendants had not obtained NPDES permits, and so, the suit alleged, they had violated the Act.

The District Court dismissed the action for failure to state a claim. It concluded that NPDES permits were not re-

quired because the ditches, culverts, and channels were not point sources of pollution under the Act and the Silvicultural Rule. The Court of Appeals for the Ninth Circuit reversed. *Northwest Environmental Defense Center* v. *Brown*, 640 F. 3d 1063 (2011). It relied upon three principal propositions. First, it held that the District Court had subject-matter jurisdiction under § 1365 notwithstanding a different provision of the Act, 33 U. S. C. § 1369(b)(1), limiting judicial review of EPA regulations. Second, the Court of Appeals held that while the EPA's Silvicultural Rule is ambiguous on the question whether the conveyances at issue are point sources, those conveyances must be deemed point sources under the rule in order to give effect to the Act's expansive definition of the term. Third, the Court of Appeals held that because the Industrial Stormwater Rule makes cross-reference to Standard Industrial Classification 24, the discharges at issue are "associated with industrial activity" within the meaning of the regulation, despite the EPA's conclusion to the contrary. The regulation was held to be unambiguous on this point. The Court of Appeals thus ruled that the discharges were from point sources and not exempt from the NPDES permitting scheme by the Industrial Stormwater Rule. It followed that petitioners had been in violation of the Act.

This Court granted certiorari. 567 U. S. 933 (2012).

II

Before proceeding to the merits, it is necessary to consider two jurisdictional questions.

A

Respondent NEDC invoked the jurisdiction of the District Court under 33 U. S. C. § 1365(a), which "authorize[s] private enforcement of the provisions of [the Clean Water Act]" and its implementing regulations. *Department of Energy* v. *Ohio*, 503 U. S. 607, 613, n. 5 (1992). Petitioners, however,

maintain that this suit is barred by a separate provision of the Act, § 1369(b). That statute provides for "judicial review in the United States courts of appeals of various particular actions by the [EPA] Administrator, including establishment of effluent standards and issuance of permits for discharge of pollutants." *Middlesex County Sewerage Authority* v. *National Sea Clammers Assn.*, 453 U. S. 1, 13–14 (1981). Where that review is available, it is the exclusive means of challenging actions covered by the statute, § 1369(b)(2), and an application for review must be lodged in the court of appeals within 120 days of the Administrator's action, § 1369(b)(1).

The Court of Appeals was correct to rule that the exclusive jurisdiction mandate is not applicable in this suit. Section 1369(b) extends only to certain suits challenging some Agency actions. It does not bar a district court from entertaining a citizen suit under § 1365 when the suit is against an alleged violator and seeks to enforce an obligation imposed by the Act or its regulations.

The present action is within the scope of § 1365. It is a claim to enforce what is at least a permissible reading of the Silvicultural Rule. The rule is ambiguous: Its characterization of silvicultural harvesting operations "from which there is natural runoff," 40 CFR § 122.27(b)(1), as a nonpoint source might be read, as petitioners contend, to apply to the channeled stormwater runoff at issue; or it might be read, as respondent NEDC urges, to apply only to runoff not collected in channels or other engineered improvements. See New Oxford American Dictionary 1167 (3d ed. 2010) (Oxford Dict.) ("natural" means "existing in or caused by nature; not made or caused by humankind"). NEDC's reading would make the channeled discharges here point-source pollution under the Act. In its view only this interpretation can be squared with the Act's broad definition of "point source." 33 U. S. C. § 1362(14). On this premise, the instant suit is an effort not

to challenge the Silvicultural Rule but to enforce it under a proper interpretation. It is a basic tenet that "regulations, in order to be valid, must be consistent with the statute under which they are promulgated." *United States* v. *Larionoff*, 431 U. S. 864, 873 (1977).

For jurisdictional purposes, it is unnecessary to determine whether NEDC is correct in arguing that only its reading of the Silvicultural Rule is permitted under the Act. It suffices to note that NEDC urges the Court to adopt a "purposeful but permissible reading of the regulation . . . to bring it into harmony with . . . the statute." *Environmental Defense* v. *Duke Energy Corp.*, 549 U. S. 561, 573 (2007). NEDC does not seek "an implicit declaration that the . . . regulations were invalid as written." *Ibid.* And, as a result, § 1369(b) is not a jurisdictional bar to this suit.

B

"It is a basic principle of Article III that a justiciable case or controversy must remain extant at all stages of review, not merely at the time the complaint is filed." *United States* v. *Juvenile Male*, 564 U. S. 932, 936 (2011) (*per curiam*) (internal quotation marks omitted). This principle requires us to determine whether the EPA's recent amendment to the Industrial Stormwater Rule makes the cases moot. In a supplemental brief filed after oral argument, petitioner Decker, joined by the United States as *amicus curiae*, takes the position that the recent amendment makes these cases moot in relevant part. See Supp. Brief for Petitioners in No. 11–338, pp. 4–6; Supp. Brief for United States 4–8.

That conclusion is incorrect. "A case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Knox* v. *Service Employees*, 567 U. S. 298, 307 (2012) (internal quotation marks omitted). Here, despite the recent amendment, a live controversy continues to exist regarding whether petitioners

may be held liable for unlawful discharges under the earlier version of the Industrial Stormwater Rule.

Respondent NEDC continues to press its claim that petitioners' discharges are unlawful under both the amended regulation and the earlier version. See Supp. Brief for Respondent 3–13. The instant cases provide no occasion to interpret the amended regulation. "'[W]e are a court of review, not of first view.'" *Arkansas Game and Fish Comm'n* v. *United States*, *ante*, at 37 (quoting *Cutter* v. *Wilkinson*, 544 U. S. 709, 718, n. 7 (2005)). The parties, however, have litigated the suit extensively based on the earlier version of the Industrial Stormwater Rule; and that version governed petitioners' past discharges, which might be the basis for the imposition of penalties even if, in the future, those types of discharges will not require a permit.

If the Court of Appeals is correct that petitioners were obligated to secure NPDES permits before discharging channeled stormwater runoff, the District Court might order some remedy for their past violations. The Act contemplates civil penalties of up to $25,000 per day, 33 U. S. C. § 1319(d), as well as attorney's fees for prevailing parties, § 1365(d). NEDC, in addition, requests injunctive relief for both past and ongoing violations, in part in the form of an order that petitioners incur certain environmental-remediation costs to alleviate harms attributable to their past discharges. Under these circumstances, the cases remain live and justiciable, for the possibility of some remedy for a proven past violation is real and not remote. See *Gwaltney of Smithfield, Ltd.* v. *Chesapeake Bay Foundation, Inc.*, 484 U. S. 49, 64–65 (1987). The District Court, it is true, might rule that NEDC's arguments lack merit, or that the relief it seeks is not warranted on the facts of these cases. That possibility, however, does not make the cases moot. "There may be jurisdiction and yet an absence of merits." *General Investment Co.* v. *New York Central R. Co.*, 271 U. S. 228, 230 (1926).

III

The substantive question of the necessity for an NPDES permit under the earlier rule now must be addressed. Under the Act, petitioners were required to secure NPDES permits for the discharges of channeled stormwater runoff only if the discharges were "associated with industrial activity," 33 U. S. C. § 1342(p)(2)(B), as that statutory term is defined in the preamendment version of the Industrial Stormwater Rule, 40 CFR § 122.26(b)(14). Otherwise, the discharges fall within the Act's general exemption of "discharges composed entirely of stormwater" from the NPDES permitting scheme. 33 U. S. C. § 1342(p)(1).

NEDC first contends that the statutory term "associated with industrial activity" unambiguously covers discharges of channeled stormwater runoff from logging roads. See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–843 (1984). That view, however, overlooks the multiple definitions of the terms "industrial" and "industry." These words can refer to business activity in general, yet so too can they be limited to "economic activity concerned with the processing of raw materials and manufacture of goods in factories." Oxford Dict. 887. The latter definition does not necessarily encompass outdoor timber harvesting. The statute does not foreclose more specific definition by the Agency, since it provides no further detail as to its intended scope.

Somewhat more plausible is NEDC's claim that the preamendment version of the Industrial Stormwater Rule unambiguously required a permit for the discharges at issue. NEDC reasons that under the rule, "[f]or the categories of industries identified in this section," NPDES permits are required for, among other things, "storm water discharges from . . . immediate access roads . . . used or traveled by carriers of raw materials." 40 CFR § 122.26(b)(14). Yet this raises the question whether logging is a "categor[y] of industr[y]" identified by the section. The regulation goes

on to identify a list of "categories of facilities" that "are considered to be engaging in 'industrial activity' for purposes" of the Industrial Stormwater Rule. *Ibid.* In the earlier version of the regulation, this list included "[f]acilities classified as Standard Industrial Classificatio[n] 24," which encompasses "Logging." *Ibid.* See also *supra*, at 604. Hence, NEDC asserts, logging is among the categories of industries for which "storm water discharges from . . . immediate access roads . . . used or traveled by carriers of raw materials" required NPDES permits under the earlier version of the Industrial Stormwater Rule. § 122.26(b)(14). NEDC further notes, in support of its reading of the regulation, that modern logging is a large-scale, highly mechanized enterprise, using sophisticated harvesting machines weighing up to 20 tons. See Brief for Respondent 4–5.

The EPA takes a different view. It concludes that the earlier regulation invoked Standard Industrial Classification 24 "'to regulate traditional *industrial* sources such as sawmills.'" Brief for United States as *Amicus Curiae* 24–25. It points to the regulation's reference to "facilities" and the classification's reference to "establishments," which suggest industrial sites more fixed and permanent than outdoor timber-harvesting operations. *Ibid.* See also 55 Fed. Reg. 47990, 48008 (1990). This reading is reinforced by the Industrial Stormwater Rule's definition of discharges associated with industrial activity as discharges "from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant." 40 CFR § 122.26(b)(14). This language lends support to the EPA's claim that the regulation does not cover temporary, outdoor logging installations. It was reasonable for the Agency to conclude that the conveyances at issue are "directly related" only to the harvesting of raw materials, rather than to "manufacturing," "processing," or "raw materials storage areas." See Oxford Dict. 1066 (manufacturing is "mak[ing] (some-

thing) on a large scale using machinery"); *id.*, at 1392 (processing is "perform[ing] a series of mechanical or chemical operations on (something) in order to change or preserve it"). In addition, even if logging as a general matter is a type of economic activity within the regulation's scope, a reasonable interpretation of the regulation could still require the discharges to be related in a direct way to operations "at an industrial plant" in order to be subject to NPDES permitting.

NEDC resists this conclusion, noting that elsewhere in the Industrial Stormwater Rule the EPA has required NPDES permits for stormwater discharges associated with other types of outdoor economic activity. See § 122.26(b)(14)(iii) (mining); § 122.26(b)(14)(v) (landfills receiving industrial waste); § 122.26(b)(14)(x) (large construction sites). The EPA reasonably could conclude, however, that these types of activities tend to be more fixed and permanent than timber-harvesting operations are and have a closer connection to traditional industrial sites. In light of the language of the regulation just discussed, moreover, the inclusion of these types of economic activity in the Industrial Stormwater Rule need not be read to mandate that all stormwater discharges related to these activities fall within the rule, just as the inclusion of logging need not be read to extend to all discharges from logging sites. The regulation's reach may be limited by the requirement that the discharges be "directly related to manufacturing, processing or raw materials storage areas at an industrial plant." § 122.26(b)(14).

It is well established that an agency's interpretation need not be the only possible reading of a regulation—or even the best one—to prevail. When an agency interprets its own regulation, the Court, as a general rule, defers to it "unless that interpretation is 'plainly erroneous or inconsistent with the regulation.'" *Chase Bank USA, N. A.* v. *McCoy*, 562 U. S. 195, 208 (2011) (quoting *Auer*, 519 U. S., at 461). The EPA's interpretation is a permissible one. Taken together,

the regulation's references to "facilities," "establishments," "manufacturing," "processing," and an "industrial plant" leave open the rational interpretation that the regulation extends only to traditional industrial buildings such as factories and associated sites, as well as other relatively fixed facilities.

There is another reason to accord *Auer* deference to the EPA's interpretation: There is no indication that its current view is a change from prior practice or a *post hoc* justification adopted in response to litigation. See *Christopher* v. *SmithKline Beecham Corp.*, 567 U. S. 142, 155 (2012). The opposite is the case. The Agency has been consistent in its view that the types of discharges at issue here do not require NPDES permits.

The EPA's decision exists against a background of state regulation with respect to stormwater runoff from logging roads. The State of Oregon has made an extensive effort to develop a comprehensive set of best practices to manage stormwater runoff from logging roads. These practices include rules mandating filtration of stormwater runoff before it enters rivers and streams, Ore. Admin. Rule 629–625–0330(4) (2012); requiring logging companies to construct roads using surfacing that minimizes the sediment in runoff, Rule 629–625–0700(2); and obligating firms to cease operations where such efforts fail to prevent visible increases in water turbidity, Rule 629–625–0700(3). Oregon has invested substantial time and money in establishing these practices. In addition, the development, siting, maintenance, and regulation of roads—and in particular of state forest roads—are areas in which Oregon has considerable expertise. In exercising the broad discretion the Act gives the EPA in the realm of stormwater runoff, the Agency could reasonably have concluded that further federal regulation in this area would be duplicative or counterproductive. Indeed, Congress has given express instructions to the EPA to work "in consultation with State and local officials" to alle-

viate stormwater pollution by developing the precise kind of best management practices Oregon has established here. 33 U. S. C. § 1342(p)(6).

* * *

The preamendment version of the Industrial Stormwater Rule, as permissibly construed by the Agency, exempts discharges of channeled stormwater runoff from logging roads from the NPDES permitting scheme. As a result, there is no need to reach petitioners' alternative argument that the conveyances in question are not "pipe[s], ditch[es], channel[s], tunnel[s], conduit[s]," or any other type of point source within the Act's definition of the term. § 1362(14).

For the reasons stated, the judgment of the Court of Appeals is reversed, and the cases are remanded for proceedings consistent with this opinion.

It is so ordered.

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

CHIEF JUSTICE ROBERTS, with whom JUSTICE ALITO joins, concurring.

The opinion concurring in part and dissenting in part raises serious questions about the principle set forth in *Bowles* v. *Seminole Rock & Sand Co.*, 325 U. S. 410 (1945), and *Auer* v. *Robbins*, 519 U. S. 452 (1997). It may be appropriate to reconsider that principle in an appropriate case. But this is not that case.

Respondent suggested reconsidering *Auer*, in one sentence in a footnote, with no argument. See Brief for Respondent 42, n. 12. Petitioners said don't do it, again in a footnote. See Reply Brief for Petitioners in No. 11–338, p. 4, n. 1; see also *Turner Broadcasting System, Inc.* v. *FCC*, 520 U. S. 180, 223–224 (1997) (declining to decide question that received only "scant argumentation"). Out of 22 *amicus* briefs, only two—filed by dueling groups of law professors—

addressed the issue on the merits. See Brief for Law Professors on the Propriety of Administrative Deference in Support of Respondent; Brief for Law Professors in Support of Petitioners; see also *FTC* v. *Phoebe Putney Health System, Inc.*, 568 U. S. 216, 226, n. 4 (declining to consider argument raised only by *amicus*).

The issue is a basic one going to the heart of administrative law. Questions of *Seminole Rock* and *Auer* deference arise as a matter of course on a regular basis. The bar is now aware that there is some interest in reconsidering those cases, and has available to it a concise statement of the arguments on one side of the issue.

I would await a case in which the issue is properly raised and argued. The present cases should be decided as they have been briefed and argued, under existing precedent.

JUSTICE SCALIA, concurring in part and dissenting in part.

I join Parts I and II of the Court's opinion; I agree that these cases are not moot and that the District Court had jurisdiction. I do not join Part III. The Court there gives effect to a reading of the Environmental Protection Agency's regulations that is not the most natural one, simply because EPA says that it believes the unnatural reading is right. It does this, moreover, even though the Agency has vividly illustrated that it can write a rule saying precisely what it means—by doing *just that* while these cases were being briefed.

Enough is enough.

I

For decades, and for no good reason, we have been giving agencies the authority to say what their rules mean, under the harmless-sounding banner of "defer[ring] to an agency's interpretation of its own regulations." *Talk America, Inc.* v. *Michigan Bell Telephone Co.*, 564 U. S. 50, 67 (2011) (SCALIA, J., concurring). This is generally called *Seminole Rock* or *Auer* deference. See *Bowles* v. *Seminole Rock &*

Sand Co., 325 U. S. 410 (1945); *Auer* v. *Robbins*, 519 U. S. 452 (1997).

Two Terms ago, in my separate concurrence in *Talk America*, I expressed doubts about the validity of this practice. In that case, however, the agency's interpretation of the rule was also the fairest one, and no party had asked us to reconsider *Auer*. Today, however, the Court's deference to the Agency makes the difference (note the Court's defensive insistence that the Agency's interpretation need not be "the best one," *ante*, at 613). And respondent has asked us, if necessary, to "'reconsider *Auer*.'" I believe that it is time to do so. See Brief for Respondent 42, n. 12; see also Brief for Law Professors on the Propriety of Administrative Deference as *Amici Curiae*. This is especially true because the circumstances of these cases illustrate *Auer*'s flaws in a particularly vivid way.

The canonical formulation of *Auer* deference is that we will enforce an agency's interpretation of its own rules unless that interpretation is "plainly erroneous or inconsistent with the regulation." *Seminole Rock*, *supra*, at 414. But of course whenever the agency's interpretation of the regulation is different from the fairest reading, it is in that sense "inconsistent" with the regulation. Obviously, that is not enough, or there would be nothing for *Auer* to do. In practice, *Auer* deference is *Chevron* deference applied to regulations rather than statutes. See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). The agency's interpretation will be accepted if, though not the fairest reading of the regulation, it is a plausible reading—within the scope of the ambiguity that the regulation contains.

Our cases have not put forward a persuasive justification for *Auer* deference. The first case to apply it, *Seminole Rock*, offered no justification whatever—just the *ipse dixit* that "the administrative interpretation . . . becomes of controlling weight unless it is plainly erroneous or inconsistent

with the regulation." 325 U. S., at 414. Our later cases provide two principal explanations, neither of which has much to be said for it. See generally Stephenson & Pogoriler, *Seminole Rock*'s Domain, 79 Geo. Wash. L. Rev. 1449, 1454–1458 (2011). First, some cases say that the agency, as the drafter of the rule, will have some special insight into its intent when enacting it. *E. g.*, *Martin* v. *Occupational Safety and Health Review Comm'n*, 499 U. S. 144, 150–153 (1991). The implied premise of this argument—that what we are looking for is the agency's *intent* in adopting the rule—is false. There is true of regulations what is true of statutes. As Justice Holmes put it: "We do not inquire what the legislature meant; we ask only what the statute means." The Theory of Legal Interpretation, 12 Harv. L. Rev. 417, 419 (1899). Whether governing rules are made by the National Legislature or an administrative agency, we are bound *by what they say*, not by the unexpressed intention of those who made them.

The other rationale our cases provide is that the agency possesses special expertise in administering its "'complex and highly technical regulatory program.'" See, *e. g.*, *Thomas Jefferson Univ.* v. *Shalala*, 512 U. S. 504, 512 (1994). That is true enough, and it leads to the conclusion that agencies and not courts should make regulations. But it has nothing to do with who should interpret regulations—unless one believes that the purpose of interpretation is to make the regulatory program work in a fashion that the current leadership of the agency deems effective. Making regulatory programs effective is the purpose of *rulemaking*, in which the agency uses its "special expertise" to formulate the best rule. But the purpose of interpretation is to determine the fair meaning of the rule—to "say what the law is," *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803). Not to make policy, but to determine what policy has been made and promulgated by the agency, to which the public owes obedience. Indeed, since the leadership of agencies (and hence the policy

preferences of agencies) changes with Presidential administrations, an agency head can only be sure that the application of his "special expertise" to the issue addressed by a regulation *will be given effect* if we adhere to predictable principles of textual interpretation rather than defer to the "special expertise" of his successors. If we take agency enactments as written, the Executive has a stable background against which to write its rules and achieve the policy ends it thinks best.

Another conceivable justification for *Auer* deference, though not one that is to be found in our cases, is this: If it is reasonable to defer to agencies regarding the meaning of statutes that *Congress* enacted, as we do per *Chevron*, it is *a fortiori* reasonable to defer to them regarding the meaning of regulations *that they themselves crafted.* To give an agency less control over the meaning of its own regulations than it has over the meaning of a congressionally enacted statute seems quite odd.

But it is not odd at all. The theory of *Chevron* (take it or leave it) is that when Congress gives an agency authority to administer a statute, including authority to issue interpretive regulations, it implicitly accords the agency a degree of discretion, which the courts must respect, regarding the meaning of the statute. See *Smiley* v. *Citibank (South Dakota), N. A.*, 517 U. S. 735, 740–741 (1996). While the implication of an agency power to clarify the statute is reasonable enough, there is surely no congressional implication that the agency can resolve ambiguities in its own regulations. For that would violate a fundamental principle of separation of powers—that the power to write a law and the power to interpret it cannot rest in the same hands. "When the legislative and executive powers are united in the same person . . . there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner." Montesquieu, Spirit of the Laws bk. XI, ch. 6, pp. 151–152 (O. Piest

ed., T. Nugent transl. 1949). Congress cannot enlarge its *own* power through *Chevron*—whatever it leaves vague in the statute will be worked out *by someone else.* *Chevron* represents a presumption about who, as between the Executive and the Judiciary, that someone else will be. (The Executive, by the way—the competing political branch—is the less congenial repository of the power as far as Congress is concerned.) So Congress's incentive is to speak as clearly as possible on the matters it regards as important.

But when an agency interprets its *own* rules—that is something else. Then the power to prescribe is augmented by the power to interpret; and the incentive is to speak vaguely and broadly, so as to retain a "flexibility" that will enable "clarification" with retroactive effect. "It is perfectly understandable" for an agency to "issue vague regulations" if doing so will "maximiz[e] agency power." *Thomas Jefferson Univ.*, *supra*, at 525 (THOMAS, J., dissenting). Combining the power to prescribe with the power to interpret is not a new evil: Blackstone condemned the practice of resolving doubts about "the construction of the Roman laws" by "stat[ing] the case to the emperor in writing, and tak[ing] his opinion upon it." 1 W. Blackstone, Commentaries on the Laws of England 58 (1765). And our Constitution did not mirror the British practice of using the House of Lords as a court of last resort, due in part to the fear that he who has "agency in passing bad laws" might operate in the "same spirit" in their interpretation. The Federalist No. 81, pp. 543–544 (J. Cooke ed. 1961). *Auer* deference encourages agencies to be "vague in framing regulations, with the plan of issuing 'interpretations' to create the intended new law without observance of notice and comment procedures." Anthony, The Supreme Court and the APA: Sometimes They Just Don't Get It, 10 Admin. L. J. Am. U. 1, 11–12 (1996). *Auer* is not a logical corollary to *Chevron* but a dangerous permission slip for the arrogation of power. See *Talk America*, 564 U. S., at 68–69 (SCALIA, J., concurring); Manning, Constitu-

tional Structure and Judicial Deference to Agency Interpretations of Agency Rules, 96 Colum. L. Rev. 612 (1996).

It is true enough that *Auer* deference has the same beneficial pragmatic effect as *Chevron* deference: The country need not endure the uncertainty produced by divergent views of numerous district courts and courts of appeals as to what is the fairest reading of the regulation, until a definitive answer is finally provided, years later, by this Court. The agency's view can be relied upon, unless it is, so to speak, beyond the pale. But the duration of the uncertainty produced by a vague regulation need not be as long as the uncertainty produced by a vague statute. For as soon as an interpretation uncongenial to the agency is pronounced by a district court, the agency can begin the process of amending the regulation to make its meaning entirely clear. The circumstances of this case demonstrate the point. While these cases were being briefed before us, EPA issued a rule designed to respond to the Court of Appeals judgment we are reviewing. See 77 Fed. Reg. 72974 (2012) (to be codified in 40 CFR pt. 122, subpt. B). It did so (by the standards of such things) relatively quickly: The decision below was handed down in May 2011, and in December 2012 EPA published an amended rule setting forth in unmistakable terms the position it argues here. And there is another respect in which a lack of *Chevron*-type deference has less severe pragmatic consequences for rules than for statutes. In many cases, when an agency believes that its rule permits conduct that the text arguably forbids, it can simply exercise its discretion not to prosecute. That is not possible, of course, when, as here, a party harmed by the violation has standing to compel enforcement.

In any case, however great may be the efficiency gains derived from *Auer* deference, beneficial effect cannot justify a rule that not only has no principled basis but contravenes one of the great rules of separation of powers: He who writes a law must not adjudge its violation.

II

I would therefore resolve these cases by using the familiar tools of textual interpretation to decide: Is what the petitioners did here proscribed by the fairest reading of the regulations? What they did was to channel stormwater runoff from logging roads without a permit. To decide whether that was permissible we must answer one, and possibly two, questions: First, was the stormwater discharged from a "point source"? If not, no permit was required. But if so, we face the second question: Were the stormwater discharges exempt from the permit requirement because they were not "associated with industrial activity"? The fairest reading of the statute and regulations is that these discharges were from point sources, and were associated with industrial activity.

A

The Clean Water Act generally prohibits discharging pollution without a permit from what it calls a "point source." 33 U. S. C. § 1311(a). A "point source" is defined as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit," and several other things. § 1362(14). The stormwater here was discharged from logging roads through a series of pipes, ditches, and channels—all items expressly named in the definition.

EPA argues that the Silvicultural Rule, 40 CFR § 122.27(b)(1) (2006), *excludes* from the definition of "[s]ilvicultural point source" "harvesting operations . . . from which there is natural runoff." This is relevant, says the Agency, because that rule specifies that only "[s]ilvicultural point sources, as defined in this section," are "point sources subject to the . . . permit program." § 122.27(a). In EPA's view, the stormwater here is "natural runoff."

But are stormwater discharges "natural runoff" when they are channeled through manmade pipes and ditches, and

carry with them manmade pollutants from manmade forest roads? It is not obvious that this is so—as the Agency agrees. See Brief for United States as *Amicus Curiae* 19 (the rule's "reference to 'natural runoff' associated with logging roads neither clearly encompasses nor clearly excludes the sort of channeled runoff that is at issue in this case"). In my view, giving the term the Agency's interpretation would contradict the statute's definition of "point source," which explicitly includes any "pipe, ditch, channel, tunnel, [and] conduit." Applying the interpretive presumption of validity—the canon that we are to "prefe[r] the meaning that preserves to the meaning that destroys," *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 439 (1935) (Cardozo, J., dissenting)—I would hold that the regulation's exclusion of "natural runoff" does not reach the situation here. The stormwater discharges came from point sources, because they flowed out of artificial "pipe[s]," "ditch[es]," and "channel[s]," 33 U. S. C. § 1362(14), and were thus not "*natural* runoff" from a logging operation, 40 CFR § 122.27(b)(1) (emphasis added).

B

Many point-source stormwater discharges are nonetheless exempt from the usual permitting requirement. See 33 U. S. C. § 1342(p). This exemption, however, does not reach discharges "associated with industrial activity." *Ibid.* EPA has enacted a rule defining what it means for stormwater discharges to be "associated with" industrial activity, and what activities count as "industrial." 40 CFR § 122.26(b)(14).

The regulation sets out 11 "categories of industries"; as to those industries, discharges are "associated with industrial activity" if they come from sites used for "transportation" of "any raw material." *Ibid.* The forest roads at issue here are used to transport raw material (logs); the only question is whether logging is a "categor[y] of industr[y]" enumerated

in the definition. It is: The second of the listed "categories of facilities" is "[f]acilities classified as Standard Industrial Classifications 24 (except 2434)." § 122.26(b)(14)(ii). Opening one's hymnal to Standard Industrial Classification 24 ("Lumber and Wood Products, Except Furniture"), one finds that the first industry group listed, No. 2411, is "Logging"—defined as "[e]stablishments primarily engaged in cutting timber." 2 App. 64. (As if that were not clear enough, an illustrative product of this industry is helpfully listed: "Logs.") That, I would think, is that.

EPA disagrees, and the Court gives the Agency's position *Auer* deference, but that reading is certainly not the most natural one. The Court relies heavily on the fact that the definition of "[s]torm water discharge associated with industrial activity" requires that the discharge be "directly related to manufacturing, processing or raw materials storage areas at an industrial plant," § 122.26(b)(14). The crucial question this definition presents is whether the concluding phrase "at an industrial plant" limits only the last noun phrase ("raw materials storage areas") or also the two preceding nouns ("manufacturing" and "processing"). The canon of interpretation known as the rule of the last antecedent states that "a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows." *Barnhart* v. *Thomas*, 540 U. S. 20, 26 (2003). If a statute provides that "it shall be unlawful to possess a grenade launcher, a fully-automatic weapon, or a shotgun with a barrel shorter than 12 inches," that does not mean that a grenade launcher with a barrel *longer* than 12 inches is legal. Application of the canon would mean that "at an industrial plant" modifies only "raw materials storage areas," and therefore that "manufacturing" and "processing" *anywhere*, including in the forest, would be "associated with industrial activity." (Standard Industrial Classification 24 categorizes logging as a manufacturing business, and these discharges are therefore "directly related to manufacturing.")

Like all canons of interpretation, the rule of the last antecedent can be overcome by textual indication of contrary meaning. But that does not exist here. To the contrary, the enumerated categories of industries to which the term "industrial activity" applies reinforce the proposition that "at an industrial plant" does not modify "manufacturing" or "processing." The term includes (in addition to logging) "active or inactive mining operations," § 122.26(b)(14)(iii); "[l]andfills" and "open dumps," § 122.26(b)(14)(v); "automobile junkyards," § 122.26(b)(14)(vi); and "[c]onstruction activity including clearing, grading and excavation," § 122.26(b)(14)(x). *Those* industries and activities (while related to manufacturing and processing) virtually never take place at anything like what one might describe as a "plant." The rule of the last antecedent is therefore confirmed as the correct guide to meaning here: "at an industrial plant" limits only "raw materials storage areas."

EPA also insists, Brief for United States as *Amicus Curiae* 24, that the regulation reaches only "'traditional'" sources of industrial stormwater, such as sawmills. But Standard Industrial Classification 24 *has* a specific subcategory (No. 242) that is "Sawmills and Planing Mills." 2 App. 64. The rule is not so limited, reaching by its terms "Standard Industrial Classificatio[n] 24 (except 2434)." § 122.26(b)(14)(ii). The explicit carving-out of No. 2434 is telling: Why EPA chose to exclude "establishments primarily engaged in manufacturing wood kitchen cabinet and wood bathroom vanities" from the definition of industrial stormwater, I do not know—but the picayune nature of the exclusion gives lie to the idea that the rule's scope ought to be decided by a rough sense of its gestalt. If EPA had meant to reach only sawmills, it quite obviously knew how to do so.

Finally, the Court believes that Standard Industrial Classification 24's reference to "establishments" "suggest[s] industrial sites more fixed and permanent than outdoor timber-harvesting operations." *Ante*, at 612. Not so. The

Standard Industrial Classification uses "establishments" throughout to refer to business entities in general; for example, Classification 2411 refers to "[e]stablishments primarily engaged in cutting timber," which includes "producing wood chips in the field." 2 App. 64. I cannot imagine what kind of "fixed and permanent" industrial site the Court and EPA imagine will be "producing wood chips in the field." And the Court's final point, *ante,* at 613—that the regulatory definition of "industrial activity" uses the word "facilities"—cuts the other way: EPA regulations define "facility" to include "any . . . 'point source.'" 40 CFR § 122.2; see, *e. g.*, § 122.26(b)(14)(iii) (referring to mines as "facilities").

The Agency also assures us that its *intent* (Brief for United States as *Amicus Curiae* 25) was to reach a more limited subset of logging activities, an intent that it believes can essentially float free from the text of the relevant rule. In the end, this is the real meat of the matter: EPA states that it simply did not mean to require permits for the discharges at issue here. And the Court is willing to credit that intent, even given what I think has been amply demonstrated to be a contrary text.

* * *

Because the fairest reading of the Agency's rules proscribes the conduct at issue in these cases, I would affirm the judgment below. It is time for us to presume (to coin a phrase) that an agency says in a rule what it means, and means in a rule what it says there.

Syllabus

WOS, SECRETARY, NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES *v.* E. M. A., A MINOR, BY AND THROUGH HER GUARDIAN AD LITEM, JOHNSON, ET AL.

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

No. 12–98. Argued January 8, 2013—Decided March 20, 2013

The federal Medicaid statute's anti-lien provision, 42 U. S. C. § 1396p(a)(1), pre-empts a State's effort to take any portion of a Medicaid beneficiary's tort judgment or settlement not "designated as payments for medical care," *Arkansas Dept. of Health and Human Servs.* v. *Ahlborn*, 547 U. S. 268, 284. A North Carolina statute requires that up to one-third of any damages recovered by a beneficiary for a tortious injury be paid to the State to reimburse it for payments it made for medical treatment on account of the injury.

Respondent E. M. A. was born with multiple serious birth injuries that require her to receive between 12 and 18 hours of skilled nursing care per day and that will prevent her from being able to work, live independently, or provide for her basic needs. North Carolina's Medicaid program pays part of the cost of her ongoing medical care. E. M. A. and her parents filed a medical malpractice suit against the physician who delivered her and the hospital where she was born. They presented expert testimony estimating their damages to exceed $42 million, but they ultimately settled for $2.8 million, due in large part to insurance policy limits. The settlement did not allocate money among their various medical and nonmedical claims. In approving the settlement, the state court placed one-third of the recovery into escrow pending a judicial determination of the amount of the lien owed by E. M. A. to the State. E. M. A. and her parents then sought declaratory and injunctive relief in Federal District Court, claiming that the State's reimbursement scheme violated the Medicaid anti-lien provision. While that litigation was pending, the North Carolina Supreme Court held in another case that the irrebuttable statutory one-third presumption was a reasonable method for determining the amount due the State for medical expenses. The Federal District Court, in the instant case, agreed. But the Fourth Circuit vacated and remanded, concluding that the State's statutory scheme could not be reconciled with *Ahlborn*.

Syllabus

Held: The federal anti-lien provision pre-empts North Carolina's irrebuttable statutory presumption that one-third of a tort recovery is attributable to medical expenses. Pp. 633–644.

(a) In *Ahlborn*, the Court held that the federal Medicaid statute sets both a floor and a ceiling on a State's potential share of a beneficiary's tort recovery. Federal law requires an assignment to the State of "the right to recover that portion of a settlement that represents payments for medical care," but also "precludes attachment or encumbrance of the remainder of the settlement." 547 U. S., at 282, 284. *Ahlborn* did not, however, resolve the question of how to determine what portion of a settlement represents payment for medical care. As North Carolina construes its statute, when the State's Medicaid expenditures exceed one-third of a beneficiary's tort recovery, the statute establishes a conclusive presumption that one-third of the recovery represents compensation for medical expenses, even if the settlement or verdict expressly allocates a lower percentage of the judgment to medical expenses. Pp. 633–635.

(b) North Carolina's law is pre-empted insofar as it would permit the State to take a portion of a Medicaid beneficiary's tort judgment or settlement not designated for medical care. It directly conflicts with the federal Medicaid statute and therefore "must give way." *PLIVA, Inc.* v. *Mensing*, 564 U. S. 604, 617. The state law has no process for determining what portion of a beneficiary's tort recovery is attributable to medical expenses. Instead, the State has picked an arbitrary percentage and by statutory command labeled that portion of a beneficiary's tort recovery as representing payment for medical care. A State may not evade pre-emption through creative statutory interpretation or description, "framing" its law in a way that is at odds with the statute's intended operation and effect. *National Meat Assn.* v. *Harris*, 565 U. S. 452, 464. North Carolina's argument, if accepted, would frustrate the Medicaid anti-lien provision in the context of tort recoveries. It lacks any limiting principle: If a State could arbitrarily designate one-third of any recovery as payment for medical expenses, it could arbitrarily designate half or all of the recovery in the same way. The State offers no evidence showing that its allocation is reasonable in the mine run of cases, and the law provides no mechanism for determining whether its allocation is reasonable in any particular case.

No estimate of an allocation will be necessary where there has been a judicial finding or approval of an allocation between medical and nonmedical damages. In some cases, including *Ahlborn*, this binding stipulation or judgment will attribute to medical expenses less than one-third of the settlement. Yet even in these circumstances, North Carolina's statute would permit the State to take one-third of the total recovery.

Syllabus

A conflict thus exists between North Carolina's law and the Medicaid anti-lien provision.

This case is not as clear cut as *Ahlborn* was, for here there was no such stipulation or judgment. But *Ahlborn*'s reasoning and the federal statute's design contemplate that possibility: They envisioned that a judicial or administrative proceeding would be necessary where a beneficiary and the State are unable to agree on what portion of a settlement represents compensation for medical expenses. See 547 U. S., at 288. North Carolina's irrebuttable, one-size-fits-all statutory presumption is incompatible with the Medicaid Act's clear mandate that a State may not demand any portion of a beneficiary's tort recovery except the share that is attributable to medical expenses. Pp. 636–639.

(c) None of North Carolina's responses to this reasoning is persuasive. Pp. 639–643.

674 F. 3d 290, affirmed.

KENNEDY, J., delivered the opinion of the Court, in which GINSBURG, BREYER, ALITO, SOTOMAYOR, and KAGAN, JJ., joined. BREYER, J., filed a concurring opinion, *post*, p. 644. ROBERTS, C. J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined, *post*, p. 647.

John F. Maddrey, Solicitor General of North Carolina, argued the cause for petitioner. With him on the briefs were *Roy Cooper*, Attorney General, and *Gayl M. Manthei* and *Belinda A. Smith*, Special Deputy Attorneys General.

Christopher Browning, Jr., argued the cause for respondents. With him on the brief were *C. Mark Holt*, *William B. Bystrynski*, and *Jeffrey T. Mackie*.

Ginger D. Anders argued the cause for the United States as *amicus curiae* urging affirmance. With her on the brief were *Solicitor General Verrilli*, *Principal Deputy Assistant Attorney General Delery*, *Deputy Solicitor General Kneedler*, *Alisa B. Klein*, *William B. Schultz*, and *Janice L. Hoffman*.*

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*Briefs of *amici curiae* urging reversal were filed for the State of Texas et al. by *Greg Abbott*, Attorney General of Texas, *Jonathan F. Mitchell*, Solicitor General, and *Daniel T. Hodge*, First Assistant Attorney General, and by the Attorneys General for their respective States as follows: *Luther Strange* of Alabama, *Sam Olens* of Georgia, *David M. Louie* of Hawaii, *Lawrence G. Wasden* of Idaho, *Greg Zoeller* of Indiana, *Bill*

JUSTICE KENNEDY delivered the opinion of the Court.

A federal statute prohibits States from attaching a lien on the property of a Medicaid beneficiary to recover benefits paid by the State on the beneficiary's behalf. 42 U. S. C. § 1396p(a)(1). The anti-lien provision pre-empts a State's effort to take any portion of a Medicaid beneficiary's tort judgment or settlement not "designated as payments for medical care." *Arkansas Dept. of Health and Human Servs.* v. *Ahlborn*, 547 U. S. 268, 284 (2006). North Carolina has enacted a statute requiring that up to one-third of any damages recovered by a beneficiary for a tortious injury be paid to the State to reimburse it for payments it made for medical treatment on account of the injury. See N. C. Gen. Stat. Ann. § 108A–57 (Lexis 2011); *Andrews* v. *Haygood*, 362 N. C. 599, 604–605, 669 S. E. 2d 310, 314 (2008). The question presented is whether the North Carolina statute is compatible with the federal anti-lien provision.

I

When respondent E. M. A. was born in February 2000, she suffered multiple serious birth injuries which left her deaf, blind, and unable to sit, walk, crawl, or talk. The injuries also cause her to suffer from mental retardation and a seizure disorder. She requires between 12 and 18 hours of skilled nursing care per day. She will not be able to work, live independently, or provide for her basic needs. The cost

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Schuette of Michigan, *Jon Bruning* of Nebraska, *Gary K. King* of New Mexico, *Michael DeWine* of Ohio, and *Alan Wilson* of South Carolina; and for the National Governors Association et al. by *Christopher M. Egleson* and *Lisa E. Soronen.*

Briefs of *amici curiae* urging affirmance were filed for AARP et al. by *Douglas T. Kendall*, *Elizabeth B. Wydra*, *Rochelle Bobroff*, *Kenneth Zeller*, and *Michael Schuster*; for the American Association for Justice et al. by *Louis M. Bograd*, *Mary Alice McLarty*, *Burton Craige*, and *Carlos E. Mahoney*; and for the Federation of Defense and Corporate Counsel by *Allison O. Van Laningham* and *Edward M. Kaplan.*

of her ongoing medical care is paid in part by the State of North Carolina's Medicaid program.

In February 2003, E. M. A. and her parents filed a medical malpractice suit in North Carolina state court against the physician who delivered E. M. A. at birth and the hospital where she was born. The expert witnesses for E. M. A. and her parents in that proceeding estimated damages in excess of $42 million for medical and life-care expenses, loss of future earning capacity, and other assorted expenses such as architectural renovations to their home and specialized transportation equipment. App. 91–112. By far the largest part of this estimate was for "Skilled Home Care," totaling more than $37 million over E. M. A.'s lifetime. *Id.*, at 112. E. M. A. and her parents also sought damages for her pain and suffering and for her parents' emotional distress. *Id.*, at 64–65, 67–68, 72–73, 75–76. Their experts did not estimate the damages in these last two categories.

Assisted by a mediator, the parties began settlement negotiations. E. M. A. and her parents informed the North Carolina Department of Health and Human Services of the negotiations. The department had a statutory right to intervene in the malpractice suit and participate in the settlement negotiations in order to obtain reimbursement for the medical expenses it paid on E. M. A.'s behalf, up to one-third of the total recovery. See N. C. Gen. Stat. Ann. §§ 108A–57, 108A–59. It elected not to do so, though its representative informed E. M. A. and her parents that the State's Medicaid program had expended $1.9 million for E. M. A.'s medical care, which it would seek to recover from any tort judgment or settlement.

In November 2006, the court approved a $2.8 million settlement. The amount, apparently, was dictated in large part by the policy limits on the defendants' medical malpractice insurance coverage. See Brief for Respondents 5. The settlement agreement did not allocate the money among the different claims E. M. A. and her parents had advanced. In

approving the settlement the court placed one-third of the $2.8 million recovery into an interest-bearing escrow account "until such time as the actual amount of the lien owed by [E. M. A.] to [the State] is conclusively judicially determined." App. 87.

E. M. A. and her parents then filed this action under Rev. Stat. § 1979, 42 U. S. C. § 1983, in the United States District Court for the Western District of North Carolina. They sought declaratory and injunctive relief, arguing that the State's reimbursement scheme violated the Medicaid anti-lien provision, § 1396p(a)(1). While that litigation was pending, the North Carolina Supreme Court confronted the same question in *Andrews*, *supra*. It held that the irrebuttable statutory presumption that one-third of a Medicaid beneficiary's tort recovery is attributable to medical expenses was "a reasonable method for determining the State's medical reimbursements." *Id.*, at 604, 669 S. E. 2d, at 314. The United States District Court, in the instant case, agreed. *Armstrong* v. *Cansler*, 722 F. Supp. 2d 653 (2010).

The Court of Appeals for the Fourth Circuit vacated and remanded. *E. M. A.* v. *Cansler*, 674 F. 3d 290 (2012). It concluded that North Carolina's statutory scheme could not be reconciled with "*Ahlborn*'s clear holding that the general anti-lien provision in federal Medicaid law prohibits a state from recovering any portion of a settlement or judgment not attributable to medical expenses." *Id.*, at 310. In some cases, the court reasoned, the actual portion of a beneficiary's tort recovery representing payment for medical care would be less than one-third. North Carolina's statutory presumption that one-third of a tort recovery is attributable to medical expenses therefore must be "subject to adversarial testing" in a judicial or administrative proceeding. *Id.*, at 311.

To resolve the conflict between the opinion of the Court of Appeals in this case and the decision of the North Carolina Supreme Court in *Andrews*, this Court granted certiorari. 567 U. S. 968 (2012).

II

At issue is the interaction between certain provisions of the federal Medicaid statute and state law. Congress has directed States, in administering their Medicaid programs, to seek reimbursement for medical expenses incurred on behalf of beneficiaries who later recover from third-party tortfeasors. States must require beneficiaries "to assign the State any rights . . . to support (specified as support for the purpose of medical care by a court or administrative order) and to payment for medical care from any third party." 42 U. S. C. § 1396k(a)(1)(A). States receiving Medicaid funds must also

> "ha[ve] in effect laws under which, to the extent that payment has been made under the State plan for medical assistance for health care items or services furnished to an individual, the State is considered to have acquired the rights of such individual to payment by any other party for such health care items or services." § 1396a(a)(25)(H).

A separate provision of the Medicaid statute, however, exists in some tension with these requirements. It says that, with exceptions not relevant here, "[n]o lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the State plan." § 1396p(a)(1).

In *Ahlborn*, the Court addressed this tension and held that the Medicaid statute sets both a floor and a ceiling on a State's potential share of a beneficiary's tort recovery. Federal law requires an assignment to the State of "the right to recover that portion of a settlement that represents payments for medical care," but it also "precludes attachment or encumbrance of the remainder of the settlement." 547 U. S., at 282, 284. This is so because the beneficiary has a property right in the proceeds of the settlement, bringing it within the ambit of the anti-lien provision. *Id.*, at 285.

That property right is subject to the specific statutory "exception" requiring a State to seek reimbursement for medical expenses paid on the beneficiary's behalf, but the anti-lien provision protects the beneficiary's interest in the remainder of the settlement. *Id.*, at 284.

A question the Court had no occasion to resolve in *Ahlborn* is how to determine what portion of a settlement represents payment for medical care. The parties in that case stipulated that about 6 percent of respondent Ahlborn's tort recovery (approximately $35,600 of a $550,000 settlement) represented compensation for medical care. *Id.*, at 274. The Court nonetheless anticipated the concern that some settlements would not include an itemized allocation. It also recognized the possibility that Medicaid beneficiaries and tortfeasors might collaborate to allocate an artificially low portion of a settlement to medical expenses. The Court noted that these problems could "be avoided either by obtaining the State's advance agreement to an allocation or, if necessary, by submitting the matter to a court for decision." *Id.*, at 288.

North Carolina has attempted a different approach. Its statute provides:

> "Notwithstanding any other provisions of the law, to the extent of payments under this Part, the State, or the county providing medical assistance benefits, shall be subrogated to all rights of recovery, contractual or otherwise, of the beneficiary of this assistance . . . . The county attorney, or an attorney retained by the county or the State or both, or an attorney retained by the beneficiary of the assistance if this attorney has actual notice of payments made under this Part shall enforce this section. Any attorney retained by the beneficiary of the assistance shall, out of the proceeds obtained on behalf of the beneficiary by settlement with, judgment against, or otherwise from a third party by reason of injury or death, distribute to the Department the

> amount of assistance paid by the Department on behalf of or to the beneficiary, as prorated with the claims of all others having medical subrogation rights or medical liens against the amount received or recovered, but the amount paid to the Department shall not exceed one-third of the gross amount obtained or recovered." N. C. Gen. Stat. Ann. § 108A–57(a).

Before *Ahlborn* was decided, North Carolina and the state courts interpreted this statute to allow the State to "recover the costs of medical treatment provided . . . even when the funds received by the [beneficiary] are not reimbursement for medical expenses." *Campbell* v. *North Carolina Dept. of Human Resources*, 153 N. C. App. 305, 307–308, 569 S. E. 2d 670, 672 (2002). See also *Ezell* v. *Grace Hospital, Inc.*, 360 N. C. 529, 631 S. E. 2d 131 (2006) (*per curiam*). Under *Ahlborn*, however, this construction of the statute is at odds with the Medicaid anti-lien provision, which "precludes attachment or encumbrance" of any portion of a settlement not "designated as payments for medical care." 547 U. S., at 284.

In response to *Ahlborn*, the State advanced—and the North Carolina Supreme Court in *Andrews* accepted—a new interpretation of its statute. Under this interpretation the statute "defines 'the portion of the settlement that represents payment for medical expenses' as the lesser of the State's past medical expenditures or one-third of the plaintiff's total recovery." *Andrews*, 362 N. C., at 604, 669 S. E. 2d, at 314. In other words, when the State's Medicaid expenditures on behalf of a beneficiary exceed one-third of the beneficiary's tort recovery, the statute establishes a conclusive presumption that one-third of the recovery represents compensation for medical expenses. Under this reading of the statute the presumption operates even if the settlement or a jury verdict expressly allocates a lower percentage of the judgment to medical expenses. See Tr. of Oral Arg. 10, 16–17. Cf. *Andrews*, *supra*, at 602–604, 669 S. E. 2d, at 313.

III

A

Under the Supremacy Clause, "[w]here state and federal law 'directly conflict,' state law must give way." *PLIVA, Inc.* v. *Mensing*, 564 U. S. 604, 617 (2011). The Medicaid anti-lien provision prohibits a State from making a claim to any part of a Medicaid beneficiary's tort recovery not "designated as payments for medical care." *Ahlborn*, *supra*, at 284. North Carolina's statute, therefore, is pre-empted if, and insofar as, it would operate that way.

And it is pre-empted for that reason. The defect in § 108A–57 is that it sets forth no process for determining what portion of a beneficiary's tort recovery is attributable to medical expenses. Instead, North Carolina has picked an arbitrary number—one-third—and by statutory command labeled that portion of a beneficiary's tort recovery as representing payment for medical care. Pre-emption is not a matter of semantics. A State may not evade the pre-emptive force of federal law by resorting to creative statutory interpretation or description at odds with the statute's intended operation and effect.

A similar issue was presented last Term, in *National Meat Assn.* v. *Harris*, 565 U. S. 452 (2012). That case involved the pre-emptive scope of the Federal Meat Inspection Act, 21 U. S. C. § 601 *et seq.* The Act prohibited States from imposing "'[r]equirements . . . with respect to premises, facilities and operations'" at federally regulated slaughterhouses. *National Meat Assn.*, 565 U. S., at 458 (quoting § 678). The State of California had enacted a law that prohibited slaughterhouses from (among other things) selling meat from non-ambulatory animals for human consumption. *Id.*, at 458–459 (citing Cal. Penal Code Ann. § 599f(b) (West 2010)). California sought to defend the law on the ground that it did not regulate the activities of slaughterhouses but instead restricted

what type of meat could be sold in the marketplace after the animals had been butchered. 565 U. S., at 463.

The Court rejected that argument. It recognized that if the argument were to prevail, "then any State could impose any regulation on slaughterhouses just by framing it as a ban on the sale of meat produced in whatever way the State disapproved. That would make a mockery of the [Act's] preemption provision." *Id.*, at 464. In a preemption case, the Court held, a proper analysis requires consideration of what the state law in fact does, not how the litigant might choose to describe it.

That reasoning controls here. North Carolina's argument, if accepted, would frustrate the Medicaid anti-lien provision in the context of tort recoveries. The argument lacks any limiting principle: If a State arbitrarily may designate one-third of any recovery as payment for medical expenses, there is no logical reason why it could not designate half, three-quarters, or all of a tort recovery in the same way. In *Ahlborn*, the State of Arkansas, under this rationale, would have succeeded in claiming the full amount it sought from the beneficiary had it been more creative and less candid in describing the effect of its full-reimbursement law.

Here the State concedes that it would be "difficult . . . to defend" a law purporting to allocate most or all of a beneficiary's tort recovery to medical expenses. Tr. of Oral Arg. 20. That is true; but, as a doctrinal matter, it is no easier to defend North Carolina's across-the-board allocation of one-third of all beneficiaries' tort recoveries to medical expenses. The problem is not that it is an unreasonable approximation in all cases. In some cases, it may well be a fair estimate. But the State provides no evidence to substantiate its claim that the one-third allocation is reasonable in the mine run of cases. Nor does the law provide a mechanism for determining whether it is a reasonable approximation in any particular case.

In some instances, no estimate will be necessary or appropriate. When there has been a judicial finding or approval of an allocation between medical and nonmedical damages—in the form of either a jury verdict, court decree, or stipulation binding on all parties—that is the end of the matter. *Ahlborn* was a case of this sort. All parties (including the State of Arkansas) stipulated that approximately 6 percent of the plaintiff's settlement represented payment for medical costs. 547 U. S., at 274. In other cases a settlement may not be reached and the judge or jury, in its findings, may make an allocation. With a stipulation or judgment under this procedure, the anti-lien provision protects from state demand the portion of a beneficiary's tort recovery that the stipulation or judgment does not attribute to medical expenses.

North Carolina's statute, however, operates to allow the State to take one-third of the total recovery, even if a proper stipulation or judgment attributes a smaller percentage to medical expenses. Consider the facts of *Ahlborn*. There, only $35,581.47 of the beneficiary's settlement "constituted reimbursement for medical payments made." *Ibid.* North Carolina's statute, had it been applied in *Ahlborn*, would have allowed the State to claim $183,333.33 (one-third of the beneficiary's $550,000 settlement). A conflict thus exists between North Carolina's law and the Medicaid anti-lien provision.

The instant case, to be sure, is not quite so clear cut; for there was no allocation of the settlement by either judicial decree or binding stipulation of the parties. But the reasoning of *Ahlborn* and the design of the federal statute contemplate that possibility. When the State and the beneficiary are unable to agree on an allocation, *Ahlborn* noted, the parties could "submi[t] the matter to a court for decision." *Id.*, at 288.

The facts of the present case demonstrate why *Ahlborn* anticipated that a judicial or administrative proceeding

would be necessary in that situation. Of the damages stemming from the injuries E. M. A. suffered at birth, it is apparent that a quite substantial share must be allocated to the skilled home care she will require for the rest of her life. See App. 112. It also may be necessary to consider how much E. M. A. and her parents could have expected to receive as compensation for their other tort claims had the suit proceeded to trial. An irrebuttable, one-size-fits-all statutory presumption is incompatible with the Medicaid Act's clear mandate that a State may not demand any portion of a beneficiary's tort recovery except the share that is attributable to medical expenses.

B

North Carolina offers responses to this reasoning, but none is persuasive.

First, the State asserts that it is doing nothing more than what *Ahlborn* said it could do: "adop[t] special rules and procedures for allocating tort settlements." 547 U. S., at 288, n. 18. This misreads *Ahlborn*. There the Court, citing an *amicus* brief, referred to judicial proceedings some States had established for allocating tort settlements where necessary for insurance or tax purposes. See Brief for Association of Trial Lawyers of America, O. T. 2005, No. 04–1506, pp. 20–21 (citing *Henning* v. *Wineman*, 306 N. W. 2d 550 (Minn. 1981), and *Rimes* v. *State Farm Mut. Auto. Ins. Co.*, 106 Wis. 2d 263, 316 N. W. 2d 348 (1982)). Those examples illustrated the kind of "special rules and procedures for allocating tort settlements" that *Ahlborn* considered. The decision did not endorse irrebuttable presumptions that designate some arbitrary fraction of a tort judgment to medical expenses in all cases.

Second, North Carolina contends that its law falls within the scope of a State's traditional authority to regulate tort actions, including the amount of damages that a party may recover. This argument begins from a correct premise: In our federal system, there is no question that States possess

the "traditional authority to provide tort remedies to their citizens" as they see fit. *Silkwood* v. *Kerr-McGee Corp.*, 464 U. S. 238, 248 (1984). But North Carolina's law is not an exercise of the State's general authority to regulate its tort system. It does not limit tort plaintiffs' ability to recover for certain types of nonmedical damages, and it does not say that medical damages are to be privileged above other damages in tort suits. All it seeks to do is to allocate the share of damages attributable to medical expenses in tort suits brought by Medicaid beneficiaries. A statute that singles out Medicaid beneficiaries in this manner cannot avoid compliance with the federal anti-lien provision merely by relying upon a connection to an area of traditional state regulation.

Third, North Carolina suggests that even though its allocation of one-third of a tort recovery to medical expenses may be arbitrary, other methods for allocating a recovery would be just as arbitrary. In the State's view there is no "ascertainable 'true value' of [a] case that should control what portion of any settlement is subject to the State's third-party recovery rights." Brief for Petitioner 26–27. As explained earlier, allocations, while to some extent perhaps not precise, need not be arbitrary. See *supra*, at 638. In some cases a judgment or stipulation binding on all parties will allocate the plaintiff's recovery across different claims. Where no such judgment or stipulation exists, a fair allocation of such a settlement may be difficult to determine. Trial judges and trial lawyers, however, can find objective benchmarks to make projections of the damages the plaintiff likely could have proved had the case gone to trial.

In the instant case, for example, the North Carolina trial court approved the settlement only after finding that it constituted "fair and just compensation" to E. M. A. and her parents for her "severe and debilitating injuries"; for "medical and life care expenses" her condition will require; and for "severe emotional distress" from her injuries. App. 82. What portion of this lump-sum settlement constitutes "fair

and just compensation" for each individual claim will depend both on how likely E. M. A. and her parents would have been to prevail on the claims at trial and how much they reasonably could have expected to receive on each claim if successful, in view of damages awarded in comparable tort cases.

This relates to North Carolina's fourth argument: that it would be "wasteful, time consuming, and costly" to hold "frequent mini-trials" in order to divide a settlement between medical and nonmedical expenses. Brief for Petitioner 28. Even if that were true, it would not relieve the State of its obligation to comply with the terms of the Medicaid anti-lien provision. And it is not true as a general proposition. States have considerable latitude to design administrative and judicial procedures to ensure a prompt and fair allocation of damages. Sixteen States and the District of Columbia provide for hearings of this sort, and there is no indication that they have proved burdensome. Brief for United States as *Amicus Curiae* 28–29, and n. 7. See, *e. g.*, Cal. Welf. & Inst. Code Ann. §14124.76(a) (West 2011); Mo. Rev. Stat. §§208.215.9–11 (2012); Tenn. Code Ann. §§71–5–117(g)–(i) (2012); *In re E. B.*, 229 W. Va. 435, 462, 729 S. E. 2d 270, 297 (2012). Many of these States have established rebuttable presumptions and adjusted burdens of proof to ensure that speculative assessments of a plaintiff's likely recovery do not defeat the State's right to recover medical costs, a concern North Carolina raises. See, *e. g.*, Haw. Rev. Stat. §346–37(h) (2011 Cum. Supp.) (rebuttable presumption of a one-third allocation); Mass. Gen. Laws, ch. 118E, §22(c) (West 2010) (rebuttable presumption of full reimbursement); Okla. Stat., Tit. 63, §5051.1(D)(1)(d) (West 2011) (rebuttable presumption of full reimbursement, "unless a more limited allocation of damages to medical expenses is shown by clear and convincing evidence"). Without holding that these rules are necessarily compliant with the federal statute, it can be concluded that they are more accurate than the procedure North Carolina has enacted.

The task of dividing a tort settlement is a familiar one. In a variety of settings, state and federal courts are called upon to separate lump-sum settlements or jury awards into categories to satisfy different claims to a portion of the moneys recovered. See *supra*, at 640. See also, *e. g.*, *Green* v. *Commissioner*, 507 F. 3d 857, 867–868 (CA5 2007) (separation of compensatory from noncompensatory damages for tax purposes); *Donnel* v. *United States*, 50 Fed. Cl. 375, 386–387 (2001) (separation of employee severance bonus from other payments for tax purposes); *In re Harrington*, 306 B. R. 172, 182–183 (Bkrtcy. Ct. ED Tex. 2003) (separation of pain-and-suffering damages from other damages for purposes of bankruptcy exemption); *Colorado Compensation Ins. Auth.* v. *Jones*, 131 P. 3d 1074, 1077–1078 (Colo. App. 2005) (separation of economic from noneconomic damages for purposes of insurance subrogation); *Spangler* v. *North Star Drilling Co.*, 552 So. 2d 673, 685 (La. App. 1989) (separation of past damages from future damages for purposes of calculating prejudgment interest). Indeed, North Carolina itself uses a judicial allocation procedure to ascertain the portion of a settlement subject to subrogation in a workers' compensation suit. It instructs trial courts to

> "consider the anticipated amount of prospective compensation the employer or workers' compensation carrier is likely to pay to the employee in the future, the net recovery to plaintiff, the likelihood of the plaintiff prevailing at trial or on appeal, the need for finality in the litigation, and any other factors the court deems just and reasonable." N. C. Gen. Stat. Ann. § 97–10.2(j) (Lexis 2011).

North Carolina would be on sounder footing had it adopted a similar procedure for allocating Medicaid beneficiaries' tort recoveries. It might also consider a different one along the lines of what other States have done in Medicaid reimbursement cases.

The State thus has ample means available to allocate Medicaid beneficiaries' tort recoveries in an efficient manner that complies with federal law. Indeed, if States are concerned that case-by-case judicial allocations will prove unwieldy, they may even be able to adopt *ex ante* administrative criteria for allocating medical and nonmedical expenses, provided that these criteria are backed by evidence suggesting that they are likely to yield reasonable results in the mine run of cases. What they cannot do is what North Carolina did here: adopt an arbitrary, one-size-fits-all allocation for all cases.

Fifth, and finally, North Carolina contends that in two documents—a July 2006 memorandum and a December 2009 letter responding to an inquiry from a member of North Carolina's congressional delegation—the federal Centers for Medicare & Medicaid Services approved of North Carolina's statutory scheme for Medicaid reimbursement. In the State's view, these agency pronouncements are entitled to deference. See Brief for Petitioner 33–36 (citing *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984)).

The 2006 and 2009 documents, however, no longer reflect the agency's position. See Brief for United States as *Amicus Curiae* 8–34. And at any rate, the documents are opinion letters, not regulations with the force of law. We have held that "[i]nterpretations such as those in opinion letters—like interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law—do not warrant *Chevron*-style deference." *Christensen* v. *Harris County*, 529 U. S. 576, 587 (2000). These documents are "'entitled to respect'" in proportion to their "'power to persuade.'" *Ibid.* (quoting *Skidmore* v. *Swift & Co.*, 323 U. S. 134, 140 (1944)). Insofar as the 2006 and 2009 documents approve of North Carolina's statute, they lack persuasive force for the reasons discussed above.

* * *

The law here at issue, N. C. Gen. Stat. Ann. § 108A–57, reflects North Carolina's effort to comply with federal law and secure reimbursement from third-party tortfeasors for medical expenses paid on behalf of the State's Medicaid beneficiaries. In some circumstances, however, the statute would permit the State to take a portion of a Medicaid beneficiary's tort judgment or settlement not "designated as payments for medical care." *Ahlborn*, 547 U. S., at 284. The Medicaid anti-lien provision, 42 U. S. C. § 1396p(a)(1), bars that result.

The judgment of the Court of Appeals for the Fourth Circuit is affirmed.

It is so ordered.

JUSTICE BREYER, concurring.

I join the Court's opinion with one qualification: My concurrence in the Court's views rests in part upon the fact that the federal agency that administers the Medicaid statute, known as the Centers for Medicare & Medicaid Services, has reached the same conclusion.

The question before us is how to measure what share of a judgment or settlement of an accident victim's lawsuit represents payment (or reimbursement) for health care items (or services) for which a State has already paid on behalf of the victim. The statute is silent on the question. It simply says that a State may recover the amount of "payment" that the State has made on behalf of the victim "for medical assistance for health care items or services" from funds that "any other party" has paid "for such health care items or services." 42 U. S. C. § 1396a(a)(25)(H). Moreover, the question focuses upon a comparatively minor matter of statutory detail, not a major issue of far-reaching statutory policy. It concerns everyday administration. It calls for expertise of a kind that the administering agency is more likely than a court to possess. And any of several different answers to the question would seem reasonable. Under these circum-

stances, normally we should find that Congress delegated to the agency authority to fill the statutory gap, and we should uphold the agency's conclusion as long as it is reasonable. See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 844 (1984).

Here, however, the agency did not engage in rulemaking procedures, it did not carefully consider differing points of view of those affected, it did not set forth its views in a manual intended for widespread use, nor has it in any other way announced an interpretation that Congress would have "intended . . . to carry the force of law." *United States* v. *Mead Corp.*, 533 U. S. 218, 221 (2001). Indeed, the agency does not claim that it exercised any delegated legislative power.

Neither do the documents in which the agency set forth its position (a memorandum and a letter) have much "'power to persuade.'" *Christensen* v. *Harris County*, 529 U. S. 576, 587 (2000) (quoting *Skidmore* v. *Swift & Co.*, 323 U. S. 134, 140 (1944)). Their reasoning is skimpy. And the conclusion now advanced by the agency represents a radical departure from the agency's previous position. See App. to Pet. for Cert. 129a, 141a–142a. Thus, the Solicitor General does not ask us to defer to the agency's views—and understandably so.

Nonetheless, the Administrative Procedure Act is not the Tax Code. And cases that seek to determine whether Congress intended courts to give weight to agency views provide rules of thumb, general principles meant to guide interpretation, not rigid rules that narrowly confine it. They seek to advance Congress' intent as embodied in particular statutory schemes by helping courts to determine whether, and how, Congress intended those courts to respect an agency's expertise when reasonably exercised in particular cases. They seek to allocate the law-interpreting function between court and agency in a way likely to work best within any particular statutory scheme. But they do not purport to do more than

that. In particular, they do not set forth all-encompassing absolute rules, impervious to nuance and admitting of no exceptions. Felix Frankfurter's observation, made many years ago, remains valid today: "The problems subsumed by . . . 'administrative discretion' . . . must be related to . . . the particular interest . . . as to which 'administrative discretion' is exercised." The Task of Administrative Law, 75 U. Pa. L. Rev. 614, 619–620 (1927). That is to say, "the standard doctrines of administrative law . . . should not be taken too rigidly." Jaffe, Comment, Administrative Law: Burden of Proof and Scope of Review, 79 Harv. L. Rev. 914, 918 (1966).

Thus, even though this case does not fall directly within a case-defined category, such as "*Chevron* deference," "*Skidmore* deference," "*Beth Israel* deference," "*Seminole Rock* deference," or deference as defined by some other case, I believe the agency, in taking a position, nonetheless retains some small but special "power to persuade." *Skidmore*, *supra*, at 140. See generally Eskridge & Baer, The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations From *Chevron* to *Hamdan*, 96 Geo. L. J. 1083 (2008). And I would consequently to some degree take account of, and respect, the agency's judgment.

I cannot measure the degree of deference with the precision of a mariner measuring a degree of latitude. But it is still worth noting that the agency's determination has played some role in my own decision. That is because the agency, after looking into the matter more thoroughly (perhaps after notice-and-comment rulemaking), might change its mind. Given the nature of the question and of the agency's expertise, courts, I believe, should then give weight to that new and different agency decision. Cf. *National Cable & Telecommunications Assn.* v. *Brand X Internet Services*, 545 U. S. 967, 980–986 (2005). In my view, today's decision does not freeze the Court's present interpretation of the statute permanently into law.

With that understanding, I join the Court's opinion.

CHIEF JUSTICE ROBERTS, with whom JUSTICE SCALIA and JUSTICE THOMAS join, dissenting.

The State of North Carolina paid for E. M. A.'s medical expenses under its Medicaid plan. E. M. A. sued those alleged to have caused her injuries, eventually settling for an amount that included, among other things, medical expenses already covered by North Carolina. The federal Medicaid statute requires North Carolina to recoup those expenses. But neither the Act nor the regulations issued under it tell States how to determine what portion of a third-party recovery should be attributed to medical expenses. The Court concludes that North Carolina's law addressing that question is nonetheless preempted by the Act.

The Court's reading of the Act, while plausible, is not compelled by the statutory text or our precedent. It has the unfortunate consequence of denying flexibility to the States—and, by necessary implication, the Secretary of Health and Human Services—in resolving a policy question with broad significance for this complicated program. In short, the result is both unnecessary and unwise. I therefore respectfully dissent.

I

Medicaid is a cooperative federal-state program designed to provide medical assistance to certain needy populations. The basic idea is simple: The statute—as interpreted by the Secretary of HHS—sets out the requirements for an eligible Medicaid program. If States decide to enroll and comply with those requirements, they get federal money. If they don't, they don't. The federal contribution is not enough to fully fund any State's program; States contribute anywhere from 17 to 50 percent of the costs. See 42 U. S. C. § 1396d(b) (2006 ed., Supp. V). The States have considerable discretion in structuring and administering their programs, subject of course to federal law and regulations.

In practice, it's not always so simple. The books are thick with federal regulations that States must interpret and reconcile. By my count, at least 39 federal-court opinions, including one of our own, have reiterated Judge Friendly's observation that Medicaid law is "almost unintelligible to the uninitiated." See *Schweiker* v. *Gray Panthers*, 453 U. S. 34, 43 (1981) (quoting *Friedman* v. *Berger*, 547 F. 2d 724, 727, n. 7 (CA2 1976)); see also 453 U. S., at 43, n. 14 (quoting the District Court's description of Medicaid in *Friedman* as "an aggravated assault on the English language, resistant to attempts to understand it"). "Perhaps appreciating the complexity of what it had wrought, Congress conferred on the Secretary exceptionally broad authority to prescribe standards for applying certain sections of the Act." *Schweiker*, *supra*, at 43. But where the law and the Secretary are silent on a specific question, it is up to the States—sometimes informally advised by the federal Centers for Medicare & Medicaid Services—to make sense of it all in running their programs.

The relevant provisions here require that North Carolina (1) pay for certain people's medical care, (2) make reasonable efforts to recoup from liable third parties (such as tortfeasors and insurers) any medical expenses it paid, and (3) not recoup such payments by imposing a lien on the beneficiary's property. See *ante*, at 633; see also 42 U. S. C. § 1396a(a)(25)(B) (2006 ed.). To comply, North Carolina pays for a beneficiary's medical expenses on the condition that any such expenses the beneficiary recovers from third parties will go toward repaying the State. See N. C. Gen. Stat. Ann. § 108A–59(a) (Lexis 2011).

The difficulty, however, is that tort victims seldom seek only medical expenses. Take this case: E. M. A. and her parents sought damages not only for medical expenses, but for lost income, pain and suffering, and other things, and ended up settling all these claims for a lump sum of $2.8 million. Such a situation poses the question of how much

North Carolina can recoup—indeed, under federal law, *must* recoup—from a lump sum that reflects more than just medical expenses.

This puts North Carolina in a tight spot. If it fails to recover what it must, it violates federal law. If it takes a beneficiary's property beyond medical expenses, it violates federal law. Trying to navigate between these competing requirements—with no interpretive guidance from the Secretary of HHS—North Carolina elected to resolve the problem by laying out ground rules in advance, conditioning a beneficiary's right to recover from third parties on the beneficiary's willingness to fully repay the State, or, at a minimum, define one-third of her damages as "medical expenses," whichever is less. N. C. Gen. Stat. Ann. §§ 108A–59(a), 108A–57(a); see also *Andrews* v. *Haygood*, 362 N. C. 599, 603–604, 669 S. E. 2d 310, 313–314 (2008).

II

The Court states that "[t]he problem" with North Carolina's designation—actual expenses or one-third of the recovery, whichever is less—"is not that it is an unreasonable approximation in all cases," and acknowledges that "[i]n some cases, it may well be a fair estimate." *Ante*, at 637. According to the Court, however, because North Carolina's law provides no "mechanism for determining whether it is a reasonable approximation in any *particular* case," *ibid.* (emphasis added), it "directly conflict[s]" with the "clear mandate" of the federal Medicaid statute, and is therefore preempted, *ante*, at 636 (quoting *PLIVA, Inc.* v. *Mensing*, 564 U. S. 604, 617 (2011); internal quotation marks omitted), 639. This reflects a basic policy judgment: that segregating medical expenses from a lump-sum recovery must be done on a case-specific, after-the-fact basis, rather than pursuant to a general rule spelled out in advance.

The problem is that the Court can point to no statutory or regulatory requirement, much less an unambiguous one,

requiring such an approach. The federal statute, which provides that States must recoup medical expenses owed by third parties, and which prevents States from placing a lien on a beneficiary's property, says nothing about how to comply with these two requirements in the event of a settlement. See *ante*, at 644 (BREYER, J., concurring) ("The statute is silent on the question").

Nor does our case law. As the Court acknowledges, our decision in *Arkansas Dept. of Health and Human Servs.* v. *Ahlborn*, 547 U. S. 268 (2006), was an easy one. There, the underlying tort suit settled for $550,000, and the Medicaid beneficiary and the State of Arkansas stipulated that only $35,581.47 of the settlement represented medical expenses. The State nonetheless claimed it "was entitled to a lien in the amount of $215,645.30"—*i. e.*, the total amount paid by the State for the beneficiary's health care. *Id.*, at 274. The question was whether the State could demand this money in light of its stipulation that only $35,581.47 reflected medical expenses. The answer, of course, was no. The State is only entitled to recover medical expenses; nothing else. So when Arkansas contended that it was entitled to money the beneficiary had received for something other than medical expenses, we had no trouble rejecting that argument. That proposition—that States may not take money that is unrelated to medical expenses—does not help answer the question here: May a State condition Medicaid benefits on a beneficiary agreeing to define one-third of a tort recovery as reflecting "medical expenses?"

The Court recognizes that *Ahlborn* "had no occasion to resolve" the question "how to determine what portion of a settlement represents payment for medical care," *ante*, at 634, but then promptly proceeds as if *Ahlborn* had done just that. The Court quotes *Ahlborn* for the proposition that a State may not claim any portion of a tort recovery "not 'designated as payments for medical care,' " and then faults North Carolina's law because it "sets forth no process for determining

what portion" is "attributable to medical expenses." *Ante*, at 635 (quoting 547 U. S., at 284), 636. *Ahlborn* spoke of "designated" amounts because, as noted, there was a stipulated designation in that case. What to do when there is no such stipulation—when it's not clear "what portion of a settlement represents payment for medical care"—is a different question. The Court assumes the answer must be the same: that the settlement must be parsed in every case, so that there is an actual, after-the-fact designation in every case. If the parties do not agree on one, as they did in *Ahlborn*, there must be a process in place for reaching a case-specific attribution.

The nature of the "process" contemplated by the majority is unclear, but it must involve an effort to determine what claims would have succeeded had there been a trial, what the damages would have been for the separate claims, and so on—the very sort of inquiries settlement is intended to obviate. The Court talks of addressing these concerns through "rebuttable presumptions and adjusted burdens of proof to ensure that speculative assessments of a plaintiff's likely recovery do not defeat the State's right to recover medical costs," but ominously declines to give any assurance "that these rules are necessarily compliant with the federal statute." *Ante*, at 641.

Nothing in *Ahlborn* requires all this, and North Carolina has taken a different approach. It has adjusted its tort law to account for its obligations under federal Medicaid law by requiring that beneficiaries pay the State back in full or designate one-third of any recovery as "medical expenses," whichever is less. This approach allows beneficiaries to obtain settlements, "meet[s] concerns about settlement manipulation," *Ahlborn*, *supra*, at 288, n. 18, complies with the statutory obligation that States make reasonable efforts to recover medical expenses from liable third parties, and guarantees that the beneficiary will never have to give back more than she has already received from the State.

There's nothing unusual about such an approach. States define the contours of their own tort law all the time, setting rules about who may recover in particular circumstances, what claims may be alleged, which parties are liable, what defenses may be asserted, what damages are recoverable, and so on. Doing so does not amount to imposing a lien on any property to which an individual has a vested right under state tort law. The Court says North Carolina cannot rely on its "traditional authority to regulate tort actions" because its rule in this case is not an exercise of its "general authority." *Ante*, at 639–640. The Court cites no support for this vague new limitation on a State's power to define tort remedies under state law, and I am aware of none.

In fact, federal law says nothing about how States must define the recovery available to a Medicaid beneficiary suing a third party. That silence is a good indication that Congress did not mean to strip States of their traditional authority to regulate torts. See *Wyeth* v. *Levine*, 555 U. S. 555, 565 (2009) ("[I]n all pre-emption cases, and particularly in those in which Congress has legislated in a field which the States have traditionally occupied, we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress" (internal quotation marks and ellipses omitted)). The closest the Medicaid Act gets to this topic is its requirement that States have "in effect laws under which . . . the State is considered to have acquired the rights of such individual to payment by any other party for such health care items or services." 42 U. S. C. § 1396a(a)(25)(H). That Congress has said nothing else about what recovery a State must allow, though clearly aware of the traditional power of States to regulate recoveries under private law, should be worth something. Cf. *Bonito Boats, Inc.* v. *Thunder Craft Boats, Inc.*, 489 U. S. 141, 166–167 (1989) ("The case for federal pre-emption is particularly weak where Congress has indicated its awareness of

the operation of state law in a field of federal interest, and has nonetheless decided to stand by both concepts and to tolerate whatever tension there [is] between them" (internal quotation marks omitted)).

The majority nonetheless dismisses North Carolina's solution as an arbitrary "one-size-fits-all" approach, *ante*, at 639, that has no "logical" endpoint; one that, if accepted, could permit States to "designate half, three-quarters, or all of a tort recovery in the same way," *ante*, at 637. This is an age-old objection to any line drawing, to which Justice Holmes provided a familiar response: "Neither are we troubled by the question where to draw the line. That is the question in pretty much everything worth arguing in the law." *Irwin* v. *Gavit*, 268 U. S. 161, 168 (1925). Whatever the case "as a doctrinal matter," it is *in fact* "easier to defend North Carolina's" one-third designation than the Court's hypothetical where a State allocates all of a recovery to medical expenses. *Ante*, at 637. In addition, the majority's hobgoblin is less frightening when we remember that North Carolina never takes back more than what it paid for such expenses.

The reasons for drawing a bright line, as North Carolina has, are obvious and familiar. See generally Scalia, The Rule of Law as a Law of Rules, 56 U. Chi. L. Rev. 1175 (1989). Bright lines provide clear notice; here that means beneficiaries know exactly where they stand with respect to reimbursing the State as they negotiate settlements with third parties. Such clear rules are easy, cheap, and administrable—laudable qualities in the context of a vast and intricate program. The Court's approach, on the other end, requires the time of lawyers and judges, and that time costs money—money better spent on providing health care to the needy. Or so the State, responsible for administering its program, could conclude, and nothing in the statute, regulations, or our precedent says otherwise.

The majority points out that nearly one-third of the States conduct hearings of the sort it contemplates. *Ante*, at 641.

Good for them. The whole point of our federal system is that different States may reach different judgments about how to run their own different programs. Such flexibility is particularly important in this context, where Medicaid spending is the largest component of most state budgets. The Court also notes that, in other areas, courts have undertaken the work of "separat[ing] lump-sum settlements or jury awards into categories to satisfy different claims." *Ante*, at 642. My point is not that the work required by the Court cannot be done—just that it has not been required by Congress or the Secretary.

On that note, it's bad enough that the Court finds the State's reasonable effort to reconcile its competing obligations preempted. What is doubly unfortunate is that the Court's analysis necessarily implies that the Secretary's hands are also tied. The Medicaid Act is Spending Clause legislation, and such legislation is binding on States only insofar as it is "unambiguous." See *Pennhurst State School and Hospital* v. *Halderman*, 451 U. S. 1, 17 (1981). In addition, the anti-lien provision only precludes North Carolina's law if, as the Court acknowledges, there is a direct conflict between the two. *Ante*, at 636 (quoting *PLIVA, Inc.*, 564 U. S., at 617). The Court says—wrongly, I believe—that there is. *Ante*, at 639 ("An irrebuttable, one-size-fits-all statutory presumption is incompatible with the Medicaid Act's *clear mandate* that a State may not demand any portion of a beneficiary's tort recovery except the share that is attributable to medical expenses" (emphasis added)). But if North Carolina's approach directly conflicts with an unambiguous, clear mandate in the Act—such that any presumption against preemption is overcome, see *Wyeth, supra*, at 565, n. 3—it is hard to see how the Secretary could adopt a similar approach. See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–843 (1984) ("If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency,

must give effect to the unambiguously expressed intent of Congress").

The concurrence wishes this were not so, see *ante*, at 646 ("today's decision does not freeze the Court's present interpretation of the statute permanently into law"), but fails to acknowledge the express rationale of the Court's opinion. There is no other way to read the majority opinion than as foreclosing what the concurrence would like to leave open.

Or is there? In exactly two sentences, the Court seems to falter and lose the courage of its conviction that a State must have a process in place for an individual allocation of medical expenses in every case. The Court views the problem with North Carolina's law as being that "the State provides no evidence to substantiate its claim that the one-third allocation is reasonable in the mine run of cases." *Ante*, at 637. That thought does not resurface until six pages later—and only then—when the Court says that States "may even be able to adopt *ex ante* administrative criteria for allocating medical and nonmedical expenses, provided that these criteria are backed by evidence suggesting that they are likely to yield reasonable results in the mine run of cases." *Ante*, at 643.

I am not sure whether this is a concession that individualized hearings may not be required after all, but if it is, it is flatly contrary to the rest of the opinion. It is also quite odd to suggest that the problem with North Carolina's law would go away if only the State provided some sort of study substantiating the idea that one-third was a good approximation in most cases. North Carolina is not a federal agency, whose actions are subject to review under the Administrative Procedure Act's "substantial evidence" test. See 5 U. S. C. § 706(2)(E). We have never before, in a preemption case, put the burden on the State to compile an evidentiary record supporting its legislative determination. The burden is, of course, on those challenging the law. See *Pharmaceutical Research and Mfrs. of America* v. *Walsh*, 538 U. S. 644,

661–662 (2003) (plurality opinion) ("We start . . . with a presumption that the state statute is valid, and ask whether petitioner has shouldered the burden of overcoming that presumption" (citation omitted)). We have said that, as a general matter, "Congress is not obligated, when enacting its statutes, to make a record of the type that an administrative agency or court does to accommodate judicial review." *Turner Broadcasting System, Inc.* v. *FCC*, 520 U. S. 180, 213 (1997) (internal quotation marks omitted). Sovereign States should be accorded no less deference.

Keep in mind that the basis for all this is a federal law that prohibits liens for medical assistance, but says *nothing* about how medical and nonmedical expenses are to be allocated. It is hard enough to figure out what the Medicaid Act means by what it *says*; we should not read so much into its silence.

Ultimately, it is a basic policy judgment whether the Medicaid program is best served in this instance by *post hoc* individualized determinations, or whether the issue may be addressed in advance, through a general rule, as North Carolina has done here. See *ante*, at 644 (BREYER, J., concurring) ("any of several different answers to the question would seem reasonable"). The Court can point to nothing that delegates to it the prerogative to make that judgment. Rather, States and the Secretary—working together—should be afforded the leeway to make their joint venture a workable one.

Because North Carolina's law does not conflict with federal law, I would let it be. I respectfully dissent.

Reporter's Note

The next page is purposely numbered 801. The numbers between 656 and 801 were intentionally omitted, in order to make it possible to publish the orders with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

ORDERS FOR OCTOBER 1, 2012, THROUGH
MARCH 25, 2013

OCTOBER 1, 2012

Affirmed for Absence of Quorum

No. 11–1491. SIBLEY *v.* SUPREME COURT OF THE UNITED STATES ET AL. C. A. D. C. Cir. Because the Court lacks a quorum, 28 U. S. C. § 1, and since the only qualified Justice is of the opinion that the case cannot be heard and determined at the next Term of the Court, the judgment is affirmed under 28 U. S. C. § 2109, which provides that under these circumstances "the court shall enter its order affirming the judgment of the court from which the case was brought for review with the same effect as upon affirmance by an equally divided court." THE CHIEF JUSTICE, JUSTICE SCALIA, JUSTICE KENNEDY, JUSTICE THOMAS, JUSTICE GINSBURG, JUSTICE BREYER, JUSTICE ALITO and JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

Affirmed on Appeal

No. 11–1127. RADOGNO, MINORITY LEADER, ILLINOIS SENATE, ET AL. *v.* ILLINOIS STATE BOARD OF ELECTIONS ET AL. Affirmed on appeal from D. C. N. D. Ill. Reported below: 836 F. Supp. 2d 759.

No. 11–1404. BACKUS ET AL. *v.* SOUTH CAROLINA ET AL. Affirmed on appeal from D. C. S. C. Reported below: 857 F. Supp. 2d 553.

Certiorari Granted—Vacated and Remanded

No. 11–1411. GIOVANNIELLO *v.* ALM MEDIA, LLC. C. A. 2d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Mims* v. *Arrow Financial Services, LLC*, 565 U. S. 368 (2012). Reported below: 660 F. 3d 587.

No. 11–1458. CAMPBELL *v.* UNITED STATES. C. A. 7th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Dorsey* v. *United States*, 567 U. S. 260 (2012). Reported below: 659 F. 3d 607.

No. 11–9106. MUNOZ *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Reported below: 461 Mass. 126, 958 N. E. 2d 1167; and

No. 11–10599. SHANTON *v.* UNITED STATES. C. A. 4th Cir. Reported below: 462 Fed. Appx. 297. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Williams* v. *Illinois*, 567 U. S. 50 (2012).

No. 11–9302. RICHARDSON *v.* VARANO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Martinez* v. *Ryan*, 566 U. S. 1 (2012).

No. 11–9800. WILSON *v.* TEXAS. Ct. App. Tex., 14th Dist. Reported below: 348 S. W. 3d 32; and

No. 11–10616. BEAR CLOUD *v.* WYOMING. Sup. Ct. Wyo. Reported below: 2012 WY 16, 275 P. 3d 377. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Miller* v. *Alabama*, 567 U. S. 460 (2012).

No. 11–10003. GIBSON *v.* UNITED STATES. C. A. 4th Cir. Reported below: 453 Fed. Appx. 295;

No. 11–10400. GRAY *v.* UNITED STATES. C. A. 5th Cir. Reported below: 669 F. 3d 556;

No. 11–10442. NEAL *v.* UNITED STATES. C. A. 5th Cir. Reported below: 464 Fed. Appx. 244;

No. 11–10521. SUMLIN *v.* UNITED STATES. C. A. 8th Cir. Reported below: 453 Fed. Appx. 668;

No. 11–10810. HICKS *v.* UNITED STATES. C. A. 5th Cir. Reported below: 464 Fed. Appx. 347;

No. 12–5011. COLEMAN *v.* UNITED STATES. C. A. 5th Cir. Reported below: 464 Fed. Appx. 424;

No. 12–5197. FIELDS *v.* UNITED STATES. C. A. 5th Cir. Reported below: 476 Fed. Appx. 12;

No. 12–5281. PETTIS *v.* UNITED STATES. C. A. 5th Cir. Reported below: 467 Fed. Appx. 269;

No. 12–5285. SHOUMAKER *v.* UNITED STATES. C. A. 5th Cir. Reported below: 467 Fed. Appx. 269;

No. 12–5290. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Reported below: 466 Fed. Appx. 386;

No. 12–5291. BURNETT *v.* UNITED STATES. C. A. 5th Cir. Reported below: 466 Fed. Appx. 381;

No. 12–5346. BURNS *v.* UNITED STATES. C. A. 5th Cir. Reported below: 467 Fed. Appx. 265;

No. 12–5562. MORRIS *v.* UNITED STATES. C. A. 6th Cir.; and

No. 12–5713. EDMONDS *v.* UNITED STATES. C. A. 4th Cir. Reported below: 679 F. 3d 169. Motions of petitioners for leave to proceed *in forma pauperis* granted. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Dorsey* v. *United States*, 567 U. S. 260 (2012).

No. 11–10377. ZORN *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 *Setser* v. *United States*, 566 U. S. 231 (2012). Reported below: 461 Fed. Appx. 493.

Certiorari Dismissed

No. 11–10099. SNELLING *v.* PAWLOSKI ET AL. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 11–10320. LAWHORN *v.* WRIGHT BROS. PROPERTIES. Sup. Ct. Va. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 11–10338. WALKER *v.* OCHOA, WARDEN. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 11–10384. HAMM *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 448 Fed. Appx. 76.

No. 11–10473. BOOK *v.* CONNECTICUT RESOURCES RECOVERY AUTHORITY ET AL. C. A. 2d Cir. Motion of petitioner for leave

to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 11–10555. JONES *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. 11–10585. KEELING *v.* DAMITER ET AL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 452 Fed. Appx. 233.

No. 11–10722. JOHNSON *v.* CATE, 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. Reported below: 449 Fed. Appx. 613.

No. 11–10833. LARSON *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. 11–10882. PATTERSON *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. 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: 469 Fed. Appx. 273.

No. 11–10931. LAWRENCE *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. Sup. Ct. Mo. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 11–10955. BOOK *v.* BYSIEWICZ ET AL. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 11–10960. THOMAS *v.* OKLAHOMA. Ct. Civ. App. Okla. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 11–10984. FLEMMING *v.* FRIED, FRANK, HARRIS, SHRIVER & JACOBSON, L. L. P., ET AL. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 11–11003. FIGURA TORREFRANCA *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 453 Fed. Appx. 704.

No. 11–11010. COOK *v.* GIPSON, ACTING WARDEN. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 11–11023. FLEMMING *v.* NEW YORK ET AL. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 11–11029. FAVORS *v.* CURLING 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. 12–5021. COOK *v.* GIPSON, ACTING WARDEN. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 12–5052. MCDONALD *v.* ATCHISON, WARDEN. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 12–5131. TUCKER *v.* COSTELLO. Super. Ct. N. J., App. Div. Motion of petitioner for leave to proceed *in forma pauperis*

denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 12–5165. LAWHORN *v.* AYERS ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 12–5211. WOLTZ *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 474 Fed. Appx. 104.

No. 12–5399. JOHNSON *v.* PENNSYLVANIA. Super. Ct. Pa. 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: 40 A. 3d 182.

No. 12–5419. JONES *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. Reported below: 91 So. 3d 132.

No. 12–5499. THOMAS *v.* PARKER ET AL. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 12–5864. SINGLETON *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 12–5884. HOLLIS-ARRINGTON *v.* CENDANT MORTGAGE CORP. ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 465 Fed. Appx. 675.

No. 12–5896. QUARTERMAN *v.* CULLUM. Ct. App. Ga. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 311 Ga. App. 800, 717 S. E. 2d 267.

No. 12–5946. BATES *v.* LOCKETT, WARDEN. C. A. 7th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

Miscellaneous Orders

No. D–2478. IN RE DISBARMENT OF GOLDEN, 562 U. S. 1197. Motion for reconsideration of disbarment denied.

No. D–2673. IN RE DISBARMENT OF REED. Disbarment entered. [For earlier order herein, see 566 U. S. 972.]

No. D–2684. IN RE DISBARMENT OF GARGANO. Disbarment entered. [For earlier order herein, see 567 U. S. 955.]

No. 12M1. STINCHFIELD *v.* CORTEZ MASTO, ATTORNEY GENERAL OF NEVADA, ET AL.;
No. 12M2. CASTLE *v.* SPEESE ET AL.;
No. 12M3. MYERS *v.* BMO HARRIS BANK N. A. ET AL.;
No. 12M4. FORD *v.* MCKESSON;
No. 12M5. TSHIWALA *v.* HERSHBERGER, WARDEN, ET AL.;
No. 12M8. MAXWELL *v.* LOUISIANA;
No. 12M12. BLOCKER *v.* KELLEY;
No. 12M13. VANN *v.* BRITISH PETROLEUM OIL CO. ET AL.;
No. 12M14. WOOLMAN *v.* LANCASTER COUNTY CORRECTIONS;
No. 12M15. SMITH *v.* ELINSKY;
No. 12M16. TABB *v.* BANKS;
No. 12M17. FLOYD *v.* STATE OF NEW YORK DIVISION OF HUMAN RIGHTS;
No. 12M18. JORDAN *v.* TENNESSEE;
No. 12M19. SKALAFURIS *v.* CITY OF NEW YORK, NEW YORK, DEPARTMENT OF CORRECTIONS;

No. 12M21. CAROON *v.* ROY, COMMISSIONER, MINNESOTA DEPARTMENT OF CORRECTIONS;

No. 12M22. SMITH *v.* ENTREPRENEUR MEDIA, INC.;

No. 12M23. COOPER *v.* SNIEZEK ET AL.;

No. 12M24. CROOK *v.* TEXAS;

No. 12M25. GOFORTH *v.* LAPPIN, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL.;

No. 12M26. YOUNG *v.* ZAPPOS.COM, INC., ET AL.; and

No. 12M27. GREEN *v.* BLEDSOE, WARDEN. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 12M6. HUGUELEY *v.* TENNESSEE. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted.

No. 12M7. FORNEY *v.* FLORIDA. Motion for leave to proceed as a veteran denied.

No. 12M9. TAYLOR *v.* NEGLEY PARK HOMEOWNERS ASSOCIATION COUNCIL ET AL.;

No. 12M10. NIYAZ *v.* BANK OF AMERICA ET AL.; and

No. 12M11. TEXADA *v.* CAIN, WARDEN. Motions to direct the Clerk to file petitions for writs of certiorari out of time under this Court's Rule 14.5 denied.

No. 12M20. BAEZ *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 12M28. C. F. *v.* WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES ET AL. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal granted.

No. 65, Orig. TEXAS *v.* NEW MEXICO. Motion of the River Master for fees and reimbursement of expenses granted, and the River Master is awarded a total of $6,888.59 for the period July 1, 2011, through June 30, 2012, to be paid equally by the parties. [For earlier order herein, see, *e. g.*, 565 U. S. 809.]

No. 11–438. LIBERTY UNIVERSITY ET AL. *v.* GEITHNER, SECRETARY OF THE TREASURY, ET AL., 567 U. S. 951. Respondents are requested to file a response to petition for rehearing within 30 days.

No. 11–864. Comcast Corp. et al. *v.* Behrend et al. C. A. 3d Cir. [Certiorari granted, 567 U. S. 933.] Motion of petitioners to file volumes four and five of the joint appendix under seal granted.

No. 11–1485. Young, Personal Representative of the Estate of Young *v.* Fitzpatrick et al. Ct. App. Wash.;

No. 12–9. Arzoumanian et al. *v.* Munchener Ruckversicherungs-Gesellschaft Aktiengesellschaft AG. C. A. 9th Cir.;

No. 12–79. Chadbourne & Parke LLP *v.* Troice et al. C. A. 5th Cir.;

No. 12–86. Willis of Colorado Inc. et al. *v.* Troice et al. C. A. 5th Cir.; and

No. 12–88. Proskauer Rose LLP *v.* Troice et al. C. A. 5th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 11–8932. In re Richards. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [566 U. S. 961] denied.

No. 11–9137. Johnson *v.* Securities and Exchange Commission. C. A. 11th Cir.;

No. 11–9999. Reardon *v.* Reardon et al. C. A. 3d Cir.;

No. 11–10017. In re Fields et al.;

No. 11–10201. Lynn *v.* Lynn. Ct. App. Cal., 2d App. Dist.;

No. 11–10220. Bailey et ux. *v.* Suhar. C. A. 6th Cir.;

No. 11–10314. Siegel *v.* Fox & Spillane, LLP, et al. Ct. App. Cal., 2d App. Dist.;

No. 11–10404. Harrington *v.* Gibson. App. Ct. Mass.;

No. 11–10573. Paul *v.* United States District Court for the District of New Jersey. C. A. 3d Cir.;

No. 11–10604. Nestor *v.* United States. C. A. 3d Cir.;

No. 11–10628. Daniel *v.* Office of Personnel Management. C. A. Fed. Cir.;

No. 11–10715. Kerns *v.* Board of Commissioners of Bernalillo County, New Mexico, et al. C. A. 10th Cir.;

No. 11–10831. In re Parker;

No. 11–10848. Iorio *v.* United States. C. A. 2d Cir.;

No. 11–10899. Jackson *v.* Booker et al. C. A. 3d Cir.;

No. 11–10975. Griffin *v.* Shinseki, Secretary of Veterans Affairs. C. A. Fed. Cir.;

No. 11–11079. LINEAR *v.* VICKERSON ET AL. Ct. App. Mich.;
No. 11–11084. TORMENIA *v.* CONTURSI ET AL. Dist. Ct. App. Fla., 2d Dist.;
No. 12–5003. PAUL *v.* AMERICOLD LOGISTICS, LLC. C. A. 11th Cir.;
No. 12–5027. O'BAY *v.* UNITED STATES. C. A. 9th Cir.;
No. 12–5033. KELLEY *v.* UNITED STATES. C. A. 11th Cir.;
No. 12–5036. KELLEY *v.* UNITED STATES. C. A. 11th Cir.;
No. 12–5139. PEARSON *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. Fed. Cir.;
No. 12–5140. MONTGOMERY *v.* CALIFORNIA WORKER'S COMPENSATION APPEALS BOARD. C. A. 9th Cir.;
No. 12–5247. SANDERS *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 8th Cir.;
No. 12–5263. MARLOWE *v.* FABIAN ET AL. C. A. 8th Cir.;
No. 12–5333. CLAY *v.* UNITED STATES. C. A. 11th Cir.;
No. 12–5341. CLEMENTS *v.* ALABAMA STATE BAR. Sup. Ct. Ala.;
No. 12–5375. CORNICK *v.* BYONG YU. C. A. 9th Cir.;
No. 12–5388. SANGSTER *v.* SAN BERNARDINO COUNTY SHERIFF'S DEPARTMENT. Ct. App. Cal., 4th App. Dist., Div. 2;
No. 12–5412. HARRIS *v.* QCA HEALTH PLAN, INC. C. A. 8th Cir.;
No. 12–5443. HANSON ET UX. *v.* CHANG, JUDGE, FIRST CIRCUIT COURT OF HAWAII, ET AL. Sup. Ct. Haw.;
No. 12–5453. IN RE PRICE;
No. 12–5473. IN RE HANSON ET UX.;
No. 12–5689. GLADDEN *v.* BRYSON, SECRETARY OF COMMERCE. C. A. 4th Cir.;
No. 12–5690. GLADDEN *v.* VILSACK, SECRETARY OF AGRICULTURE. C. A. 3d Cir.;
No. 12–5708. CELIO *v.* UNITED STATES. C. A. 10th Cir.; and
No. 12–5817. COOPER *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until October 22, 2012, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 11–9307. HENDERSON *v.* UNITED STATES. C. A. 5th Cir. [Certiorari granted, 567 U. S. 934.] Motion of petitioner for ap-

pointment of counsel granted. Patricia A. Gilley, Esq., of Shreveport, La., is appointed to serve as counsel for petitioner.

No. 11–9394. SCARBOROUGH *v.* CHASE HOME FINANCE, LLC. Super. Ct. Pa. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [566 U. S. 1008] denied. JUSTICE ALITO took no part in the consideration or decision of this motion.

No. 11–9459. OPONG-MENSAH *v.* WORKERS' COMPENSATION APPEALS BOARD ET AL. Ct. App. Cal., 1st App. Dist. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [566 U. S. 1019] denied.

No. 11–9696. LEWELLYN ET VIR, ON BEHALF OF J. L. ET AL. *v.* SARASOTA COUNTY SCHOOL BOARD. C. A. 11th Cir. Motion of petitioners for reconsideration of order denying leave to proceed *in forma pauperis* [567 U. S. 904] denied.

No. 11–10630. DURONIO *v.* UNITED STATES. C. A. 3d Cir.; and No. 11–10768. DURONIO *v.* WERLINGER, WARDEN. C. A. 3d Cir. Motions of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until October 22, 2012, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court. JUSTICE KAGAN took no part in the consideration or decision of these motions.

No. 11–10801. IN RE NORMAN;
No. 11–10889. IN RE SCOTT;
No. 11–10924. IN RE SPILLMAN;
No. 11–10930. IN RE RENEAU;
No. 11–10933. IN RE EASTLAND;
No. 11–10995. IN RE HICKINGBOTTOM;
No. 11–11054. IN RE GREYER;
No. 11–11062. IN RE KIM;
No. 12–204. IN RE VADDE;
No. 12–5063. IN RE ORTIZ;
No. 12–5104. IN RE STERLING;
No. 12–5132. IN RE WILLIAMS;
No. 12–5425. IN RE EVANS;
No. 12–5564. IN RE ESSEX;
No. 12–5566. IN RE DIXON;

No. 12–5717. IN RE ABRAHAM;
No. 12–5719. IN RE BUCHANAN;
No. 12–5725. IN RE SMITHBACK;
No. 12–5954. IN RE BATTEN; and
No. 12–6050. IN RE WRIGHT. Petitions for writs of habeas corpus denied.

No. 11–10824. IN RE ALLEN. Petition for writ of habeas corpus denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–10860. IN RE DANIELS; and
No. 12–5053. IN RE SHOVE. 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. 11–1348. IN RE DEL RIO;
No. 11–9406. IN RE WRIGHT;
No. 11–10407. IN RE HAWK;
No. 11–10571. IN RE POYDRAS;
No. 11–10595. IN RE TOWNSEL;
No. 11–10611. IN RE GALLOWAY;
No. 11–10775. IN RE REYNOLDS;
No. 11–10814. IN RE SHELTON;
No. 11–10858. IN RE DAVIDSON;
No. 11–10913. IN RE JOHNSON;
No. 11–10947. IN RE CROSBY;
No. 11–11027. IN RE GOODWIN;
No. 12–84. IN RE EVANS;
No. 12–5118. IN RE WASHINGTON;
No. 12–5145. IN RE PHILLIPS;
No. 12–5150. IN RE BURKS;
No. 12–5170. IN RE NORIEGA-PEREZ;
No. 12–5360. IN RE HAYNES;
No. 12–5387. IN RE QUILLAR;
No. 12–5454. IN RE GUSTAFSON;
No. 12–5481. IN RE BELL; and
No. 12–5925. IN RE KELLEY. Petitions for writs of mandamus denied.

No. 12–5424. IN RE ESTRADA. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of mandamus dismissed. See this Court's Rule 39.8.

No. 11–10161. In re Davis;

No. 11–10706. In re Stouffer; and

No. 12–5368. In re Hawk. Petitions for writs of mandamus and/or prohibition denied.

No. 11–10053. In re Owen. Petition for writ of prohibition denied.

No. 11–10170. In re Del Rio. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of prohibition 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. 11–994. Missouri Association of Club Executives et al. *v.* Koster, Attorney General of Missouri. Sup. Ct. Mo. Certiorari denied. Reported below: 354 S. W. 3d 187.

No. 11–1047. Strong *v.* Community State Bank et al. C. A. 11th Cir. Certiorari denied. Reported below: 651 F. 3d 1241.

No. 11–1080. Mangone *v.* Wong. C. A. 2d Cir. Certiorari denied. Reported below: 450 Fed. Appx. 27.

No. 11–1170. Amlong & Amlong, P. A., et al. *v.* Denny's, Inc., et al. C. A. 11th Cir. Certiorari denied. Reported below: 628 F. 3d 1270.

No. 11–1187. Bosamia et al. *v.* Commissioner of Internal Revenue. C. A. 5th Cir. Certiorari denied. Reported below: 661 F. 3d 250.

No. 11–1188. Rossum *v.* Patrick, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 659 F. 3d 722.

No. 11–1197. Hadden *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 661 F. 3d 298.

No. 11–1204. U. S. Bank N. A. *v.* Aguayo. C. A. 9th Cir. Certiorari denied. Reported below: 653 F. 3d 912.

No. 11–1218. Heck-Dance *v.* Inversiones Isleta Marina, Inc., et al. C. A. 1st Cir. Certiorari denied.

No. 11–1226. Garcia-Torres *v.* Holder, Attorney General. C. A. 8th Cir. Certiorari denied. Reported below: 660 F. 3d 333.

No. 11–1250. FindWhat.com et al. *v.* FindWhat Investor Group. C. A. 11th Cir. Certiorari denied. Reported below: 658 F. 3d 1282.

No. 11–1254. Young *v.* California ex rel. Parker, City Attorney, City of Oakland, California. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 11–1256. Van Staden *v.* St. Martin. C. A. 5th Cir. Certiorari denied. Reported below: 644 F. 3d 56.

No. 11–1263. Washington State Democratic Central Committee *v.* Washington State Grange et al.; and

No. 11–1266. Libertarian Party of Washington State et al. *v.* Washington State Grange et al. C. A. 9th Cir. Certiorari denied. Reported below: 676 F. 3d 784.

No. 11–1275. SigmaPharm, Inc. *v.* Mutual Pharmaceutical Co., Inc., et al. C. A. 3d Cir. Certiorari denied. Reported below: 454 Fed. Appx. 64.

No. 11–1281. Forest Preserve District of Du Page County, Illinois *v.* First National Bank of Franklin Park et al. Sup. Ct. Ill. Certiorari denied. Reported below: 2011 IL 110759, 961 N. E. 2d 775.

No. 11–1284. Dintelman et al. *v.* Chicot County Memorial Hospital et al. C. A. 8th Cir. Certiorari denied.

No. 11–1286. Harvard *v.* Northeast Illinois Regional Commuter Railroad Corp., dba Metra. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2011 IL App (1st) 103033–U.

No. 11–1287. Jackson *v.* International Fiber Corp. C. A. 6th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 275.

No. 11–1288. STEELE ET AL. *v.* GREEN TREE SERVICING, LLC, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 453 Fed. Appx. 473.

No. 11–1289. DAEWOO ELECTRONICS AMERICA, INC. *v.* T. C. L. INDUSTRIES (H. K.) HOLDINGS LTD. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 456 Fed. Appx. 96.

No. 11–1290. BAKER *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 87 So. 3d 587.

No. 11–1298. SERRANO *v.* ZIEGLER ET AL. C. A. 2d Cir. Certiorari denied.

No. 11–1301. CANTRELL, INDIVIDUALLY AND AS ADMINISTRATOR OF THE ESTATE OF CANTRELL, ET AL. *v.* CITY OF MURPHY, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 666 F. 3d 911.

No. 11–1304. HART *v.* TEXAS; and
No. 11–1312. HART *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied. Reported below: 342 S. W. 3d 659.

No. 11–1305. FLINT *v.* BESHEAR, GOVERNOR OF KENTUCKY. C. A. 6th Cir. Certiorari denied.

No. 11–1306. FULMER *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 460 Fed. Appx. 91.

No. 11–1310. CONTINENTAL INSURANCE CO. *v.* THORPE INSULATION CO. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 671 F. 3d 1011.

No. 11–1313. HOLLAND *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 11–1314. HOLLAND *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 11–1318. ALFORD *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 358 S. W. 3d 647.

No. 11–1319. CONTROLOTRON CORP. *v.* SIEMENS INDUSTRY, INC. C. A. 2d Cir. Certiorari denied. Reported below: 465 Fed. Appx. 8.

No. 11–1320. CALDWELL *v.* OHIO. Ct. App. Ohio, Richland County. Certiorari denied. Reported below: 2011-Ohio-5429.

No. 11–1322. SAMICA ENTERPRISES LLC ET AL. *v.* MAIL BOXES ETC., INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 460 Fed. Appx. 664.

No. 11–1325. VEALE ET AL. *v.* UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT. C. A. 2d Cir. Certiorari denied. Reported below: 667 F. 3d 226.

No. 11–1328. CUNNINGHAM *v.* MCCLUSKEY ET AL. C. A. 2d Cir. Certiorari denied.

No. 11–1329. STRUTTON *v.* MEADE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 668 F. 3d 549.

No. 11–1331. SATTARI *v.* CITIMORTGAGE, INC. C. A. 9th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 627.

No. 11–1332. LORD ABBETT MUNICIPAL INCOME FUND, INC. *v.* STRANGE, ATTORNEY GENERAL OF ALABAMA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 671 F. 3d 1203.

No. 11–1334. COLE ET AL. *v.* HARRIS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 888.

No. 11–1336. HURTGAM *v.* LYNDONVILLE CENTRAL SCHOOL DISTRICT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 446 Fed. Appx. 385.

No. 11–1337. SIOUX HONEY ASSN. ET AL. *v.* UNITED STATES ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 672 F. 3d 1041.

No. 11–1338. WEISSHAUS *v.* FAGAN ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 456 Fed. Appx. 32.

No. 11–1342. WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND *v.* STACY, SURVIVING SPOUSE OF STACY, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 671 F. 3d 378.

No. 11–1344. GABBERT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 642 F. 3d 753.

No. 11–1346. HELLER *v.* EMANUEL. C. A. 2d Cir. Certiorari denied. Reported below: 460 Fed. Appx. 48.

No. 11–1350. Ruiz *v.* Port Authority of New York and New Jersey. Ct. App. N. Y. Certiorari denied. Reported below: 17 N. Y. 3d 428, 957 N. E. 2d 733.

No. 11–1355. 144942 Canada, Inc., dba Kaytel Video Distribution, et al. *v.* Jules Jordan Video, Inc., et al. C. A. 9th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 676.

No. 11–1358. Williams *v.* Booker, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 454 Fed. Appx. 475.

No. 11–1359. Traversa *v.* Educational Credit Management Corp. C. A. 2d Cir. Certiorari denied. Reported below: 444 Fed. Appx. 472.

No. 11–1361. Ketterer *v.* Yellow Transportation, Inc. C. A. 5th Cir. Certiorari denied. Reported below: 670 F. 3d 644.

No. 11–1362. Barrow *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 455 Fed. Appx. 631.

No. 11–1363. Hoyt, Individually and as Administrator of the Estate of Allen, et al. *v.* Cooks et al. C. A. 11th Cir. Certiorari denied. Reported below: 672 F. 3d 972.

No. 11–1365. Bolls *v.* Virginia Board of Bar Examiners. C. A. 4th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 131.

No. 11–1366. AvidAir Helicopter Supply, Inc. *v.* Rolls-Royce Corp. C. A. 8th Cir. Certiorari denied. Reported below: 663 F. 3d 966.

No. 11–1367. Lopez et al. *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 455 Fed. Appx. 427.

No. 11–1368. Summers *v.* Summers. Ct. Civ. App. Ala. Certiorari denied. Reported below: 89 So. 3d 141.

No. 11–1369. Ellis et ux. *v.* Hanson et al. Ct. App. Minn. Certiorari denied.

No. 11–1370. Thompson *v.* City of Danville, Virginia, et al. C. A. 4th Cir. Certiorari denied. Reported below: 457 Fed. Appx. 221.

No. 11–1373. SISSON *v.* ROSENBLUM, ATTORNEY GENERAL OF OREGON. C. A. 9th Cir. Certiorari denied.

No. 11–1374. ACORD, AKA LIVINGSTON, ET AL. *v.* YOUNG AGAIN PRODUCTS, INC. C. A. 4th Cir. Certiorari denied. Reported below: 459 Fed. Appx. 294.

No. 11–1375. ELIZONDO ET UX., INDIVIDUALLY AND AS REPRESENTATIVES OF THE ESTATE OF ELIZONDO *v.* CITY OF GARLAND, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 671 F. 3d 506.

No. 11–1376. FIELD *v.* BOARD OF WATER COMMISSIONERS FOR THE CITY AND COUNTY OF DENVER. C. A. 10th Cir. Certiorari denied. Reported below: 453 Fed. Appx. 811.

No. 11–1379. STUART *v.* WALKER. Ct. App. D. C. Certiorari denied.

No. 11–1382. CRAWFORD ET AL. *v.* BNSF RAILWAY CO. C. A. 8th Cir. Certiorari denied. Reported below: 665 F. 3d 978.

No. 11–1383. DYER *v.* PALMER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–1385. SATTARI *v.* BRITISH AIRWAYS WORLD CARGO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 635.

No. 11–1386. SHEPHERD *v.* HENSON, JUDGE, COURT OF COMMON PLEAS, RICHLAND COUNTY, OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 130 Ohio St. 3d 1490, 2011-Ohio-6556, 958 N. E. 2d 954.

No. 11–1388. INNOVATIVE THERAPIES, INC. *v.* KINETIC CONCEPTS, INC., ET AL. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 328 S. W. 3d 545.

No. 11–1389. TAYLOR ET AL. *v.* STREICHER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 414.

No. 11–1392. LOUISIANA ET AL. *v.* LEONARD. C. A. 5th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 386.

No. 11–1393. PRESBYTERY OF SOUTH LOUISIANA *v.* CARROLLTON PRESBYTERIAN CHURCH OF NEW ORLEANS. Ct. App. La.,

1st Cir. Certiorari denied. Reported below: 2011–0205 (La. App. 1 Cir. 9/14/11), 77 So. 3d 975.

No. 11–1396. GATES *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 11–1398. MILLER *v.* PATRICK HENRY ESTATES HOMEOWNERS ASSN., INC. C. A. 4th Cir. Certiorari denied. Reported below: 462 Fed. Appx. 339.

No. 11–1399. AVENIDA SAN JUAN PARTNERSHIP *v.* CITY OF SAN CLEMENTE, CALIFORNIA, ET AL. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied. Reported below: 201 Cal. App. 4th 1256, 135 Cal. Rptr. 3d 570.

No. 11–1400. JP BUILDERS, INC. *v.* LEEBOVE ET AL. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 11–1401. KHAKSARI *v.* CHAIRMAN, BROADCASTING BOARD OF GOVERNORS. C. A. D. C. Cir. Certiorari denied. Reported below: 451 Fed. Appx. 1.

No. 11–1403. MONTANA SULPHUR & CHEMICAL CO. *v.* ENVIRONMENTAL PROTECTION AGENCY. C. A. 9th Cir. Certiorari denied. Reported below: 666 F. 3d 1174.

No. 11–1405. ARLOTTA *v.* JOHNSON, INDIVIDUALLY AND ON BEHALF OF YOUNGS. Ct. App. Minn. Certiorari denied.

No. 11–1406. HEERSCHAP *v.* HEERSCHAP. Sup. Ct. Va. Certiorari denied.

No. 11–1408. RUDY *v.* KAPPOS, UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR, PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 463 Fed. Appx. 939.

No. 11–1410. DHILLON *v.* ZIONS FIRST NATIONAL BANK ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 462 Fed. Appx. 880.

No. 11–1412. GAYNOR *v.* TAYLOR, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 211.

No. 11–1413. CORBETT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 458 Fed. Appx. 866.

No. 11–1415. CULVER *v.* CCL LABEL, INC. C. A. 6th Cir. Certiorari denied. Reported below: 455 Fed. Appx. 625.

No. 11–1416. ATA AIRLINES, INC. *v.* FEDERAL EXPRESS CORP. C. A. 7th Cir. Certiorari denied. Reported below: 665 F. 3d 882.

No. 11–1417. JACKSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–1419. SHAW COASTAL, INC. *v.* CHERRY. C. A. 5th Cir. Certiorari denied. Reported below: 668 F. 3d 182.

No. 11–1420. SALMON *v.* SOCIAL SECURITY ADMINISTRATION. C. A. Fed. Cir. Certiorari denied. Reported below: 663 F. 3d 1378.

No. 11–1421. CICCHIELLO *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 458 Fed. Appx. 117.

No. 11–1423. BRUNER ET UX. *v.* JOSEPHINE COUNTY, OREGON. Ct. App. Ore. Certiorari denied. Reported below: 240 Ore. App. 276, 246 P. 3d 46.

No. 11–1424. BROWN *v.* UNKNOWN OBJECTORS. C. A. 8th Cir. Certiorari denied.

No. 11–1429. RUNNER *v.* KENTUCKY ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–1430. BLAKELY *v.* LOS ANGELES SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–1432. SILVERSTEIN *v.* ANDOVER SCHOOL BOARD. Sup. Ct. N. H. Certiorari denied. Reported below: 163 N. H. 192, 37 A. 3d 382.

No. 11–1433. VALDEZ *v.* FRANK KENT MOTOR CO., DBA FRANK KENT CADILLAC. Sup. Ct. Tex. Certiorari denied. Reported below: 361 S. W. 3d 628.

No. 11–1434. SIGNATURE PHARMACY, INC., ET AL. *v.* SOARES ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 917.

No. 11–1435. Bolmer *v.* Connolly Properties, Inc., et al. C. A. 3d Cir. Certiorari denied. Reported below: 672 F. 3d 241.

No. 11–1436. Taylor et al. *v.* Averill et al. C. A. 9th Cir. Certiorari denied. Reported below: 460 Fed. Appx. 693.

No. 11–1437. Webster *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 667 F. 3d 826.

No. 11–1438. Taleff et al. *v.* Southwest Airlines Co. et al. C. A. 9th Cir. Certiorari denied.

No. 11–1439. Tripodi *v.* North Coventry Township, Pennsylvania. Commw. Ct. Pa. Certiorari denied. Reported below: 23 A. 3d 648.

No. 11–1440. Carolina Chloride, Inc. *v.* Richland County, South Carolina. Sup. Ct. S. C. Certiorari denied. Reported below: 394 S. C. 154, 714 S. E. 2d 869.

No. 11–1441. Watson *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 11–1442. Miceli *v.* Lakeland Automotive Corp. Super. Ct. N. J., App. Div. Certiorari denied.

No. 11–1443. Rohr *v.* Indiana. Ct. App. Ind. Certiorari denied. Reported below: 959 N. E. 2d 396.

No. 11–1444. Hussein *v.* Nevada System of Higher Education et al.; and

No. 11–1445. Dickerson *v.* Nevada System of Higher Education et al. C. A. 9th Cir. Certiorari denied. Reported below: 458 Fed. Appx. 659.

No. 11–1446. Singh *v.* George Washington University School of Medicine and Health Sciences et al. C. A. D. C. Cir. Certiorari denied. Reported below: 667 F. 3d 1.

No. 11–1449. Wright *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 475.

No. 11–1452. Hulihan *v.* Circle K Stores. C. A. 9th Cir. Certiorari denied. Reported below: 462 Fed. Appx. 751.

No. 11–1455. Husain *v.* Mahmood. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 11–1456. BROWN *v.* BOWMAN ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 668 F. 3d 437.

No. 11–1457. READ *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 163 Wash. App. 853, 261 P. 3d 207.

No. 11–1460. AWAND ET VIR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 609.

No. 11–1461. BULLOCK *v.* NAPOLITANO, SECRETARY OF HOMELAND SECURITY. C. A. 4th Cir. Certiorari denied. Reported below: 666 F. 3d 281.

No. 11–1462. ROBERTS *v.* PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE CO. C. A. 4th Cir. Certiorari denied. Reported below: 668 F. 3d 106.

No. 11–1463. RAY *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. Ct. App. Mich. Certiorari denied.

No. 11–1464. WHITE *v.* MERCADO ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 455 Fed. Appx. 691.

No. 11–1465. JOHNSON *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 2012 OK CR 5, 272 P. 3d 720.

No. 11–1466. MISSOURI TITLE LOANS, INC. *v.* BREWER. Sup. Ct. Mo. Certiorari denied. Reported below: 364 S. W. 3d 486.

No. 11–1467. NELSON, PERSONAL REPRESENTATIVE OF THE ESTATE OF NELSON, DECEASED *v.* AERONAUTICAL ACCESSORIES, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 669 F. 3d 577.

No. 11–1468. PINTER *v.* CITY OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 448 Fed. Appx. 99.

No. 11–1469. MCCOY *v.* MISSISSIPPI STATE TAX COMMISSION. C. A. 5th Cir. Certiorari denied. Reported below: 666 F. 3d 924.

No. 11–1470. MCCASKILL *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–1472. STARNES *v.* MCLEOD, FKA STARNES. Sup. Ct. S. C. Certiorari denied. Reported below: 396 S. C. 647, 723 S. E. 2d 198.

No. 11–1475. ICICLE SEAFOODS, INC. *v.* CLAUSEN. Sup. Ct. Wash. Certiorari denied. Reported below: 174 Wash. 2d 70, 272 P. 3d 827.

No. 11–1476. MARCINEK *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 3d Cir. Certiorari denied. Reported below: 467 Fed. Appx. 153.

No. 11–1477. MAHON *v.* OELBAUM ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 31 A. 3d 747.

No. 11–1479. KEYCORP ET AL. *v.* SOLLITT. C. A. 6th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 471.

No. 11–1480. MUHAMMAD *v.* SHAW. Ct. App. Ga. Certiorari denied.

No. 11–1481. NICHOLAS *v.* ALLIANCEONE RECEIVABLES MANAGEMENT, INC. C. A. 11th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 887.

No. 11–1482. SAN FRANCISCO AESTHETICS & LASER MEDICINE, INC., ET AL. *v.* PRESIDIO TRUST ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 454 Fed. Appx. 579.

No. 11–1483. CARO ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 454 Fed. Appx. 817.

No. 11–1484. CARTER *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2010–0614 (La. 1/24/12), 84 So. 3d 499.

No. 11–1487. MALBURG *v.* CALIFORNIA; and
No. 11–1505. MALBURG *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–1488. PARISI *v.* DAYTON BAR ASSN. Sup. Ct. Ohio. Certiorari denied. Reported below: 131 Ohio St. 3d 345, 2012-Ohio-879, 965 N. E. 2d 268.

No. 11–1489. O'BRIEN *v.* KIRLEY ET AL. Ct. App. Wash. Certiorari denied. Reported below: 162 Wash. App. 1024.

No. 11–1492. WERSAL *v.* SEXTON ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 674 F. 3d 1010.

No. 11–1493. OHIO EX REL. VARNAU *v.* WENNINGER. Sup. Ct. Ohio. Certiorari denied. Reported below: 131 Ohio St. 3d 169, 2012-Ohio-224, 962 N. E. 2d 790.

No. 11–1494. EAST COAST FOODS, INC., ET AL. *v.* RANGE ROAD MUSIC, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 668 F. 3d 1148.

No. 11–1495. WHITE *v.* CITY OF WAUKEGAN, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 456 Fed. Appx. 599.

No. 11–1496. THOMAS PETROLEUM, INC., ET AL. *v.* MORRIS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 355 S. W. 3d 94.

No. 11–1498. BAZUAYE *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 452 Fed. Appx. 15.

No. 11–1499. LAMONS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–1500. STANLEY *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 71 M. J. 60.

No. 11–1501. KIGGUNDU *v.* MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 330.

No. 11–1502. LOAN PHOUNG *v.* TRAN. Sup. Ct. Va. Certiorari denied.

No. 11–1503. DARR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 661 F. 3d 375.

No. 11–1504. KOCH, AKA BUTRICK *v.* CITY OF DEL CITY, OKLAHOMA, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 660 F. 3d 1228.

No. 11–1506. GROSE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 461 Fed. Appx. 786.

No. 11–1508. HAGEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 373.

No. 11–1509. CHANDLER *v.* WACKENHUT CORP. C. A. 6th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 425.

No. 11–1510. ELLIS *v.* CITY OF FORT WORTH, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 325.

No. 11–1511. Lawrence et ux. *v.* Bank of America et al. C. A. 9th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 570.

No. 11–1512. Larremore et ux. *v.* Lykes Brothers, Inc. C. A. 5th Cir. Certiorari denied.

No. 11–1513. FreeEats.com, Inc. *v.* Indiana. Sup. Ct. Ind. Certiorari denied. Reported below: 959 N. E. 2d 794.

No. 11–1514. Fox *v.* Good Samaritan Hospital, L. P., et al. C. A. 9th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 731.

No. 11–1516. Kim et al. *v.* Village at Eagle Creek Homeowners Assn. et al. Ct. App. Ind. Certiorari denied. Reported below: 958 N. E. 2d 817.

No. 11–1517. Raymond *v.* Warren, Warden. C. A. 6th Cir. Certiorari denied.

No. 11–1519. Kawache, an Infant, by Her Parent and Natural Guardian Kawache *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 471 Fed. Appx. 10.

No. 11–1520. Hoosier Racing Tire Corp. et al. *v.* Race Tires America, Inc., et al. C. A. 3d Cir. Certiorari denied. Reported below: 674 F. 3d 158.

No. 11–1521. General Drivers, Warehousemen and Helpers, Local Union No. 89 *v.* Shelter Distribution, Inc. C. A. 6th Cir. Certiorari denied. Reported below: 674 F. 3d 608.

No. 11–1523. Woodruff, Trustee of Legacy Healthcare, Inc., dba New Horizon Developmental Center *v.* Indiana Family and Social Services Administration et al. Sup. Ct. Ind. Certiorari denied. Reported below: 964 N. E. 2d 784.

No. 11–1524. Mulk et al. *v.* Ohio Department of Job and Family Services. Ct. App. Ohio, Franklin County. Certiorari denied. Reported below: 2011-Ohio-5850, 969 N. E. 2d 1254.

No. 11–1526. Rockefeller *v.* Chu, Secretary of Energy, et al. C. A. 10th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 829.

No. 11–1527. UNDER SEAL *v.* UNDER SEAL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 236.

No. 11–1529. BROWN *v.* ASTORIA FEDERAL SAVINGS & LOAN ASSN. C. A. 2d Cir. Certiorari denied. Reported below: 444 Fed. Appx. 504.

No. 11–1530. TAVERAS *v.* RHODE ISLAND. Sup. Ct. R. I. Certiorari denied. Reported below: 39 A. 3d 638.

No. 11–1533. YAKUBU *v.* HOLDER, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied. Reported below: 456 Fed. Appx. 868.

No. 11–1534. ANDERSON *v.* AON CORP. C. A. 7th Cir. Certiorari denied. Reported below: 674 F. 3d 895.

No. 11–1537. KERNELL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 667 F. 3d 746.

No. 11–1539. ALARCIA *v.* REMINGTON, ACTING CHIEF PROBATION OFFICER, LOS ANGELES COUNTY PROBATION DEPARTMENT, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–1540. CITY COUNCIL OF THE CITY OF NEWPORT NEWS, VIRGINIA, ET AL. *v.* T-MOBILE NORTHEAST LLC. C. A. 4th Cir. Certiorari denied. Reported below: 674 F. 3d 380.

No. 11–1541. COLEMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 675 F. 3d 615.

No. 11–1542. CRAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 923.

No. 11–1548. TRAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 629.

No. 11–1549. TOLAND *v.* FUTAGI. Ct. App. Md. Certiorari denied. Reported below: 425 Md. 365, 40 A. 3d 1051.

No. 11–1551. GROSECLOSE *v.* DEPARTMENT OF THE NAVY. C. A. Fed. Cir. Certiorari denied. Reported below: 459 Fed. Appx. 918.

No. 11–6315. JACKSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 11–7841. GARZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 439 Fed. Appx. 297.

No. 11–8143. G. A. W. *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 387 Ill. App. 3d 1194, 981 N. E. 2d 544.

No. 11–8278. BASKERVILLE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 448 Fed. Appx. 243.

No. 11–8401. TOMLIN *v.* GLUNT, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 448 Fed. Appx. 224.

No. 11–8677. LEE *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 447 Fed. Appx. 357.

No. 11–8802. AKAOMA *v.* SUPERSHUTTLE INTERNATIONAL CORP. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 250.

No. 11–8864. ESCAMILLA-ROJAS *v.* UNITED STATES (Reported below: 640 F. 3d 1055); and DIAZ-RAMIREZ ET AL. *v.* UNITED STATES (646 F. 3d 653). C. A. 9th Cir. Certiorari denied.

No. 11–8942. JOHNSON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 11–9025. OSBURN *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2011 Ark. 406.

No. 11–9037. SEASE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 659 F. 3d 519.

No. 11–9120. JONATHON C. B., A MINOR *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 2011 IL 107750, 958 N. E. 2d 227.

No. 11–9124. GOBERT *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–9152. PIKE *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 11–9198. HARRINGTON *v.* HARRINGTON. App. Ct. Mass. Certiorari denied. Reported below: 79 Mass. App. 1106, 943 N. E. 2d 980.

No. 11–9249. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 545.

No. 11–9294. BROADNAX *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–9384. SMITH *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied. Reported below: 357 S. W. 3d 322.

No. 11–9389. SPURLIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 664 F. 3d 954.

No. 11–9395. CLEAVER-BASCOMBE *v.* KARTANO. Ct. App. D. C. Certiorari denied. Reported below: 28 A. 3d 608.

No. 11–9517. TOLLIVER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 451 Fed. Appx. 97.

No. 11–9526. BLUE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 665 F. 3d 647.

No. 11–9602. SANCHEZ-GONZALEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–9622. MEECE *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied. Reported below: 348 S. W. 3d 627.

No. 11–9686. OLIPHANT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 456 Fed. Appx. 456.

No. 11–9703. VEGA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 844.

No. 11–9704. JALOWIEC *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 657 F. 3d 293.

No. 11–9736. PARTIN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 82 So. 3d 31.

No. 11–9740. COTA *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 229 Ariz. 136, 272 P. 3d 1027.

No. 11–9753. SANDOVAL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 653.

No. 11–9770. MABIE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 663 F. 3d 322.

No. 11–9810. SIMMONS *v.* BRAVERMAN. Ct. App. Mich. Certiorari denied.

No. 11–9820. RHODES *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–9833. THOMAS *v.* RITZ CONDOMINIUM ASSN., INC. Super. Ct. N. J., App. Div. Certiorari denied.

No. 11–9836. GLISSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 460 Fed. Appx. 259.

No. 11–9840. WELLS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–9841. QUINTANA SOLORIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 669 F. 3d 943.

No. 11–9849. NARVAEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 488.

No. 11–9853. LAEKE *v.* COLORADO. Sup. Ct. Colo. Certiorari denied. Reported below: 271 P. 3d 1111.

No. 11–9880. COUSIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 593.

No. 11–9901. ZAKARIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 192.

No. 11–9911. ORSO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 912.

No. 11–9930. MITCHELL *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 84 So. 3d 968.

No. 11–9948. ODENBAUGH *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2010–0268 (La. 12/6/11), 82 So. 3d 215.

No. 11–9951. REYNOLDS *v.* QUEENS COUNTY BOARD OF ELECTIONS ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 11–9955. BOWMAN *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied. Reported below: 282 Va. 359, 718 S. E. 2d 456.

No. 11–9956. ARCHULETA *v.* GALETKA, WARDEN. Sup. Ct. Utah. Certiorari denied. Reported below: 2011 UT 73, 267 P. 3d 232.

No. 11–9985. MCKAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 657 F. 3d 1190.

No. 11–9993. ESQUIVEL *v.* GULERIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 128.

No. 11–9996. O'KANE *v.* KIRKPATRICK, SUPERINTENDENT, WENDE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 11–9998. ALLUMS *v.* PHILLIPS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 840.

No. 11–10001. STOGNER *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2011–0629 (La. 2/3/12), 79 So. 3d 1021.

No. 11–10006. FUENTES *v.* GONZALEZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 457 Fed. Appx. 695.

No. 11–10009. HOWARD *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–10012. HILL *v.* MUWWAKKIL. C. A. 4th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 384.

No. 11–10013. RETANAN *v.* SACRAMENTO COUNTY SHERIFF'S DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–10014. QUIGGLE *v.* COLEMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–10020. LOVETTE *v.* PAUL ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 436.

No. 11–10022. WEST *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 11–10023. Cooper *v.* Missouri (Reported below: 356 S. W. 3d 148); and Krupp *v.* Missouri (356 S. W. 3d 142). Sup. Ct. Mo. Certiorari denied.

No. 11–10024. Thomas *v.* Gonzalez, Warden. C. A. 9th Cir. Certiorari denied.

No. 11–10026. Postolache *v.* Postolache. Sup. Jud. Ct. Me. Certiorari denied.

No. 11–10034. Hollis *v.* Lafler, Warden. C. A. 6th Cir. Certiorari denied.

No. 11–10037. Castorillo Ibale *v.* Safeway Inc. C. A. 9th Cir. Certiorari denied.

No. 11–10039. Crosby *v.* Crosby et al. C. A. 5th Cir. Certiorari denied.

No. 11–10040. Coats *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 409 Ill. App. 3d 1153, 2 N. E. 3d 663.

No. 11–10041. Thomas et ux. *v.* Loveless et al. Ct. Civ. App. Ala. Certiorari denied. Reported below: 129 So. 3d 1051.

No. 11–10044. Green *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 11–10045. Harden *v.* Maryland. Ct. Sp. App. Md. Certiorari denied. Reported below: 199 Md. App. 708.

No. 11–10047. Gamble *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 11–10050. Guillion *v.* Cade, Judge, Civil District Court Parish of Orleans. C. A. 5th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 340.

No. 11–10051. Hooker *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–10057. Little *v.* Tommy Guns Garage, Inc. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 405 Ill. App. 3d 1206, 997 N. E. 2d 1012.

No. 11–10058. MAISONET *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 612 Pa. 539, 31 A. 3d 689.

No. 11–10060. MARTINEZ *v.* TROMBLEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–10061. TARKINGTON *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–10064. BOOKMAN *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 449 Fed. Appx. 90.

No. 11–10066. HAILE *v.* SANTA ROSA MEMORIAL HOSPITAL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 972.

No. 11–10068. HOLLMON *v.* WOODS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–10069. HOOD *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 11–10070. GARRETT *v.* COURSEY, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 11–10071. HALL *v.* KELLY, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 11–10072. HAMBY *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 362 Mont. 544, 272 P. 3d 125.

No. 11–10074. FISH *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2011–0830 (La. 3/23/12), 84 So. 3d 563.

No. 11–10079. POTTER *v.* HORNBECK, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 645.

No. 11–10082. WADDLETON *v.* TEXAS. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 11–10083. MARSHALL *v.* CARTLEDGE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 327.

No. 11–10086. MANN *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–10091. LUMPKINS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 879.

No. 11–10094. LEMPAR *v.* NICHOLAS ET AL. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 11–10100. SHEHABELDIN *v.* WILSON J. ET AL. C. A. 2d Cir. Certiorari denied.

No. 11–10101. BINFORD *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–10102. ATTERBERRY *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2011 IL App (3d) 090505–U.

No. 11–10105. MCCARTNEY *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied. Reported below: 228 W. Va. 315, 719 S. E. 2d 785.

No. 11–10107. MARKOVANOVICH *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–10110. SANCHEZ *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 614 Pa. 1, 36 A. 3d 24.

No. 11–10111. FRAZIER *v.* THOMAS, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 661 F. 3d 519.

No. 11–10112. MURRAY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–10113. MICOLO *v.* NEW YORK. Sup. Ct. N. Y., Suffolk County. Certiorari denied.

No. 11–10114. SHANNON *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 11–10115. RODRIGUEZ *v.* WALKER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–10118. SPIRES *v.* HARBAUGH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 126.

No. 11–10128. WHITE *v.* MEDINA, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 715.

No. 11–10131. MUNN *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 11–10133. JOHNSON *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 354 S. W. 3d 491.

No. 11–10137. PALACIOS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 677 F. 3d 234.

No. 11–10141. LYONS *v.* BELLE GLADES CORRECTIONAL INSTITUTION ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 83 So. 3d 708.

No. 11–10142. MATHIS *v.* MCCALL, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 183.

No. 11–10143. LOGGINS *v.* KANSAS. Ct. App. Kan. Certiorari denied. Reported below: 46 Kan. App. 2d xxv, 258 P. 3d 387.

No. 11–10153. ALLEN *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 11–10156. EDGE *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 24 A. 3d 448.

No. 11–10158. CORRION *v.* CORRION. C. A. 6th Cir. Certiorari denied.

No. 11–10159. DIXON *v.* KERNAN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–10160. DIONNE *v.* SAMPSON ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–10162. CLEMANS *v.* YATES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 732.

No. 11–10163. DAVIS *v.* ROZUM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–10165. DUNSMORE *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 11–10167. EL-AMIN *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 2011–0030 (La. App. 1 Cir. 6/10/11).

No. 11–10169. CROSBY *v.* MENZENA ET AL. C. A. 5th Cir. Certiorari denied.

No. 11–10171. COOPER *v.* DENNEY, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 11–10172. DREW *v.* MANPOWER OF SOUTHERN NEVADA, INC., ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 127 Nev. 1131, 373 P. 3d 910.

No. 11–10173. CHAFFINS *v.* SOUTHWEST VIRGINIA REGIONAL JAIL-ABINGDON. C. A. 4th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 287.

No. 11–10174. COULTER *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 456 Fed. Appx. 222.

No. 11–10175. CRUMMER *v.* HOREL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–10177. CLARK *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2011 IL App (1st) 091942–U.

No. 11–10179. DANIELS *v.* GONZALEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–10180. SKIPPER *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2011–1598 (La. 2/1/12), 79 So. 3d 1011.

No. 11–10186. GARCIA-TREJO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 459 Fed. Appx. 465.

No. 11–10194. RAMOS *v.* CKS PACKAGING, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 970.

No. 11–10195. PAYNE ET AL. *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 460 Fed. Appx. 725.

No. 11–10198. HOLLOWAY *v.* MAGNESS ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 666 F. 3d 1076.

No. 11–10199. FARMER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 647 F. 3d 1175.

No. 11–10200. HILL *v.* WHITE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–10203. JONES *v.* UNION CITY, GEORGIA. C. A. 11th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 807.

No. 11–10213. WOOD *v.* BITER, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–10214. NELSON *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 229 Ariz. 180, 273 P. 3d 632.

No. 11–10215. PHERNETTON *v.* CROWN POINT POLICE DEPARTMENT. C. A. 7th Cir. Certiorari denied.

No. 11–10216. NESBITT *v.* WILLIAMS. C. A. 2d Cir. Certiorari denied.

No. 11–10221. BOOKER-EL *v.* WILSON, SUPERINTENDENT, INDIANA STATE PRISON, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 668 F. 3d 896.

No. 11–10222. AL-AMI'N *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 225.

No. 11–10223. BROOKS *v.* SISTO, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–10227. MCLEOD *v.* JARRETT ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 442 Fed. Appx. 565.

No. 11–10228. GEORGE *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 490 Mich. 1001, 807 N. W. 2d 313.

No. 11–10231. RIZZO *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 303 Conn. 171, 31 A. 3d 1094.

No. 11–10238. JONES *v.* BONEVELLE. C. A. 6th Cir. Certiorari denied.

No. 11–10240. JOHNSON *v.* MISSISSIPPI. C. A. 5th Cir. Certiorari denied.

No. 11–10242. WATKINS *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 11–10243. YOUNG *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 290 Ga. 441, 721 S. E. 2d 839.

No. 11–10244. ADKINS *v.* ARMSTRONG ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 451 Fed. Appx. 744.

No. 11–10245. ARUANNO *v.* MAIN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 467 Fed. Appx. 134.

No. 11–10247. MULLINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–10249. STOKLEY *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 659 F. 3d 802.

No. 11–10250. COLLIER *v.* BLAGOJEVICH ET AL. C. A. 7th Cir. Certiorari denied.

No. 11–10251. DAVIS *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 11–10252. GORBATOVA *v.* HARTSTEIN ET AL.; and
No. 11–10253. GORBATOVA *v.* HARTSTEIN ET AL. C. A. 1st Cir. Certiorari denied.

No. 11–10255. CLAYTON *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 11–10257. BOSTON *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 128 Nev. 883, 381 P. 3d 595.

No. 11–10259. PRYCE *v.* JACQUEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–10261. WAUGH *v.* SOUTHEASTERN GUN CO. C. A. 4th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 176.

No. 11–10262. BEESON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 189.

No. 11–10264. KETRON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 251.

No. 11–10266. SYKES *v.* WOLFENBARGER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 563.

No. 11–10267. STEVENS *v.* MARTEL, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–10268. RUSSO *v.* ATCHISON. Sup. Ct. Ill. Certiorari denied.

No. 11–10270. RUPPERT *v.* ARAGON. C. A. 10th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 862.

No. 11–10271. KIDD *v.* NORMAN, WARDEN. C. A. 8th Cir. Certiorari denied. Reported below: 651 F. 3d 947.

No. 11–10273. BONGIOVANNI, ON BEHALF OF BONGIOVANNI *v.* GRUBIN, TRUSTEE. C. A. 2d Cir. Certiorari denied. Reported below: 451 Fed. Appx. 53.

No. 11–10275. MCKNIGHT *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied.

No. 11–10276. MACK *v.* CURRAN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 457 Fed. Appx. 141.

No. 11–10277. JACOBS *v.* LOUISIANA. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 07–887 (La. App. 5 Cir. 5/24/11), 67 So. 3d 535.

No. 11–10278. PERRY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–10281. SCALES *v.* SANDOVAL, GOVERNOR OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–10282. SMITH *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 409 Ill. App. 3d 1159, 2 N. E. 3d 666.

No. 11–10283. DOMINGUEZ-GONZALEZ *v.* CLINTON, SECRETARY OF STATE. C. A. 5th Cir. Certiorari denied. Reported below: 454 Fed. Appx. 287.

No. 11–10285. JENKINS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 11–10287. WILLIAMS *v.* BROWN, GOVERNOR OF CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 461 Fed. Appx. 621.

No. 11–10290. KEELING *v.* BRUNSMAN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 673 F. 3d 452.

No. 11–10293. ADAMCIK *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied. Reported below: 152 Idaho 445, 272 P. 3d 417.

No. 11–10295. BROWN *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2011 IL App (3d) 090572–UB.

No. 11–10297. PRUETT *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 455 Fed. Appx. 478.

No. 11–10300. ORELLANA CAMPOS *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied.

No. 11–10301. PAYNE *v.* CITY OF MISSOULA, MONTANA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 459 Fed. Appx. 607.

No. 11–10305. MARTIN *v.* LOUISIANA. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 10–710 (La. App. 5 Cir. 5/24/11), 70 So. 3d 41.

No. 11–10307. KAPORDELIS *v.* GAINESVILLE SURGERY CENTER ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–10308. WILSON *v.* MCLAUGHLIN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 11–10310. CINI *v.* CINI. Sup. Ct. Mont. Certiorari denied. Reported below: 363 Mont. 1, 266 P. 3d 1257.

No. 11–10311. DEROUEN *v.* FALLS COUNTY SHERIFF'S DEPARTMENT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 460 Fed. Appx. 428.

No. 11–10316. BARLOW *v.* SCRIBNER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 454 Fed. Appx. 585.

No. 11–10318. SPENCER *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–10321. FUENTES MARTINEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 11–10324. BLACKMON *v.* HOREL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–10325. ACASIO *v.* GUITTARD CHOCOLATE CO. ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–10326. BUILES *v.* COAKLEY, ATTORNEY GENERAL OF MASSACHUSETTS. C. A. 1st Cir. Certiorari denied.

No. 11–10327. BERRY *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied. Reported below: 366 S. W. 3d 160.

No. 11–10329. DANIEL *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 86 So. 3d 405.

No. 11–10332. WHETSTONE *v.* ELLERS ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 447 Fed. Appx. 286.

No. 11–10333. WOLTZ *v.* FEDERAL CORRECTIONAL INSTITUTION AT BECKLEY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 143.

No. 11–10334. WILLIAMS *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–10343. NELSON *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied.

No. 11–10344. PINA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 11–10347. RUCKER *v.* CURLEY, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–10348. SCHMOTZER *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 11–10350. RIETHMILLER *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 11–10352. COLEMAN *v.* LANDRUM, WARDEN. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 79 So. 3d 22.

No. 11–10355. BRYAN *v.* DEFENSE TECHNOLOGY, U. S., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 208.

No. 11–10356. CABALLERO *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 11–10358. KASSAB *v.* JEFF ET AL. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 11–10359. KIRKPATRICK *v.* TEXAS (four judgments). Ct. Crim. App. Tex. Certiorari denied.

No. 11–10360. DE LA CRUZ *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 11–10363. YARNS *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 73 So. 3d 765.

No. 11–10366. JOHNSON *v.* SHERRY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 477.

No. 11–10367. LANGLEY *v.* LOUISIANA. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 2010–969 (La. App. 3 Cir. 4/6/11), 61 So. 3d 747.

No. 11–10368. BOULDS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–10369. BROWN *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 77 So. 3d 194.

No. 11–10370. SOTO-QUINONES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 11–10372. STEVENS *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 11–10373. RHINE *v.* DEATON ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 459 Fed. Appx. 421.

No. 11–10376. LEFTWICH *v.* FRAZIER, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 11–10379. COLLINS *v.* LEE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 667 F. 3d 247.

No. 11–10386. POTVIN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–10391. FOULKE *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 1st Cir. Certiorari denied.

No. 11–10401. FLEMING *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 83 So. 3d 741.

No. 11–10403. FELS *v.* ILLINOIS. C. A. 7th Cir. Certiorari denied.

No. 11–10405. SINGLETON *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 950 N. E. 2d 851.

No. 11–10406. SOLOMON *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA. C. A. D. C. Cir. Certiorari denied.

No. 11–10408. HAYES *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 11–10409. TURNER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 11–10410. GARY *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 76 So. 3d 355.

No. 11–10411. FOYE *v.* SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY ET AL. Commw. Ct. Pa. Certiorari denied. Reported below: 13 A. 3d 1055.

No. 11–10412. HARDY *v.* WEST ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–10413. INGRAM *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–10415. HERRERA *v.* ALMAGER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–10416. FREEMAN *v.* VOORHIES, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–10418. LENOIR *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 83 So. 3d 708.

No. 11–10419. KRUG *v.* BAKER ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–10420. LEATHERMAN *v.* KENTUCKY. Ct. App. Ky. Certiorari denied. Reported below: 357 S. W. 3d 518.

No. 11–10421. GARRETT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 654.

No. 11–10423. FLEMING *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 11–10424. HILL *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–10425. FREEMAN *v.* MOHR, DIRECTOR, OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–10427. ADAMS *v.* HART, WARDEN. Super. Ct. Ware County, Ga. Certiorari denied.

No. 11–10429. MOSLEY *v.* BOWDEN ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–10431. WILLIAMS *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 450 Fed. Appx. 191.

No. 11–10432. OLAUSEN *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 128 Nev. 923, 381 P. 3d 647.

No. 11–10433. WILLIAMS *v.* GRAHAM, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 11–10434. Osika *v.* Avazos, Acting Warden. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 441.

No. 11–10436. Nesbitt *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 405 Ill. App. 3d 1201, 997 N. E. 2d 1010.

No. 11–10439. Christian *v.* Townsend et al. C. A. 4th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 237.

No. 11–10440. Durr *v.* Tucker, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 11–10446. Ross *v.* New York State Board of Parole. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 78 App. Div. 3d 1405, 910 N. Y. S. 2d 704.

No. 11–10448. Wiggins *v.* Lee, Superintendent, Green Haven Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 11–10450. Rogers *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 359.

No. 11–10451. Rodriguez *v.* Peters, Director, Oregon Department of Corrections, et al. C. A. 9th Cir. Certiorari denied. Reported below: 447 Fed. Appx. 850.

No. 11–10453. Kenner *v.* Mercer et al. C. A. 9th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 742.

No. 11–10454. Johnson *v.* Swarthout, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 251.

No. 11–10455. Nolan *v.* Nebraska. Sup. Ct. Neb. Certiorari denied. Reported below: 283 Neb. 50, 807 N. W. 2d 520.

No. 11–10460. Torres *v.* Tucker, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 11–10461. Miller *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 11–10462. Adams *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 11–10463. VAN BUREN *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 11–10464. RAIGOSA ARREDONDO *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 11–10465. ALLEN *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 959 N. E. 2d 343.

No. 11–10466. O'NEAL *v.* WILLIAMS ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–10467. WILLIAMS *v.* MARTEL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–10468. ROEDER *v.* KANSAS. Ct. App. Kan. Certiorari denied.

No. 11–10470. ROBERTS *v.* TIFFT, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 11–10472. RAVENEL *v.* BADEN, WARDEN. Super. Ct. Bartow County, Ga. Certiorari denied.

No. 11–10479. ROGERS *v.* DAVIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–10480. TRIVEDI *v.* INTERNAL REVENUE SERVICE. C. A. 9th Cir. Certiorari denied. Reported below: 459 Fed. Appx. 619.

No. 11–10481. EFSTATHIOU *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 200 Cal. App. 4th 725, 133 Cal. Rptr. 3d 34.

No. 11–10483. JONES *v.* THOMAS ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–10486. GORBATOVA *v.* GREATER LYNN SENIOR SERVICES, INC., AKA GLSS, INC. C. A. 1st Cir. Certiorari denied.

No. 11–10488. HENNEGHAN *v.* ROACH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 195.

No. 11–10490. DIEHL *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 614 Pa. 716, 38 A. 3d 827.

No. 11–10491. CONNER *v.* BIRKETT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–10494. DESUE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 88 So. 3d 148.

No. 11–10495. SCANLON *v.* HARKLEROAD, SUPERINTENDENT, MARION CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 164.

No. 11–10497. MCCRAY *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied.

No. 11–10502. CUSTODIO *v.* OFFICE OF PERSONNEL MANAGEMENT. C. A. Fed. Cir. Certiorari denied. Reported below: 468 Fed. Appx. 950.

No. 11–10503. JACKSON *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 216 N. C. App. 238, 717 S. E. 2d 35.

No. 11–10504. JONES *v.* BAUMAN. C. A. 6th Cir. Certiorari denied.

No. 11–10505. WILLIAMS *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. Sup. Ct. Ark. Certiorari denied. Reported below: 2012 Ark. 30.

No. 11–10506. ALI *v.* MANESS ET AL. C. A. 5th Cir. Certiorari denied.

No. 11–10507. MOYER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 674 F. 3d 192.

No. 11–10509. MARGARET B. *v.* MILWAUKEE COUNTY, WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 2011 WI App 155, 337 Wis. 2d 734, 807 N. W. 2d 32.

No. 11–10510. BOWEN *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 514.

No. 11–10511. BRUNSON *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA. C. A. 11th Cir. Certiorari denied.

No. 11–10512. WALKER *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 2011 WI App 155, 337 Wis. 2d 735, 807 N. W. 2d 33.

No. 11–10514. GORBATOVA *v.* GREATER LYNN SENIOR SERVICES, INC., AKA GLSS, INC. C. A. 1st Cir. Certiorari denied.

No. 11–10515. DERRINGER *v.* TERMAIN ET AL. Sup. Ct. Ariz. Certiorari denied.

No. 11–10516. BELITZ *v.* WASHINGTON. C. A. 9th Cir. Certiorari denied.

No. 11–10517. ANDERSON *v.* BRUNSMAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–10518. CHUPP *v.* CARNEYGEE, SUPERINTENDENT, CORRECTIONAL INDUSTRIAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 11–10519. PROFIT *v.* FREDERICK, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 11–10522. ROWE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 656.

No. 11–10523. MILLEN *v.* CARTER. C. A. 11th Cir. Certiorari denied.

No. 11–10526. PLUMMER *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 501.

No. 11–10527. MORRIS *v.* CHAVEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–10535. BERRY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 460 Fed. Appx. 684.

No. 11–10536. BASAT *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–10538. MCCOY *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 541.

No. 11–10539. MACWILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 459 Fed. Appx. 217.

No. 11–10540. LACOUR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 375.

No. 11–10541. MAYS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–10542. MANGINO *v.* CAMERON, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT CRESSON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–10543. BOTELLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 791.

No. 11–10544. BARNEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 672 F. 3d 228.

No. 11–10545. WARE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 487.

No. 11–10546. YELLOWBEAR *v.* WYOMING. Dist. Ct. Wyo., Hot Springs County. Certiorari denied.

No. 11–10547. REYNOSO AVALOS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 462 Fed. Appx. 378.

No. 11–10548. BERTANELLI *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–10549. LARSON *v.* GLEBE, SUPERINTENDENT, STAFFORD CREEK CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 582.

No. 11–10550. MOLINA-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 767.

No. 11–10551. ORTIZ-VARELA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 798.

No. 11–10552. MELENDEZ-BAEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 457 Fed. Appx. 886.

No. 11–10553. KENDRICK *v.* MCLAREN ET AL. C. A. 7th Cir. Certiorari denied.

No. 11–10554. PRESLEY *v.* SUPREME COURT OF MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 11–10556. ROE *v.* COURSEY, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 622.

No. 11–10558. WALLACE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–10559. TARPLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–10560. TILTON *v.* MACDONALD, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–10562. POPE *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 75 So. 3d 273.

No. 11–10565. HARPER *v.* ALLEN. C. A. 4th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 324.

No. 11–10566. CONSALVO *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 664 F. 3d 842.

No. 11–10567. FITCH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 659 F. 3d 788.

No. 11–10568. AVALOS CERPAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 397 Fed. Appx. 524.

No. 11–10569. HOLLAND *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–10570. HAMBY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 202.

No. 11–10572. SCARNATI *v.* PENNSYLVANIA OFFICE OF INSPECTOR GENERAL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 469 Fed. Appx. 75.

No. 11–10574. IBARRA-SOTO, AKA IBARRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 255.

No. 11–10575. HENDRIX *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 11–10576. HARDING *v.* OSBORN, JUDGE, CIRCUIT COURT OF VIRGINIA, 10TH JUDICIAL CIRCUIT. C. A. 4th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 241.

No. 11–10577. INMAN *v.* CLARK, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–10578. WILSON *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 11–10579. ASHWORTH *v.* ZIEGLER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 184.

No. 11–10580. BOONE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–10581. THOMAS *v.* PENNSYLVANIA BOARD OF PROBATION AND PAROLE ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–10582. BARRIERA-VERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–10583. WALKER *v.* KEMNA ET AL. C. A. 8th Cir. Certiorari denied.

No. 11–10584. LEO *v.* GARMIN INTERNATIONAL, INC. C. A. 10th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 740.

No. 11–10587. DOMINGUEZ-SIANEZ *v.* UNITED STATES; and
No. 11–10612. BALDOVINAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 326.

No. 11–10588. SHABAZZ *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 11–10589. CLARK *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 673 F. 3d 410.

No. 11–10590. ENGLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 676 F. 3d 405.

No. 11–10591. KNIGHT *v.* RIOS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 456 Fed. Appx. 657.

No. 11–10592. MARRIOTT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 554.

No. 11–10593. PADILLA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–10594. JONES *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–10596. VARNES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 495.

No. 11–10597. VASQUEZ-ROJAS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–10598. TAYLOR *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 2011 UT 5, 270 P. 3d 471.

No. 11–10600. SUMMERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 666 F. 3d 192.

No. 11–10601. RIVERA *v.* CITY OF CHELSEA, MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 81 Mass. App. 1106, 958 N. E. 2d 1181.

No. 11–10602. RODRIGUEZ-GARCIA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 459 Fed. Appx. 754.

No. 11–10603. HIGGINS *v.* CONSOLIDATED RAIL CORPORATION ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 451 Fed. Appx. 25.

No. 11–10605. MCCARTHY *v.* SOSNICK ET AL. Ct. App. Mich. Certiorari denied.

No. 11–10606. SIMMS *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 11–10608. SPENCER *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 11–10609. TORRES HERNANDEZ *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 349.

No. 11–10610. HENRY ET VIR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 673 F. 3d 285.

No. 11–10613. BURGARD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 675 F. 3d 1029.

No. 11–10614. BREWER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–10615. BELL *v.* KEFFER, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 458 Fed. Appx. 361.

No. 11–10617. GOODWIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 662 F. 3d 301.

No. 11–10620. HASSETT *v.* HASSELBECK ET AL. C. A. 1st Cir. Certiorari denied.

No. 11–10621. DONAHUE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 460 Fed. Appx. 141.

No. 11–10622. SIMS *v.* RIOS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 457 Fed. Appx. 626.

No. 11–10623. STANWYCK *v.* SUPREME COURT OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 11–10624. SMITH *v.* PARKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–10625. RODRIGUEZ *v.* DEPARTMENT OF STATE. C. A. Fed. Cir. Certiorari denied. Reported below: 450 Fed. Appx. 965.

No. 11–10626. SHORTER *v.* ADAMS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–10627. SMITH *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 11–10631. SLETTEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 458 Fed. Appx. 782.

No. 11–10632. DELFIN *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied.

No. 11–10633. SHONG-CHING TONG *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–10634. AL TAWHEED, AKA ALI *v.* CITY OF SPRINGFIELD, MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 79 Mass. App. 1112, 944 N. E. 2d 1096.

No. 11–10635. WALTON *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 661 F. 3d 1308.

No. 11–10636. MARKOU *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 464 Fed. Appx. 30.

No. 11–10637. PRITT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 458 Fed. Appx. 795.

No. 11–10638. MACIAS-MUNOZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 460 Fed. Appx. 426.

No. 11–10639. LEE *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2010–2787 (La. 11/4/11), 78 So. 3d 749.

No. 11–10640. MCGEE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 592.

No. 11–10641. MELVIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 463 Fed. Appx. 141.

No. 11–10642. FREEMAN *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 83 So. 3d 707.

No. 11–10643. HALL *v.* BRUNSMAN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 662 F. 3d 745.

No. 11–10644. GOUVEIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 793.

No. 11–10645. GARDNER *v.* ROMANOWSKI, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–10646. L. F. *v.* CUYAHOGA COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 2011-Ohio-2158.

No. 11–10647. BRADLEY *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 79 So. 3d 26.

No. 11–10648. HICKS *v.* BIRKETT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–10649. GOAINS *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 11–10650. HESTER *v.* OFFICER O. C. A. 3d Cir. Certiorari denied.

No. 11–10651. GLIDDEN *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied.

No. 11–10653. WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 118.

No. 11–10655. THOMAS *v.* ALABAMA DEPARTMENT OF CORRECTIONS. Sup. Ct. Ala. Certiorari denied. Reported below: 151 So. 3d 395.

No. 11–10656. WINBURN *v.* MICHIGAN. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 11–10657. VELASQUEZ-MALDONADO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–10658. PAGE *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 11–10659. KOPSHO *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 84 So. 3d 204.

No. 11–10660. MAY *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 612 Pa. 505, 31 A. 3d 668.

No. 11–10661. COX *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 460 Fed. Appx. 248.

No. 11–10662. HOPSON *v.* KANSAS. C. A. 10th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 684.

No. 11–10663. HAMEED *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 275.

No. 11–10664. HOWELL *v.* TEXAS. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 11–10665. FORNEY *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 11–10666. FULBRIGHT *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–10667. HENDERSON *v.* BAUMAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–10668. HALL *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 84 App. Div. 3d 79, 923 N. Y. S. 2d 428.

No. 11–10669. GARDNER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 11–10670. GATO *v.* SMITH, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–10671. GARCIA *v.* EVANS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–10672. CULGAN ET AL. *v.* MILLER ET AL. Ct. App. Ohio, Medina County. Certiorari denied. Reported below: 2011-Ohio-6194.

No. 11–10673. FOLKES *v.* LEE, WARDEN. C. A. 2d Cir. Certiorari denied.

No. 11–10674. HIDROGO *v.* TEXAS. Ct. App. Tex., 11th Dist. Certiorari denied. Reported below: 352 S. W. 3d 27.

No. 11–10675. HOLMES *v.* DREYER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 431 Fed. Appx. 69.

No. 11–10676. HILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 460 Fed. Appx. 201.

No. 11–10677. FORTE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–10678. HUBER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 455 Fed. Appx. 696.

No. 11–10679. HAGER *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 11–10680. HUMPHREY *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 877.

No. 11–10681. LOPEZ-IMITOLA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 11–10682. GREER *v.* CARUSO ET AL. C. A. 6th Cir. Certiorari denied.

No. 11–10683. RHINES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 243.

No. 11–10684. RIVERA *v.* CUOMO, GOVERNOR OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 664 F. 3d 20.

No. 11–10685. REID *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 451 Fed. Appx. 896.

No. 11–10686. MATTHEWS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 34 A. 3d 214.

No. 11–10687. LEMPAR *v.* LIVINGSTON, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 268.

No. 11–10688. TORRES *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 128 Nev. 940, 381 P. 3d 670.

No. 11–10689. ZACKERY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–10690. THORNSBURY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 670 F. 3d 532.

No. 11–10691. KING *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 212.

No. 11–10693. LEONARD *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 81 So. 3d 421.

No. 11–10694. LINDSEY *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2010–2363 (La. 10/7/11), 71 So. 3d 306.

No. 11–10695. DELGADO *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 659 F. 3d 1311.

No. 11–10696. CAIN *v.* PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 11–10697. COMPANONIO *v.* DICHAUT, SUPERINTENDENT, NORTH CENTRAL CORRECTIONAL INSTITUTION AT GARDNER. C. A. 1st Cir. Certiorari denied. Reported below: 672 F. 3d 101.

No. 11–10698. WALIYUD-DIN *v.* KELLY, ATTORNEY GENERAL OF PENNSYLVANIA. C. A. 3d Cir. Certiorari denied.

No. 11–10699. ACCARDI *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 669 F. 3d 340.

No. 11–10700. ALONZO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–10701. BAILEY *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 78 So. 3d 308.

No. 11–10702. BYNUM *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 669 F. 3d 880.

No. 11–10703. BLUDWORTH *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–10704. BROWN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 456 Fed. Appx. 79.

No. 11–10705. BLACK *v.* TEXAS. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 11–10707. CLAVELLE *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 80 So. 3d 456.

No. 11–10708. MARTINEZ *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO. C. A. 10th Cir. Certiorari denied.

No. 11–10709. LOPEZ *v.* SANDERS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–10710. ZHENGHAO LIU *v.* HOLDER, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 457 Fed. Appx. 446.

No. 11–10711. POWELL *v.* WESTGATE RESORTS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 447 Fed. Appx. 92.

No. 11–10712. Moore *v.* Tucker, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 11–10713. McKinney *v.* Washington. Ct. App. Wash. Certiorari denied.

No. 11–10714. Musgrove *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 11–10716. Curvan *v.* Trombley, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 475.

No. 11–10717. Boone *v.* Zych, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 460 Fed. Appx. 223.

No. 11–10719. Wells *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 459 Fed. Appx. 243.

No. 11–10720. Tomaselli et al. *v.* Coppola & Coppola et al. C. A. 1st Cir. Certiorari denied.

No. 11–10721. Doroteo *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 203.

No. 11–10723. Martinez *v.* California. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 11–10724. Leech *v.* Holt, Warden. C. A. 3d Cir. Certiorari denied.

No. 11–10725. Xiang Li *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 11–10726. Johnson *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 11–10727. Neal *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 70 So. 3d 676.

No. 11–10728. Mueller *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 11–10729. Osborne *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 673 F. 3d 508.

No. 11–10730. Moses *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 11–10731. Ballejos *v.* Yates, Warden. C. A. 9th Cir. Certiorari denied.

No. 11–10732. Bridgmon *v.* Ohio. Ct. App. Ohio, Allen County. Certiorari denied.

No. 11–10733. Butts *v.* Sebelius, Secretary of Health and Human Services. C. A. 4th Cir. Certiorari denied. Reported below: 455 Fed. Appx. 313.

No. 11–10734. Andrulonis *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 379.

No. 11–10735. Villasenor *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 664 F. 3d 673.

No. 11–10736. Velasco-Hernandez *v.* Miller-Stout, Superintendent, Airway Heights Correctional Center. C. A. 9th Cir. Certiorari denied.

No. 11–10737. Melrose *v.* New York State Department of Health, Office of Professional Medical Conduct. C. A. 2d Cir. Certiorari denied.

No. 11–10738. Rosas-Jimenez *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 527.

No. 11–10739. Linsman *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 11–10740. Holston *v.* Tucker, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 11–10741. Gomez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 568.

No. 11–10742. Theresa H. *v.* Public Guardian, Office of Public Advocacy, et al. Sup. Ct. Alaska. Certiorari denied. Reported below: 270 P. 3d 805.

No. 11–10743. Hudson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 673 F. 3d 263.

No. 11–10744. Foster *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 662 F. 3d 291.

No. 11–10745. HEATH *v.* WOJTOWICZ ET AL. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 89 App. Div. 3d 551, 932 N. Y. S. 2d 695.

No. 11–10746. GRAUBERGER *v.* DOOLEY, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 11–10747. HUSTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 564.

No. 11–10749. STRICKLAND *v.* KNAB, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–10750. REED *v.* FLORIDA PAROLE COMMISSION. C. A. 11th Cir. Certiorari denied.

No. 11–10751. DUTTON-MYRIE, AKA MORRIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 482 Fed. Appx. 693.

No. 11–10753. COLEMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 223.

No. 11–10754. CARTER *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

No. 11–10755. STRICKLAND *v.* RRR BOWIE, LLC. Cir. Ct. Prince George's County, Md. Certiorari denied.

No. 11–10756. BANSE *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied. Reported below: 440 Fed. Appx. 39.

No. 11–10757. CHATT, INDIVIDUALLY AND AS CO-ADMINISTRATOR OF THE ESTATE OF CHATT, DECEASED *v.* CITY OF WEST MEMPHIS, ARKANSAS, ET AL. C. A. 8th Cir. Certiorari denied.

No. 11–10758. CHAVIS *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 11–10759. RIVERA-MARTINEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 665 F. 3d 344.

No. 11–10760. ROMERO *v.* LANDER ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 461 Fed. Appx. 661.

No. 11–10761. WARRENER *v.* SUTHERS, ATTORNEY GENERAL OF COLORADO. C. A. 10th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 290.

No. 11–10762. Tooley *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 357.

No. 11–10763. Davis *v.* Kansas. Ct. App. Kan. Certiorari denied. Reported below: 46 Kan. App. 2d xx, 258 P. 3d 387.

No. 11–10764. Enriquez *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 11–10765. Estrada *v.* Texas. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 352 S. W. 3d 762.

No. 11–10766. Dean *v.* Louisiana. Ct. App. La., 4th Cir. Certiorari denied.

No. 11–10767. Cornelius *v.* California. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 11–10770. Eichler *v.* Knipp, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 11–10771. Clay *v.* Glebe, Warden. C. A. 9th Cir. Certiorari denied.

No. 11–10773. Cazares Rojas *v.* Salazar, Warden. C. A. 9th Cir. Certiorari denied.

No. 11–10776. Neng Por Yang *v.* City of Shakopee, Minnesota, et al. Ct. App. Minn. Certiorari denied.

No. 11–10777. Coulibaly *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 463 Fed. Appx. 127.

No. 11–10778. Mercado *v.* Lempke, Superintendent, Five Points Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 11–10779. McCoy *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 11–10780. Achouatte *v.* New York. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 91 App. Div. 3d 1028, 936 N. Y. S. 2d 384.

No. 11–10782. Johnson *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 28 A. 3d 609.

No. 11–10783. SAUER *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 215 N. C. App. 393, 716 S. E. 2d 87.

No. 11–10784. RAISLEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 466 Fed. Appx. 125.

No. 11–10785. TAYLOR *v.* LOUISIANA. C. A. 5th Cir. Certiorari denied.

No. 11–10786. KING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 673 F. 3d 274.

No. 11–10787. WASHINGTON *v.* CITY OF LOS ANGELES, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 683.

No. 11–10788. NENG POR YANG *v.* HANSON ET AL. Ct. App. Minn. Certiorari denied.

No. 11–10789. VANDERZWAAG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 402.

No. 11–10790. BAMBIC *v.* WOOD. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2011 IL App (1st) 111608–U.

No. 11–10791. BUZBEE *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 199 Md. App. 678, 24 A. 3d 153.

No. 11–10792. WILKE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 481 Fed. Appx. 647.

No. 11–10793. UMPHREY *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 2011 IL App (4th) 100073–U.

No. 11–10794. WOLFE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 461 Fed. Appx. 122.

No. 11–10795. JOHNSON *v.* KNIPP, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–10796. E. C. *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–10797. CLOUD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 680 F. 3d 396.

No. 11–10798. INMAN *v.* SOUTH CAROLINA. Sup. Ct. S. C. Certiorari denied. Reported below: 395 S. C. 539, 720 S. E. 2d 31.

No. 11–10799. RICHARDS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 11–10800. SWANK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 676 F. 3d 919.

No. 11–10802. NELSON *v.* HOLDER, ATTORNEY GENERAL, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 262.

No. 11–10803. NAJERA *v.* WYOMING. C. A. 10th Cir. Certiorari denied. Reported below: 462 Fed. Appx. 827.

No. 11–10804. LABORDE *v.* VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 455 Fed. Appx. 361.

No. 11–10805. WHITMORE *v.* HILL ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 456 Fed. Appx. 726.

No. 11–10806. KING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 775.

No. 11–10807. LEE *v.* CULLY, SUPERINTENDENT, COLLINS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 11–10808. JIGGETTS *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 11–10809. JOHNSON *v.* SISTO, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 244.

No. 11–10811. TABANSI, AKA PEW *v.* JONES ET AL. C. A. 4th Cir. Certiorari denied.

No. 11–10812. TERRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 278.

No. 11–10813. TURNER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 11–10815. SHEHATA *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 678.

No. 11–10816. SANDERS *v.* LOUISIANA. Ct. App. La., 3d Cir. Certiorari denied. Reported below: 2011–160 (La. App. 3 Cir. 10/5/11), 74 So. 3d 284.

No. 11–10817. SKAGGS *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 83 So. 3d 726.

No. 11–10818. RILEY *v.* HEDGPETH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–10819. SELENSKY *v.* ALABAMA. C. A. 11th Cir. Certiorari denied. Reported below: 446 Fed. Appx. 213.

No. 11–10821. VASQUEZ ARROYO *v.* GROSS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 681.

No. 11–10822. WILSON *v.* MINOR, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 173.

No. 11–10823. BAILEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 677 F. 3d 816.

No. 11–10825. AL-RIKABI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–10827. BENNETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 183.

No. 11–10828. MARTIN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 164 Wash. App. 1003.

No. 11–10829. LOPEZ-MERIDA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 731.

No. 11–10830. MBACKE *v.* NORTH CAROLINA. Sup. Ct. N. C. Certiorari denied. Reported below: 365 N. C. 403, 721 S. E. 2d 218.

No. 11–10832. MOORE *v.* DEPARTMENT OF THE NAVY. C. A. Fed. Cir. Certiorari denied. Reported below: 476 Fed. Appx. 454.

No. 11–10836. NOVAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 461 Fed. Appx. 896.

No. 11–10837. MCQUEEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 670 F. 3d 1168.

No. 11–10838. MULLINIX *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 663 F. 3d 634.

No. 11–10839. ENRACA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 53 Cal. 4th 735, 269 P. 3d 543.

No. 11–10841. WYRE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 11–10842. WEBER *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 38 A. 3d 271.

No. 11–10843. GRANTHAM *v.* FAKHOURY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 443.

No. 11–10844. FALCON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 462 Fed. Appx. 866.

No. 11–10845. GRAY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–10851. HERNANDEZ-HERNANDEZ, AKA HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 263.

No. 11–10852. HILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 256.

No. 11–10853. FRANK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 431.

No. 11–10854. JACKSON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–10855. COAN *v.* MCCALL, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 460 Fed. Appx. 205.

No. 11–10856. MARLOW *v.* SUPREME COURT OF TENNESSEE ET AL. Sup. Ct. Tenn. Certiorari denied.

No. 11–10857. RAMOS-HERNANDEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–10859. DELGADO-BENITEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 464.

No. 11–10861. DOANE *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 454 Fed. Appx. 230.

No. 11–10862. CRAWFORD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 11–10863. HART *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 674 F. 3d 33.

No. 11–10864. HOLTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 265.

No. 11–10866. NEELEY *v.* HANEY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 449.

No. 11–10867. PHILLIPS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 11–10868. SISAVATH *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 765.

No. 11–10869. BELL *v.* LEE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 471 Fed. Appx. 17.

No. 11–10871. CARR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 420.

No. 11–10872. COLEMAN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–10873. WALKER *v.* CURLEY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 462 Fed. Appx. 543.

No. 11–10874. ARREYGUE *v.* VIRGA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–10875. CARPENTER *v.* BRADT, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 11–10876. BOLTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 669 F. 3d 780.

No. 11–10877. Bailey *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 456 Fed. Appx. 429.

No. 11–10878. Bertanelli *v.* Ryan, Director, Arizona Department of Corrections, et al. C. A. 9th Cir. Certiorari denied.

No. 11–10879. Hartwell *v.* Neven, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 749.

No. 11–10880. Owens *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 458 Fed. Appx. 444.

No. 11–10881. Maldonado *v.* Cartledge, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 171.

No. 11–10883. Tyson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 462 Fed. Appx. 402.

No. 11–10884. Rivera-Velez *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 468 Fed. Appx. 148.

No. 11–10885. Quintanilla *v.* Grounds, Warden. C. A. 9th Cir. Certiorari denied.

No. 11–10886. Spears *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 673 F. 3d 598.

No. 11–10887. Rubio *v.* Tennessee. Ct. Crim. App. Tenn. Certiorari denied.

No. 11–10888. Reyes *v.* Gonzales, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 11–10890. Rice *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 746.

No. 11–10891. Savell *v.* Mississippi. Sup. Ct. Miss. Certiorari denied.

No. 11–10892. Davis *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied. Reported below: 2011 OK CR 29, 268 P. 3d 86.

No. 11–10894. Cox *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 11–10895. Newton *v.* Oklahoma. Ct. Crim. App. Okla. Certiorari denied.

No. 11–10896. ORTIZ-RODRIGUEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 461 Fed. Appx. 525.

No. 11–10898. JUVENILE MALE ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 670 F. 3d 999.

No. 11–10900. LARSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 11–10901. LASHINSKY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–10902. MARTEN *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 615 Pa. 179, 41 A. 3d 1287.

No. 11–10903. WILKINS *v.* FREITAS. C. A. 9th Cir. Certiorari denied.

No. 11–10904. THOMAS *v.* ALABAMA BOARD OF PARDONS AND PAROLES. Ct. Crim. App. Ala. Certiorari denied. Reported below: 130 So. 3d 592.

No. 11–10905. TURNER *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 82 So. 3d 1107.

No. 11–10906. TISIUS *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 362 S. W. 3d 398.

No. 11–10907. MOORE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 462 Fed. Appx. 58.

No. 11–10908. MELENDEZ-ROCHA *v.* UNITED STATES; and
No. 11–10972. GARCIA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 666 F. 3d 492.

No. 11–10910. BAK *v.* DONAHOE, POSTMASTER GENERAL, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 705.

No. 11–10911. ALJAZI *v.* STATE FARM INSURANCE. Ct. App. Mich. Certiorari denied.

No. 11–10912. BAEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 623.

No. 11–10914. PATTERSON *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 464 Fed. Appx. 871.

No. 11–10915. MURPHY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 460 Fed. Appx. 122.

No. 11–10916. SNYDER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–10917. DEMENT *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 53 Cal. 4th 1, 264 P. 3d 292.

No. 11–10918. CARTER *v.* DEMPSEY ET AL. C. A. D. C. Cir. Certiorari denied.

No. 11–10919. COWAN *v.* MCCALL, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 204.

No. 11–10920. CHAVEZ *v.* HEDGPETH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–10921. SPENCER *v.* RILEY ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–10922. RUBIO SERRANO *v.* STANCIL, ADMINISTRATOR, BERTIE CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 453 Fed. Appx. 376.

No. 11–10923. ROBINSON *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 455 Fed. Appx. 319.

No. 11–10925. SMITH *v.* CHAPPELL, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 671.

No. 11–10926. SMITH *v.* BONDI, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–10927. SINGLETON *v.* EAGLETON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 226.

No. 11–10928. RIJO, AKA FELICINDO, AKA TIJO-MOTA, AKA CONCEPCION *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 467 Fed. Appx. 24.

No. 11–10929. SCOTT *v.* CURRY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–10932. VALRICK J. *v.* ORANGE COUNTY DEPARTMENT OF SOCIAL SERVICES. App. Div., Sup. Ct. N. Y., 2d Jud. Dept.

Certiorari denied. Reported below: 84 App. Div. 3d 1087, 923 N. Y. S. 2d 653.

No. 11–10934. ADEFUMI *v.* CITY OF PHILADELPHIA, PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 445 Fed. Appx. 610.

No. 11–10935. BRUMAIRE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 459 Fed. Appx. 212.

No. 11–10936. BLANCHARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 229.

No. 11–10938. OWENS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 857.

No. 11–10939. SCARBOROUGH *v.* MILLER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 457 Fed. Appx. 193.

No. 11–10940. JAMES *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 202 Cal. App. 4th 323, 136 Cal. Rptr. 3d 85.

No. 11–10941. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 373.

No. 11–10942. WHITMORE *v.* MILLER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 705.

No. 11–10943. TATUM *v.* DENNEY, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 11–10945. CHANDLER *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–10946. DUNN *v.* EDMONDS ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–10948. DAVIS *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. Sup. Ct. Ark. Certiorari denied. Reported below: 2012 Ark. 167.

No. 11–10949. SCACCIA *v.* STAMP ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 447 Fed. Appx. 267.

No. 11–10950. Ross *v.* Florida. C. A. 11th Cir. Certiorari denied.

No. 11–10951. Scott *v.* Iowa Department of Corrections et al. C. A. 8th Cir. Certiorari denied.

No. 11–10952. Sidener *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 11–10954. Rasley *v.* Tucker, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 11–10956. Bowers *v.* Call. Ct. App. Utah. Certiorari denied. Reported below: 2011 UT App 143, 257 P. 3d 433.

No. 11–10957. Branham *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 11–10958. Hunt *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 673 F. 3d 1289.

No. 11–10959. Wilson *v.* Ohio. Ct. App. Ohio, Montgomery County. Certiorari denied.

No. 11–10961. Williams *v.* Hobbs et al. C. A. 8th Cir. Certiorari denied. Reported below: 662 F. 3d 994.

No. 11–10962. Taylor *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 11–10963. Jennings *v.* Texas. Ct. App. Tex., 11th Dist. Certiorari denied.

No. 11–10964. Jackson *v.* Louisiana. Sup. Ct. La. Certiorari denied. Reported below: 2011–0871 (La. 2/17/12), 82 So. 3d 279.

No. 11–10966. Johnson *v.* Kerns, Warden. C. A. 6th Cir. Certiorari denied.

No. 11–10967. Prieto *v.* Virginia. Sup. Ct. Va. Certiorari denied. Reported below: 283 Va. 149, 721 S. E. 2d 484.

No. 11–10968. Torres *v.* Nebraska. Sup. Ct. Neb. Certiorari denied. Reported below: 283 Neb. 142, 812 N. W. 2d 213.

No. 11–10969. Smart *v.* Hedgpeth, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 803.

No. 11–10970. DUNN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–10971. SHUSTERMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 11–10973. MORRIS *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 203.

No. 11–10976. FAIR *v.* BYARS, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 277.

No. 11–10977. GRIFFEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–10978. GARCIA *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 407 Ill. App. 3d 195, 942 N. E. 2d 700.

No. 11–10979. GRIFFIN *v.* BAUMAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–10980. GILMORE *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–10981. FIGUEROA *v.* LEA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–10982. FERGUSON *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 212 N. C. App. 692, 718 S. E. 2d 737.

No. 11–10985. ISLAM *v.* SCUTT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–10986. GARRETT *v.* MICHIGAN. C. A. 6th Cir. Certiorari denied.

No. 11–10987. HOLLY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 309.

No. 11–10988. DAVIS *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 11–10991. Dolan *v.* Gerbering, Superintendent, Otisville Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 11–10992. Cantu-Ramirez *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 669 F. 3d 619.

No. 11–10993. Gamble *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 11–10994. Hickman *v.* Cameron, Superintendent, State Correctional Institution at Cresson. C. A. 3d Cir. Certiorari denied.

No. 11–10996. Foster *v.* Louisiana Department of Public Safety and Corrections et al. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 2010–1624 (La. App. 1 Cir. 3/25/11), 58 So. 3d 1155.

No. 11–10997. Romo-Villalobos *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 674 F. 3d 1246.

No. 11–10998. Naranjo *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 459 Fed. Appx. 579.

No. 11–10999. Jones *v.* Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 11–11000. Jones *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 11–11001. Ruffin *v.* Houston Independent School District. C. A. 5th Cir. Certiorari denied. Reported below: 459 Fed. Appx. 358.

No. 11–11002. Stephens *v.* Georgia Department of Transportation et al. C. A. 11th Cir. Certiorari denied.

No. 11–11004. Ambrose *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 668 F. 3d 943.

No. 11–11005. Campbell *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 84 So. 3d 313.

No. 11–11006. Chung *v.* United States. C. A. 2d Cir. Certiorari denied.

No. 11–11007. DAVILA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 661 F. 3d 568.

No. 11–11008. LOOSE, AKA CROWNHART *v.* KOGOUSEK ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 834.

No. 11–11009. CUEVAS *v.* GRONDOLSKY, WARDEN. C. A. 1st Cir. Certiorari denied. Reported below: 671 F. 3d 76.

No. 11–11011. CRUTCHER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–11012. CODIGA *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 11–11013. CAPELTON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–11014. EDMOND *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 11–11015. CANAS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 462 Fed. Appx. 836.

No. 11–11016. CASON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 11–11017. COLEMAN *v.* BUTTS, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 11–11019. ESQUIVEL *v.* LEDEZMA, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 462 Fed. Appx. 825.

No. 11–11020. GAYTAN *v.* HALL ET AL. C. A. 7th Cir. Certiorari denied.

No. 11–11021. FRIPP *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 455 Fed. Appx. 358.

No. 11–11022. FAULKENBERRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 461 Fed. Appx. 496.

No. 11–11024. HERRERA *v.* CASH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–11025. HUNTER *v.* OWENS. C. A. 5th Cir. Certiorari denied. Reported below: 460 Fed. Appx. 421.

No. 11–11026. GARZA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 11–11028. GUZMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 457 Fed. Appx. 223.

No. 11–11030. GARZA *v.* KANSAS. C. A. 10th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 734.

No. 11–11031. GONZALEZ-PEREZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 444 Fed. Appx. 867.

No. 11–11032. GATTI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 364.

No. 11–11033. HANSON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–11034. HUNTER *v.* LOUISIANA. Ct. App. La., 2d Cir. Certiorari denied. Reported below: 46,194 (La. App. 2 Cir. 4/13/11), 62 So. 3d 340.

No. 11–11035. GARCIA *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 84 App. Div. 3d 1116, 922 N. Y. S. 2d 813.

No. 11–11036. ENNIS, AKA JONES *v.* KIRKPATRICK, SUPERINTENDENT, WENDE CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 11–11037. CARDENAS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 11–11038. DAVIS *v.* MCDUFFIE. C. A. 5th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 7.

No. 11–11039. JONES *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 11–11040. GREENOUGH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 669 F. 3d 567.

No. 11–11041. VALENCIA *v.* HEDGPETH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 366.

No. 11–11042. WEEKS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2011 IL App (1st) 093109–U.

No. 11–11043. CASTRO-MAGAMA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 370.

No. 11–11044. HAGINS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 452 Fed. Appx. 141.

No. 11–11045. MIRANDA *v.* ANCHONDO ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 684 F. 3d 844.

No. 11–11046. MYLES *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 53 Cal. 4th 1181, 274 P. 3d 413.

No. 11–11047. LEYVA PECINA *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 361 S. W. 3d 68.

No. 11–11048. PHILLIPS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 482 Fed. Appx. 640.

No. 11–11049. MCCLENDON *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 11–11050. NOCK *v.* RODEN, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION AT NORFOLK. C. A. 1st Cir. Certiorari denied.

No. 11–11051. BLACK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 510.

No. 11–11052. GOMEZ *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 2011 IL App (1st) 092185, 959 N. E. 2d 1178.

No. 11–11053. GARY *v.* HILL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–11055. HUNT *v.* RAND. C. A. 4th Cir. Certiorari denied. Reported below: 461 Fed. Appx. 327.

No. 11–11056. HOLMES *v.* CITY OF SHORELINE, WASHINGTON. Super. Ct. Wash., King County. Certiorari denied.

No. 11–11057. GOODWIN, AKA ROSS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 239.

No. 11–11058. FABIAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 11–11059. HENRY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 11–11060. LOBO-LOPEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 186.

No. 11–11063. HOLLOWAY *v.* LAY, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied.

No. 11–11064. HUGHES *v.* CITY OF DALLAS, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 515.

No. 11–11065. GRAY *v.* BRITTEN, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 11–11066. HILL *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. Sup. Ct. Va. Certiorari denied.

No. 11–11067. HUNT *v.* CASSESE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 301.

No. 11–11068. POWELL *v.* KELLER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 538.

No. 11–11069. MCMILLION *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 472 Fed. Appx. 138.

No. 11–11070. MOTTEN *v.* BELL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–11072. AYERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–11073. GUTIERREZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–11074. HAYES *v.* ANDERSON, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 11–11075. HESS *v.* RIPPERGER ET AL. C. A. 8th Cir. Certiorari denied.

No. 11–11076. LOVELLETTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 593.

No. 11–11077. HERNANDEZ JIMENEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 680.

No. 11–11078. MALDONADO-AGUILAR *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 11–11080. DAVIS *v.* KIA MOTORS OF AMERICA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 199.

No. 11–11081. VEGA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 676 F. 3d 708.

No. 11–11082. THOMPSON *v.* TAYLOR ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 507.

No. 11–11083. WOOLSEY *v.* MISSOURI ET AL. Sup. Ct. Mo. Certiorari denied.

No. 11–11085. DODD *v.* BOARD OF EDUCATION, BRUNSWICK COUNTY SCHOOLS. C. A. 4th Cir. Certiorari denied.

No. 11–11086. KELLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 459 Fed. Appx. 527.

No. 11–11087. MARTI *v.* FAIRMAN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–11088. JEAN-GUERRIER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 666 F. 3d 1087.

No. 11–11089. HUERTA GUILLEN *v.* OLLISON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–11090. SCOTT *v.* SOBINA, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–11091. MORGAN *v.* WASHINGTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–11092. NANCE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 111.

No. 11–11093. DULANEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 178.

No. 11–11094. STRICKLAND *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 32 A. 3d 272.

No. 11–11095. SAMSOEDIEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–11097. ISMAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 461 Fed. Appx. 545.

No. 11–11098. RODGERS *v.* PFISTER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 11–11099. GLEASON *v.* HAWS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–11100. HINES *v.* KANE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 11–11101. FINLEY *v.* BERGH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–11103. HOFFMAN *v.* LEE. C. A. 9th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 503.

No. 11–11104. FEGAN *v.* GIPSON, ACTING WARDEN (two judgments). C. A. 9th Cir. Certiorari denied.

No. 11–11105. RYDLAND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 461 Fed. Appx. 208.

No. 11–11106. CLEMENTE-BERNABE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–11107. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 916.

No. 11–11108. BAIRD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–11109. MARTIN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 40 A. 3d 17.

No. 11–11110. LUNSFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 184.

No. 11–11111. LAROSE *v.* SCHNEIDER, JUDGE, CIRCUIT COURT OF MISSOURI, ST. CHARLES COUNTY. Sup. Ct. Mo. Certiorari denied.

No. 11–11112. JOHNSON *v.* WOLFENBARGER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–11113. CAVINS *v.* HUNTER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 599.

No. 11–11115. WILLIAMS *v.* EDENFIELD, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 286.

No. 11–11116. WILEY *v.* GRIMMER, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 292.

No. 11–11117. WILLIAMS *v.* OHIO PAROLE AUTHORITY. C. A. 6th Cir. Certiorari denied.

No. 11–11118. WALLACE *v.* COHEN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 110.

No. 11–11119. SHAO *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 11–11121. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–11122. RICHEY *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 11–11123. REGA *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–11124. SARCONA, AKA SARCONE, AKA JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 457 Fed. Appx. 806.

No. 11–11125. MORALES *v.* ELLIS. C. A. 11th Cir. Certiorari denied.

No. 11–11126. MURDOCK *v.* MICHIGAN. Cir. Ct. Isabella County, Mich. Certiorari denied.

No. 11–11127. BAKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 674 F. 3d 1066.

No. 11–11128. ADAMS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 11–11129. BOWELL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 11–11131. CRIDER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 457.

No. 11–11132. DITTMER *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. Ct. App. Mich. Certiorari denied.

No. 11–11133. WHITMORE *v.* HILL ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 456 Fed. Appx. 735.

No. 11–11134. GUY *v.* WILSON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 807.

No. 11–11135. FRANCIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 480 Fed. Appx. 8.

No. 11–11136. HALL *v.* PEOPLES ET AL. Sup. Ct. Va. Certiorari denied.

No. 11–11138. JOHNSON *v.* HENDERSON, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 11–11139. MATTHEWS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 986 A. 2d 1259.

No. 11–11140. GRAVES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 466 Fed. Appx. 56.

No. 11–11141. GAY *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 2011 IL App (4th) 100009, 960 N. E. 2d 1272.

No. 11–11142. KIDD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 11–11143. MENDEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 214.

No. 11–11144. MACKAY *v.* PLAN ADMINISTRATOR BENEFITS OUTSOURCING ET AL. C. A. 3d Cir. Certiorari denied.

No. 11–11145. GERMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 462 Fed. Appx. 293.

No. 11–11147. LEDBETTER *v.* CHUCK'S RENTALS, INC. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 2011 IL App (5th) 100473–U.

No. 11–11148. LEE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 457.

No. 11–11150. CLUTTER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 674 F. 3d 980.

No. 11–11151. SMITH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 295.

No. 11–11152. WRIGHT *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 466 Fed. Appx. 889.

No. 11–11153. SOULEMAN *v.* HOLDER, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 472 Fed. Appx. 120.

No. 11–11154. COLO'N *v.* DOWNS. C. A. 7th Cir. Certiorari denied.

No. 11–11156. BURGESS *v.* BERGH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 11–11157. BAHENA *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2011 IL App (1st) 102855–U.

No. 11–11158. ALTES *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 11–11159. MCCOY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 24 A. 3d 665.

No. 11–11160. SHEPPARD *v.* HOLDER, ATTORNEY GENERAL, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 360.

No. 12–2. GOVERNMENT OF BELIZE *v.* BELIZE SOCIAL DEVELOPMENT LTD. C. A. D. C. Cir. Certiorari denied. Reported below: 668 F. 3d 724.

No. 12–5. WELDON ET AL. *v.* OBAMA, PRESIDENT OF THE UNITED STATES. Super. Ct. Fulton County, Ga. Certiorari denied.

No. 12–7. Baker *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 144.

No. 12–8. Pahssen, as Next Friend of Doe, a Minor *v.* Merrill Community School District et al. C. A. 6th Cir. Certiorari denied. Reported below: 668 F. 3d 356.

No. 12–12. Turrubiates *v.* Family Practice Associates of Western Kansas, LLC, et al. Ct. App. Kan. Certiorari denied. Reported below: 45 Kan. App. 2d xliii, 249 P. 3d 468.

No. 12–14. Grynberg Production Corp. et al. *v.* Susman Godfrey, L. L. P. C. A. 10th Cir. Certiorari denied.

No. 12–18. Sledge *v.* Marshall County Sheriff Department. C. A. 5th Cir. Certiorari denied. Reported below: 447 Fed. Appx. 637.

No. 12–19. Connor *v.* St. Louis County, Missouri, dba Museum of Transportation. C. A. 2d Cir. Certiorari denied.

No. 12–20. Coulter *v.* Kelly, Attorney General of Pennsylvania, et al. C. A. 3d Cir. Certiorari denied.

No. 12–21. Chung *v.* Johnston et al. C. A. 9th Cir. Certiorari denied. Reported below: 441 Fed. Appx. 536.

No. 12–22. Ali, aka Ali-Gardner *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 239.

No. 12–24. Campbell, Individually and as Personal Representative of the Estate of Booth *v.* Washington Department of Social and Health Services et al. C. A. 9th Cir. Certiorari denied. Reported below: 671 F. 3d 837.

No. 12–26. Williams et ux. *v.* Bentley Motors, Inc., et al. Sup. Ct. Cal. Certiorari denied.

No. 12–27. Jones *v.* United Parcel Service, Inc. C. A. 10th Cir. Certiorari denied. Reported below: 674 F. 3d 1187.

No. 12–28. Krukemyer *v.* Forcum. C. A. 6th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 563.

No. 12–29. McPeters *v.* Edwards, Individually and in His Official Capacity as the District Judge of the 9th Dis-

TRICT COURT, MONTGOMERY COUNTY, TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 351.

No. 12–31. DOE *v.* WHITE PLAINS HOSPITAL MEDICAL CENTER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 458 Fed. Appx. 21.

No. 12–32. CAPOGROSSO *v.* KANSAS. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 60 App. Div. 3d 522, 874 N. Y. S. 2d 376.

No. 12–34. HAGGARD *v.* CITY OF JACKSON, MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 84 So. 3d 797.

No. 12–35. MCNEIL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 451 Fed. Appx. 694.

No. 12–36. MEMPHIS HOUSING AUTHORITY *v.* GIGGERS ET AL. Sup. Ct. Tenn. Certiorari denied. Reported below: 363 S. W. 3d 500.

No. 12–37. CITY OF DES MOINES, IOWA *v.* KRAGNES ET AL. Sup. Ct. Iowa. Certiorari denied. Reported below: 810 N. W. 2d 492.

No. 12–39. SELGAS ET UX. *v.* HENDERSON COUNTY APPRAISAL DISTRICT. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 12–40. ROTHSTEIN ET UX. *v.* OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 452 Fed. Appx. 75.

No. 12–41. MOORE *v.* DEPARTMENT OF EDUCATION. C. A. 2d Cir. Certiorari denied. Reported below: 457 Fed. Appx. 10.

No. 12–42. GERMALIC *v.* NEW YORK STATE BOARD OF ELECTIONS COMMISSIONERS. C. A. 2d Cir. Certiorari denied. Reported below: 466 Fed. Appx. 54.

No. 12–45. AVCO CORP. *v.* STEWART ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 7 A. 3d 266.

No. 12–46. MALOOF *v.* UHRICH, PLAN ADMINISTRATOR OF THE CONSOLIDATED ESTATE OF LEVEL PROPANE GASES, INC. C. A. 6th Cir. Certiorari denied.

No. 12–47. GARCIA *v.* WHIRLPOOL CORP. C. A. 6th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 609.

No. 12–50. SALCIDO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 475 Fed. Appx. 788.

No. 12–51. CARLSON ET AL. *v.* WIGGINS, JUSTICE, SUPREME COURT OF IOWA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 675 F. 3d 1134.

No. 12–53. CUATRO DEL MAR *v.* IMPERIAL IRRIGATION DISTRICT. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 201 Cal. App. 4th 758, 134 Cal. Rptr. 3d 274.

No. 12–54. HWANG, AKA LUCAS *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 12–57. COLLINS ET AL. *v.* KAPPOS, DIRECTOR, PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 464 Fed. Appx. 883.

No. 12–58. GONZALEZ *v.* DEPARTMENT OF HOMELAND SECURITY. C. A. Fed. Cir. Certiorari denied. Reported below: 482 Fed. Appx. 560.

No. 12–59. GIBSON ET VIR *v.* AMERICAN GREETINGS CORP. C. A. 8th Cir. Certiorari denied. Reported below: 670 F. 3d 844.

No. 12–60. FISHER ET AL. *v.* COMMUNICATIONS WORKERS OF AMERICA ET AL. Ct. App. N. C. Certiorari denied. Reported below: 215 N. C. App. 46, 716 S. E. 2d 396.

No. 12–64. MAVERICK ENTERPRISES, LLC, ET AL. *v.* CITY OF ALABASTER, ALABAMA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 456 Fed. Appx. 870.

No. 12–65. MATTHIES *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 85 So. 3d 838.

No. 12–67. ALMOND ET AL. *v.* UNIFIED SCHOOL DISTRICT #501. C. A. 10th Cir. Certiorari denied. Reported below: 665 F. 3d 1174.

No. 12–69. JONES *v.* UNIVERSITY OF HAWAII ET AL. Int. Ct. App. Haw. Certiorari denied. Reported below: 126 Haw. 24, 265 P. 3d 493.

No. 12–70. KRIKHELI ET UX. *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 461 Fed. Appx. 7.

No. 12–72. BARRETT *v.* BELLEQUE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 653.

No. 12–73. STOFFELS, ON BEHALF OF THE SBC TELEPHONE CONCESSION PLAN, ET AL. *v.* SBC COMMUNICATIONS, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 677 F. 3d 720.

No. 12–75. WALTNER ET UX. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 679 F. 3d 1329.

No. 12–76. EL PASO ENTERTAINMENT, INC., ET AL. *v.* CITY OF EL PASO, TEXAS. C. A. 5th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 366.

No. 12–77. DAMATO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 672 F. 3d 832.

No. 12–78. BEY *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 32 A. 3d 819.

No. 12–85. WAGENFEALD ET AL. *v.* GUSMAN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 674 F. 3d 475.

No. 12–87. TERRANOVA, AS ADMINISTRATOR OF THE ESTATE OF TERRANOVA, ET AL. *v.* TORRES ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 676 F. 3d 305.

No. 12–90. POLAR STAR ALASKA HOUSING CORP. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 668 F. 3d 1119.

No. 12–91. VETA *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 451 Fed. Appx. 698.

No. 12–92. J. C. *v.* BUTLER COUNTY CHILDREN AND YOUTH SERVICES ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 38 A. 3d 927 and 928.

No. 12–93. CHIEN *v.* SKYSTAR BIO PHARMACEUTICAL CO. ET AL. C. A. 2d Cir. Certiorari denied.

No. 12–94. CHIEN *v.* SKYSTAR BIO PHARMACEUTICAL CO. ET AL. C. A. 2d Cir. Certiorari denied.

No. 12–100. WARMUS *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 197 Ohio App. 3d 383, 2011-Ohio-5827, 967 N. E. 2d 1223.

No. 12–101. BROWN *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 469 Fed. Appx. 852.

No. 12–102. MALDONADO *v.* SUPERIOR COURT OF CALIFORNIA, SAN MATEO COUNTY, ET AL. Sup. Ct. Cal. Certiorari denied. Reported below: 53 Cal. 4th 1112, 274 P. 3d 1110.

No. 12–103. LESKINEN *v.* HALSEY ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–105. AMERICAN EXPRESS TRAVEL RELATED SERVICES, INC. *v.* SIDAMON-ERISTOFF, TREASURER OF NEW JERSEY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 669 F. 3d 359.

No. 12–106. YEPEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 456 Fed. Appx. 52.

No. 12–113. MERRILL LYNCH, PIERCE, FENNER & SMITH INC. *v.* MCREYNOLDS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 672 F. 3d 482.

No. 12–116. LEI *v.* PELLETTI. Ct. App. Wash. Certiorari denied. Reported below: 162 Wash. App. 531, 256 P. 3d 1251.

No. 12–118. LOVLAND *v.* EMPLOYERS MUTUAL CASUALTY CO. C. A. 8th Cir. Certiorari denied. Reported below: 674 F. 3d 806.

No. 12–120. GEORGE *v.* DONAHOE, POSTMASTER GENERAL, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 459 Fed. Appx. 671.

No. 12–121. HARMAN *v.* BUNCH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 462 Fed. Appx. 319.

No. 12–125. WURZEL *v.* WHIRLPOOL CORP. C. A. 6th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 1.

No. 12–128. POOH BAH ENTERPRISES, INC. *v.* CITY OF CHICAGO, ILLINOIS, ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2011 IL App (1st) 093293–U.

No. 12–129. Beary Landscaping, Inc., et al. *v.* Costigan, Director, Illinois Department of Labor. C. A. 7th Cir. Certiorari denied. Reported below: 667 F. 3d 947.

No. 12–131. Cummins *v.* Hawaii. Int. Ct. App. Haw. Certiorari denied. Reported below: 126 Haw. 474, 272 P. 3d 1241.

No. 12–132. Dunn *v.* Brown et al. C. A. 1st Cir. Certiorari denied.

No. 12–134. Hayes *v.* City of Chicago, Illinois. C. A. 7th Cir. Certiorari denied. Reported below: 670 F. 3d 810.

No. 12–137. Al Ghaith Suleiman *v.* Obama, President of the United States, et al. C. A. D. C. Cir. Certiorari denied. Reported below: 670 F. 3d 1311.

No. 12–141. Bader *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 678 F. 3d 858.

No. 12–149. Murray *v.* Anderson. C. A. 9th Cir. Certiorari denied. Reported below: 453 Fed. Appx. 756.

No. 12–153. Driscoll et ux. *v.* Commissioner of Internal Revenue. C. A. 11th Cir. Certiorari denied. Reported below: 669 F. 3d 1309.

No. 12–154. Mussack *v.* Hawaii Board of Education. Int. Ct. App. Haw. Certiorari denied. Reported below: 126 Haw. 25, 265 P. 3d 494.

No. 12–155. Rodrigues *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 678 F. 3d 693.

No. 12–170. Whitesell International Corp. *v.* Whitaker. Ct. App. Mich. Certiorari denied.

No. 12–174. David E. Watson, P. C. *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 668 F. 3d 1008.

No. 12–181. Alswager *v.* Rocky Mountain Instrumental Laboratories, Inc., et al. C. A. 7th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 482.

No. 12–183. Standridge *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 12–185. MAGA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 538.

No. 12–186. JONES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 364 S. W. 3d 854.

No. 12–187. HATLEY *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 71 M. J. 93.

No. 12–189. LEE *v.* MICHAEL, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 29.

No. 12–195. STIERHOFF *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–196. CAREY *v.* RYAN. Ct. Sp. App. Md. Certiorari denied. Reported below: 199 Md. App. 705 and 713.

No. 12–197. DONCHAK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 687 F. 3d 134.

No. 12–201. BOYLE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 452 Fed. Appx. 55.

No. 12–206. DAILY *v.* PENNSYLVANIA STATE CIVIL SERVICE COMMISSION (NORTHAMPTON COUNTY AREA AGENCY ON AGING). Commw. Ct. Pa. Certiorari denied. Reported below: 30 A. 3d 1235.

No. 12–217. GIBERT ET AL. *v.* UNITED STATES (Reported below: 677 F. 3d 613); and HUTTO ET AL. *v.* UNITED STATES (677 F. 3d 629). C. A. 4th Cir. Certiorari denied.

No. 12–229. ROSE *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 71 M. J. 138.

No. 12–248. YOUNG *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 481 Fed. Appx. 769.

No. 12–5001. COLVIN *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2011–1040 (La. 3/13/12), 85 So. 3d 663.

No. 12–5002. RIVERA-SANTANA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 668 F. 3d 95.

No. 12–5004. MENDEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–5005. MEGGS *v.* KNOWLIN, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 260.

No. 12–5006. KING *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 499.

No. 12–5007. MAESTAS *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 128 Nev. 124, 275 P. 3d 74.

No. 12–5008. SALAS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2011 IL App (1st) 091880, 961 N. E. 2d 831.

No. 12–5010. CRAPE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 581.

No. 12–5012. NGUYEN *v.* KNOWLES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 128.

No. 12–5013. ROEDEL *v.* FRINK, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–5014. BUSH *v.* WILSON, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 459 Fed. Appx. 805.

No. 12–5015. BUCCI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 662 F. 3d 18.

No. 12–5018. BELDEN *v.* LAMPERT, DIRECTOR, WYOMING DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 456 Fed. Appx. 715.

No. 12–5019. VAN HOESEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 450 Fed. Appx. 57.

No. 12–5020. KUMVACHIRAPITAG *v.* GATES ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–5022. JUAREZ *v.* JACQUEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–5023. LOPEZ-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 565.

No. 12–5024. MAJOR ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 676 F. 3d 803.

No. 12–5025. COLE *v.* BOWERSOX, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 12–5026. MARTINEZ-MENDOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 323.

No. 12–5028. PICKETT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 375.

No. 12–5029. HOFFMAN *v.* STULGA ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 229.

No. 12–5031. SODIPO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 161.

No. 12–5034. SOLIS-DIAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 387.

No. 12–5035. SULLIVAN *v.* DERAMCY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 460 Fed. Appx. 374.

No. 12–5037. JACKSON *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 294 Kan. viii, 274 P. 3d 26.

No. 12–5038. MANGUM *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 270.

No. 12–5039. POSTELLE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 2011 OK CR 30, 267 P. 3d 114.

No. 12–5040. MORALES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 474 Fed. Appx. 30.

No. 12–5041. KITCHEN *v.* BALLARD, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 237.

No. 12–5042. LEROY *v.* HILL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–5043. LEE *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY. C. A. 3d Cir. Certiorari denied. Reported below: 468 Fed. Appx. 127.

No. 12–5044. SWANEGAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 655.

No. 12–5045. SCOTT *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied.

No. 12–5046. DE LA CERDA *v.* VAUGHN. Ct. App. Tex., 12th Dist. Certiorari denied.

No. 12–5047. VASQUEZ-OLEA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 704.

No. 12–5048. TRUONG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 649.

No. 12–5049. BEARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 665.

No. 12–5050. BORBON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 674.

No. 12–5051. THAMES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 241.

No. 12–5055. MARTIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 456 Fed. Appx. 240.

No. 12–5056. KORDENBROCK *v.* BROWN ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 434.

No. 12–5057. LADEAIROUS *v.* SUPREME COURT OF VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 12–5058. MELGOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 357.

No. 12–5059. EUBANKS *v.* LEMPKE, SUPERINTENDENT, FIVE POINTS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 479 Fed. Appx. 363.

No. 12–5060. CHILDRESS *v.* DASSAULT SYSTEMES, S. A. C. A. 6th Cir. Certiorari denied. Reported below: 663 F. 3d 832.

No. 12–5061. RAISLEY *v.* NEW JERSEY. Super. Ct. N. J., App. Div. Certiorari denied.

No. 12–5064. PACHECO *v.* CALIFORNIA; and

No. 12–5135. LUGO *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 12–5065. McFalls *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 675 F. 3d 599.

No. 12–5066. Pita-Mota *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 447.

No. 12–5067. Spry *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 12–5068. O'Neill *v.* Clarke, Director, Virginia Department of Corrections. C. A. 4th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 200.

No. 12–5069. Mondaca *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 12–5070. Roman *v.* Wenerowicz, Superintendent, State Correctional Institution at Graterford, et al. C. A. 3d Cir. Certiorari denied. Reported below: 675 F. 3d 204.

No. 12–5071. Contreras *v.* Cate, Secretary, California Department of Corrections and Rehabilitation. C. A. 9th Cir. Certiorari denied.

No. 12–5072. Elam *v.* Denney, Warden. C. A. 8th Cir. Certiorari denied. Reported below: 662 F. 3d 1059.

No. 12–5073. Davis *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 459 Fed. Appx. 664.

No. 12–5074. Chitwood *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 676 F. 3d 971.

No. 12–5076. Garcia *v.* Yates, Warden. C. A. 9th Cir. Certiorari denied.

No. 12–5077. Francisco-Pascual *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 694.

No. 12–5078. Huitron-Guizar *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 678 F. 3d 1164.

No. 12–5079. Harris *v.* Kansas. Sup. Ct. Kan. Certiorari denied. Reported below: 294 Kan. viii, 274 P. 3d 25.

No. 12–5080. Delgado *v.* Warren, Administrator, New Jersey State Prison, et al. C. A. 3d Cir. Certiorari denied.

No. 12–5081. DEIBERT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 121.

No. 12–5082. RUELAS TORRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 459 Fed. Appx. 347.

No. 12–5083. WOODARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–5084. TENERELLI *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–5085. TREVINO *v.* HARDY, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 12–5086. THOMPSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 462 Fed. Appx. 265.

No. 12–5087. BARTLETT *v.* KELLER, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION. C. A. 4th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 190.

No. 12–5088. BRACAMONTES, AKA BRACAMONTES-RAYO, AKA PALOMARES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 157.

No. 12–5089. BARLEY *v.* EDMONDS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 232.

No. 12–5090. TIGELINO MARTINEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 475 Fed. Appx. 773.

No. 12–5091. KOEHLER *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 31 A. 3d 755.

No. 12–5092. JACKSON *v.* TAYLOR ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 467 Fed. Appx. 98.

No. 12–5094. MCCARTHY *v.* SCOFIELD ET AL. Ct. App. Mich. Certiorari denied.

No. 12–5095. PRAWDZIK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 484 Fed. Appx. 717.

No. 12–5096. MUTH *v.* FONDREN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 676 F. 3d 815.

No. 12–5097. TAYLOR *v.* SALAZAR, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–5098. WEBB *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 665 F. 3d 1380.

No. 12–5099. CRAWFORD *v.* CITY OF TAMPA, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 856.

No. 12–5100. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 1.

No. 12–5102. ROULHAC *v.* PRISON HEALTH SERVICES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 214.

No. 12–5103. STREU *v.* DORMIRE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 12–5105. SMITH *v.* FOLINO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–5106. JONES *v.* CITIMORTGAGE, INC., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 420.

No. 12–5108. VETETO *v.* SUPREME COURT OF ALABAMA ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–5110. HILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 78 Fed. Appx. 223.

No. 12–5111. FANARY, AKA MARSHALL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 148.

No. 12–5113. HOPE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–5114. HARVEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 12–5115. GONZALEZ URIBE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 465 Fed. Appx. 75.

No. 12–5116. Fox *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 12–5117. Honarmand *v.* J. C. Penney. C. A. 8th Cir. Certiorari denied. Reported below: 434 Fed. Appx. 575.

No. 12–5120. Young *v.* Pennsylvania. Super. Ct. Pa. Certiorari denied. Reported below: 40 A. 3d 183.

No. 12–5122. Muhonen *v.* Cingular Wireless Employee Services, LLC, et al. C. A. 8th Cir. Certiorari denied. Reported below: 456 Fed. Appx. 610.

No. 12–5123. Dillon *v.* United States. C. A. 5th Cir. Certiorari denied.

No. 12–5124. Dennard *v.* Tucker, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 12–5126. Baisey *v.* Stansberry, Warden. C. A. D. C. Cir. Certiorari denied.

No. 12–5127. Brown *v.* Pollard, Warden. C. A. 7th Cir. Certiorari denied.

No. 12–5128. Richardson *v.* Greene. C. A. 4th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 240.

No. 12–5129. Johnson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 179.

No. 12–5130. Cabrera Saucedo *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 384 Fed. Appx. 312.

No. 12–5133. Malcomson *v.* Topps, Inc. C. A. 9th Cir. Certiorari denied. Reported below: 459 Fed. Appx. 672.

No. 12–5134. Lopez *v.* Texas. Ct. App. Tex., 4th Dist. Certiorari denied. Reported below: 358 S. W. 3d 691.

No. 12–5136. Mendiola *v.* Hobbs, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied.

No. 12–5137. Guess *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 546.

No. 12–5138. Lau *v.* Florida. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 83 So. 3d 743.

No. 12–5141. Williams *v.* Robertson et al. C. A. 4th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 151.

No. 12–5142. Wheaten *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 321.

No. 12–5143. Thomas *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 50 A. 3d 458.

No. 12–5144. Toyens-Villegas *v.* United States. C. A. 1st Cir. Certiorari denied.

No. 12–5146. Moser *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 713.

No. 12–5147. Parson *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 12–5148. Neng Por Yang *v.* Nutter et al. C. A. 8th Cir. Certiorari denied. Reported below: 455 Fed. Appx. 705.

No. 12–5149. Johnson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 223.

No. 12–5151. Bright *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 90 So. 3d 249.

No. 12–5152. Bowler *v.* Lafler, Warden. C. A. 6th Cir. Certiorari denied.

No. 12–5153. Bromwell et al. *v.* Nixon et al. Sup. Ct. Mo. Certiorari denied. Reported below: 361 S. W. 3d 393.

No. 12–5154. Rojas *v.* Kirkland, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 668.

No. 12–5156. Sturm *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 673 F. 3d 1274.

No. 12–5157. Ramez *v.* Glebe, Superintendent, Stafford Creek Corrections Center. C. A. 9th Cir. Certiorari denied.

No. 12–5158. Shields *v.* Frontier Technology LLC, dba MicroAge LLC, et al. C. A. 9th Cir. Certiorari denied.

No. 12–5159. KENDRICK *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 12–5160. MARTINEZ-CASTRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 687.

No. 12–5161. NIETO-ROJAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 674.

No. 12–5162. PATE *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 12–5164. NDOROMO *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied.

No. 12–5166. LAMB *v.* MICHIGAN. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 12–5167. WHITE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 670 F. 3d 1077.

No. 12–5168. TURNER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 674 F. 3d 420.

No. 12–5169. COLLINS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 461 Fed. Appx. 807.

No. 12–5171. PAIGE *v.* UNKNOWN PARTIES ET AL. C. A. 6th Cir. Certiorari denied.

No. 12–5172. CUNNINGHAM *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–5173. HINTON *v.* BAILEY, SHERIFF, MECKLENBURG COUNTY, NORTH CAROLINA, ET AL. Sup. Ct. N. C. Certiorari denied.

No. 12–5174. HORMACHEA *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 12–5175. GORBEY *v.* WEST VIRGINIA ET AL. Sup. Ct. App. W. Va. Certiorari denied.

No. 12–5176. FLOWERS *v.* SMALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–5177. HOLZ *v.* MCFADDEN ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–5178. HOLMES *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 12–5179. HANCOCK *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 453 Fed. Appx. 286.

No. 12–5180. HONESTO *v.* ADAMS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–5181. HANCOCK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 424.

No. 12–5183. GARCIA-TORRES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–5184. FABIAN ET UX. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 173.

No. 12–5185. GRAVES *v.* SWARTHOUT, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 768.

No. 12–5186. GARDNER *v.* ZAKAIB, CHIEF JUDGE, CIRCUIT COURT OF WEST VIRGINIA, KANAWHA COUNTY. Sup. Ct. App. W. Va. Certiorari denied.

No. 12–5187. GAFFNEY *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 79 So. 3d 744.

No. 12–5188. THOMPSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–5189. TANNIS *v.* NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 12–5190. WILLOUGHBY *v.* HORNE, ATTORNEY GENERAL OF ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–5191. WILLIAMS *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 244.

No. 12–5192. SHAW *v.* WALKER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–5193. MURDOCK *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2011 IL App (3d) 091053–UB.

No. 12–5194. MCGAHA *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 12–5195. LEWIS *v.* RUNNELS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 778.

No. 12–5198. IJEWERE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 557.

No. 12–5200. POSADOS-AGUILERA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 336 Fed. Appx. 970.

No. 12–5202. FALCON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 12–5203. HOWELL *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 12–5205. GARCIA *v.* SMALL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–5206. FOX *v.* DREW, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 148.

No. 12–5207. LOFLEY *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 91 So. 3d 132.

No. 12–5208. GOREE *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 12–5209. BRADY *v.* PERSSON, SUPERINTENDENT, OREGON STATE CORRECTIONAL INSTITUTION. Ct. App. Ore. Certiorari denied. Reported below: 247 Ore. App. 354, 271 P. 3d 154.

No. 12–5212. WOODFIN *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 209.

No. 12–5213. WIDI *v.* NEW HAMPSHIRE. Super. Ct. N. H., Rockingham County. Certiorari denied.

No. 12–5214. HAYES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 409 Ill. App. 3d 612, 949 N. E. 2d 182.

No. 12–5215. GRINDLING *v.* THOMAS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–5217. HARPER *v.* FARRELL, JUDGE, CIRCUIT COURT OF WEST VIRGINIA, CABELL COUNTY. Sup. Ct. App. W. Va. Certiorari denied.

No. 12–5218. DAZA GUTIERREZ *v.* HARKLEROAD, SUPERINTENDENT, MARION CORRECTIONAL INSTITUTION, ET AL. C. A. 4th Cir. Certiorari denied.

No. 12–5219. HARRIS *v.* PROGRESSIVE CASUALTY INSURANCE CO. C. A. 4th Cir. Certiorari denied. Reported below: 450 Fed. Appx. 273.

No. 12–5220. GONZALEZ *v.* HEDGPETH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–5221. CLARK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 454 Fed. Appx. 435.

No. 12–5222. ELDRIDGE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 460 Fed. Appx. 3.

No. 12–5223. JONES *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 12–5224. BEN-MORKA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–5225. MCGOUGH *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 12–5226. NAVARRO-GARCIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 653.

No. 12–5227. MORAIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 670 F. 3d 889.

No. 12–5228. ORTA-ROSARIO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 140.

No. 12–5230. GARBUTT *v.* BRADT, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 668 F. 3d 79.

No. 12–5231. WOGENSTAHL *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 668 F. 3d 307.

No. 12–5232. ABEL *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 53 Cal. 4th 891, 271 P. 3d 1040.

No. 12–5233. WILLIAMS *v.* CITY UNIVERSITY OF NEW YORK, BROOKLYN COLLEGE. C. A. 2d Cir. Certiorari denied.

No. 12–5235. ROMERO-CORONA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 142.

No. 12–5236. SPURLOCK *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 12–5237. SHULICK *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir. Certiorari denied.

No. 12–5238. SMITH *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 280.

No. 12–5239. DANG *v.* SOLAR TURBINES INC. C. A. 9th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 804.

No. 12–5241. CROSBY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 913.

No. 12–5242. DOUGLAS *v.* INGERSOLL. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 12–5243. REED *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 12–5244. REILLY *v.* CAMPBELL. C. A. 11th Cir. Certiorari denied.

No. 12–5245. SMART *v.* WILSON, ATTORNEY GENERAL OF SOUTH CAROLINA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 165.

No. 12–5246. ROSARIO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–5248. SASTROM *v.* DREW, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 12–5249. SELDERS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2011–2286 (La. 6/1/12), 90 So. 3d 426.

No. 12–5250. SANCHEZ *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 12–5251. MUNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 57.

No. 12–5252. ROMAN *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 615 Pa. 451, 43 A. 3d 1286.

No. 12–5253. WALKER *v.* GROUNDS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–5254. TITUS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 826.

No. 12–5255. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 457 Fed. Appx. 840.

No. 12–5256. TORAIN *v.* SMITHSONIAN INSTITUTION. C. A. Fed. Cir. Certiorari denied. Reported below: 465 Fed. Appx. 945.

No. 12–5257. DAVID D. *v.* GRIEVANCE COMMITTEE OF THE EIGHTH JUDICIAL DISTRICT OF NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 18 N. Y. 3d 974, 967 N. E. 2d 700.

No. 12–5258. SALVADOR ROMERO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 120.

No. 12–5259. DANIELS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 896.

No. 12–5262. JACKSON *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 440.

No. 12–5266. INFANTE-CABRERA *v.* WALTON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–5267. FRANKLIN *v.* U. S. BANK N. A. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 12–5268. RIVAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 273.

No. 12–5270. CARDONA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–5272. COOLEY *v.* SMALL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–5273. DELGADO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 478 Fed. Appx. 732.

No. 12–5274. ROBINSON *v.* CONNELL, SUPERINTENDENT, ONEIDA CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 478 Fed. Appx. 705.

No. 12–5275. LAWSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 644.

No. 12–5276. JUDY *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. Sup. Ct. Ga. Certiorari denied.

No. 12–5277. MAURELLO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–5278. JONES *v.* WINGARD, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT LAUREL HIGHLANDS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–5279. KEARSE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 152.

No. 12–5280. LEWIS *v.* SINCLAIR, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 12–5282. OCHOA *v.* WORKMAN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 669 F. 3d 1130.

No. 12–5283. O'GUINN *v.* CORTEZ MASTO, ATTORNEY GENERAL OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–5284. LARA *v.* YATES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–5286. REYES-BONILLA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 671 F. 3d 1036.

No. 12–5287. NICHOLS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 12–5288. MUTHUKUMAR *v.* DESS ET AL. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 12–5289. REESE *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 675 F. 3d 1277.

No. 12–5292. VALENCIA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 456 Fed. Appx. 875.

No. 12–5293. WRIGHT *v.* MCDONALD, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 678.

No. 12–5294. IZATT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 447.

No. 12–5295. FULLER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 514.

No. 12–5296. FINCH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–5297. FRANKLIN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2011 IL App (1st) 102002–U.

No. 12–5298. FONTANEZ *v.* HOLT, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–5299. FABIAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 461 Fed. Appx. 244.

No. 12–5300. LAFARGA *v.* MARTEL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–5301. HUNT *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–5303. FUTCH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–5304. OLIVELLA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 674 F. 3d 735.

No. 12–5305. METHVIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–5307. PROCTOR *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 193.

No. 12–5308. GODFREY *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 12–5310. LACHIRA *v.* SUTTON LAND LLC ET AL. App. Ct. Conn. Certiorari denied.

No. 12–5311. LEBLANC *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 12–5312. FLORES-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 677 F. 3d 699.

No. 12–5313. SAA *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–5314. SANGALAZA *v.* WELLS FARGO NATIONAL BANK. C. A. 1st Cir. Certiorari denied.

No. 12–5315. ROJAS-VEGA *v.* BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–5316. SILVIO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 840.

No. 12–5317. PORTER, AKA OWUSU *v.* HEYNS, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS, ET AL. C. A. 6th Cir. Certiorari denied.

No. 12–5320. EVANS *v.* BOOKER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 461 Fed. Appx. 441.

No. 12–5321. ETOTY, AKA LOWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 3d 292.

No. 12–5322. VICKERMAN *v.* BIXLER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 568.

No. 12–5323. WILLIAMS *v.* VAUGHN, DISTRICT ATTORNEY, LEHIGH COUNTY, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 477 Fed. Appx. 1.

No. 12–5324. ANDERSON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–5325. BROWN *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 12–5326. GONZALEZ-TREJO ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 55.

No. 12–5327. HOLLIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 459 Fed. Appx. 535.

No. 12–5328. HAND *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR. C. A. 3d Cir. Certiorari denied. Reported below: 446 Fed. Appx. 429.

No. 12–5329. MILES *v.* PERSSON, SUPERINTENDENT, OREGON STATE CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 12–5330. POULLARD *v.* ST. AMANT ET AL. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 2011–0958 (La. App. 4 Cir. 4/4/12), 89 So. 3d 393.

No. 12–5331. VU HOANG NGUYEN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 12–5335. RENTERIA-VAZQUEZ, AKA RENTERIA, AKA GARCIA, AKA RENTERIA-VASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 269.

No. 12–5337. GONZALEZ-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–5340. CLEVELAND ET UX. *v.* OKLAHOMA. Sup. Ct. Okla. Certiorari denied.

No. 12–5343. DOWELL *v.* GARCIA, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 503.

No. 12–5344. WILLIAMS *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 81 So. 3d 1165.

No. 12–5345. TONEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–5347. WILLIAMS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 381.

No. 12–5348. WOOD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–5350. WASHINGTON *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 203 Md. App. 766.

No. 12–5351. ZELLIS *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 127 Nev. 1187, 373 P. 3d 976.

No. 12–5352. YELVERTON *v.* DISTRICT OF COLUMBIA OFFICE OF BAR COUNSEL. C. A. D. C. Cir. Certiorari denied.

No. 12–5353. PRYOR *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 12–5355. GIRMA *v.* DEPARTMENT OF HOMELAND SECURITY. C. A. D. C. Cir. Certiorari denied. Reported below: 468 Fed. Appx. 7.

No. 12–5356. SWANSBROUGH *v.* SCUTT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–5358. GARNER *v.* JONES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 460 Fed. Appx. 212.

No. 12–5359. FLEMING *v.* MAZURKIEWICZ, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENSBURG, ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–5361. MIRALRIO REBOLLAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–5362. SABER ET AL. *v.* BANK OF AMERICA ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–5364. PRENATT *v.* G. W. WILLIAMS CO., DBA SIERRA ROBLES APARTMENTS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 543.

No. 12–5365. MORRISON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 829.

No. 12–5366. GRIFFIN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 28 A. 3d 585.

No. 12–5369. HUCK *v.* NORMAN, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 12–5371. CURESCU *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 674 F. 3d 735.

No. 12–5372. COSSEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 476 Fed. Appx. 931.

No. 12–5373. CABRERA, AKA MEDINA, AKA CARERA, AKA CHIKINKIRA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 208.

No. 12–5376. PICCONE *v.* NEW YORK STATE DEPARTMENT OF HEALTH ET AL. C. A. 2d Cir. Certiorari denied.

No. 12–5377. POYDRAS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2011–0825 (La. 3/9/12), 83 So. 3d 1053.

No. 12–5378. NORMAN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 12–5379. ROSE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 487 Fed. Appx. 33.

No. 12–5381. BACHMANN *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 12–5382. TIERNEY *v.* UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT. C. A. 9th Cir. Certiorari denied.

No. 12–5383. BUTLER *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 12–5384. ANAYA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–5385. LOPEZ VASQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 308.

No. 12–5386. BOTHA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 575.

No. 12–5389. NORWOOD *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 12–5390. MATTHEWS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 371.

No. 12–5391. BUTLER *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 306.

No. 12–5392. BOWEN *v.* BOWEN. Ct. App. Utah. Certiorari denied. Reported below: 2011 UT App 352, 264 P. 3d 233.

No. 12–5393. BARTOLILLO *v.* BROWN, SUPERINTENDENT, EASTERN NEW YORK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 12–5394. ALDRED *v.* BIRKETT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–5395. ARAFAT *v.* STATE FARM INSURANCE CO. ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 90 So. 3d 270.

No. 12–5396. BORECKI *v.* ARIZONA DEPARTMENT OF ECONOMIC SECURITY ET AL. Ct. App. Ariz. Certiorari denied.

No. 12–5397. GOMEZ-HAWKINS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 509.

No. 12–5398. MATTISON *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 12–5400. LENOIR *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 88 So. 3d 938.

No. 12–5402. LARIMER *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 317.

No. 12–5403. KNOWLIN *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 164.

No. 12–5404. KESSLER *v.* PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 12–5405. JONES *v.* RUIZ ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 834.

No. 12–5407. ORTEGA-GALVAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 682 F. 3d 558.

No. 12–5409. MOORE *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 439.

No. 12–5410. CONTRERAS-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 670.

No. 12–5411. REYES *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 12–5413. BALDWIN *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 12–5414. LEON *v.* SECURAPLANE TECHNOLOGIES, INC., ET AL. Ct. App. Ariz. Certiorari denied.

No. 12–5415. MALEDE *v.* WILSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 261.

No. 12–5416. BROWN *v.* UNEMPLOYMENT COMPENSATION BOARD OF REVIEW. Commw. Ct. Pa. Certiorari denied.

No. 12–5417. VILLEGAS *v.* GALLOWAY ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 458 Fed. Appx. 334.

No. 12–5418. LEZAMA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 122.

No. 12–5420. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 175.

No. 12–5421. RIGGS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 12–5422. ROBLEDO *v.* JONES, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 773.

No. 12–5423. GOMEZ *v.* NEUBAUER, BRIGADIER GENERAL, COMMANDER, 56TH FIGHTER WING, LUKE AIR FORCE BASE, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 451.

No. 12–5426. DEVERS *v.* FAYRAM, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 12–5428. DAVIS *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 957 N. E. 2d 705.

No. 12–5429. WOOLMAN *v.* NEBRASKA ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 484.

No. 12–5430. ACUNA-REYNA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 677 F. 3d 1282.

No. 12–5431. BURCH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 772.

No. 12–5434. LOPEZ *v.* CALIFORNIA. Ct. App. Cal., 4th App. Dist., Div. 3. Certiorari denied.

No. 12–5438. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 322.

No. 12–5439. ORTIZ-FIGUEROA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 216 F. 3d 163.

No. 12–5440. PEIRCE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 12–5441. ACOSTA *v.* N. A. P. H. CARE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 800.

No. 12–5442. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 945.

No. 12–5444. HALL *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2010–2523 (La. 11/4/11), 75 So. 3d 916.

No. 12–5445. GRIFFIN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2011 IL App (1st) 080654.

No. 12–5446. VENTA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–5448. BAJANAAR *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied.

No. 12–5449. BETTENCOURT *v.* KNOWLES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 661.

No. 12–5450. WRIGHT *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–5451. WHITTINGTON *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 12–5452. ROLLINS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 276.

No. 12–5455. HALL *v.* JONES ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 535.

No. 12–5456. HAMPTON *v.* AYERS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–5457. CORELLEONE *v.* COVINA POLICE DEPARTMENT. C. A. 9th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 677.

No. 12–5458. CHARLES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 213.

No. 12–5459. DELEON *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 732.

No. 12–5460. CARTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–5461. WILLIAMS *v.* LOCKETT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 12–5462. TURNPAUGH *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 12–5465. McDonald *v.* Astrue, Commissioner of Social Security. C. A. 7th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 554.

No. 12–5466. Nelson *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 12–5467. Mastowski *v.* Lempke, Superintendent, Five Points Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 12–5468. Jennings *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 119.

No. 12–5469. Rozzelle *v.* Tucker, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 672 F. 3d 1000.

No. 12–5470. Scarlato *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 477 Fed. Appx. 818.

No. 12–5471. Patterson *v.* Small, Warden. C. A. 9th Cir. Certiorari denied.

No. 12–5472. Mitchell *v.* Indiana. Sup. Ct. Ind. Certiorari denied. Reported below: 970 N. E. 2d 665.

No. 12–5474. Antonetti *v.* Neven, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 12–5475. Stewart *v.* Parris. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 12–5476. Hilton *v.* Washington. Ct. App. Wash. Certiorari denied. Reported below: 164 Wash. App. 81, 261 P. 3d 683.

No. 12–5477. Samuel *v.* Yenefanta. Ct. Sp. App. Md. Certiorari denied. Reported below: 203 Md. App. 762 and 767.

No. 12–5478. Gonzalez *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 461 Fed. Appx. 34.

No. 12–5480. Hagood *v.* Reynolds, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 214.

No. 12–5482. Abram *v.* Gerry, Warden. C. A. 1st Cir. Certiorari denied. Reported below: 672 F. 3d 45.

No. 12–5483. ZAMBRELLA *v.* LOCKETT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 12–5485. GOODRICH *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI. C. A. 8th Cir. Certiorari denied.

No. 12–5486. HOBBS *v.* TAMPKINS, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–5487. CONTRERAS *v.* SHARTLE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–5488. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 673 F. 3d 497.

No. 12–5490. LAFUENTE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 12–5492. SILVA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 70.

No. 12–5493. SHIPPY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 172.

No. 12–5494. ROSALES-TRUJILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 295.

No. 12–5497. WESTERLUND *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 366.

No. 12–5502. DE LA ROSA *v.* NEW YORK CITY POLICE DEPARTMENT ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 461 Fed. Appx. 73.

No. 12–5503. HARRISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 321.

No. 12–5504. ZELEKE *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 278.

No. 12–5505. ZELEKE *v.* NASA HEADQUARTERS. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 336.

No. 12–5509. SPIVEY *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 104 So. 3d 1100.

No. 12–5511. BLANTON *v.* BONDI, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–5516. CRESPO *v.* ARNONE, COMMISSIONER, CONNECTICUT DEPARTMENT OF CORRECTION. C. A. 2d Cir. Certiorari denied.

No. 12–5517. EVANS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 289.

No. 12–5519. DARDEN *v.* LOCKETT, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 477 Fed. Appx. 912.

No. 12–5521. KING *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 484.

No. 12–5522. KELSO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 551.

No. 12–5523. MAYER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 451 Fed. Appx. 684.

No. 12–5524. MAYER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 674 F. 3d 942.

No. 12–5527. MEIRICK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 674 F. 3d 802.

No. 12–5528. MCCLELLAN *v.* JARRIEL, WARDEN. Super. Ct. Tattnall County, Ga. Certiorari denied.

No. 12–5529. MONTUE *v.* SCHWARTZ, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 455 Fed. Appx. 732.

No. 12–5531. ROGERS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 463.

No. 12–5532. SHAREEF, AKA KARIM, AKA SHERIF *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 613.

No. 12–5533. QUINTANA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–5536. ANDABLO-SAENZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–5538. WATSON *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 12–5539. THOMAS *v.* POLLARD, WARDEN. Ct. App. Wis. Certiorari denied.

No. 12–5542. COLEMAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 419.

No. 12–5544. JOHNSON *v.* WALL, DIRECTOR, RHODE ISLAND DEPARTMENT OF CORRECTIONS, ET AL. C. A. 1st Cir. Certiorari denied.

No. 12–5545. MALAVE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 469 Fed. Appx. 51.

No. 12–5547. RODRIGUEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 310.

No. 12–5548. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–5549. LI XIN WU *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 668 F. 3d 882.

No. 12–5554. OCAMPO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–5556. SOMIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 334.

No. 12–5557. RAHIM, AKA MYERS *v.* SOUTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 300.

No. 12–5558. RUELAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 12–5559. CASTRO-RAMIREZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 461 Fed. Appx. 467.

No. 12–5560. CREEK *v.* UNITED STATES ET AL. C. A. 8th Cir. Certiorari denied.

No. 12–5561. OWENS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 12–5567. CHROMY *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 606.

No. 12–5569. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 676 F. 3d 1138.

No. 12–5570. QUINONES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 457 Fed. Appx. 68.

No. 12–5571. SCHIRO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 679 F. 3d 521.

No. 12–5575. VASQUEZ-GUTIERREZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 336.

No. 12–5578. TOELUPE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 12–5586. GREGORY *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 469 Fed. Appx. 891.

No. 12–5587. BIRHAN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 47 A. 3d 559.

No. 12–5589. DOMINGUEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 475 Fed. Appx. 454.

No. 12–5591. CURRENCE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 12–5596. JONES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 674 F. 3d 88.

No. 12–5597. W. R. *v.* DISTRICT OF COLUMBIA. Ct. App. D. C. Certiorari denied. Reported below: 52 A. 3d 820.

No. 12–5600. CARPENTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 201.

No. 12–5601. MONTOUR *v.* CLEMENTS, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS. C. A. 10th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 808.

No. 12–5605. GEORGE *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 2012 ME 64, 52 A. 3d 903.

No. 12–5607. DeSilva *v.* United States. C. A. 7th Cir. Certiorari denied.

No. 12–5608. Stewart *v.* Tucker, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 12–5616. Logan *v.* Outlaw, Warden, et al. C. A. 8th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 532.

No. 12–5617. Luh *v.* Fulton State Hospital et al. C. A. 8th Cir. Certiorari denied.

No. 12–5619. Plotkin *v.* United States et al. C. A. 11th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 828.

No. 12–5620. Rangel *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 12–5623. Aman *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 221.

No. 12–5625. Cunningham *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 669 F. 3d 723.

No. 12–5627. Bobo *v.* Astrue, Commissioner of Social Security. C. A. 9th Cir. Certiorari denied.

No. 12–5628. Wright *v.* United States. C. A. 4th Cir. Certiorari denied.

No. 12–5629. Wainwright *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 238.

No. 12–5630. Tarver *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 12–5633. Kuchna *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 12–5636. Maytubby *v.* United States. C. A. 10th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 877.

No. 12–5638. Williams *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 21.

No. 12–5639. St. Vallier *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 488 Fed. Appx. 628.

No. 12–5640. BROWN *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 561.

No. 12–5641. STINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 285.

No. 12–5644. CASTRO-DAVIS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–5645. RENDON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 462 Fed. Appx. 923.

No. 12–5647. BLACKWOOD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 208.

No. 12–5648. DREW *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 422 Fed. Appx. 1.

No. 12–5652. ANDERSON *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2012 Ark. 270, 423 S. W. 3d 20.

No. 12–5653. MARTINEZ *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 34 A. 3d 229.

No. 12–5654. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 682 F. 3d 448.

No. 12–5655. ROBINSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 467 Fed. Appx. 115.

No. 12–5657. SHEHABELDIN *v.* UNITED STATES POSTAL INSPECTION SERVICE ET AL. C. A. 2d Cir. Certiorari denied.

No. 12–5662. SYLVESTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–5663. DICKERSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 12–5664. MCARTY *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. Sup. Ct. Ark. Certiorari denied. Reported below: 2012 Ark. 257.

No. 12–5666. JORDAN *v.* WILEY, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 525.

No. 12–5667. ACEVEDO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 200.

No. 12–5668. WILLIAMS *v.* BOWERSOX, SUPERINTENDENT, SOUTH CENTRAL CORRECTIONAL FACILITY. Sup. Ct. Mo. Certiorari denied.

No. 12–5679. GONZALEZ *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–5680. ROBINSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 618.

No. 12–5683. GUNTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 244.

No. 12–5685. FREEMAN *v.* UNITED STATES;
No. 12–5740. MCGARITY *v.* UNITED STATES; and
No. 12–5790. LAKEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 669 F. 3d 1218.

No. 12–5686. INGRAM *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 490 Fed. Appx. 363.

No. 12–5687. GERHARTZ *v.* PUGH, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 12–5693. JABAL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–5694. PATTERSON *v.* RIOS, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 12–5696. BROWN *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 27 A. 3d 127.

No. 12–5697. OLMOS-AMADOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 376.

No. 12–5701. GAYEKPAR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 678 F. 3d 629.

No. 12–5702. BURNELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 501.

No. 12–5703. DURHAM *v.* VARANO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–5704. GREENO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 679 F. 3d 510.

No. 12–5707. CARPENTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 457 Fed. Appx. 889.

No. 12–5709. COX *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 460 Fed. Appx. 248.

No. 12–5712. SMOLSKY *v.* KERESTES, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–5714. POWELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 680 F. 3d 350.

No. 12–5722. JOHNSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 632.

No. 12–5723. MARTINEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–5726. RYAN *v.* SCISM, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 474 Fed. Appx. 49.

No. 12–5727. BISHOP-OYEDEPO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 431.

No. 12–5732. PIERCE *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 216 N. C. App. 377, 718 S. E. 2d 648.

No. 12–5736. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 229.

No. 12–5742. TAYLOR *v.* HOLDER, ATTORNEY GENERAL, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 329.

No. 12–5744. WILLIAMS *v.* JACQUEZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 851.

No. 12–5745. COWAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 674 F. 3d 947.

No. 12–5746. DAMAYO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 409.

No. 12–5751. TINDALL *v.* FREIGHTQUOTE.COM, INC. C. A. 10th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 752.

No. 12–5753. THOMAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 752.

No. 12–5755. ALEXANDER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 679 F. 3d 721.

No. 12–5757. PRATT *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 180.

No. 12–5762. LAMONDS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–5764. VERBURG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 188.

No. 12–5766. THOMAS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 53 Cal. 4th 771, 269 P. 3d 1109.

No. 12–5767. WILSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 12–5769. CERDA-ENRIQUEZ, AKA MADRAIGAL, AKA MENDES, AKA ENRIQUEZ CERDA, AKA GUZMAN, AKA MADRIGA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 565.

No. 12–5770. SHIELDS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 381.

No. 12–5777. MONTGOMERY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–5779. KILBURN *v.* SPENCER, COMMISSIONER, MASSACHUSETTS DEPARTMENT OF CORRECTION. C. A. 1st Cir. Certiorari denied.

No. 12–5781. JIMENEZ-ESPINOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 194.

No. 12–5787. SANCHEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 139.

No. 12–5791. BUCZEK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 457 Fed. Appx. 22.

No. 12–5795. CASTRO DAVIS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–5796. CARSON *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied.

No. 12–5803. ROBINSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 670 F. 3d 874.

No. 12–5808. JOHNSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–5815. TAYLOR *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 12–5816. HILARIO-POLANCO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–5821. DUNAWAY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 482 Fed. Appx. 714.

No. 12–5825. MALINSKY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 12–5827. O'NEAL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 469.

No. 12–5830. MILLER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 12–5831. STEWART *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 12–5836. CLARK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 464 Fed. Appx. 82.

No. 12–5838. WINBUSH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 250.

No. 12–5839. TORRES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 387.

No. 12–5840. GLADDEN *v.* BOLDEN, ADMINISTRATOR, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION. C. A. D. C. Cir. Certiorari denied.

No. 12–5841. HERNANDEZ-CABEZAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 299.

No. 12–5843. GASCA-CHAVEZ, AKA NAVARRO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 679 F. 3d 132.

No. 12–5844. FERNANDEZ-AVINA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 212.

No. 12–5845. FORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 146.

No. 12–5846. RIVERA *v.* CITY OF CHELSEA, MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 81 Mass. App. 1125, 964 N. E. 2d 370.

No. 12–5853. MATHIS *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 2012 IL App (5th) 100092–U.

No. 12–5854. JANGULA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 595.

No. 12–5855. LAUGHLIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 818.

No. 12–5856. SANDOVAL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 480 Fed. Appx. 692.

No. 12–5862. AVANT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–5865. CAPOZZI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–5867. IBEH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 480 Fed. Appx. 658.

No. 12–5870. FIGUEROA *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA. C. A. 3d Cir. Certiorari denied. Reported below: 463 Fed. Appx. 99.

No. 12–5875. FIGUEROA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 12–5885. HOLYFIELD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–5888. MENDOZA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 677 F. 3d 822.

No. 12–5892. SCHUMAKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 878.

No. 12–5893. RANEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 591.

No. 12–5894. SANDERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 461 Fed. Appx. 854.

No. 12–5898. BOWIE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 12–5903. COLEN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 482 Fed. Appx. 710.

No. 12–5904. DELEON-TORRES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 599.

No. 12–5905. VALENTIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 469 Fed. Appx. 48.

No. 12–5916. JONES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 346 Fed. Appx. 253.

No. 12–5924. KING *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 266.

No. 12–5928. MIRANDA-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 626.

No. 12–5929. MURRAY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 483 Fed. Appx. 690.

No. 12–5931. BARGO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 78.

No. 12–5947. CHAVEZ-MARQUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 244.

No. 12–5949. SANTONE *v.* FISCHER, COMMISSIONER, NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES. C. A. 2d Cir. Certiorari denied. Reported below: 689 F. 3d 138.

No. 12–5960. DANIELS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 12–5961. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 874.

No. 12–5968. RIVERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 93.

No. 12–5969. SUNIGA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 798.

No. 12–5971. ASHLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 512.

No. 12–5972. SPIGNER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–5975. ANTONE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 461 Fed. Appx. 815.

No. 12–5976. BUGG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 166.

No. 12–5977. BREWER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 291.

No. 12–5979. ORTIZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 483 Fed. Appx. 712.

No. 12–5980. RODRIGUEZ-CHACON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 391.

No. 12–5987. BRIGHAM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 12–5988. COLLINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–952. PENNSYLVANIA *v.* BANKS. Sup. Ct. Pa. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 612 Pa. 56, 29 A. 3d 1129.

No. 11–1094. MARTEL, WARDEN *v.* TUITE (Reported below: 460 Fed. Appx. 701); and YATES, WARDEN *v.* MEROLILLO (663 F. 3d 444). C. A. 9th Cir. Motion of respondents for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 11–1203. RUBASHKIN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 655 F. 3d 849.

No. 11–1302. NEW WEST, L. P., ET AL. *v.* CITY OF JOLIET, ILLINOIS, ET AL. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–1335. SZAFRAN *v.* SANDATA TECHNOLOGIES, INC. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 452 Fed. Appx. 41.

No. 11–1378. WYOMING *v.* DEPARTMENT OF AGRICULTURE ET AL.; and

No. 11–1384. COLORADO MINING ASSN. *v.* DEPARTMENT OF AGRICULTURE ET AL. C. A. 10th Cir. Certiorari denied. JUSTICE ALITO and JUSTICE KAGAN took no part in the consideration or decision of these petitions. Reported below: 661 F. 3d 1209.

No. 11–1397. CHAPPELL, ACTING WARDEN *v.* GONZALES. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 667 F. 3d 965.

No. 11–1409. CONAGRA, INC., ET AL. *v.* AMERICOLD CORP. ET AL. Sup. Ct. Kan. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 293 Kan. 633, 270 P. 3d 1074.

No. 11–1418. WALKER, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF WALKER *v.* MEDTRONIC, INC. C. A. 4th Cir. Motion of respondent for leave to file brief in opposition under seal with redacted copies for the public record granted. Certiorari denied. Reported below: 670 F. 3d 569.

No. 11–1422. BRUNER ET UX. *v.* WHITMAN ET AL. C. A. 9th Cir. Motion of Jeanette Stevens for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 671 F. 3d 905.

No. 11–1426. NATIONAL ORGANIZATION FOR MARRIAGE, INC., ET AL. *v.* MCKEE ET AL. C. A. 1st Cir. Motion of respondents for leave to file brief in opposition under seal with redacted copies for the public record granted. Certiorari denied. Reported below: 669 F. 3d 34.

No. 11–1453. BARCLAY *v.* BARCLAY. Ct. App. Ore. Motion of American Retirees Association et al. for leave to file brief as

amici curiae granted. Certiorari denied. Reported below: 245 Ore. App. 725, 261 P. 3d 1292.

No. 11–1471. Nebraskans United for Life, dba Nulife Pregnancy Resource Center *v.* Planned Parenthood of the Heartland et al. C. A. 8th Cir. Motions of Thomas More Law Center and Eagle Forum Education & Legal Defense Fund for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 664 F. 3d 716.

No. 11–1474. Farmers Insurance Company of Washington et al. *v.* Moratti, a Minor, By and Through Her Guardian ad Litem Tarutis. Ct. App. Wash. Motion of DRI–The Voice of the Defense Bar for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 162 Wash. App. 495, 254 P. 3d 939.

No. 11–1478. Banks *v.* Ameren UE et al. C. A. 8th Cir. Certiorari denied. Justice Alito took no part in the consideration or decision of this petition. Reported below: 439 Fed. Appx. 564.

No. 11–1543. Metz *v.* Titanium Metals Corp., dba Timet. C. A. 6th Cir. Certiorari denied. Justice Alito took no part in the consideration or decision of this petition. Reported below: 475 Fed. Appx. 33.

No. 11–9692. Rana *v.* Department of the Army. C. A. Fed. Cir. Motion for reconsideration of order denying leave to proceed *in forma pauperis* [566 U. S. 1020] denied. Leave to proceed as a veteran granted. Certiorari denied. Reported below: 453 Fed. Appx. 982.

No. 11–10049. Honesto *v.* Fogel, Judge, 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.

No. 11–10145. Nickels *v.* Hobbs, Director, Arkansas Department of Correction. C. A. 8th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied.

No. 11–10371. Strother *v.* United States. C. A. 8th Cir. Certiorari denied. Justice Kagan took no part in the consideration or decision of this petition.

No. 11–10520. STEVENSON ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 676 F. 3d 557.

No. 11–10561. NAVAR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–10564. HARRIS *v.* FELKER, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 468 Fed. Appx. 761.

No. 11–10586. MADRIZ-REYNA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 11–10607. RUTLEDGE *v.* CITY OF OAKLAND, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 453 Fed. Appx. 737.

No. 11–10618. FARRELL *v.* ABBOTT LABORATORIES. C. A. 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 11–10619. HAQUE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–10654. TIMMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 664 F. 3d 436.

No. 11–10769. COCHRAN *v.* OLIVER, WARDEN. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–10774. ROGERS *v.* DICKINSON, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 471 Fed. Appx. 766.

No. 11–10834. MATHIS *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE

ALITO took no part in the consideration or decision of this petition.

No. 11–10847. MANNING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 462 Fed. Appx. 345.

No. 11–10897. PEREIRA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–10909. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–11018. DEDE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–11096. HAIRSTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 467 Fed. Appx. 234.

No. 11–11130. MCKINNON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–1. REPUBLIC OF ARGENTINA *v.* EM LTD. ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 680 F. 3d 254.

No. 12–33. DOLENZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 464 Fed. Appx. 429.

No. 12–38. CALDWELL *v.* KAGAN, ASSOCIATE JUSTICE, SUPREME COURT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 455 Fed. Appx. 1.

No. 12–66. SCHULEMAN *v.* UNION ASSET MANAGEMENT HOLDING A. G. ET AL. C. A. 5th Cir. Certiorari denied. THE CHIEF

JUSTICE took no part in the consideration or decision of this petition. Reported below: 669 F. 3d 632.

No. 12–68. LAW OFFICES OF THEODORE COATES, P. C. *v.* AIG ANNUITY INSURANCE CO. ET AL. C. A. 10th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 478 Fed. Appx. 484.

No. 12–107. SENSING ET AL. *v.* PORTER ET AL. C. A. 1st Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 677 F. 3d 21.

No. 12–110. WEBB *v.* INTERNATIONAL BUSINESS MACHINES CORP. C. A. 11th Cir. Certiorari denied. JUSTICE BREYER and JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 458 Fed. Appx. 871.

No. 12–124. CASTRO *v.* FLORIDA BOARD OF BAR EXAMINERS. Sup. Ct. Fla. Motion of Florida Association of Criminal Defense Lawyers-Miami Chapter for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 87 So. 3d 699.

No. 12–5054. SURGENT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–5062. JORDAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 461 Fed. Appx. 771.

No. 12–5101. ROLLNESS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 451 Fed. Appx. 707.

No. 12–5109. FALLS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–5112. HUMBERT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–5204. HINSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consid-

eration or decision of this petition. Reported below: 475 Fed. Appx. 298.

No. 12–5210. BAYLIS *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 469 Fed. Appx. 618.

No. 12–5332. STEELE *v.* TURNER BROADCASTING SYSTEM, INC., ET AL.; STEELE *v.* VECTOR MANAGEMENT ET AL.; STEELE *v.* BONGIOVI ET AL.; and STEELE *v.* RICIGLIANO. C. A. 1st Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 12–5339. CONYERS *v.* PISTOLE, ADMINISTRATOR, TRANSPORTATION SECURITY ADMINISTRATION, DEPARTMENT OF HOMELAND SECURITY. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 558 F. 3d 137.

No. 12–5342. CRAWFORD *v.* UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–5357. RUTLEDGE *v.* ALLEN ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 12–5367. WINGO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–5370. FRANKEL, AKA STEVENS, AKA KING *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR and JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–5401. JORDAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–5447. BECK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–5514. CONFREDO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 458 Fed. Appx. 69.

No. 12–5530. GONZAGA RODRIQUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 471 Fed. Appx. 727.

No. 12–5537. SISNEY *v.* REISCH, SECRETARY, SOUTH DAKOTA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 674 F. 3d 839.

No. 12–5606. CREAMER *v.* ESIS CLAIMS UNIT ET AL. C. A. 10th Cir. Certiorari before judgment denied.

No. 12–5649. ASKEW *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–5665. LEE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–5672. JEFFRIES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 472 Fed. Appx. 166.

No. 12–5674. BATTLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–5684. HORN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 679 F. 3d 397.

No. 12–5705. BARFIELD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–5720. WOODBERRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 469 Fed. Appx. 279.

No. 12–5743. YOUNGE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–5765. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–5897. SCHWARTZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–5908. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 477 Fed. Appx. 590.

No. 12–5938. PEER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–5944. CESAL *v.* CROSS, WARDEN. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

Rehearing Denied

No. 11–1251. BOWERSOCK *v.* CITY OF LIMA, OHIO, 566 U. S. 1035;

No. 11–8846. BURGHART *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS, 566 U. S. 927;

No. 11–9189. GAMAGE *v.* MISSISSIPPI, 566 U. S. 994;

No. 11–9768. BLACKMON *v.* DOUGLAS, WARDEN, 567 U. S. 929;

No. 11–9899. DAVIS *v.* AKIN'S ET AL., 567 U. S. 910; and

No. 11–9964. MORRIS *v.* MALFI, WARDEN, ET AL., 567 U. S. 940. Petitions for rehearing denied.

OCTOBER 4, 2012

Miscellaneous Order

No. 11–1351. LEVIN *v.* UNITED STATES ET AL. C. A. 9th Cir. [Certiorari granted, 567 U. S. 968.] James A. Feldman, Esq., of Washington, D. C., is invited to brief and argue this case as *amicus curiae* in support of petitioner.

October 5, 2012

Certiorari Granted

No. 11–796. Bowman *v.* Monsanto Co. et al. C. A. Fed. Cir. Certiorari granted. Reported below: 657 F. 3d 1341.

No. 11–1118. Gunn et al. *v.* Minton. Sup. Ct. Tex. Certiorari granted. Reported below: 355 S. W. 3d 634.

No. 11–1447. Koontz *v.* St. Johns River Water Management District. Sup. Ct. Fla. Certiorari granted. Reported below: 77 So. 3d 1220.

No. 12–17. McBurney et al. *v.* Young, Deputy Commissioner and Director, Virginia Division of Child Support Enforcement, et al. C. A. 4th Cir. Certiorari granted. Reported below: 667 F. 3d 454.

No. 11–1545. City of Arlington, Texas, et al. *v.* Federal Communications Commission et al.; and

No. 11–1547. Cable, Telecommunications, and Technology Committee of the New Orleans City Council *v.* Federal Communications Commission et al. C. A. 5th Cir. Certiorari granted limited to Question 1 presented by the petition in No. 11–1545, cases consolidated, and a total of one hour is allotted for oral argument. Reported below: 668 F. 3d 229.

No. 11–9335. Alleyne *v.* United States. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 457 Fed. Appx. 348.

No. 11–9953. Boyer *v.* Louisiana. Ct. App. La., 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 2010–693 (La. App. 3 Cir. 2/2/11), 56 So. 3d 1119, and 2010–694 (La. App. 3 Cir. 2/2/11), 56 So. 3d 1162.

October 9, 2012

Certiorari Granted—Vacated and Remanded

No. 11–1448. United States *v.* Samish Indian Nation. C. A. Fed. Cir. Certiorari granted, judgment with respect to all

matters relating to respondent's Revenue Sharing Act claim vacated, and case remanded with instructions to dismiss that claim as moot. See *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950). Reported below: 657 F. 3d 1330.

Certiorari Dismissed

No. 12–5500. McGee *v.* Superior Court of California, Sacramento County, et al. Ct. App. Cal., 3d App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 12–5550. Threatt *v.* Arredia et al. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 12–5651. Kemppainen *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.

Miscellaneous Orders

No. 12A184. Daker *v.* Georgia. Sup. Ct. Ga. Application for stay, addressed to Justice Sotomayor and referred to the Court, denied.

No. D–2665. In re Disbarment of House. Disbarment entered. [For earlier order herein, see 567 U. S. 959.]

No. D–2676. In re Disbarment of Simon. Disbarment entered. [For earlier order herein, see 566 U. S. 984.]

No. D–2677. In re Disbarment of Schoenecker. Disbarment entered. [For earlier order herein, see 566 U. S. 984.]

No. D–2678. IN RE DISBARMENT OF AGILIGA. Disbarment entered. [For earlier order herein, see 566 U. S. 984.]

No. D–2679. IN RE DISBARMENT OF WEBER. Disbarment entered. [For earlier order herein, see 567 U. S. 931.]

No. D–2680. IN RE DISBARMENT OF HALL. Disbarment entered. [For earlier order herein, see 567 U. S. 955.]

No. D–2681. IN RE DISBARMENT OF HENNESSEY. Disbarment entered. [For earlier order herein, see 567 U. S. 955.]

No. D–2683. IN RE DISBARMENT OF SMALLENBERG. Disbarment entered. [For earlier order herein, see 567 U. S. 955.]

No. D–2692. IN RE DISCIPLINE OF ROTH. Clifford R. Roth, of Otisville, 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–2693. IN RE DISCIPLINE OF KIRSHENBAUM. Warren A. Kirshenbaum, of Newton, Mass., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2694. IN RE DISCIPLINE OF BARKER. Ronald Kay Barker, of Lee's Summit, 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–2695. IN RE DISCIPLINE OF PAYNE. Richard B. Payne, of Kansas City, 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–2696. IN RE DISCIPLINE OF NNAKA. Godson M. Nnaka, of Baltimore, Md., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2697. In re Discipline of Prem. Wayne Thomas Prem, of Towson, Md., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2723. In re Disbarment of Bennett. Disbarment entered. [For earlier order herein, see 567 U. S. 903.]

No. D–2725. In re Disbarment of Jean-Baptiste. Disbarment entered. [For earlier order herein, see 567 U. S. 903.]

No. 12M29. Bess *v.* Walton, Warden;

No. 12M30. Chambers *v.* Tucker, Secretary, Florida Department of Corrections, et al.;

No. 12M31. Jones *v.* Cawley et al.; and

No. 12M32. Audette *v.* Swarthout, Warden. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 11–697. Kirtsaeng, dba Bluechristine99 *v.* John Wiley & Sons, Inc. C. A. 2d Cir. [Certiorari granted, 566 U. S. 936.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 11–1175. Marx *v.* General Revenue Corp. C. A. 10th Cir. [Certiorari granted, 566 U. S. 1021.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 11–10362. Millbrook *v.* United States. C. A. 3d Cir. [Certiorari granted, 567 U. S. 968.] Motion of petitioner for appointment of counsel granted, and it is ordered that Christopher J. Paolella, Esq., of New York, N. Y., is appointed to serve as counsel for petitioner in this case.

No. 12–3. Lawson et al. *v.* FMR LLC et al. C. A. 1st Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 12–5125. Sherrod *v.* Johnson et al. C. A. 11th Cir.; and

No. 12–5592. Dover *v.* Holder, Attorney General. C. A. 2d Cir. Motions of petitioners for leave to proceed *in forma*

pauperis denied. Petitioners are allowed until October 30, 2012, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 11–1307. IN RE HERRING;
No. 12–175. IN RE PANGHAT;
No. 12–192. IN RE VILLA;
No. 12–5565. IN RE DISMUKES; and
No. 12–5718. IN RE MUTHUKUMAR. Petitions for writs of mandamus denied.

No. 12–5555. IN RE SINQUEFIELD. 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. 11–1352. CCA ASSOCIATES *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 667 F. 3d 1239.

No. 11–1427. JOHN MEZZALINGUA ASSOCIATES, INC., DBA PPC *v.* INTERNATIONAL TRADE COMMISSION. C. A. Fed. Cir. Certiorari denied. Reported below: 660 F. 3d 1322.

No. 11–1451. GUATAY CHRISTIAN FELLOWSHIP *v.* SAN DIEGO COUNTY, CALIFORNIA. C. A. 9th Cir. Certiorari denied. Reported below: 670 F. 3d 957.

No. 11–1532. SCHOLASTIC BOOK CLUBS, INC. *v.* CONNECTICUT COMMISSIONER OF REVENUE SERVICES. Sup. Ct. Conn. Certiorari denied. Reported below: 304 Conn. 204, 38 A. 3d 1183.

No. 11–1544. SARIDAKIS *v.* SOUTH BROWARD HOSPITAL DISTRICT. C. A. 11th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 926.

No. 11–9771. PORTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 653 F. 3d 1043.

No. 11–9831. Diaz *v.* Wyoming. Dist. Ct. Wyo., Teton County. Certiorari denied.

No. 11–10166. Daker *v.* Georgia. Sup. Ct. Ga. Certiorari denied.

No. 11–10204. Mascorro *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 714.

No. 11–10312. Huet *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 665 F. 3d 588.

No. 11–10471. Johnson *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 458 Fed. Appx. 834.

No. 11–10748. Hinojosa *v.* United States;
No. 11–10849. Garcia *v.* United States; and
No. 11–10850. Galindo *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 432.

No. 11–10752. Diggs *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 460 Fed. Appx. 890.

No. 11–10840. Charles *v.* Felker, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 541.

No. 11–10937. Black *v.* Risner, Sheriff, Ashland County, Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 131 Ohio St. 3d 1551, 2012-Ohio-2263, 967 N. E. 2d 762.

No. 11–10989. Cruz-Lopez *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 478.

No. 11–11146. Holmes *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 670 F. 3d 586.

No. 11–11149. Fears *v.* Robinson, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 462 Fed. Appx. 565.

No. 12–6. Trudeau *v.* Federal Trade Commission. C. A. 7th Cir. Certiorari denied. Reported below: 662 F. 3d 947.

No. 12–55. Fisher, Individually and as Successor in Interest to Decedent Fisher, et al. *v.* Halliburton et al. C. A. 5th Cir. Certiorari denied. Reported below: 667 F. 3d 602.

No. 12–74. SIEBER *v.* WASHINGTON POST COS. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 191.

No. 12–83. BOMBARDIER INC. ET AL. *v.* DOW CHEMICAL CANADA ULC ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 202 Cal. App. 4th 170, 134 Cal. Rptr. 3d 597.

No. 12–89. SOLUTIA INC. ET AL. *v.* MCWANE, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 672 F. 3d 1230.

No. 12–104. BARNETT ET AL. *v.* SKF USA, INC. Sup. Ct. Pa. Certiorari denied. Reported below: 614 Pa. 463, 38 A. 3d 770.

No. 12–109. ENRIQUEZ *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 283 Va. 511, 722 S. E. 2d 252.

No. 12–114. HIRSCHFIELD *v.* SUPERIOR COURT OF CALIFORNIA, SACRAMENTO COUNTY, ET AL. Ct. App. Cal., 3d App. Dist. Certiorari denied.

No. 12–115. MAGGIORE *v.* CONNECTICUT. App. Ct. Conn. Certiorari denied. Reported below: 132 Conn. App. 908, 31 A. 3d 1203.

No. 12–127. PALIVODA *v.* FELIX ET AL. Ct. App. Ohio, Ashtabula County. Certiorari denied. Reported below: 2011-Ohio-5231.

No. 12–136. YOUNG *v.* MISSOURI EX INF. HENSLEY, CASS COUNTY PROSECUTING ATTORNEY. Sup. Ct. Mo. Certiorari denied. Reported below: 362 S. W. 3d 386.

No. 12–139. HOUGH ET UX., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED *v.* REGIONS FINANCIAL CORP. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 672 F. 3d 1224.

No. 12–143. SIU *v.* DE ALWIS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 603.

No. 12–146. BUFFINGTON ET UX. *v.* SUNTRUST BANKS, INC. C. A. 11th Cir. Certiorari denied. Reported below: 459 Fed. Appx. 855.

No. 12–147. Bristol-Myers Squibb Co. et al. *v.* Anglin et al. C. A. 7th Cir. Certiorari denied.

No. 12–151. Mickens et ux. *v.* Tenth Judicial Circuit Court et al. C. A. 11th Cir. Certiorari denied. Reported below: 458 Fed. Appx. 839.

No. 12–156. George *v.* United States et al. C. A. 10th Cir. Certiorari denied. Reported below: 672 F. 3d 942.

No. 12–157. Amaechi *v.* University of Kentucky et al. C. A. 6th Cir. Certiorari denied.

No. 12–160. Zaga *v.* Superior Court of California, Los Angeles County, et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–161. Cruz *v.* New York State Board of Education et al. C. A. 2d Cir. Certiorari denied. Reported below: 460 Fed. Appx. 67.

No. 12–163. Newell Window Furnishings Inc. et al. *v.* Bender et al. C. A. 6th Cir. Certiorari denied. Reported below: 681 F. 3d 253.

No. 12–169. Panghat *v.* New York State Division of Human Rights. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 89 App. Div. 3d 597, 934 N. Y. S. 2d 9.

No. 12–172. Adonna *v.* Sargent Manufacturing Co. C. A. 2d Cir. Certiorari denied. Reported below: 485 Fed. Appx. 445.

No. 12–176. Chapman *v.* United Auto Workers Local 1005 et al. C. A. 6th Cir. Certiorari denied. Reported below: 670 F. 3d 677.

No. 12–178. Brown *v.* Bank of America Corp. et al. C. A. 1st Cir. Certiorari denied.

No. 12–179. Panghat *v.* New York State Division of Human Rights. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 12–200. Keck *v.* Virginia et al. C. A. 4th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 127.

No. 12–205. THOMAS *v.* HOLDER, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 465 Fed. Appx. 127.

No. 12–214. WEHRENBERG *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 40 A. 3d 200.

No. 12–221. AHLERS *v.* RABINOWITZ, DIRECTOR, MANHATTAN PSYCHIATRIC CENTER, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 684 F. 3d 53.

No. 12–225. WILLIAMS *v.* MCEWEN, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 457.

No. 12–238. BHARDWAJ *v.* PATHAK. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 12–244. CHAMBERS *v.* MAYO ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 331.

No. 12–247. VARGAS *v.* HEDGPETH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–249. PRUETT ET AL. *v.* HARRIS COUNTY BAIL BOND BOARD. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 356 S. W. 3d 103.

No. 12–251. DREW *v.* ILLINOIS EX REL. GLASGOW ET AL. Sup. Ct. Ill. Certiorari denied. Reported below: 2012 IL 113197, 970 N. E. 2d 506.

No. 12–258. FLETCHER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 394.

No. 12–297. CANO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 509.

No. 12–5121. PAYTON *v.* CULLEN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 658 F. 3d 890.

No. 12–5336. SADIK *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 46 A. 3d 806.

No. 12–5463. BUSCHARD *v.* OHIO ET AL. Ct. App. Ohio, Hamilton County. Certiorari denied.

No. 12–5479. STEWART *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 12–5484. GARZA *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 12–5489. JENKINS *v.* SMELOSKY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–5498. HARRIS *v.* CARUSO ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 481.

No. 12–5501. LEWIS *v.* CARUSO ET AL. C. A. 6th Cir. Certiorari denied.

No. 12–5506. NASIR *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 32 A. 3d 848.

No. 12–5507. BROOKS *v.* MEDINA, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 808.

No. 12–5512. ZELEKE *v.* ZENAWI. C. A. 4th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 541.

No. 12–5515. CHRISTIAN *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII. C. A. 9th Cir. Certiorari denied.

No. 12–5518. DUCROS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 333.

No. 12–5520. LEON *v.* DANAHER CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 591.

No. 12–5525. JAMES *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 401.

No. 12–5526. LOZANO *v.* CURRY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–5534. SCHAD *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied. Reported below: 671 F. 3d 708.

No. 12–5540. HERNANDEZ *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 721.

No. 12–5541. FRANCOIS *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 89 App. Div. 3d 588, 933 N. Y. S. 2d 254.

No. 12–5543. CUNNINGHAM *v.* COLSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–5546. ANDERSON *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 461 Mass. 616, 963 N. E. 2d 704.

No. 12–5551. K'NAPP *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 457 Fed. Appx. 627.

No. 12–5552. POWELL *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 12–5553. MILLER *v.* MOTOR VEHICLE DIVISION ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 674.

No. 12–5563. COLLINS *v.* WOLFE, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 305.

No. 12–5568. COOPER *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2011 IL App (2d) 090813–U.

No. 12–5573. HENDERSON *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 616 Pa. 277, 47 A. 3d 797.

No. 12–5574. ROBINSON *v.* MOSHER. C. A. 4th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 535.

No. 12–5576. BARLASS *v.* CITY OF JANESVILLE, WISCONSIN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 261.

No. 12–5577. WASHINGTON *v.* NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 128.

No. 12–5579. THURSTON *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 619.

No. 12–5580. POSTELL *v.* NAPEL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–5581. Cox *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–5582. Hutchinson *v.* Florida. C. A. 11th Cir. Certiorari denied. Reported below: 677 F. 3d 1097.

No. 12–5583. Durr *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 12–5584. Smith *v.* Monroe et al. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 363 S. W. 3d 60.

No. 12–5588. Coke *v.* New York. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 81 App. Div. 3d 1260, 916 N. Y. S. 2d 548.

No. 12–5593. Boyd *v.* Angelica Textile Services, Inc. C. A. 4th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 288.

No. 12–5598. Tornheim *v.* Blue & White Food Products Corp. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 88 App. Div. 3d 867, 931 N. Y. S. 2d 340.

No. 12–5599. White *v.* Planned Security Services et al. C. A. 3d Cir. Certiorari denied. Reported below: 480 Fed. Appx. 115.

No. 12–5602. Clark *v.* Riley, Warden. C. A. 5th Cir. Certiorari denied.

No. 12–5603. Lawrence *v.* White, Secretary of State of Illinois, et al. C. A. 7th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 523.

No. 12–5609. Birdette *v.* Associated Recovery Systems et al. C. A. 11th Cir. Certiorari denied.

No. 12–5610. Croneberger *v.* Washington. Ct. App. Wash. Certiorari denied.

No. 12–5611. Carter *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 12–5612. Carrasco *v.* Horel, Warden. C. A. 9th Cir. Certiorari denied.

No. 12–5613. ADKINS *v.* JOHNSON ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 318.

No. 12–5615. JOHNSON *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 81 Mass. App. 1117, 962 N. E. 2d 245.

No. 12–5618. SHEPPARD *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 62 So. 3d 14.

No. 12–5621. WILLIAMS *v.* JACKSON, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 12–5622. WILLIAMS *v.* FELKER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 580.

No. 12–5624. COX *v.* SMALL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 661.

No. 12–5626. BOBO *v.* TULARE CO. ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–5631. ZACHARY *v.* ARAMARK CORRECTIONAL SERVICES, LLC. C. A. 7th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 547.

No. 12–5634. LEVITAN *v.* FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 12–5635. KING *v.* HEDGPETH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 818.

No. 12–5642. SCOTT *v.* IOWA ET AL. C. A. 8th Cir. Certiorari denied.

No. 12–5643. RICHARDSON *v.* BRANKER, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 668 F. 3d 128.

No. 12–5646. CHAVEZ *v.* TEXAS (three judgments). Ct. Crim. App. Tex. Certiorari denied.

No. 12–5650. SOSBEE *v.* MCCALL, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 263.

No. 12–5658. BUGGS *v.* RAPELJE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–5659. Morris *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division, et al. C. A. 5th Cir. Certiorari denied.

No. 12–5660. Pemberton *v.* Jones, Director, Oklahoma Department of Corrections, et al. C. A. 10th Cir. Certiorari denied.

No. 12–5669. Wise *v.* Hill, Warden. C. A. 9th Cir. Certiorari denied.

No. 12–5670. Zakat *v.* Bureau of Administrative Adjudication. Commw. Ct. Pa. Certiorari denied.

No. 12–5671. Carter *v.* Smith, Warden. C. A. 6th Cir. Certiorari denied.

No. 12–5673. Davis *v.* Ludgate, Judge, Court of Common Pleas, 23d Judicial District, Berks County, Pennsylvania, et al. C. A. 3d Cir. Certiorari denied.

No. 12–5675. Baccus *v.* Byars, Director, South Carolina Department of Corrections, et al. C. A. 4th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 142.

No. 12–5676. Williams *v.* Coursey, Superintendent, Eastern Oregon Correctional Institution. C. A. 9th Cir. Certiorari denied.

No. 12–5677. Teague *v.* North Carolina Department of Transportation. Ct. App. N. C. Certiorari denied. Reported below: 177 N. C. App. 215, 628 S. E. 2d 395.

No. 12–5678. Gould *v.* Ohio. Sup. Ct. Ohio. Certiorari denied. Reported below: 131 Ohio St. 3d 179, 2012-Ohio-71, 963 N. E. 2d 136.

No. 12–5681. Scrase *v.* California. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 12–5695. O'Bryant *v.* Finch. C. A. 11th Cir. Certiorari denied. Reported below: 637 F. 3d 1207.

No. 12–5698. Parham *v.* Warren, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 686.

No. 12–5706. DILLARD *v.* BANK OF NEW YORK, AS SUCCESSOR TO JPMORGAN CHASE BANK. C. A. 10th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 690.

No. 12–5711. SMILES *v.* LAVIGNE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–5715. DIALLO *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 315.

No. 12–5716. CHILDERS *v.* OHIO. Ct. App. Ohio, Fairfield County. Certiorari denied. Reported below: 2011-Ohio-6742.

No. 12–5721. WILLOUGHBY *v.* LINDAMOOD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–5729. ALLEN *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 78 So. 3d 549.

No. 12–5737. BLANCO-AVALOS *v.* HOLDER, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied.

No. 12–5738. WILLIAMS *v.* UNITED STATES MARSHALS SERVICE ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–5748. CARTER *v.* WOLFENBARGER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–5750. BASSETT *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2011 IL App (3d) 091035–U.

No. 12–5752. ZUNIGA *v.* MCDONALD, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 458 Fed. Appx. 693.

No. 12–5758. MASON *v.* BRUNSMAN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 122.

No. 12–5759. JONES *v.* OCHOA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–5763. WOLCOTT *v.* DIAZ, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 756.

No. 12–5778. BLACH *v.* DOVEY, DIRECTOR, ADULT INSTITUTIONS, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 614.

No. 12–5780. JOHNSON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 93 App. Div. 3d 408, 940 N. Y. S. 2d 40.

No. 12–5788. PADRON RODRIGUEZ *v.* CORTEZ MASTO, ATTORNEY GENERAL OF NEVADA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 66.

No. 12–5792. EPSTEIN *v.* FRANKE, SUPERINTENDENT, TWO RIVERS CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 12–5793. DEGENNARO *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 2012 ME 68, 46 A. 3d 1147.

No. 12–5794. CLIFTON *v.* DEXTER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–5800. HEILMAN *v.* COURSEY, SUPERINTENDENT, EASTERN OREGON CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 12–5801. SHELLEY *v.* MEKO, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–5805. OBOMIGHIE *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 225.

No. 12–5810. QUILES *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 84 App. Div. 3d 1415, 923 N. Y. S. 2d 889.

No. 12–5818. RYEL *v.* PERSSON, SUPERINTENDENT, OREGON STATE CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 579.

No. 12–5819. ROBERTSON *v.* CARTINHOUR. C. A. D. C. Cir. Certiorari denied. Reported below: 475 Fed. Appx. 767.

No. 12–5835. DEWITT *v.* DISTRICT OF COLUMBIA ET AL. Ct. App. D. C. Certiorari denied. Reported below: 43 A. 3d 291.

No. 12–5851. MORGAN *v.* DICKHAUT, SUPERINTENDENT, SOUZA-BARANOWSKI CORRECTIONAL CENTER. C. A. 1st Cir. Certiorari denied. Reported below: 677 F. 3d 39.

No. 12–5858. DRAIN *v.* LUDWICK, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–5861. STEPHENS *v.* BONDI, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–5868. CHERRY *v.* HOWES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–5873. HOLLEY *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–5880. PILLETTE *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–5889. NITSCHKE *v.* PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 680 F. 3d 1105.

No. 12–5900. PHILLIPS *v.* UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 700.

No. 12–5910. ROWE *v.* MISSOURI. Ct. App. Mo., Southern Dist. Certiorari denied. Reported below: 363 S. W. 3d 114.

No. 12–5912. WALKER *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 12–5939. MILLSAP *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2012 Ark. 169.

No. 12–5943. KOU CHA *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 565.

No. 12–5955. WADDELL *v.* JACKSON, CORRECTIONAL SUPERINTENDENT, BROWN CREEK CORRECTIONAL INSTITUTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 680 F. 3d 384.

No. 12–5958. CARTWRIGHT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 678 F. 3d 907.

No. 12–5964. WALLACE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 739.

No. 12–5973. SYLVIN *v.* UNITED STATES; and

No. 12–5989. VICTOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 792.

No. 12–5983. RODRIGUEZ-JIMENEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 484 Fed. Appx. 645.

No. 12–5986. KEENEY *v.* BALLARD, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 197.

No. 12–5994. ADDERLY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 12–5995. BARNEY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 12–5996. BRADFORD *v.* RIVERA, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 109.

No. 12–6002. RUIZ-ZARATE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 678 F. 3d 683.

No. 12–6003. FUENTES *v.* LEMPKE, SUPERINTENDENT, FIVE POINTS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 12–6004. ALSTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 290.

No. 12–6007. ROACH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 993.

No. 12–6008. TAYLOR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–6010. BAHENA-CARRENO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 762.

No. 12–6012. GILL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–6013. HERNANDEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 12–6015. GARCIA-RIOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 334.

No. 12–6017. GREENE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 12–6018. GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 227.

No. 12–6019. HILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 143.

No. 12–6021. COFIELD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 138.

No. 12–6022. EMANUEL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 783.

No. 12–6023. KENNEDY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 493 Fed. Appx. 615.

No. 12–6026. RIOS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 460 Fed. Appx. 831.

No. 12–6029. DOYLE *v.* UNITED STATES (Reported below: 678 F. 3d 429); DAVIS *v.* UNITED STATES (483 Fed. Appx. 998); FRISON *v.* UNITED STATES (487 Fed. Appx. 953); MELTON *v.* UNITED STATES (478 Fed. Appx. 321); FULLER *v.* UNITED STATES (472 Fed. Appx. 401); and ROGERS *v.* UNITED STATES (481 Fed. Appx. 250). C. A. 6th Cir. Certiorari denied.

No. 12–6030. ALEXANDER *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. Sup. Ct. Ariz. Certiorari denied.

No. 12–6036. OWENS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 683 F. 3d 93.

No. 12–6037. NWAEHIRI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 161.

No. 12–6039. DAVIS *v.* PASTRANA, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 12–6040. COBB *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 483 Fed. Appx. 719.

No. 12–6045. CARDEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 839.

No. 12–6046. LAIHBEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 827.

No. 12–6047. COBB *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 221.

No. 12–6049. LAUDERMILT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 677 F. 3d 605.

No. 12–6051. LIMAS-CALDERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 286.

No. 12–6056. CHUNG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 12–6063. CASTLEMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 669 F. 3d 1218.

No. 12–6071. MARTINEZ-MATA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 885.

No. 12–6073. PRIVOTT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 12–6074. MILES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 546 Fed. Appx. 730.

No. 12–6078. GRINNAGE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 486 Fed. Appx. 325.

No. 12–6079. FUENTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 160.

No. 12–6081. FARLOW *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 681 F. 3d 15.

No. 12–6087. ICE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 293.

No. 12–6088. BRYANT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 338.

No. 12–6093. MATA-ROSALES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 324.

No. 12–6094. REYES-ARGUELLES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 315.

No. 12–6097. FOSKEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 455 Fed. Appx. 884.

No. 12–6098. BILYEU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 753.

No. 12–6103. VALDEZ VALENZUELA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 243.

No. 12–6104. MOORE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–6107. OPIYO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 300.

No. 12–6121. SNYDER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 884.

No. 12–6122. QUESADA-GUERRERO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 306.

No. 12–6128. BRUNSON ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 811.

No. 12–6132. COLON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 509.

No. 12–6133. WINKELMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 12–6136. EASTERLING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 812.

No. 12–6139. HILL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 195.

No. 12–6140. TROTMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 750.

No. 12–6141. MCCOOL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 299.

No. 12–6144. CATLETT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 559.

No. 12–6145. HARRIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–6149. HOLMES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 92.

No. 12–6152. HEWLETT *v.* HOLDER, ATTORNEY GENERAL, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 230.

No. 12–6156. YOUNG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 976.

No. 12–6159. PATT *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 498 Fed. Appx. 73.

No. 12–6161. WELLS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 33 A. 3d 924.

No. 12–6164. STURMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 484 Fed. Appx. 686.

No. 12–6168. MOBLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 766.

No. 12–6170. CLOSE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 679 F. 3d 714.

No. 12–6171. DIXON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–6172. PILLOW *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 726.

No. 12–6173. MERAZ-OLIVERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 610.

No. 12–6175. WILLIAMS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 948.

No. 12–6176. WINKELMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 12–6178. LESTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 697.

No. 12–6180. RODRIGUEZ-FAVELA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 334.

No. 12–6183. AVITIA-GUILLEN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 680 F. 3d 1253.

No. 12–6184. ANTONIO-AGUSTA, AKA ARTIAGA *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 672 F. 3d 1209.

No. 12–6185. ALEJO-PENA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 137.

No. 12–6187. PARKER *v.* UNITED STATES ET AL. C. A. 2d Cir. Certiorari denied.

No. 12–6200. RUTHERFORD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 857.

No. 12–6208. CARRENO-GUTIERREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 445.

No. 12–6212. BURGOS-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 330.

No. 11–1200. HEPTING ET AL. *v.* AT&T CORP. ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 671 F. 3d 881.

No. 11–1428. CHEVRON CORP. *v.* CAMACHO NARANJO ET AL. C. A. 2d Cir. Motions of National Association of Manufacturers, Chamber of Commerce of the United States of America, and Halliburton Co. for leave to file briefs as *amici curiae* granted. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of these motions and this petition. Reported below: 667 F. 3d 232.

No. 11–1431. BISTLINE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 665 F. 3d 758.

No. 11–1459. VARGAS ET AL. *v.* CITY OF SALINAS, CALIFORNIA, ET AL. Ct. App. Cal., 6th App. Dist. Motions of Pacific Legal Foundation and Californians Aware et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 200 Cal. App. 4th 1331, 134 Cal. Rptr. 3d 244.

No. 11–10629. DELGADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–10652. YBARRA *v.* BAKER, WARDEN. C. A. 9th Cir. Motion of petitioner for remand, for stay of proceedings, or for leave to amend denied. Certiorari denied. Reported below: 656 F. 3d 984.

No. 12–4. METROPOLITAN EDISON CO. ET AL. *v.* PENNSYLVANIA PUBLIC UTILITY COMMISSION ET AL. Commw. Ct. Pa. Motions of Edison Electric Institute; Electrical Engineers, Scientists, and Economists; and Energy Association of Pennsylvania for leave to file briefs as *amici curiae* granted. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of these motions and this petition. Reported below: 22 A. 3d 353.

No. 12–122. MCNEIL-PPC, INC. *v.* HUTTO ET AL. Ct. App. La., 3d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 2011–609 (La. App. 3 Cir. 12/7/11), 79 So. 3d 1199.

No. 12–159. WILLIAMS ET UX. *v.* JPMORGAN CHASE BANK ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 452 Fed. Appx. 799.

No. 12–177. PIECZENIK *v.* BAYER CORP. ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 474 Fed. Appx. 766.

No. 12–191. WASHINGTON *v.* STENSON. Sup. Ct. Wash. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 174 Wash. 2d 474, 276 P. 3d 286.

No. 12–299. REDZIC *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–5981. CLAYTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 477 Fed. Appx. 644.

No. 12–5992. MOORE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 468 Fed. Appx. 638.

No. 12–5999. FERNANDEZ MARTINEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–6060. DRIGGERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–6061. DOUGLAS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

Rehearing Denied

No. 11–9588. DA COSTA *v.* UNITED STATES ET AL., 566 U. S. 1026. Motion for leave to file petition for rehearing denied.

OCTOBER 10, 2012

Miscellaneous Order

No. 12A343. GREEN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied.

Certiorari Denied

No. 12–6652 (12A346). GREEN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Application for stay of execution of sentence of death, presented to JUSTICE GINSBURG, and by her referred to the Court, denied. Certiorari denied. Reported below: 374 S. W. 3d 434.

OCTOBER 15, 2012

Certiorari Dismissed

No. 12–5771. SMITH *v.* GOMEZ. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Mar-*

tin v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). Reported below: 447 Fed. Appx. 863.

Miscellaneous Orders

No. 12M33. SPADONI *v.* UNITED STATES. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 12M34. ANDERSON *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL.;

No. 12M35. CRAWFORD-BEY *v.* NEW YORK PRESBYTERIAN HOSPITAL; and

No. 12M36. TELSI *v.* SOLIS, SECRETARY OF LABOR. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 126, Orig. KANSAS *v.* NEBRASKA ET AL. Motion of the Special Master for allowance of fees and disbursements granted, and the Special Master is awarded a total of $288,229.61 for the period January 1 through August 23, 2012, to be allocated among the States as follows: Kansas $115,291.84; Nebraska $115,291.84; and Colorado $57,645.93. [For earlier order herein, see, *e. g.*, 565 U. S. 1192.]

No. 11–982. ALREADY, LLC, DBA YUMS *v.* NIKE, INC. C. A. 2d Cir. [Certiorari granted, 567 U. S. 933.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 11–1085. AMGEN INC. ET AL. *v.* CONNECTICUT RETIREMENT PLANS AND TRUST FUNDS. C. A. 9th Cir. [Certiorari granted, 567 U. S. 905.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 11–9307. HENDERSON *v.* UNITED STATES. C. A. 5th Cir. [Certiorari granted, 567 U. S. 934.] Motion of petitioner to dispense with printing joint appendix granted.

No. 12–5739. MIZUKAMI *v.* EDWARDS ET AL. C. A. 9th Cir.;

No. 12–5798. HARDINE *v.* OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION. C. A. 9th Cir.;

No. 12–5872. FRANKLIN *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir.;

No. 12–5962. WHITE *v.* NAPOLITANO, SECRETARY OF HOMELAND SECURITY. C. A. 11th Cir.; and

No. 12–6082. K. F. *v.* UTAH. Ct. App. Utah. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 5, 2012, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 12–6331. IN RE RAMON. Petition for writ of habeas corpus denied.

Certiorari Granted

No. 12–71. ARIZONA ET AL. *v.* INTER TRIBAL COUNCIL OF ARIZONA, INC., ET AL. C. A. 9th Cir. Motion of Mountain States Legal Foundation for leave to file brief as *amicus curiae* granted. Certiorari granted. Reported below: 677 F. 3d 383.

Certiorari Denied

No. 11–1454. HOLISTIC CANDLERS & CONSUMERS ASSN. ET AL. *v.* FOOD AND DRUG ADMINISTRATION ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 664 F. 3d 940.

No. 11–1522. WILLIAMS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 448 Fed. Appx. 156.

No. 11–1531. GRAY ET AL. *v.* CITIGROUP INC. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 662 F. 3d 128.

No. 11–1546. MCHUGH *v.* MAYOR AND CITY COUNCIL OF BALTIMORE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 198.

No. 11–1550. GEARREN ET AL. *v.* MCGRAW-HILL COS., INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 660 F. 3d 605.

No. 11–10692. LAWN *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 11–10893. DROEGEMEIER *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 11–11071. ARIAS *v.* TBC CORP. C. A. 11th Cir. Certiorari denied.

No. 12–56. E. T. ET AL. *v.* CANTIL-SAKAUYE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 682 F. 3d 1121.

No. 12–188. LEWIS *v.* AUTO CLUB FAMILY INSURANCE CO., DBA AAA INSURANCE. C. A. 5th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 403.

No. 12–193. PARKER *v.* MITCHELL, CHAPTER 7 TRUSTEE. C. A. 4th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 176.

No. 12–198. PHILLIPS *v.* LEE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 12–199. ROBERTS *v.* COLE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 279.

No. 12–203. COLUMBUS EXPLORATION, L. L. C., ET AL. *v.* WILLIAMSON ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 382.

No. 12–213. CLAIR *v.* MAYNARD, SECRETARY, MARYLAND DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 543.

No. 12–220. BHAT *v.* ACCENTURE LLP. C. A. 7th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 504.

No. 12–226. KIDWELL *v.* EISENHAUER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 679 F. 3d 957.

No. 12–228. ADLABS FILMS USA, INC. *v.* NEWBURGH/SIX MILE LIMITED PARTNERSHIP II. C. A. 6th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 85.

No. 12–241. R. I., INC., DBA SEATING SOLUTIONS, ET AL. *v.* MCCARTHY ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 483 Fed. Appx. 745.

No. 12–242. PHILIPS *v.* BROWN, SUPERINTENDENT, EASTERN NEW YORK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 12–263. ONYEWUCHI *v.* GONZALEZ, DIRECTOR, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES. C. A. D. C. Cir. Certiorari denied.

No. 12–273. HERNANDEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 53 Cal. 4th 1095, 273 P. 3d 1113.

No. 12–5155. SWAIN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 393.

No. 12–5265. VILLANUEVA SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 274.

No. 12–5269. ABELDANEZ SANCHEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 272.

No. 12–5318. GHANE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 673 F. 3d 771.

No. 12–5724. BREWER *v.* HEDGPETH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 582.

No. 12–5728. ACEVEDO *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 12–5730. MUHAMMAD *v.* CAPPELLINI ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 477 Fed. Appx. 935.

No. 12–5731. NEVILLE *v.* TAYLOR ET AL. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 2012 IL App (4th) 110813–U.

No. 12–5733. KING *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 89 So. 3d 209.

No. 12–5734. LEE *v.* MISSISSIPPI STATE OIL AND GAS BOARD. Sup. Ct. Miss. Certiorari denied.

No. 12–5741. GOMEZ TORRES *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–5754. ANZALONE *v.* HUBBARD, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–5760. LIBERT *v.* PARKERSBURG CITY POLICE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 461 Fed. Appx. 201.

No. 12–5772. Robertson *v.* Simpson, Warden, et al. C. A. 6th Cir. Certiorari denied.

No. 12–5773. Soto-Echevarria *v.* Wenerowicz, Superintendent, State Correctional Institution at Graterford, et al. C. A. 3d Cir. Certiorari denied.

No. 12–5774. Ramsey *v.* McCall, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 235.

No. 12–5775. Amr *v.* Crowley et al. Sup. Ct. Va. Certiorari denied.

No. 12–5776. Ramirez Bravo *v.* California. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 12–5782. Martin *v.* Ramberg. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 792.

No. 12–5783. Lomax *v.* Davis, Warden, et al. C. A. 10th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 206.

No. 12–5784. Vondal *v.* Frink, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 12–5785. Moore *v.* Michigan. Ct. App. Mich. Certiorari denied.

No. 12–5786. Ordonez *v.* Gonzalez, Warden. C. A. 9th Cir. Certiorari denied.

No. 12–5789. Rochin *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–5797. Barrett *v.* Kitzhaber, Governor of Oregon, et al. Sup. Ct. Ore. Certiorari denied.

No. 12–5799. Gagne *v.* Booker, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 680 F. 3d 493.

No. 12–5802. Rose *v.* California et al. C. A. 9th Cir. Certiorari denied.

No. 12–5804. Restivo *v.* Illinois. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 12–5806. McGee *v.* Rudek, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 458 Fed. Appx. 781.

No. 12–5807. CHERER *v.* FRAZIER ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 681.

No. 12–5809. KENDRICK *v.* CAVANAUGH ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 194.

No. 12–5811. ZAJRAEL *v.* HARMON, WARDEN, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 677 F. 3d 353.

No. 12–5814. WRIGHT *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 34 A. 3d 239.

No. 12–5822. KRAMER *v.* WYOMING. Sup. Ct. Wyo. Certiorari denied. Reported below: 2012 WY 69, 277 P. 3d 88.

No. 12–5823. KARTIGANER *v.* HENDERSON. C. A. 9th Cir. Certiorari denied.

No. 12–5826. JOHNSON *v.* LEA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–5828. JOHNSON *v.* CALIFORNIA (two judgments). Sup. Ct. Cal. Certiorari denied.

No. 12–5829. SHALLOWHORN *v.* STRIBLING, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–5833. CREAMER *v.* SMITH COUNTY SHERIFF'S DEPARTMENT. C. A. 10th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 911.

No. 12–5852. LEO *v.* GARMIN INTERNATIONAL, INC. C. A. 10th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 737.

No. 12–5857. STEPHENS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 678 F. 3d 1219.

No. 12–5874. GARCIA *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 19 N. Y. 3d 960, 973 N. E. 2d 210.

No. 12–5887. MOSLEY *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 89 So. 3d 41.

No. 12–5891. BARRAGAN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–5913. WILLIAMS *v.* BELTRAN ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 446 Fed. Appx. 892.

No. 12–5919. SARTAIN *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 365 Mont. 483, 285 P. 3d 407.

No. 12–5932. BROWN *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 174 Wash. 2d 683, 278 P. 3d 184.

No. 12–5935. SCOTT *v.* PADULA, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 125.

No. 12–5951. MAREZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–5956. CONTRERAS *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 12–5957. ESTEEN *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 12–5965. DEAN *v.* URIBE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–5984. LISLE *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 128 Nev. 913, 381 P. 3d 634.

No. 12–5997. KLINCAR *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 2011 IL App (5th) 090143–U.

No. 12–6035. RENDELMAN *v.* NEUMANN ET AL. C. A. 7th Cir. Certiorari denied.

No. 12–6042. CIACCI *v.* HAWAII. C. A. 9th Cir. Certiorari denied.

No. 12–6055. WILLIAMS *v.* LEWIS, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–6065. BREWER *v.* RUNNELS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 132.

No. 12–6080. GARCIA-NAVARRO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 722.

No. 12–6134. CONWAY *v.* OHIO. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 2012-Ohio-590.

No. 12–6148. IRENE *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 462 Mass. 600, 970 N. E. 2d 291.

No. 12–6155. WIGGINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 492 Fed. Appx. 414.

No. 12–6182. BRAKEMAN *v.* WANDS, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 759.

No. 12–6186. DIAZ-GALIANA, AKA DIAZ-ROSAS, AKA DIAZ ROSAS, AKA DIAZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 840.

No. 12–6190. ADGER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 203.

No. 12–6192. ROBINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 194.

No. 12–6193. EL SAYED *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 491.

No. 12–6194. DEBERRY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 885.

No. 12–6195. SUMPTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 504.

No. 12–6202. SOLER-NORONA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–6207. CONZE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–6210. BURGESS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 684 F. 3d 445.

No. 12–6213. BARRAGAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 12–6217. GRANT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 904.

No. 12–6218. HINTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 108.

No. 12–6220. HERRERA-CASTILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 12–6225. TRAMMELL *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 12–6228. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 851.

No. 12–6229. BROSNAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 167.

No. 12–6231. PARKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 98.

No. 12–6232. MCINTYRE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 717.

No. 12–6237. COCHRAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 683 F. 3d 1314.

No. 12–6245. CHAPMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 121.

No. 12–6255. MEEKS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 479.

No. 12–6258. VILLASENOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 175.

No. 12–6266. KLUGE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 483.

No. 12–6268. PITA-MOTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 756.

No. 12–6271. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 363.

No. 12–6276. FONTENOT *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 186.

No. 12–6277. GUTIERREZ-DIAZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 340.

No. 12–6281. LUCAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 877.

No. 12–6287. WILBOURN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 332.

No. 12–6295. MATEO-DE LOS SANTOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 331.

No. 11–10848. IORIO *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* granted. Order entered October 1, 2012 [*ante*, p. 809], vacated. Certiorari denied. Reported below: 465 Fed. Appx. 60.

No. 12–342. ALLERGAN, INC., ET AL. *v.* WATSON LABORATORIES, INC., ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 470 Fed. Appx. 903.

No. 12–6248. MINER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–6250. CLAY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

OCTOBER 16, 2012

Miscellaneous Order

No. 12A338. HUSTED, SECRETARY OF STATE OF OHIO, ET AL. *v.* OBAMA FOR AMERICA ET AL. C. A. 6th Cir. Application for stay, presented to JUSTICE KAGAN, and by her referred to the Court, denied.

OCTOBER 18, 2012

Miscellaneous Order

No. 12A369 (12–6760). HAYNES *v.* THALER, 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 SCALIA, and by him referred to the Court, granted pending disposition of the petition for writ of certiorari. Should the petition for writ of certiorari be denied, this stay shall terminate automatically. In the event the petition for writ of certiorari is granted, the stay shall termi-

nate upon the sending down of the judgment of this Court. JUSTICE SCALIA and JUSTICE ALITO would deny the application for stay of execution.*

Statement of JUSTICE SOTOMAYOR, with whom JUSTICE GINSBURG joins, respecting the grant of stay of execution.

In this case, a divided Fifth Circuit panel rejected Anthony Haynes' application for a certificate of appealability on the ground that this Court's decision in *Martinez* v. *Ryan*, 566 U. S. 1 (2012), "does not apply to Texas capital habeas petitioners." 489 Fed. Appx. 770, 772 (2012) (*per curiam*). We recently granted certiorari to address precisely the question whether *Martinez* applies to habeas cases arising from Texas courts. See *Trevino* v. *Thaler*, *post*, p. 977.

The dissent observes that on federal habeas review in this case, the District Court, after first concluding that Haynes had procedurally defaulted his claim that his trial counsel was constitutionally ineffective, ruled in the alternative that the claim failed on the merits. *Post*, at 973 (opinion of SCALIA, J.). But the Court of Appeals has never addressed the District Court's merits ruling, and has instead relied solely on procedural default. See 489 Fed. Appx., at 772; *Haynes* v. *Quarterman*, 526 F. 3d 189, 194–195 (CA5 2008). The only appellate judge to consider the merits of Haynes' claim would have granted Haynes a certificate of appealability in his current case and stated that it was "difficult to conclude that Hayne[s] has not made a sufficient showing for a *Strickland* [v. *Washington*, 466 U. S. 668 (1984),] violation as to his trial counsel." 489 Fed. Appx., at 775 (Dennis, J., dissenting). Under these circumstances, rather than assume the correctness of the District Court's unreviewed merits decision, I believe a stay of execution is warranted to allow Haynes to pursue his claim on remand if this Court in *Trevino* rejects the single ground relied upon by the Fifth Circuit for denying Haynes' application for a certificate of appealability.

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

I dissent from the Court's order of October 18, 2012, granting the application of Anthony Haynes for stay of execution of sen-

*[REPORTER'S NOTE: The following statement of JUSTICE SOTOMAYOR and dissenting opinion of JUSTICE SCALIA were filed on November 13, 2012.]

tence of death. Petitioner Haynes, who had committed a series of armed robberies, was approached by off-duty Houston Police Department Officer Kent Kincaid after a bullet from Haynes' truck had cracked Kincaid's windshield. Kincaid, who thought the missile had been a rock, identified himself as a police officer and asked for Haynes' driving license. Haynes lifted a pistol and shot the officer in the head. Haynes was apprehended and confessed to the killing. He was tried for the capital murder of a peace officer "acting in the lawful discharge of an official duty," Tex. Penal Code Ann. § 19.03(a)(1) (West Cum. Supp. 2012). A Texas jury found him guilty and sentenced him to death.

It has been more than 14 years since Haynes killed Officer Kincaid, 10 years since we denied Haynes' first petition for certiorari, see *Haynes* v. *Texas*, 535 U. S. 999 (2002), and six months since we denied his second, see *Haynes* v. *Thaler*, 566 U. S. 964 (2012). Haynes is now back before us a third time, arguing that he received ineffective assistance from his trial counsel and that his procedural default of this claim is excused by our decision seven months ago in *Martinez* v. *Ryan*, 566 U. S. 1 (2012), which he asserts entitles him to a reopening of his habeas proceedings under Federal Rule of Civil Procedure 60(b)(6).

The Fifth Circuit determined that Haynes did not qualify for relief under *Martinez*, which carved out a "limited" exception to our longstanding rule that attorney error on state collateral review does not constitute cause to excuse procedural default of an ineffective-assistance-of-counsel claim, see *Coleman* v. *Thompson*, 501 U. S. 722 (1991). According to the Fifth Circuit, Texas inmates fall outside the scope of *Martinez*, which applies only "where the State barred the defendant from raising the claims on direct appeal," 566 U. S., at 17. See *Ibarra* v. *Thaler*, 687 F. 3d 222, 225–227 (2012). Haynes points to the practical difficulties in Texas of successfully raising an ineffective-assistance claim on direct appeal or by motion for new trial.

Even if the Fifth Circuit is incorrect and *Martinez* does implicate Texas's system of postconviction review, a stay is unwarranted here because Haynes presents no plausible claim for relief. His complaint is that his trial counsel was ineffective at sentencing. The absolute most to which he would be entitled under *Martinez* is excuse of his procedural default of this claim, enabling a federal district court to adjudicate the claim on the merits.

But that is precisely what the District Court already did on federal habeas review. See *Haynes* v. *Quarterman*, Civ. No. H–05–3424, 2007 WL 268374 (SD Tex., Jan. 25, 2007). In addition to finding the majority of Haynes' ineffective-assistance claims procedurally defaulted, the court rejected all of them on the merits. It concluded that Haynes' argument was "'not that counsels' performance should have been *better*, rather, his argument is that counsel should have investigated and presented evidence at the punishment phase in a completely *different* manner.'" *Id.*, at *9. It rejected that argument because it concluded that his lawyers' decisions represented simply "the exercise of [a] strategy" different from what Haynes would now prefer. *Ibid.* It said that even "[i]f the constraints of federal review did not command that Haynes first give the state courts an opportunity to adjudicate his claims of error, this court would still not issue a habeas writ." *Ibid.* Thus, when the District Court denied Haynes' Rule 60(b)(6) motion, it correctly concluded that *Martinez* (which would do no more than excuse Haynes' procedural default) was beside the point, since the court had "already granted Haynes the relief he now requests: The court considered the merits of his barred claims." *Haynes* v. *Thaler*, 2012 WL 4739541, *5 (Oct. 3, 2012).

This stay cannot, therefore, be justified even as preserving an opportunity to challenge the sentence under *Martinez*. And because I see no reason to believe that the District Court was wrong about the merits of Haynes' claims, I also do not consider a stay warranted in order to plumb the record and correct any alleged factbound error of the District Court.

Haynes has already outlived the policeman whom he shot in the head by 14 years. I cannot join the Court's further postponement of the State's execution of its lawful judgment.

Certiorari Denied

No. 12–6627 (12A339). FERGUSON *v.* FLORIDA. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. JUSTICE BREYER would grant the application for stay of execution. THE CHIEF JUSTICE took no part in the consideration or decision of this application and this petition. Reported below: 101 So. 3d 362.

October 23, 2012

Miscellaneous Orders

No. 12A395. Lair et al. *v.* Bullock, Attorney General of Montana, et al. Application to vacate stay entered by the United States Court of Appeals for the Ninth Circuit on October 16, 2012, presented to Justice Kennedy, and by him referred to the Court, denied.

No. 12A402. Ferguson *v.* Tucker, Secretary, Florida Department of Corrections. Application for stay of execution of sentence of death, presented to Justice Thomas, and by him referred to the Court, denied. The Chief Justice took no part in the consideration or decision of this application.

No. 12A408. Tucker, Secretary, Florida Department of Corrections *v.* Ferguson. Application to vacate stay of execution of sentence of death entered by the United States Court of Appeals for the Eleventh Circuit on October 23, 2012, presented to Justice Thomas, and by him referred to the Court, denied. The Chief Justice took no part in the consideration or decision of this application.

Certiorari Denied

No. 12–6812 (12A390). Ferguson *v.* Florida. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to Justice Thomas, and by him referred to the Court, denied. Certiorari denied. The Chief Justice took no part in the consideration or decision of this application and this petition. Reported below: 112 So. 3d 1154.

No. 12–6831 (12A398). Ferguson *v.* Palmer, Warden, et al. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to Justice Thomas, and by him referred to the Court, denied. Certiorari denied. The Chief Justice took no part in the consideration or decision of this application and this petition. Reported below: 493 Fed. Appx. 22.

October 25, 2012

Dismissal Under Rule 46

No. 12–366. LanLogistics, Corp. *v.* Holston Investments, Inc. B. V. I., et al. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 677 F. 3d 1068.

October 26, 2012

Miscellaneous Order

No. 11–1327. Evans *v.* Michigan. Sup. Ct. Mich. [Certiorari granted, 567 U. S. 905.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

October 29, 2012

Certiorari Granted—Vacated and Remanded

No. 11–10139. Mauricio *v.* California. Ct. App. Cal., 2d App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Miller* v. *Alabama*, 567 U. S. 460 (2012).

Certiorari Dismissed

No. 12–6070. Lewis *v.* Washington. Ct. App. Wash. 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. 12–6243. Cutaia *v.* Bondi, Attorney General of Florida, et al. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 12M37. China Terminal & Electric Corp. et al. *v.* Willemsen, as Personal Representative of the Estate of Willemsen, et al. Motion for leave to file petition for writ of certiorari under seal with redacted copies for the public record granted.

No. 12M38. Garcia *v.* Lopez, Warden; and

No. 12M39. MORRIS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 11–1351. LEVIN *v.* UNITED STATES ET AL. C. A. 9th Cir. [Certiorari granted, 567 U. S. 968.] Motion of the Court-appointed *amicus curiae* in support of petitioner to dispense with printing joint appendix granted.

No. 11–1507. TOWNSHIP OF MOUNT HOLLY, NEW JERSEY, ET AL. *v.* MT. HOLLY GARDENS CITIZENS IN ACTION, INC., ET AL. C. A. 3d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 11–9540. DESCAMPS *v.* UNITED STATES. C. A. 9th Cir. [Certiorari granted, 567 U. S. 964.] Motion of petitioner for appointment of counsel granted. Dan B. Johnson, Esq., of Spokane, Wash., is appointed to serve as counsel for petitioner.

No. 12–5869. BRAND *v.* LOS ANGELES UNIFIED SCHOOL DISTRICT. Ct. App. Cal., 2d App. Dist.;

No. 12–5982. CRAWFORD *v.* EVERHOME MORTGAGE CO. Sup. Ct. Fla.;

No. 12–6006. SCOTT *v.* U. S. BANK N. A. ET AL. C. A. 4th Cir.;

No. 12–6033. SPOONER ET UX. *v.* GAUTREAUX ET AL. C. A. 5th Cir.; and

No. 12–6169. MAEHR *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 10th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until November 19, 2012, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 12–6076. HUGHES *v.* CHEVRON PHILLIPS CHEMICAL CO. LP. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 19, 2012, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court. JUSTICE ALITO took no part in the consideration or decision of this motion.

No. 12–6516. IN RE SWISHER;

No. 12–6547. IN RE MCGHEE; and

No. 12–6552. In re Siluk. Petitions for writs of habeas corpus denied.

No. 12–6478. In re Letizia. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 12–253. In re Fessler;
No. 12–5918. In re Amaro;
No. 12–5950. In re Muthukumar;
No. 12–6085. In re Currier; and
No. 12–6330. In re Rosa. Petitions for writs of mandamus denied.

No. 12–6383. In re Rudzavice. 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. 11–1518. Bullock *v.* BankChampaign, N. A. C. A. 11th Cir. Certiorari granted. Reported below: 670 F. 3d 1160.

No. 12–43. PPL Corp. et al. *v.* Commissioner of Internal Revenue. C. A. 3d Cir. Certiorari granted. Reported below: 665 F. 3d 60.

No. 12–126. McQuiggin, Warden *v.* Perkins. C. A. 6th Cir. Certiorari granted. Reported below: 670 F. 3d 665.

No. 11–10189. Trevino *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 449 Fed. Appx. 415.

Certiorari Denied

No. 11–1321. Velasquez-Otero *v.* Holder, Attorney General. C. A. 11th Cir. Certiorari denied. Reported below: 456 Fed. Appx. 822.

No. 11–1390. Elashi et al. *v.* United States; and
No. 11–10437. El-Mezain *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 664 F. 3d 467.

No. 11–1391. CHESTER *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 666 F. 3d 340.

No. 11–1402. MARCAVAGE *v.* SAPERSTEIN ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 666 F. 3d 856.

No. 11–1490. BERNINI ET AL. *v.* CITY OF ST. PAUL, MINNESOTA, ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 665 F. 3d 997.

No. 11–1525. GRANADOS GAITAN *v.* HOLDER, ATTORNEY GENERAL. C. A. 8th Cir. Certiorari denied. Reported below: 671 F. 3d 678.

No. 11–9981. ARGUETA, AKA CRUZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 176.

No. 11–10021. W. B. H. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 664 F. 3d 848.

No. 11–10492. DELGADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 672 F. 3d 320.

No. 11–11061. MARTINEZ-TAVERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 271.

No. 12–61. BROICH *v.* INCORPORATED VILLAGE OF SOUTHAMPTON, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 462 Fed. Appx. 39.

No. 12–108. SIDAMON-ERISTOFF, TREASURER OF NEW JERSEY, ET AL. *v.* NEW JERSEY FOOD COUNCIL ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 669 F. 3d 374.

No. 12–145. PERSONHOOD OKLAHOMA *v.* BARBER ET AL. Sup. Ct. Okla. Certiorari denied. Reported below: 2012 OK 42, 286 P. 3d 637.

No. 12–180. JEWUSIAK *v.* SANDY KAYE CONDOMINIUM ASSN., INC. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 81 So. 3d 434.

No. 12–202. JOHN HANCOCK LIFE INSURANCE CO. (U. S. A.) ET AL. *v.* SANTOMENNO ET AL.; and

No. 12–208. SANTOMENNO *v.* JOHN HANCOCK LIFE INSURANCE CO. (U. S. A.) ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 677 F. 3d 178.

No. 12–211. GLUNK *v.* COMMONWEALTH OF PENNSYLVANIA BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS (STATE BOARD OF MEDICINE). Commw. Ct. Pa. Certiorari denied.

No. 12–233. CINOTTO *v.* DELTA AIR LINES, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 674 F. 3d 1285.

No. 12–237. TRANCOS, INC. *v.* BALSAM. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 203 Cal. App. 4th 1083, 138 Cal. Rptr. 3d 108.

No. 12–243. NOVA CHEMICALS CORP. ET AL. *v.* DOW CHEMICAL CO. C. A. Fed. Cir. Certiorari denied. Reported below: 458 Fed. Appx. 910.

No. 12–252. KULESA *v.* REX. Super. Ct. Pa. Certiorari denied. Reported below: 32 A. 3d 827 and 828.

No. 12–255. CAPOGROSSO *v.* 30 RIVER COURT EAST URBAN RENEWAL CO. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 482 Fed. Appx. 677.

No. 12–257. ROBINSON *v.* MORGAN STANLEY ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 456.

No. 12–259. BO LIU *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2012 IL App (1st) 103449.

No. 12–260. LAUER *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 11th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 550.

No. 12–261. FHARMACY RECORDS, AKA FHARMACY RECORDS PRODUCTION CO. ET AL. *v.* NASSAR ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 448.

No. 12–279. LYNN *v.* ALEXANDER, DIRECTOR, NATIONAL SECURITY AGENCY. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 950.

No. 12–287. PATRAW *v.* GROTH ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 127 Nev. 1165, 373 P. 3d 949.

No. 12–288. ORD *v.* DISTRICT OF COLUMBIA. C. A. D. C. Cir. Certiorari denied.

No. 12–291. SMITH *v.* CSX TRANSPORTATION, INC. Sup. Ct. Ala. Certiorari denied. Reported below: 151 So. 3d 394.

No. 12–321. NEELY *v.* MCDANIEL, ATTORNEY GENERAL OF ARKANSAS. C. A. 8th Cir. Certiorari denied. Reported below: 677 F. 3d 346.

No. 12–325. SMITH *v.* UNITED STATES; and
No. 12–6340. BAKER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 674 F. 3d 722.

No. 12–329. MINOR, INDIVIDUALLY AND AS MOTHER, NATURAL GUARDIAN, AND NEXT BEST FRIEND OF D. A. *v.* GRABE ET AL. Sup. Ct. Iowa. Certiorari denied. Reported below: 819 N. W. 2d 383.

No. 12–333. CARTER *v.* DEPARTMENT OF THE NAVY ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 466 Fed. Appx. 2.

No. 12–336. CITY OF BROOKSVILLE, FLORIDA *v.* WESTCHESTER FIRE INSURANCE CO. C. A. 11th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 851.

No. 12–337. RAY *v.* SUN LIFE & HEALTH INSURANCE CO. C. A. 11th Cir. Certiorari denied. Reported below: 443 Fed. Appx. 529.

No. 12–338. KURSCHINSKE *v.* MEADVILLE FORGING CO. C. A. 3d Cir. Certiorari denied. Reported below: 481 Fed. Appx. 736.

No. 12–340. RUSSELL, ADMINISTRATOR OF THE ESTATE OF RUSSELL *v.* VIRGINIA BOARD OF AGRICULTURE AND CONSUMER SERVICES. Sup. Ct. Va. Certiorari denied.

No. 12–341. GUY ET AL. *v.* LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 9.

No. 12–345. GUIAMELON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied. Reported below: 205 Cal. App. 4th 383, 140 Cal. Rptr. 3d 584.

No. 12–347. HENGJUN CHAO *v.* MOUNT SINAI HOSPITAL ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 476 Fed. Appx. 892.

No. 12–363. DEAN *v.* TEEUWISSEN, CHAIRMAN, MISSISSIPPI BOARD OF BAR ADMISSIONS. C. A. 5th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 629.

No. 12–377. HALE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 685 F. 3d 522.

No. 12–378. MITCHELL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 418.

No. 12–386. SHARPTON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 541.

No. 12–387. DAVIS, ADMINISTRATOR OF THE ESTATE OF SMITH, DECEASED *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 145.

No. 12–5016. AMEZCUA *v.* EIGHTH JUDICIAL DISTRICT COURT OF NEVADA, CLARK COUNTY, ET AL. Sup. Ct. Nev. Certiorari denied. Reported below: 128 Nev. 879, 381 P. 3d 589.

No. 12–5030. SPARKS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 12–5229. HAWKINS *v.* OHIO. Ct. App. Ohio, Hamilton County. Certiorari denied. Reported below: 2011-Ohio-5645.

No. 12–5363. SHIGLEY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 451 Fed. Appx. 705.

No. 12–5374. CAMPBELL *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 674 F. 3d 578.

No. 12–5427. ELLIOTT *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 53 Cal. 4th 535, 269 P. 3d 494.

No. 12–5433. HOWARD *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2012 Ark. 177, 403 S. W. 3d 38.

No. 12–5495. SPRINGS *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2012 Ark. 87, 387 S. W. 3d 143.

No. 12–5572. NOSIE *v.* ASSOCIATION OF FLIGHT ATTENDANTS-CWA, AFL–CIO. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 802.

No. 12–5682. ROBERTS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 681 F. 3d 597.

No. 12–5756. ANDERSON *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 294 Kan. 450, 276 P. 3d 200.

No. 12–5834. CARROLL *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 69 So. 3d 1118.

No. 12–5837. TINSLEY, PERSONAL REPRESENTATIVE OF THE ESTATE OF TINSLEY *v.* GENESIS HEALTHCARE CORP. Ct. Sp. App. Md. Certiorari denied. Reported below: 203 Md. App. 749 and 764.

No. 12–5848. WILLIAMS *v.* HUMPHREY, WARDEN. Super. Ct. Butts County, Ga. Certiorari denied.

No. 12–5849. TIMMONS *v.* RICHLAND COUNTY SHERIFF'S OFFICE. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 190.

No. 12–5850. PRICE *v.* WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY ET AL. Ct. App. D. C. Certiorari denied. Reported below: 41 A. 3d 526.

No. 12–5859. ESPOSITO *v.* HUMPHREY, WARDEN. Super. Ct. Butts County, Ga. Certiorari denied.

No. 12–5860. SWISHER *v.* LEVENHAGEN, SUPERINTENDENT, WESTVILLE CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 12–5863. SLOCUM *v.* CORPORATE EXPRESS US INC. ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 446 Fed. Appx. 957.

No. 12–5866. BLUME *v.* SUPILANAS ET AL. C. A. 6th Cir. Certiorari denied.

No. 12–5871. FIELDS *v.* RAINBOW REHABILITATION CENTER ET AL. C. A. 6th Cir. Certiorari denied.

No. 12–5876. Fischer *v.* Pelkie, Superintendent, Strafford County House of Corrections. Sup. Ct. N. H. Certiorari denied. Reported below: 163 N. H. 515, 44 A. 3d 493.

No. 12–5877. Hall *v.* Texarkana, Arkansas, Police Department, et al. C. A. 8th Cir. Certiorari denied.

No. 12–5878. Imperial *v.* Herndon, Warden. C. A. 9th Cir. Certiorari denied.

No. 12–5879. Rayfield *v.* United Medical Center. Ct. App. D. C. Certiorari denied.

No. 12–5881. Jerrell *v.* Texas. Ct. App. Tex., 7th Dist. Certiorari denied.

No. 12–5882. James *v.* Hardy, Warden. C. A. 7th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 427.

No. 12–5886. Frost *v.* F & R Realty Trust et al. App. Ct. Mass. Certiorari denied. Reported below: 80 Mass. App. 1108, 954 N. E. 2d 590.

No. 12–5899. Perry *v.* McDaniel, Warden. C. A. 9th Cir. Certiorari denied.

No. 12–5902. Cordero *v.* Tucker, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 12–5907. Villafane *v.* LaValley, Superintendent, Clinton Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 12–5909. Anglin *v.* Breckinridge Circuit Court et al. C. A. 6th Cir. Certiorari denied.

No. 12–5914. Bush *v.* Bennett et al. Ct. Sp. App. Md. Certiorari denied. Reported below: 202 Md. App. 729.

No. 12–5917. Malcomb *v.* Dietz et al. C. A. 3d Cir. Certiorari denied. Reported below: 487 Fed. Appx. 683.

No. 12–5920. Ruiz *v.* Texas. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 12–5921. Sloane *v.* Fischer, Commissioner, New York Department of Correctional Services, et al. C. A. 2d Cir. Certiorari denied.

No. 12–5922. RODRIGUEZ *v.* CALIFORNIA. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 12–5923. CLARK *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 12–5926. JACKSON *v.* WATFORD. Super. Ct. Rockdale County, Ga. Certiorari denied.

No. 12–5927. LACEY *v.* BRAXTON, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 222.

No. 12–5930. MCKINNEY *v.* SHEETS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–5933. ALSTON *v.* VOORHIES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–5934. SCAGGS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2011 IL App (1st) 090666–U.

No. 12–5936. SMITH *v.* KOERNER ET AL. C. A. 7th Cir. Certiorari denied.

No. 12–5940. CROSS *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 128 Nev. 891, 381 P. 3d 605.

No. 12–5942. MONTGOMERY *v.* BUCHANAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–5952. WOLDEGIORGISE *v.* HOLDER, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 335.

No. 12–5953. SMITHERMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 893.

No. 12–5966. ELAM *v.* LYKOS. C. A. 5th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 275.

No. 12–5967. LACROIX *v.* GREEN MOUNTAIN FINANCIAL FUND, LLC, ET AL. C. A. 7th Cir. Certiorari denied.

No. 12–5974. NALI *v.* PHILLIPS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 681 F. 3d 837.

No. 12–5985. JONES *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 12–5990. WALLACE *v.* ROBERTS, WARDEN. Super. Ct. Washington County, Ga. Certiorari denied.

No. 12–5991. MCDERMOTT, AKA JOHNSON *v.* GEORGIA. Super. Ct. DeKalb County, Ga. Certiorari denied.

No. 12–5993. MONTUE *v.* SISTO, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–5998. MOLETTE *v.* GEORGIA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 766.

No. 12–6000. JOHNSON *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 364 S. W. 3d 292.

No. 12–6001. KING *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 12–6005. BLACK *v.* HOLDER, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied.

No. 12–6009. WASHINGTON *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 2012 IL 107993, 969 N. E. 2d 349.

No. 12–6011. CASWELL *v.* LAVALLEY, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 12–6014. HARRIS *v.* BERNSTEIN ET AL. C. A. 6th Cir. Certiorari denied.

No. 12–6016. HALL *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 87 So. 3d 667.

No. 12–6020. CLACK *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 12–6025. LYON *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 12–6027. SANDERS *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2012 IL App (1st) 102040, 965 N. E. 2d 1275.

No. 12–6031. BURNETT *v.* NORMAN, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 12–6032. ARRINGTON *v.* SAUERS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FOREST. C. A. 3d Cir. Certiorari denied.

No. 12–6034. RETANAN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 12–6038. DE MEDEIROS *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 461 Fed. Appx. 633.

No. 12–6041. DUKES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2011 IL App (1st) 073170–U.

No. 12–6043. ROSADO *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 43 A. 3d 523.

No. 12–6044. CIACCI *v.* HAWAII. C. A. 9th Cir. Certiorari denied.

No. 12–6048. CREAMER *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 285.

No. 12–6052. RITCHIE *v.* FERRITER, DIRECTOR, MONTANA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 840.

No. 12–6054. CRANE *v.* NORMAN, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied.

No. 12–6057. ADAMS *v.* ADAMS. Sup. Ct. Ga. Certiorari denied.

No. 12–6059. EMERSON *v.* BUTTS, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. Ct. App. Ind. Certiorari denied.

No. 12–6062. OUOLOGUEM *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 219.

No. 12–6066. BARKER *v.* BARROW, WARDEN. Sup. Ct. Ga. Certiorari denied. Reported below: 290 Ga. 711, 723 S. E. 2d 905.

No. 12–6068. DAVIS *v.* UNITED STATES POSTAL SERVICE ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 487 Fed. Appx. 571.

No. 12–6083. GLADDEN *v.* MCHUGH, SECRETARY OF THE ARMY. C. A. 4th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 221.

No. 12–6089. BACZYNSKI *v.* HOLDER, ATTORNEY GENERAL. C. A. 11th Cir. Certiorari denied.

No. 12–6091. BIRDETTE *v.* SUPERIOR COURT OF GEORGIA, DOUGLAS COUNTY. C. A. 11th Cir. Certiorari denied.

No. 12–6096. WALKER *v.* NEW YORK (two judgments). App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 93 App. Div. 3d 1218, 940 N. Y. S. 2d 516 (both judgments).

No. 12–6108. MERILIEN, AKA ASSE *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied.

No. 12–6113. HIMMELREICH *v.* FEDERAL BUREAU OF PRISONS ET AL. C. A. 6th Cir. Certiorari denied.

No. 12–6114. TICHOT *v.* MAINE STATE POLICE. C. A. 1st Cir. Certiorari denied.

No. 12–6117. GRAVES *v.* KNIPP, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–6130. JAMISON *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–6146. HEARON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 12–6151. HALL *v.* VIRGA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–6165. BROWN *v.* BRADT, SUPERINTENDENT, ATTICA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 483 Fed. Appx. 593.

No. 12–6166. D. M. *v.* New Jersey Division of Youth and Family Services. Super. Ct. N. J., App. Div. Certiorari denied.

No. 12–6174. Moorer-Bey *v.* Federal Bureau of Prisons et al. C. A. 7th Cir. Certiorari denied.

No. 12–6199. Johnson *v.* United States et al. C. A. 3d Cir. Certiorari denied. Reported below: 469 Fed. Appx. 79.

No. 12–6201. Suggs *v.* United States; and
No. 12–6425. Price *v.* United States. C. A. D. C. Cir. Certiorari denied. Reported below: 681 F. 3d 411.

No. 12–6209. Collins *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 683 F. 3d 697.

No. 12–6219. Garcia *v.* California. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 12–6221. Hitchcock *v.* Tucker, Secretary, Florida Department of Corrections, et al. C. A. 11th Cir. Certiorari denied.

No. 12–6251. Cure *v.* Louisiana. Sup. Ct. La. Certiorari denied. Reported below: 2011–2238 (La. 7/2/12), 93 So. 3d 1268.

No. 12–6253. Piekarsky *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 687 F. 3d 134.

No. 12–6256. Vann *v.* Gilbert et al. C. A. 5th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 876.

No. 12–6280. Mataele *v.* Nunn, Director, Center for Families, Children and the Courts for the State of California, et al. C. A. 9th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 607.

No. 12–6282. Christi *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 682 F. 3d 138.

No. 12–6284. Ward *v.* Florida. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 90 So. 3d 281.

No. 12–6290. Sims *v.* Preska, Chief Judge, United States District Court for the Southern District of New York. C. A. 2d Cir. Certiorari denied.

No. 12–6299. KOCAYA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–6301. LUELLEN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 151.

No. 12–6304. CASEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 135.

No. 12–6305. CURRIER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 469.

No. 12–6311. LEAL-CAMPOS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–6312. WELLINGTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 879.

No. 12–6317. MUMPOWER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 669 F. 3d 1218.

No. 12–6318. LAUREL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–6320. SALINAS-CASTILLO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 12–6321. MARTINEZ *v.* UNITED STATES (Reported below: 468 Fed. Appx. 423); MONROE *v.* UNITED STATES (471 Fed. Appx. 373); GARZA MARTINEZ *v.* UNITED STATES (475 Fed. Appx. 956); MIRELEZ-GARCIA *v.* UNITED STATES (475 Fed. Appx. 990); and LOPEZ-RAMOS *v.* UNITED STATES (486 Fed. Appx. 476). C. A. 5th Cir. Certiorari denied.

No. 12–6325. SHEPHERD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–6328. RAINEY *v.* DISTRICT ATTORNEY OF THE COUNTY OF PHILADELPHIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–6332. HERRERA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 491.

No. 12–6333. HONEY *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 12–6334. HIGDON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 493 Fed. Appx. 261.

No. 12–6335. YOUNG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 49.

No. 12–6336. WILLIAMS *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 12–6337. DEIDA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 682 F. 3d 201.

No. 12–6339. MONDRAGON-PINEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 524.

No. 12–6341. MINOR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 320.

No. 12–6343. WHIPPLE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 374.

No. 12–6344. DORSEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 304.

No. 12–6346. COLTER *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 37 A. 3d 282.

No. 12–6352. ZALESKI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 489 Fed. Appx. 474.

No. 12–6354. LEMASTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 814.

No. 12–6357. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 207.

No. 12–6358. STRONG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–6360. JONES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 489 Fed. Appx. 57.

No. 12–6366. HOFFERT *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 657.

No. 12–6367. GANTT *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 679 F. 3d 1240.

No. 12–6368. DELCO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 332.

No. 12–6369. BORRERO-RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–6374. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–6385. MAYBEE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 687 F. 3d 1026.

No. 12–6389. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 116.

No. 12–6390. CORNETT, AKA CORNETTE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 495.

No. 12–6391. WATSON *v.* UNKNOWN CLERK 1 ET AL. C. A. 1st Cir. Certiorari denied.

No. 12–6393. PUBIEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–6394. PRIMM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 593.

No. 12–6396. VELEZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 793.

No. 12–6397. TAYLOR ET AL. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 499.

No. 12–6400. HAGLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 301.

No. 12–6401. GONZALEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–6407. MORALES-CABALLERO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 471.

No. 12–6408. O'BRIEN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–6409. MEJIA-NUNEZ, AKA MEJIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–6414. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–6416. RODRIGUEZ, AKA RODRIGUEZ-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 231.

No. 12–6417. UPSHAW *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 233.

No. 12–6426. ADETILOYE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–6428. DEERING, AKA WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–6431. HERRERA-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 753.

No. 12–6432. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 413.

No. 12–6433. DAYTON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 937.

No. 12–6436. GILBERT *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 2012 WI 72, 342 Wis. 2d 82, 816 N. W. 2d 215.

No. 12–6437. WEGMANN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 908.

No. 12–6439. GLADDEN *v.* DEPARTMENT OF COMMERCE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 947.

No. 12–6441. MCALLISTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 755.

No. 12–6444. O'NEILL-SERRANO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–6445. BOSKOVIC *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 607.

No. 12–6448. BURGDORF *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 761.

No. 12–6450. GALLEGOS-HERNANDEZ *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 688 F. 3d 190.

No. 12–6453. COTTON, AKA WOODARD *v.* KEFFER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 12–6454. ESSO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 684 F. 3d 347 and 486 Fed. Appx. 200.

No. 12–6462. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–6475. SMITH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 483 Fed. Appx. 672.

No. 12–6477. HELTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 846.

No. 12–6480. HATCHES, AKA SMITH, AKA DOVE, AKA FARVEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 123.

No. 12–6482. RODRIGUEZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 486 Fed. Appx. 259.

No. 12–6488. GIORDANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 3d 814 and 485 Fed. Appx. 185.

No. 12–6489. GUTIERREZ-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 617.

No. 12–6490. REDENIUS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 401.

No. 12–6499. GRAFMULLER *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 71 M. J. 308.

No. 12–6509. SOLIS, AKA MEDEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 409.

No. 12–6510. RIGGINS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 808.

No. 12–6512. SHAHID *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 486 Fed. Appx. 915.

No. 12–6515. ERNST *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 667.

No. 12–6518. BAEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 618.

No. 12–6524. GREENE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 313.

No. 12–6525. VREELAND *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 684 F. 3d 653.

No. 12–6526. VALDIVIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 680 F. 3d 33.

No. 12–6527. BAKER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 964.

No. 12–6535. LONGUS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 47 A. 3d 559.

No. 12–6541. BARAHONA-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 900.

No. 12–6542. ALBERTELLI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 687 F. 3d 439.

No. 12–6543. BEATY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 463.

No. 12–6544. AGUILERA, AKA TORRES AGUILERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 426.

No. 12–6545. BOUYEA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 479 Fed. Appx. 383.

No. 12–6548. MILLER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–6550. STANFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 492 Fed. Appx. 401.

No. 12–6551. RAMOS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 685 F. 3d 120.

No. 12–6560. AGUILAR-ORTIZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 285.

No. 12–6562. RAY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 141.

No. 12–6564. WILSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 493 Fed. Appx. 919.

No. 12–6565. TAYLOR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 135.

No. 12–6572. STROUD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–6579. HERRERA-DELGADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 318.

No. 12–6580. GILLIAM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 486 Fed. Appx. 556.

No. 12–6592. GLOVER *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 681 F. 3d 411.

No. 12–234. CRAVEN *v.* COBELL ET AL. C. A. D. C. Cir. Certiorari denied. THE CHIEF JUSTICE and JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 679 F. 3d 909.

No. 12–6058. PAYNE *v.* KIRKEGARD ET AL. C. A. 9th Cir. Certiorari before judgment denied.

No. 12–6179. WILLIAMS *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE. C. A. 6th Cir. Certiorari before judgment denied.

No. 12–6319. KING *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–6378. RODRIGUEZ *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 12–6384. MURILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 484 Fed. Appx. 201.

No. 12–6573. LAWSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 686 F. 3d 1317.

Rehearing Denied

No. 11–9959. MAYES *v.* GRAPHIC PACKAGING INTERNATIONAL, 567 U. S. 939. Petition for rehearing denied.

NOVEMBER 2, 2012

Miscellaneous Order

No. 11–864. COMCAST CORP. ET AL. *v.* BEHREND ET AL. C. A. 3d Cir. [Certiorari granted, 567 U. S. 933.] Motion of petitioners for leave to file supplemental volume of the joint appendix under seal granted.

NOVEMBER 5, 2012

Certiorari Granted—Vacated and Remanded. (See No. 12–168, *ante*, p. 1.)

Certiorari Dismissed

No. 12–6254. MCCARTHY *v.* SERVITTO 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. 12–6595. ORIAKHI *v.* WILSON, WARDEN. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 473 Fed. Appx. 345.

Miscellaneous Orders

No. D–2690. IN RE DISBARMENT OF MITCHELL. Disbarment entered. [For earlier order herein, see 567 U. S. 964.]

No. 12M40. ABED *v.* BLEDSOE, WARDEN; and
No. 12M41. WRIGHT *v.* HAMRICK, WARDEN. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 11–11084. TORMENIA *v.* CONTURSI ET AL. Dist. Ct. App. Fla., 2d Dist. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 810] denied.

No. 12–138. BG GROUP PLC *v.* REPUBLIC OF ARGENTINA. C. A. D. C. Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 12–467. SIBLEY *v.* DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS. Ct. App. D. C. Motion of petitioner to expedite consideration of petition for writ of certiorari denied.

No. 12–5131. TUCKER *v.* COSTELLO. Super. Ct. N. J., App. Div. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 805] denied.

No. 12–5375. CORNICK *v.* BYONG YU. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 810] denied.

No. 12–6095. PARKS *v.* STATE OF GEORGIA SEXUAL OFFENDER REGISTRATION REVIEW BOARD. Super. Ct. Fulton County, Ga. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until November 26, 2012, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 12–6633. IN RE SINGLETON; and
No. 12–6673. IN RE RCOM. Petitions for writs of habeas corpus denied.

No. 12–5473. IN RE HANSON ET UX. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 12–30. SETTENBRINO *v.* BARROGA-HAYES. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 89 App. Div. 3d 1094, 933 N. Y. S. 2d 409.

No. 12–171. BRANTLEY ET AL. *v.* NBC UNIVERSAL, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 675 F. 3d 1192.

No. 12–194. MORRISON *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 120 So. 3d 1239.

No. 12–216. KLEIN ET AL. *v.* CITY OF JACKSON, MICHIGAN. C. A. 6th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 317.

No. 12–269. MAHNCKE *v.* NEW YORK. App. Term, Sup. Ct. N. Y., 9th and 10th Jud. Dists. Certiorari denied. Reported below: 34 Misc. 3d 10, 935 N. Y. S. 2d 440.

No. 12–280. WILEY *v.* ILLINOIS EX REL. ILLINOIS DEPARTMENT OF HUMAN RIGHTS ET AL. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2011 IL App (1st) 101720–U.

No. 12–283. SIMMONS *v.* NOVARTIS PHARMACEUTICALS CORP. C. A. 6th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 182.

No. 12–285. STAMPS ET UX., INDIVIDUALLY AND AS NEXT FRIENDS OF H. S. ET AL. *v.* GWINNETT COUNTY SCHOOL DISTRICT ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 470.

No. 12–293. HAMNER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 18.

No. 12–314. LAWLOR *v.* CONNELLY. C. A. 2d Cir. Certiorari denied. Reported below: 471 Fed. Appx. 64.

No. 12–323. HALL *v.* KENTUCKY. Ct. App. Ky. Certiorari denied.

No. 12–334. STIERHOFF *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–349. MCREADY *v.* O'MALLEY, GOVERNOR OF MARYLAND, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 391.

No. 12–368. HILLIARD, TRUSTEE OF THE H. DAVID AND BONITA G. HILLIARD LIVING TRUST *v.* JACOBS. Ct. App. Ind. Certiorari denied. Reported below: 957 N. E. 2d 1043.

No. 12–384. HARJO *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 92 So. 3d 829.

No. 12–395. SPEAR *v.* MONTANA ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 366 Mont. 543.

No. 12–397. ZEMECKIS *v.* GLOBAL CREDIT & COLLECTION CORP. C. A. 7th Cir. Certiorari denied. Reported below: 679 F. 3d 632.

No. 12–405. STARR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 140.

No. 12–413. JESSE E. BRANNEN, III, P. C., ET AL. *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 682 F. 3d 1316.

No. 12–419. WALDEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 571.

No. 12–423. WINTERROTH *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 553.

No. 12–430. LEITMAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 572.

No. 12–5443. HANSON ET UX. *v.* CHANG, JUDGE, FIRST CIRCUIT COURT OF HAWAII, ET AL. Sup. Ct. Haw. Certiorari denied.

No. 12–5590. DUARTE-SABORI, AKA DUARTE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 580.

No. 12–5595. KEEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 676 F. 3d 981.

No. 12–5761. JOHNSON *v.* LINDAMOOD, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 394.

No. 12–6064. MCFADDEN *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied. Reported below: 369 S. W. 3d 727.

No. 12–6069. CABALLERO *v.* HARRINGTON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 248.

No. 12–6072. Reyes *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 12–6077. Heyne *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 88 So. 3d 113.

No. 12–6086. Annabel *v.* Wolfenbarger, Warden. C. A. 6th Cir. Certiorari denied.

No. 12–6099. Broussard *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 12–6100. Burghardt *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–6101. Hunter *v.* Bondi, Attorney General of Florida. C. A. 11th Cir. Certiorari denied.

No. 12–6102. Wilson *v.* Gavagni et al. C. A. 11th Cir. Certiorari denied.

No. 12–6123. Caraballo *v.* Florida. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 88 So. 3d 940.

No. 12–6125. Gray *v.* Palmer, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 12–6162. Trotter *v.* Ayres et al. Ct. App. Ga. Certiorari denied. Reported below: 315 Ga. App. 7, 726 S. E. 2d 424.

No. 12–6181. Sonachansingh *v.* Lee, Superintendent, Green Haven Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 12–6188. Ramsey *v.* Curtin, Warden. C. A. 6th Cir. Certiorari denied.

No. 12–6238. Kronenberg *v.* Ohio. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 2012-Ohio-589.

No. 12–6239. McCormick *v.* Schmidt. C. A. 10th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 661.

No. 12–6246. Deleston *v.* Rivera, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 118.

No. 12–6247. DANIELS *v.* JONES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–6261. MOSS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 12–6263. SMITH-JETER *v.* CITY OF COLUMBIA, SOUTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 260.

No. 12–6264. JOHNSON *v.* OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P. C., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 209.

No. 12–6270. JACKSON *v.* PERRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–6272. SCHNEIDER *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 674 F. 3d 1144.

No. 12–6279. JOHNSON *v.* HENDRICK AUTOMOTIVE GROUP ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 192.

No. 12–6285. WATTS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2012–0376 (La. 6/15/12), 90 So. 3d 1059.

No. 12–6286. WILKENS *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 983.

No. 12–6293. NUNES *v.* HOLDER, ATTORNEY GENERAL. C. A. 3d Cir. Certiorari denied. Reported below: 475 Fed. Appx. 427.

No. 12–6300. LYONS *v.* KING. C. A. 5th Cir. Certiorari denied.

No. 12–6302. CROFT, AKA DARK HORSE *v.* HENRY, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–6308. WILLIAMS *v.* LOUISIANA. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 10–947 (La. App. 5 Cir. 12/28/11), 87 So. 3d 106.

No. 12–6316. BAILEY *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 492 Fed. Appx. 619.

No. 12–6361. BOLES *v.* NEWTH ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 836.

No. 12–6364. GRUPEE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 682 F. 3d 143.

No. 12–6371. STEPHENSON *v.* SMITH. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 272.

No. 12–6388. WALLACE *v.* LEMPKE, SUPERINTENDENT, FIVE POINTS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 12–6395. HOLLINS *v.* ILLINOIS. Sup. Ct. Ill. Certiorari denied. Reported below: 2012 IL 112754, 971 N. E. 2d 504.

No. 12–6403. FREEMAN *v.* CLEMENTS, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 770.

No. 12–6405. BROWN ET AL. *v.* KELLER, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 258.

No. 12–6411. MORGAN *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 12–6420. VAN HOOSE *v.* SEIFERT, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 987.

No. 12–6438. SARTAIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–6449. AARON *v.* HARRIS, ASSISTANT DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL. C. A. 8th Cir. Certiorari denied.

No. 12–6457. STATON *v.* REYNOLDS, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 129.

No. 12–6458. SALTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–6467. BROWN *v.* BAENEN, WARDEN. Ct. App. Wis. Certiorari denied.

No. 12–6471. GREENE *v.* DEPARTMENT OF JUSTICE. C. A. 6th Cir. Certiorari denied.

No. 12–6472. SPEAR *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 90 So. 3d 273.

No. 12–6473. RODIS *v.* CUCCINELLI, ATTORNEY GENERAL OF VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 295.

No. 12–6492. DA VANG *v.* HOOVER. C. A. 7th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 326.

No. 12–6498. FAULK *v.* LAMAS, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ROCKVIEW, ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–6500. GROGANS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 854.

No. 12–6502. LOZANO-GALVAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 411.

No. 12–6514. SARGENT *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 523.

No. 12–6537. MCCLAIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 12–6549. NORWOOD *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 431.

No. 12–6563. FINGER *v.* ANDERSON COUNTY, TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied.

No. 12–6567. DEL TORO-BARBOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 673 F. 3d 1136.

No. 12–6587. ANDREWS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 910.

No. 12–6590. GARCIA-SANTOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 302.

No. 12–6594. NELSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–6597. THOMPSON *v.* HOLDER, ATTORNEY GENERAL, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 323.

No. 12–6603. CAVAZOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 834.

No. 12–6607. CARR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 728.

No. 12–6609. THOMAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 489 Fed. Appx. 688.

No. 12–6617. WEDDERBURN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 964.

No. 12–6618. DEL TORO-BARBOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 673 F. 3d 1136.

No. 12–6619. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 500 Fed. Appx. 364.

No. 12–6624. JIANG *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 471 Fed. Appx. 85.

No. 12–6626. CEPHUS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 684 F. 3d 703.

No. 12–6630. CARRASCO ESPINOZA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 684 F. 3d 766.

No. 12–6631. CHIARADIO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 684 F. 3d 265.

No. 12–6632. ROEMMELE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–6648. DELACRUZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 531.

No. 12–6650. BAWGUS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–6651. ADKINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 855.

No. 12–6495. GROVES *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 463 Fed. Appx. 929.

No. 12–6520. FOUCHE *v.* GUTTIERREZ, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–6639. JAMES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

Rehearing Denied

No. 11–9810. SIMMONS *v.* BRAVERMAN, *ante,* p. 829;

No. 11–10022. WEST *v.* OKLAHOMA, *ante,* p. 830;

No. 11–10163. DAVIS *v.* ROZUM, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT SOMERSET, ET AL., *ante,* p. 835;

No. 11–11115. WILLIAMS *v.* EDENFIELD, WARDEN, *ante,* p. 880;

No. 12–5084. TENERELLI *v.* UNITED STATES, *ante,* p. 894;

No. 12–5274. ROBINSON *v.* CONNELL, SUPERINTENDENT, ONEIDA CORRECTIONAL FACILITY, ET AL., *ante,* p. 904; and

No. 12–5314. SANGALAZA *v.* WELLS FARGO NATIONAL BANK, *ante,* p. 906. Petitions for rehearing denied.

No. 12–33. DOLENZ *v.* UNITED STATES, *ante,* p. 931. Petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

NOVEMBER 6, 2012

Dismissal Under Rule 46

No. 12–355. GOOD BEAR ET AL. *v.* COBELL ET AL. C. A. D. C. Cir. Certiorari dismissed under this Court's Rule 46.1.

Certiorari Denied

No. 12–7006 (12A443). ALLEN *v.* TRAMMELL, WARDEN. C. A. 10th Cir. Application for stay of execution of sentence of death,

presented to JUSTICE SOTOMAYOR, and by her referred to the Court, denied. Certiorari denied. Reported below: 500 Fed. Appx. 708.

NOVEMBER 8, 2012

Dismissal Under Rule 46

No. 12–6528. DANENBERG *v.* GEORGIA. Sup. Ct. Ga. Certiorari dismissed under this Court's Rule 46.1. Reported below: 291 Ga. 439, 729 S. E. 2d 315.

Miscellaneous Order

No. 12A474. WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. *v.* MICHAEL. Application to vacate stay of execution of sentence of death entered by the United States Court of Appeals for the Third Circuit on November 8, 2012, presented to JUSTICE SOTOMAYOR, and by her referred to the Court, denied. JUSTICE ALITO took no part in the consideration or decision of this application.

NOVEMBER 9, 2012

Certiorari Granted

No. 12–62. PEUGH *v.* UNITED STATES. C. A. 7th Cir. Certiorari granted. Reported below: 675 F. 3d 736.

No. 12–207. MARYLAND *v.* KING. Ct. App. Md. Certiorari granted. Reported below: 425 Md. 550, 42 A. 3d 549.

No. 12–96. SHELBY COUNTY, ALABAMA *v.* HOLDER, ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Certiorari granted limited to the following question: "Whether Congress' decision in 2006 to reauthorize § 5 of the Voting Rights Act under the pre-existing coverage formula of § 4(b) of the Voting Rights Act exceeded its authority under the Fourteenth and Fifteenth Amendments and thus violated the Tenth Amendment and Article IV of the Constitution." Reported below: 679 F. 3d 848.

No. 12–133. AMERICAN EXPRESS CO. ET AL. *v.* ITALIAN COLORS RESTAURANT ET AL. C. A. 2d Cir. Certiorari granted. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 667 F. 3d 204.

NOVEMBER 12, 2012

Certiorari Denied

No. 12–6969 (12A437). HARTMAN *v.* ROBINSON, WARDEN. C. A. 6th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KAGAN, and by her referred to the Court, denied. Certiorari denied.

No. 12–7050 (12A454). HARTMAN *v.* WALSH, PROSECUTING ATTORNEY, SUMMIT COUNTY, OHIO. C. A. 6th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KAGAN, and by her referred to the Court, denied. Certiorari denied.

No. 12–7163 (12A476). HARTMAN *v.* ROBINSON, WARDEN. C. A. 6th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KAGAN, and by her referred to the Court, denied. Certiorari denied.

NOVEMBER 13, 2012

Certiorari Granted—Vacated and Remanded

No. 12–5017. BARBA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Williams* v. *Illinois*, 567 U. S. 50 (2012).

Certiorari Dismissed

No. 12–6135. BOOK *v.* PARKS ET AL. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 12–6236. YOUNG *v.* MADISON ET AL. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). JUSTICE SOTOMAYOR and JUSTICE

KAGAN took no part in the consideration or decision of this motion and this petition.

*Miscellaneous Orders**

No. 12M42. SAMADI *v.* BANK OF AMERICA, N. A.; and

No. 12M43. TURNER, NEXT FRIEND OF RODRIGUEZ TREVINO *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 11–338. DECKER, OREGON STATE FORESTER, ET AL. *v.* NORTHWEST ENVIRONMENTAL DEFENSE CENTER; and

No. 11–347. GEORGIA-PACIFIC WEST, INC., ET AL. *v.* NORTHWEST ENVIRONMENTAL DEFENSE CENTER. C. A. 9th Cir. [Certiorari granted, 567 U. S. 933.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. JUSTICE BREYER took no part in the consideration or decision of this motion.

No. 11–556. VANCE *v.* BALL STATE UNIVERSITY ET AL. C. A. 7th Cir. [Certiorari granted, 567 U. S. 933.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 11–1059. GENESIS HEALTHCARE CORP. ET AL. *v.* SYMCZYK. C. A. 3d Cir. [Certiorari granted, 567 U. S. 933.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 11–1231. SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* AUBURN REGIONAL MEDICAL CENTER ET AL. C. A. D. C. Cir. [Certiorari granted, 567 U. S. 933.] Motion of the Court-appointed *amicus curiae* for divided argument granted.

No. 11–1285. US AIRWAYS, INC., FIDUCIARY AND PLAN ADMINISTRATOR OF THE US AIRWAYS, INC. EMPLOYEE BENEFITS PLAN *v.* MCCUTCHEN ET AL. C. A. 3d Cir. [Certiorari granted, 567 U. S. 933.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

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*[REPORTER'S NOTE: For statement of JUSTICE SOTOMAYOR and dissenting opinion of JUSTICE SCALIA in No. 12A369, *Haynes* v. *Thaler*, see *ante*, p. 971.]

No. 11–10473. Book *v.* Connecticut Resources Recovery Authority et al. C. A. 2d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 803] denied.

No. 12–6120. Smith *v.* Florida. Dist. Ct. App. Fla., 3d Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 4, 2012, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

No. 12–6682. Turpin *v.* United States. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until December 4, 2012, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court. Justice Kagan took no part in the consideration or decision of this motion.

No. 12–292. In re Sawyer;
No. 12–6138. In re Porter, aka Owusu;
No. 12–6196. In re Shell;
No. 12–6700. In re Williams; and
No. 12–6759. In re Mack. Petitions for writs of mandamus denied.

Certiorari Denied

No. 11–1395. Fry *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 70 M. J. 465.

No. 11–9696. Lewellyn et vir, on Behalf of J. L. et al. *v.* Sarasota County School Board. C. A. 11th Cir. Certiorari denied. Reported below: 442 Fed. Appx. 446.

No. 11–10201. Lynn *v.* Lynn. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 11–10202. Jackson *v.* United States. Ct. App. D. C. Certiorari denied. Reported below: 38 A. 3d 308.

No. 11–10220. Bailey et ux. *v.* Suhar. C. A. 6th Cir. Certiorari denied.

No. 11–10354. Tamayo *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 11–11155. Cox *v.* Howerton, Warden. Sup. Ct. Ga. Certiorari denied. Reported below: 290 Ga. 693, 723 S. E. 2d 891.

No. 12–81. Nix et al. *v.* Holder, Attorney General, et al. C. A. D. C. Cir. Certiorari denied. Reported below: 679 F. 3d 905.

No. 12–212. ClearValue, Inc., et al. *v.* Pearl River Polymers, Inc., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 668 F. 3d 1340.

No. 12–254. Sawyer *v.* Wright et al. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 260.

No. 12–282. Slaughter, Individually and as Personal Representative of the Estate of Wilson, et al. *v.* Mayor and City Council of Baltimore et al. C. A. 4th Cir. Certiorari denied. Reported below: 682 F. 3d 317.

No. 12–286. Teachers Insurance and Annuity Association of America et al. *v.* CRIIMI MAE Services Limited Partnership et al. C. A. 2d Cir. Certiorari denied. Reported below: 481 Fed. Appx. 686.

No. 12–290. Hafter *v.* State Bar of Nevada. Sup. Ct. Nev. Certiorari denied. Reported below: 128 Nev. 905, 381 P. 3d 623.

No. 12–294. Thomas *v.* City of Staunton, Virginia, et al. C. A. 4th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 151.

No. 12–295. Zorbalas *v.* City of Minneapolis, Minnesota. Ct. App. Minn. Certiorari denied.

No. 12–303. Wen Xuan *v.* On Tai. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 12–305. Allen Group Partners *v.* Golden, Trustee. C. A. 9th Cir. Certiorari denied. Reported below: 460 Fed. Appx. 681.

No. 12–326. Akers *v.* Hinds Community College. C. A. 5th Cir. Certiorari denied. Reported below: 515 Fed. Appx. 249.

No. 12–343. Frluckaj *v.* Long, Warden. C. A. 9th Cir. Certiorari denied.

No. 12–344. GREEN, PERSONAL REPRESENTATIVE OF THE ESTATE OF GREEN, ET AL. *v.* NASSIF. Ct. App. Md. Certiorari denied. Reported below: 426 Md. 258, 44 A. 3d 321.

No. 12–375. ROCHA *v.* PETER PAN BUS LINE, INC., ET AL. C. A. 1st Cir. Certiorari denied.

No. 12–400. LANGENECKERT *v.* WEBER ET AL. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 368 S. W. 3d 242.

No. 12–403. MAPLE *v.* HARLOW, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT ALBION, ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–415. MOSS, INDIVIDUALLY AND AS GUARDIAN OF HIS MINOR CHILD, ET AL. *v.* SPARTANBURG COUNTY SCHOOL DISTRICT SEVEN. C. A. 4th Cir. Certiorari denied. Reported below: 683 F. 3d 599.

No. 12–440. MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–449. CONNOLLY *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 457 Fed. Appx. 641.

No. 12–455. HOSSEINI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 679 F. 3d 544.

No. 12–468. R&L CARRIERS SHARED SERVICES, L. L. C., ET AL. *v.* BENNETT. C. A. 4th Cir. Certiorari denied. Reported below: 492 Fed. Appx. 315.

No. 12–472. RENDON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–5036. KELLEY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 840.

No. 12–5093. CHANDIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 675 F. 3d 329.

No. 12–5234. RAUPP *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 677 F. 3d 756.

No. 12–5264. HERRERA-MONTES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 400.

No. 12–5333. CLAY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 457 Fed. Appx. 885.

No. 12–5341. CLEMENTS *v.* ALABAMA STATE BAR. Sup. Ct. Ala. Certiorari denied. Reported below: 100 So. 3d 505.

No. 12–5380. SMART *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–5594. LOTCHES *v.* OREGON. C. A. 9th Cir. Certiorari denied.

No. 12–5692. MAGANA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 114.

No. 12–5735. LEMONS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 400.

No. 12–5749. HUNT *v.* THOMAS, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 666 F. 3d 708.

No. 12–5883. KENNEDY *v.* KEMNA, SUPERINTENDENT, CROSSROADS CORRECTIONAL CENTER. C. A. 8th Cir. Certiorari denied. Reported below: 666 F. 3d 472.

No. 12–6105. HOUGHTON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 12–6106. CHESTEEN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 12–6109. HURD *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 12–6110. GLASSER *v.* COLORADO. Ct. App. Colo. Certiorari denied. Reported below: 293 P. 3d 68.

No. 12–6112. FIELDS *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 201.

No. 12–6115. HITE *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–6116. HOSKINS *v.* NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 294.

No. 12–6118. GATHER *v.* OKLAHOMA ARMY NATIONAL GUARD ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 803.

No. 12–6124. JONES *v.* LOPEZ. Ct. App. D. C. Certiorari denied. Reported below: 53 A. 3d 330.

No. 12–6126. GRIFFIN *v.* MCGRADY, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT RETREAT, ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–6127. GARCIA *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–6131. BURKE *v.* MCCOLLUM, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 516.

No. 12–6137. BENSON *v.* LUTTRELL, SHERIFF, SHELBY COUNTY, TENNESSEE, ET AL. C. A. 6th Cir. Certiorari denied.

No. 12–6143. CAMPBELL *v.* PERLEY. C. A. 9th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 618.

No. 12–6147. HART *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied.

No. 12–6150. HALL *v.* HOKE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 269.

No. 12–6153. FREEMAN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–6154. HERNANDEZ *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–6158. JOHNSON *v.* LOPEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–6167. BYRD *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. Ct. Crim. App. Tex. Certiorari denied.

No. 12–6189. BANKS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. Ct. Crim. App. Tex. Certiorari denied.

No. 12–6191. DAVENPORT *v.* MCLAUGHLIN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 12–6198. MCKINNEY *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2011 IL App (1st) 100317, 962 N. E. 2d 1084.

No. 12–6203. SLEDGE *v.* GROUNDS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–6204. ROBINSON *v.* SOUTH CAROLINA DEPARTMENT OF CORRECTIONS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 970.

No. 12–6206. MCDONALD *v.* BRUNSMAN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 22.

No. 12–6211. CRUZ BELTRAN *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 108 So. 3d 1087.

No. 12–6214. ASHFORD *v.* WENEROWICZ, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–6215. ANDERSON *v.* CITY OF RIVERSIDE, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–6216. JACKSON *v.* RAPELJE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–6224. TRAMMELL *v.* SMART ET AL. C. A. 5th Cir. Certiorari denied.

No. 12–6226. KURTZ *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied.

No. 12–6227. ALVARADO *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 12–6233. JONES *v.* MISSOURI DEPARTMENT OF CORRECTIONS ET AL. C. A. 8th Cir. Certiorari denied.

No. 12–6234. WILLIAMS *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 128 Nev. 945, 381 P. 3d 676.

No. 12–6235. WHITMORE *v.* PARKER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 227.

No. 12–6240. DAVIS *v.* MCLAUGHLIN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 12–6241. VERDUN *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 12–6242. SADLOWSKI *v.* MICHALSKY. App. Ct. Conn. Certiorari denied.

No. 12–6244. SADLOWSKI *v.* TOWN OF MIDDLEFIELD. App. Ct. Conn. Certiorari denied.

No. 12–6249. RAMIREZ *v.* HERNDON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–6252. RAMIREZ-GARCIA *v.* SCUTT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–6259. TREGLIA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 12–6260. BAPTISTA *v.* CLARK, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–6275. HUNTER *v.* LESTER KALMANSON AGENCY, INC. Sup. Ct. Va. Certiorari denied.

No. 12–6288. WHITE *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 365 S. W. 3d 255.

No. 12–6338. MORRIS *v.* CROSS ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 783.

No. 12–6363. HERNANDEZ *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 12–6375. KELLY *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 12–6424. BREWSTER *v.* EASTERLING, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–6501. MOORE *v.* WENEROWICZ, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 489 Fed. Appx. 618.

No. 12–6598. WILLIAMS *v.* SHEAHAN, SUPERINTENDENT, FIVE POINTS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 486 Fed. Appx. 208.

No. 12–6637. SERFASS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 684 F. 3d 548.

No. 12–6638. SANTIAGO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 477 Fed. Appx. 922.

No. 12–6645. SMITH *v.* WISCONSIN. Sup. Ct. Wis. Certiorari denied. Reported below: 2012 WI 91, 342 Wis. 2d 710, 817 N. W. 2d 410.

No. 12–6653. BARREN ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 374.

No. 12–6655. LOC HUU BUI ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 545.

No. 12–6659. VILLA-MADRIGAL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 683 F. 3d 924.

No. 12–6662. RAMIREZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 460 Fed. Appx. 119.

No. 12–6667. KELLY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 677 F. 3d 373.

No. 12–6668. SHERLEY *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 336.

No. 12–6669. MACK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 253.

No. 12–6674. CARNAHAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 684 F. 3d 732.

No. 12–6686. CHANTHACHACK *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 483 Fed. Appx. 580.

No. 12–6690. YOSHIMOTO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 197.

No. 12–6699. WESTBROOK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 403.

No. 12–6701. WILLIAMS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 461 Fed. Appx. 483.

No. 12–6702. TRIPP *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–6705. BARNES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 486 Fed. Appx. 579.

No. 12–6707. WILLIAMS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 12–6710. CASANOVA, AKA ALVAREZ, AKA ROSSOVA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 465.

No. 12–6711. CRAWLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–6718. TAYLOR *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 489 Fed. Appx. 34.

No. 12–6723. AIDOO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 670 F. 3d 600.

No. 12–6725. ADAMS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 12–6728. JOHNSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 491 Fed. Appx. 326.

No. 12–6729. RICHARDS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 12–6730. RAMIREZ-SALAZAR *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 12–6734. COOK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 488 Fed. Appx. 643.

No. 12–6735. COTTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–6736. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 662.

No. 12–6737. AMSTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 338.

No. 12–6738. ALMEDINA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 686 F. 3d 1312.

No. 12–6739. BURKHARDT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 801.

No. 12–6743. POPE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 686 F. 3d 1078.

No. 12–6744. TURNER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 684 F. 3d 244.

No. 12–6748. KIRBY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 113.

No. 12–6750. KNITTEL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 462 Fed. Appx. 844.

No. 12–6751. OSORIO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 548.

No. 12–6752. REYES-PEDROZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 12–6753. DODAKIAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 490 Fed. Appx. 363.

No. 12–6755. DOWNS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 594.

No. 12–6763. WINFIELD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 417.

No. 12–6764. THOMAS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 12–6775. HARPER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 550.

No. 12–6779. GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 12–6780. HILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 492 Fed. Appx. 365.

No. 12–6781. GRAFF *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–6783. GLASSGOW *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 682 F. 3d 1107.

No. 12–6784. GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 319.

No. 12–6786. FERRANTI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 480 Fed. Appx. 634.

No. 12–6788. GONZALEZ-BELLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 964.

No. 12–6789. MCKEIGHAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 685 F. 3d 956.

No. 12–44. SHAYGAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 652 F. 3d 1297.

No. 12–298. FISHER ET AL. *v.* JPMORGAN CHASE & CO. ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE ALITO and JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 469 Fed. Appx. 57.

No. 12–308. THOMAS, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. *v.* MADISON. C. A. 11th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 677 F. 3d 1333.

No. 12–460. SPADONI *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 479 Fed. Appx. 392.

No. 12–6291. SMITH *v.* VERIZON WASHINGTON, DC, ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE ALITO took no part

in the consideration or decision of this petition. Reported below: 470 Fed. Appx. 104.

No. 12–6323. LINDSAY *v.* BOEING NORTH AMERICA, INC., ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

Rehearing Denied

No. 11–1328. CUNNINGHAM *v.* MCCLUSKEY ET AL., *ante*, p. 816;

No. 11–10174. COULTER *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, *ante*, p. 835;

No. 11–10244. ADKINS *v.* ARMSTRONG ET AL., *ante*, p. 837;

No. 11–10451. RODRIGUEZ *v.* PETERS, DIRECTOR, OREGON DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 844;

No. 11–10776. NENG POR YANG *v.* CITY OF SHAKOPEE, MINNESOTA, ET AL., *ante*, p. 861;

No. 11–10788. NENG POR YANG *v.* HANSON ET AL., *ante*, p. 862;

No. 11–10910. BAK *v.* DONAHOE, POSTMASTER GENERAL, ET AL., *ante*, p. 868;

No. 12–39. SELGAS ET UX. *v.* HENDERSON COUNTY APPRAISAL DISTRICT, *ante*, p. 884;

No. 12–5239. DANG *v.* SOLAR TURBINES INC., *ante*, p. 902;

No. 12–5322. VICKERMAN *v.* BIXLER ET AL., *ante*, p. 907;

No. 12–5482. ABRAM *v.* GERRY, WARDEN, *ante*, p. 914; and

No. 12–5517. EVANS *v.* UNITED STATES, *ante*, p. 916. Petitions for rehearing denied.

No. 11–10607. RUTLEDGE *v.* CITY OF OAKLAND, CALIFORNIA, ET AL., *ante*, p. 930. Petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 12–38. CALDWELL *v.* KAGAN, ASSOCIATE JUSTICE, SUPREME COURT OF THE UNITED STATES, ET AL., *ante*, p. 931. Petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–5357. RUTLEDGE *v.* ALLEN ET AL., *ante*, p. 933. Petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

NOVEMBER 15, 2012

Miscellaneous Order

No. 12–7197 (12A480). IN RE HUGHES. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 12–6935 (12A425). HUGHES *v.* TEXAS. Ct. Crim. App. Tex. Motion for leave to proceed *in forma pauperis* without an affidavit of indigency executed by petitioner granted. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied.

NOVEMBER 20, 2012

Miscellaneous Orders

No. 11–460. LOS ANGELES COUNTY FLOOD CONTROL DISTRICT *v.* NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL. C. A. 9th Cir. [Certiorari granted, 567 U. S. 933.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 11–1347. CHAFIN *v.* CHAFIN. C. A. 11th Cir. [Certiorari granted, 567 U. S. 960.] Motion of respondent for divided argument denied. Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

Certiorari Granted

No. 12–123. HORNE ET AL. *v.* DEPARTMENT OF AGRICULTURE. C. A. 9th Cir. Certiorari granted. Reported below: 673 F. 3d 1071.

No. 12–236. SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES *v.* CLOER. C. A. Fed. Cir. Certiorari granted. Reported below: 675 F. 3d 1358.

NOVEMBER 26, 2012

Certiorari Granted—Vacated and Remanded. (See also No. 11–1377, *ante,* p. 17.)

No. 11–438. LIBERTY UNIVERSITY ET AL. *v.* GEITHNER, SECRETARY OF THE TREASURY, ET AL. C. A. 4th Cir. Petition for rehearing granted. Order entered June 29, 2012 [567 U. S. 951], denying petition for writ of certiorari vacated. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *National Federation of Independent Business* v. *Sebelius*, 567 U. S. 519 (2012).

No. 12–6687. DEANE *v.* UNITED STATES. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Dorsey* v. *United States*, 567 U. S. 260 (2012). Reported below: 474 Fed. Appx. 212.

Certiorari Dismissed

No. 12–6292. SANDERS *v.* DETROIT POLICE DEPARTMENT ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). Reported below: 490 Fed. Appx. 771.

No. 12–6412. MARIAN *v.* SOCORRO ELECTRIC COOPERATIVE OF NEW MEXICO 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: 466 Fed. Appx. 756.

No. 12–6530. SMITH *v.* HOLDER, ATTORNEY GENERAL, 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: 473 Fed. Appx. 278.

No. 12–6836. CUMMINS *v.* CITY OF YUMA, ARIZONA, ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 12A364. IN RE FLORES. Application to file petition for writ of mandamus in excess of the word limits, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. D–2685. IN RE DISBARMENT OF CONOUR. Disbarment entered. [For earlier order herein, see 567 U. S. 959.]

No. D–2686. IN RE DISBARMENT OF MAHLER. Disbarment entered. [For earlier order herein, see 567 U. S. 959.]

No. D–2687. IN RE DISBARMENT OF SIEGELMAN. Disbarment entered. [For earlier order herein, see 567 U. S. 960.]

No. D–2688. IN RE DISBARMENT OF LAWRENCE. Disbarment entered. [For earlier order herein, see 567 U. S. 960.]

No. D–2689. IN RE DISBARMENT OF INGRAM. Disbarment entered. [For earlier order herein, see 567 U. S. 960.]

No. D–2691. IN RE DISBARMENT OF GITOMER. Disbarment entered. [For earlier order herein, see 567 U. S. 964.]

No. D–2698. IN RE DISCIPLINE OF OSMOND. Jeffrey P. Osmond, of Sayre, Pa., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2699. IN RE DISCIPLINE OF TEITELBAUM. Steven Usher Teitelbaum, of Albany, N. Y., is suspended from the practice

of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. 12M44. Cooper *v.* Illinois Lottery Control Board;
No. 12M45. White *v.* New Jersey Department of Human Services;
No. 12M46. Wheeler-Whichard *v.* Roach et al.;
No. 12M47. Randle *v.* House of Brides;
No. 12M48. Amer *v.* United States; and
No. 12M50. Kincaid et vir *v.* Smith, Trustee. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 12M49. Gibbs *v.* Thomas, Warden. Motion for leave to proceed as a veteran denied.

No. 11–9540. Descamps *v.* United States. C. A. 9th Cir. [Certiorari granted, 567 U. S. 964.] Motion of petitioner for leave to file volume II of the joint appendix under seal granted.

No. 11–10628. Daniel *v.* Office of Personnel Management. C. A. Fed. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 809] denied.

No. 11–10955. Book *v.* Bysiewicz et al. C. A. 2d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 804] denied.

No. 11–11003. Figura Torrefranca *v.* Ryan, Director, Arizona Department of Corrections, et al. C. A. 9th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 805] denied.

No. 12–5140. Montgomery *v.* California Worker's Compensation Appeals Board. C. A. 9th Cir. Motion to substitute Judith K. Montgomery as petitioner in place of Maurice E. Montgomery, deceased, granted.

No. 12–5247. Sanders *v.* Astrue, Commissioner of Social Security. C. A. 8th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 810] denied.

No. 12–5419. JONES *v.* FLORIDA. Sup. Ct. Fla. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 806] denied.

No. 12–5651. KEMPPAINEN *v.* TEXAS. Ct. Crim. App. Tex. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 937] denied.

No. 12–6269. IN RE MUTHUKUMAR;
No. 12–6314. BORG *v.* MINNESOTA. Sup. Ct. Minn.;
No. 12–6322. PARHAM *v.* HSBC MORTGAGE CORP. ET AL. C. A. 4th Cir.;
No. 12–6398. CONTI *v.* TEXAS. Ct. App. Tex., 14th Dist.; and
No. 12–6554. EMERSON ET VIR *v.* ALY ET AL. Sup. Ct. Iowa. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 17, 2012, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 12–6900. IN RE BOODY; and
No. 12–6903. IN RE JOYNER. Petitions for writs of habeas corpus denied.

No. 12–6362. IN RE AVENA. Petition for writ of mandamus denied.

No. 12–316. IN RE LIPIN. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 11–1371. CALIFORNIA TABLE GRAPE COMMISSION *v.* DELANO FARMS CO. ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 655 F. 3d 1337.

No. 11–1552. UNITED STATES FIRE INSURANCE CO. ET AL. *v.* ALEXANDER ET AL. Ct. App. La., 4th Cir. Certiorari denied.

No. 11–9353. PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 453 Fed. Appx. 524.

No. 11–9661. HERNANDEZ-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 457 Fed. Appx. 365.

No. 11–9705. QUIROZ-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 321.

No. 11–9724. ZUNIGA-ALCALA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 458 Fed. Appx. 344.

No. 11–10499. CASTILLO-QUINTANAR, AKA CASTILLO QUINTANAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 293.

No. 11–10715. KERNS *v.* BOARD OF COMMISSIONERS OF BERNALILLO COUNTY, NEW MEXICO, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 663 F. 3d 1173.

No. 11–10718. MARTIN *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 335 S. W. 3d 867.

No. 11–10953. RUSSELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 844.

No. 11–11137. HAMPTON *v.* CAIN, WARDEN. Sup. Ct. La. Certiorari denied. Reported below: 2011–1935 (La. 3/23/12), 82 So. 3d 1241.

No. 12–49. TUCKER *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. D. C. Cir. Certiorari denied. Reported below: 676 F. 3d 1129.

No. 12–80. MCMANAMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 673 F. 3d 841.

No. 12–95. CORDOVA-SOTO *v.* HOLDER, ATTORNEY GENERAL. C. A. 10th Cir. Certiorari denied. Reported below: 659 F. 3d 1029.

No. 12–166. BARANWAL *v.* UNITED STATES;
No. 12–428. CHEBSSI *v.* UNITED STATES;
No. 12–5261. LACOUR *v.* UNITED STATES; and
No. 12–6353. TOBIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 676 F. 3d 1264.

No. 12–224. MATATALL *v.* HERMIZ, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HERMIZ, DECEASED. C. A. 6th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 13.

No. 12–232. SOLANA BEACH SCHOOL DISTRICT ET AL. *v.* K. D., A MINOR, BY HER MOTHER AND NEXT FRIEND K. D., ET AL.

C. A. 9th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 658.

No. 12–267. Geneva-Roth Ventures, Inc. *v.* Edwards. Ct. App. Ind. Certiorari denied. Reported below: 956 N. E. 2d 1195.

No. 12–272. R. J. Reynolds Tobacco Co. et al. *v.* Clay, as Personal Representative of the Estate of Clay. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 84 So. 3d 1069.

No. 12–274. Apex 1 Processing, Inc. *v.* Edwards. Ct. App. Ind. Certiorari denied. Reported below: 962 N. E. 2d 663.

No. 12–310. Lallier *v.* Supreme Judicial Court of Massachusetts et al. Sup. Jud. Ct. Mass. Certiorari denied.

No. 12–317. Blake Marine Group, Inc. *v.* Adams Offshore Ltd. C. A. 11th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 558.

No. 12–318. Alvarez *v.* American Civil Liberties Union of Illinois. C. A. 7th Cir. Certiorari denied. Reported below: 679 F. 3d 583.

No. 12–319. Jenkins *v.* Bryant et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–320. Buniff *v.* Cain, Warden. C. A. 5th Cir. Certiorari denied.

No. 12–324. Hart *v.* Penske Truck Leasing Co. C. A. 6th Cir. Certiorari denied.

No. 12–327. Alphas Co., Inc. *v.* Dan Tudor & Sons Sales, Inc. C. A. 1st Cir. Certiorari denied. Reported below: 679 F. 3d 35.

No. 12–346. Kulpinsky *v.* Texas. Ct. Crim. App. Tex. Certiorari denied.

No. 12–350. Parent, aka Koziol *v.* New York et al. C. A. 2d Cir. Certiorari denied. Reported below: 485 Fed. Appx. 500.

No. 12–353. Henriques Group, P. A., et al. *v.* Bankers Lending Services, Inc., et al. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 85 So. 3d 496.

No. 12–354. GORDON ET AL. *v.* WEHRLE. C. A. 6th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 362.

No. 12–359. PARKS *v.* MBNA AMERICA BANK, N. A. Sup. Ct. Cal. Certiorari denied. Reported below: 54 Cal. 4th 376, 278 P. 3d 1193.

No. 12–360. HERRERA *v.* CHURCHILL MCGEE, LLC, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 680 F. 3d 539.

No. 12–361. C. M. H. *v.* D. M. ET UX. Ct. App. La., 1st Cir. Certiorari denied.

No. 12–362. EASTSIDE EXHIBITION CORP. *v.* 210 EAST 86TH STREET CORP. Ct. App. N. Y. Certiorari denied. Reported below: 18 N. Y. 3d 617, 965 N. E. 2d 246.

No. 12–364. DONOHUE *v.* DONOHUE. Ct. Sp. App. Md. Certiorari denied. Reported below: 203 Md. App. 746.

No. 12–365. HOUSTON *v.* DOW LOHNES PLLC ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 475 Fed. Appx. 776.

No. 12–367. DEL MARCELLE *v.* BROWN COUNTY CORP. ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 680 F. 3d 887.

No. 12–369. NORITA ET AL. *v.* COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS. Sup. Ct. N. Mar. I. Certiorari denied. Reported below: 2012 MP 6.

No. 12–374. SCHOLASTIC BOOK CLUBS, INC. *v.* ROBERTS, COMMISSIONER OF TENNESSEE DEPARTMENT OF REVENUE. Ct. App. Tenn. Certiorari denied. Reported below: 373 S. W. 3d 558.

No. 12–376. FURRY, AS PERSONAL REPRESENTATIVE OF THE ESTATE AND SURVIVORS OF FURRY *v.* MICCOSUKEE TRIBE OF INDIANS OF FLORIDA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 685 F. 3d 1224.

No. 12–380. STEELE *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–383. BRYANT *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 491 Mich. 575, 822 N. W. 2d 124.

No. 12–388. ADIELE *v.* HOLDER, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 272.

No. 12–392. GILBERT *v.* BANGS. C. A. 4th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 52.

No. 12–394. BRODIE *v.* ROSEN ET AL. C. A. D. C. Cir. Certiorari denied.

No. 12–404. STRADER *v.* DEPARTMENT OF AGRICULTURE. C. A. Fed. Cir. Certiorari denied. Reported below: 475 Fed. Appx. 316.

No. 12–412. DUBUC ET UX. *v.* TOWNSHIP OF GREEN OAK, MICHIGAN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 128.

No. 12–426. PAYNE *v.* WHOLE FOODS MARKET GROUP, INC. C. A. 4th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 186.

No. 12–432. VOGEL *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–443. NUNLEY *v.* MICHIGAN. Sup. Ct. Mich. Certiorari denied. Reported below: 491 Mich. 686, 821 N. W. 2d 642.

No. 12–450. MULERO *v.* THOMPSON, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 668 F. 3d 529.

No. 12–474. SCOTT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 845.

No. 12–475. JUNKIN *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 92 So. 3d 826.

No. 12–476. MARTINO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 12–479. LOVE *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 43 A. 3d 517.

No. 12–480. MANN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 685 F. 3d 714.

No. 12–483. WATERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–487. RANN *v.* ATCHISON, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 689 F. 3d 832.

No. 12–490. WILLIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 183.

No. 12–5027. O'BAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 600.

No. 12–5032. MOTA REYES, AKA REYES MOTA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 454.

No. 12–5119. WHITE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 663 F. 3d 1207.

No. 12–5125. SHERROD *v.* JOHNSON ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 667 F. 3d 1359.

No. 12–5182. HOOD *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Harnett County, N. C. Certiorari denied.

No. 12–5263. MARLOWE *v.* FABIAN ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 676 F. 3d 743.

No. 12–5309. LEWIS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 459 Fed. Appx. 742.

No. 12–5354. MCGOWEN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 675 F. 3d 482.

No. 12–5412. HARRIS *v.* QCA HEALTH PLAN, INC. C. A. 8th Cir. Certiorari denied. Reported below: 452 Fed. Appx. 702.

No. 12–5592. DOVER *v.* HOLDER, ATTORNEY GENERAL. C. A. 2d Cir. Certiorari denied.

No. 12–5689. GLADDEN *v.* BRYSON, SECRETARY OF COMMERCE. C. A. 4th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 285.

No. 12–5690. GLADDEN *v.* VILSACK, SECRETARY OF AGRICULTURE. C. A. 3d Cir. Certiorari denied. Reported below: 483 Fed. Appx. 664.

No. 12–5901. NICOLAISON *v.* MINNESOTA. Ct. App. Minn. Certiorari denied.

No. 12–5937. BEEMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 392.

No. 12–5962. WHITE *v.* NAPOLITANO, SECRETARY OF HOMELAND SECURITY. C. A. 11th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 587.

No. 12–5978. MINORA-ESCARCEGA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 242.

No. 12–6262. REDDY *v.* GILBERT MEDICAL TRANSCRIPTION SERVICE, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 622.

No. 12–6267. JOHNSON *v.* HEDGPETH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–6274. FOGLE *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 88 App. Div. 3d 738, 930 N. Y. S. 2d 274.

No. 12–6283. MANGRAM *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 12–6289. MEILLEUR *v.* STRONG ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 682 F. 3d 56.

No. 12–6294. JAWORSKI *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 806.

No. 12–6296. AHLUWALIA *v.* AYERS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–6297. ALLEN *v.* CLEMENTS, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 784.

No. 12–6298. ANDRADE-PAROMO *v.* FRANKE, SUPERINTENDENT, TWO RIVERS CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 12–6303. ALLEN *v.* ZAVARAS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 741.

No. 12–6307. Lobato Romero *v.* Williams, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 12–6309. Williams *v.* California. Sup. Ct. Cal. Certiorari denied.

No. 12–6310. Shoemaker *v.* LeBlanc, Secretary, Louisiana Department of Public Safety and Corrections, et al. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 2011–0210 (La. App. 1 Cir. 9/30/11), 90 So. 3d 546.

No. 12–6313. Ballard *v.* Long, Warden. C. A. 9th Cir. Certiorari denied.

No. 12–6315. Ocampo Albarran *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied. Reported below: 96 So. 3d 131.

No. 12–6324. Small *v.* Tucker, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 808.

No. 12–6326. Smith *v.* Virginia. Sup. Ct. Va. Certiorari denied.

No. 12–6329. Richardson *v.* Ray, Warden, et al. C. A. 4th Cir. Certiorari denied. Reported below: 492 Fed. Appx. 395.

No. 12–6345. McNac *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 338.

No. 12–6347. Jackson *v.* Barrow, Warden. C. A. 11th Cir. Certiorari denied.

No. 12–6351. Richardson *v.* Mount Vernon Recreation Center et al. Sup. Ct. Va. Certiorari denied.

No. 12–6356. Mazza *v.* Public Utility Commission. Commw. Ct. Pa. Certiorari denied.

No. 12–6359. Clemons *v.* Indiana. Ct. App. Ind. Certiorari denied. Reported below: 967 N. E. 2d 514.

No. 12–6365. Holland *v.* Monroe County Children and Youth Services et al. Sup. Ct. Pa. Certiorari denied.

No. 12–6370. TRUJILLO *v.* PLOUGHE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 261.

No. 12–6372. THOMPSON *v.* GONZALEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–6376. RUSS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 706.

No. 12–6377. ROGERS *v.* KERNS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 24.

No. 12–6379. LUEVANO *v.* SUPREME COURT OF THE UNITED STATES ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–6380. SOLIS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 12–6381. SHARP *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 12–6387. TRAVILLION *v.* DIFENDERFER ET AL. Super. Ct. Pa. Certiorari denied. Reported below: 37 A. 3d 1233.

No. 12–6392. BYSE *v.* GEORGIA. C. A. 11th Cir. Certiorari denied.

No. 12–6399. O'DIAH *v.* HEREFORD INSURANCE CO. ET AL.; and O'DIAH *v.* PORT AUTHORITY OF NEW YORK AND NEW JERSEY ET AL. C. A. 2d Cir. Certiorari denied.

No. 12–6402. HOFFMAN *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 12–6404. FREISINGER *v.* KEITH, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 846.

No. 12–6406. JONES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 141 So. 3d 132.

No. 12–6410. POOLE *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 90 So. 3d 303.

No. 12–6413. LAMB *v.* MENDOZA, WARDEN, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 854.

No. 12–6415. STEIN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 91 So. 3d 784.

No. 12–6418. WILLIAMS *v.* DARDEN. C. A. 11th Cir. Certiorari denied.

No. 12–6419. WILLIAMS *v.* DANFORTH, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 12–6422. GILMORE *v.* VALENZUELA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 640.

No. 12–6423. ALANA *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 106.

No. 12–6427. ARIEGWE *v.* MONTANA. Sup. Ct. Mont. Certiorari denied. Reported below: 365 Mont. 505, 285 P. 3d 424.

No. 12–6429. ANTONETTI *v.* COX, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–6430. ASHFORD *v.* WENEROWICZ, WARDEN, ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–6434. DRANE *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 291 Ga. 298, 728 S. E. 2d 679.

No. 12–6442. PEW *v.* FOLINO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–6443. PEREZ *v.* DEXTER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–6447. FRANKLIN *v.* SCRIBNER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 803.

No. 12–6470. AMOS *v.* RENICO, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 683 F. 3d 720.

No. 12–6479. SAMONTE *v.* HAWAII. Int. Ct. App. Haw. Certiorari denied. Reported below: 126 Haw. 124, 267 P. 3d 708.

No. 12–6513. SPENCER *v.* KIRKLAND, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 91.

No. 12–6523. C. F. *v.* WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES ET AL. Sup. Ct. App. W. Va. Certiorari denied.

No. 12–6538. CUNNINGHAM *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 479 Fed. Appx. 974.

No. 12–6557. DOBBS *v.* MICHIGAN. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 12–6566. WATKINS *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 12–6569. SMITH *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 94 So. 3d 335.

No. 12–6589. LEINWEBER *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 54.

No. 12–6606. MCCLAIN *v.* DAVIS, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 874.

No. 12–6613. SISNEY *v.* REISCH, SECRETARY, SOUTH DAKOTA DEPARTMENT OF CORRECTIONS, ET AL. Sup. Ct. S. D. Certiorari denied. Reported below: 821 N. W. 2d 244.

No. 12–6616. WALLS *v.* LITTLE ET AL. Sup. Ct. Del. Certiorari denied. Reported below: 44 A. 3d 923.

No. 12–6642. PATTON *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 2012 ME 101, 50 A. 3d 544.

No. 12–6643. MCBRIDE *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–6646. MERRIETT *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 12–6661. RICHARDSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 681 F. 3d 736.

No. 12–6666. KWASNIK *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied.

No. 12–6676. THAMES *v.* CHAPMAN ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 808.

No. 12–6692. NANCE *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 86 So. 3d 1120.

No. 12–6694. ROLAN *v.* COLEMAN, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FAYETTE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 680 F. 3d 311.

No. 12–6698. WOODWARD *v.* CLINE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 693 F. 3d 1289.

No. 12–6706. BOOKER *v.* GODINEZ, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS. Sup. Ct. Ill. Certiorari denied.

No. 12–6742. NOYAKUK *v.* TURNBULL. C. A. 9th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 618.

No. 12–6774. HAMILTON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 489 Fed. Appx. 10.

No. 12–6787. HAMPTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 363.

No. 12–6792. ELFGEEH *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 681 F. 3d 89.

No. 12–6803. MCCREARY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 489 Fed. Appx. 87.

No. 12–6810. RAMIREZ-SALAZAR *v.* OUTLAW, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 12–6814. SOLIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–6816. SUAREZ *v.* FELKER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–6820. JAMES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 510.

No. 12–6821. JOHNSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 680 F. 3d 966.

No. 12–6827. BARLOW *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 479 Fed. Appx. 372.

No. 12–6829. ERVIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 385.

No. 12–6837. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 690 F. 3d 358.

No. 12–6845. MCINTYRE *v.* MCKUNE, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 486.

No. 12–6848. PRYSOCK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 160.

No. 12–6849. STAFFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 489 Fed. Appx. 673.

No. 12–6855. BERGRIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 682 F. 3d 261.

No. 12–6856. ALFONSO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–6860. JACKSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 856.

No. 12–6862. SAQUELLA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 398.

No. 12–6863. SHINEFIELD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 134.

No. 12–6865. PRIETO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 12–6867. DWYER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 493 Fed. Appx. 313.

No. 12–6868. DIAMREYAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 684 F. 3d 305.

No. 12–6869. CARDENAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 995.

No. 12–6871. CIACCI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–6872. CIACCI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–6873. CIACCI *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–6876. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 758.

No. 12–6881. STRACCIALINI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 489 Fed. Appx. 663.

No. 12–6887. MOORE *v.* HOLLINGSWORTH, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 492 Fed. Appx. 648.

No. 12–6891. MARSH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 538.

No. 12–6893. CLARK *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–6895. CARTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 70.

No. 12–6896. COLEMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 794.

No. 12–6909. BARAHONA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–6911. BARRANDEY *v.* UNITED STATES; and
No. 12–6915. QUILIMOCO RUBIO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 221.

No. 12–6921. RANDLEMAN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–6937. ROBINSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 12–6941. VASQUEZ-CHAVEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 759.

No. 12–6945. CARPENTER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 680 F. 3d 1101.

No. 11–1515. DELLING *v.* IDAHO. Sup. Ct. Idaho. Certiorari denied. Reported below: 152 Idaho 122, 267 P. 3d 709.

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

The law has long recognized that criminal punishment is not appropriate for those who, by reason of insanity, cannot tell right from wrong. See 4 W. Blackstone, Commentaries on the Laws of England 24–25 (1769); *M'Naghten's Case*, 10 Cl. & Fin. 200, 8 Eng. Rep. 718 (1843). The insanity defense in nearly every State incorporates this principle. See *Clark* v. *Arizona*, 548 U. S. 735, 750–752 (2006) (noting that all but four States recognize some version of the insanity defense); R. Bonnie, A. Coughlin, J. Jeffries, & P. Low, Criminal Law 604 (3d ed. 2010) (same). If a defendant establishes an insanity defense, he is not criminally liable, though the government may confine him civilly for as long as he continues to pose a danger to himself or to others by reason of his mental illness. *Jones* v. *United States*, 463 U. S. 354, 370 (1983).

Idaho and a few other States have modified this traditional insanity defense. Indeed, Idaho provides that "[m]ental condition shall not be a defense to any charge of criminal conduct." Idaho Code § 18–207(1) (Lexis 2004). Another provision of the same statute provides, however, that the above restriction is not "intended to prevent the admission of expert evidence on the issue of any state of mind which is an element of the offense." § 18–207(3). And the Idaho courts have made clear that prosecutors are "'still required to prove beyond a reasonable doubt that a defendant had the mental capacity to form the necessary intent.'" 152 Idaho 122, 125, 267 P. 3d 709, 712 (2011) (quoting *State* v. *Card*, 121 Idaho 425, 430, 825 P. 2d 1081, 1086 (1991)). Thus, in Idaho, insanity remains relevant to criminal liability, but only in respect to intent. Insanity continues to have relevance at sentencing as well. A court must "receiv[e]" evidence of mental condition at sentencing and, if mental condition proves to be a "significant factor," must consider a string of issues deemed relevant to punishment, including, notably, "[t]he capacity of the defendant to appreciate the wrongfulness of his conduct." Idaho Code § 19–2523 (Lexis 2004). In addition, if the court imposes a prison sentence on a person who "suffers from any mental condition requiring treatment," Idaho law appears to mandate that "the defendant shall receive treatment" in an appropriate facility. See § 18–207(2).

Still, the step that Idaho has taken is significant. As that State's courts recognize, it "'may allow the conviction of persons who may be insane by some former insanity test or medical standard, but who nevertheless have the ability to form intent and to control their actions.'" 152 Idaho, at 125, 267 P. 3d, at 712. That is, the difference between the traditional insanity defense and Idaho's standard is that the latter permits the conviction of an individual who knew *what* he was doing, but had no capacity to understand that it was wrong.

To illustrate with a very much simplified example: Idaho law would distinguish the following two cases. *Case One*: The defendant, due to insanity, believes that the victim is a wolf. He shoots and kills the victim. *Case Two*: The defendant, due to insanity, believes that a wolf, a supernatural figure, has ordered him to kill the victim. In *Case One*, the defendant does not know he has killed a human being, and his insanity negates a mental element necessary to commit the crime. Cf. *Clark*, *supra*, at 767–768 (offering a similar example of how mental illness may rebut *mens rea*). In *Case Two*, the defendant has intentionally killed a victim whom he knows is a human being; he possesses the necessary *mens rea*. In both cases the defendant is unable, due to insanity, to appreciate the true quality of his act, and therefore unable to perceive that it is wrong. But in Idaho, the defendant in *Case One* could defend the charge by arguing that he lacked the *mens rea*, whereas the defendant in *Case Two* would not be able to raise a defense based on his mental illness. Much the same outcome seems likely to occur in other States that have modified the insanity defense in similar ways. For example, in *State* v. *Bethel*, 275 Kan. 456, 459, 66 P. 3d 840, 843 (2003), the prosecution and defense agreed that under a similar Kansas statute, evidence that a schizophrenic defendant's "'mental state precluded him from understanding the difference between right and wrong or from understanding the consequences of his actions . . . does not constitute a defense to the charged crimes.'"

The American Psychiatric Association tells us that "severe mental illness can seriously impair a sufferer's ability rationally to appreciate the wrongfulness of conduct." Brief for American Psychiatric Association et al. as *Amici Curiae* 15. And other *amici* tell us that those seriously mentally ill individuals often possess the kind of mental disease that *Case Two* describes—that is to say, they know that the victim is a human being, but due to

mental illness, such as a paranoid delusion, they wrongly believe the act is justified. Brief for 52 Criminal Law and Mental Health Law Professors 10. In view of these submissions, I would grant the petition for certiorari to consider whether Idaho's modification of the insanity defense is consistent with the Fourteenth Amendment's Due Process Clause.

No. 11–11102. GAREY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 478 Fed. Appx. 545.

No. 12–82. THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION *v.* MCGOWEN. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 675 F. 3d 482.

No. 12–111. JEFFERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 674 F. 3d 332.

No. 12–331. SAMSON ET AL. *v.* CITY OF BAINBRIDGE ISLAND, WASHINGTON. C. A. 9th Cir. Motion of Pacific Legal Foundation et al. for leave to file brief as *amici curiae* granted. Certiorari denied. Reported below: 683 F. 3d 1051.

No. 12–339. PICTURE PATENTS LLC ET AL. *v.* AEROPOSTALE, INC., ET AL. C. A. Fed. Cir. Certiorari denied. JUSTICE BREYER and JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 469 Fed. Appx. 912.

No. 12–351. CUMMINGS ET AL. *v.* DOUGHTY. 5th Jud. Dist. Ct. La., Franklin Parish. Motion of American Bankers Association et al. for leave to file brief as *amici curiae* granted. Certiorari denied.

No. 12–358. SNYDER ET AL. *v.* NEW YORK STATE EDUCATION DEPARTMENT ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 486 Fed. Appx. 176.

No. 12–504. HARVEST INSTITUTE FREEDMEN FEDERATION, LLC, ET AL. *v.* UNITED STATES ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 478 Fed. Appx. 322.

No. 12–5739. MIZUKAMI *v.* EDWARDS ET AL. C. A. 9th Cir. Certiorari before judgment denied.

No. 12–6833. BETANCORT-SALAZAR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–6883. UDEH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 490 Fed. Appx. 859.

No. 12–6892. SOLANO-MORETA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–6894. DEGLACE *v.* JARVIS, WARDEN. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 484 Fed. Appx. 307.

Rehearing Granted. (See No. 11–438, *supra.*)

Rehearing Denied

No. 11–1452. HULIHAN *v.* CIRCLE K STORES, *ante*, p. 821;

No. 11–1466. MISSOURI TITLE LOANS, INC. *v.* BREWER, *ante*, p. 822;

No. 11–1504. KOCH, AKA BUTRICK *v.* CITY OF DEL CITY, OKLAHOMA, ET AL., *ante*, p. 824;

No. 11–1527. UNDER SEAL *v.* UNDER SEAL ET AL., *ante*, p. 826;

No. 11–9692. RANA *v.* DEPARTMENT OF THE ARMY, *ante*, p. 929;

No. 11–9998. ALLUMS *v.* PHILLIPS ET AL., *ante*, p. 830;

No. 11–10041. THOMAS ET UX. *v.* LOVELESS ET AL., *ante*, p. 831;

No. 11–10050. GUILLION *v.* CADE, JUDGE, CIVIL DISTRICT COURT PARISH OF ORLEANS, *ante*, p. 831;

No. 11–10057. LITTLE *v.* TOMMY GUNS GARAGE, INC., *ante*, p. 831;

No. 11–10203. JONES *v.* UNION CITY, GEORGIA, *ante*, p. 836;

No. 11–10270. RUPPERT *v.* ARAGON, *ante*, p. 838;

No. 11–10311. DEROUEN *v.* FALLS COUNTY SHERIFF'S DEPARTMENT ET AL., *ante*, p. 839;

No. 11–10324. BLACKMON *v.* HOREL, WARDEN, *ante*, p. 840;

No. 11–10350. RIETHMILLER *v.* FLORIDA, *ante*, p. 841;

No. 11–10490. DIEHL *v.* PENNSYLVANIA, *ante*, p. 845;

No. 11–10511. BRUNSON *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, *ante*, p. 846;

No. 11–10581. THOMAS *v.* PENNSYLVANIA BOARD OF PROBATION AND PAROLE ET AL., *ante*, p. 850;

No. 11–10595. IN RE TOWNSEL, *ante*, p. 812;

No. 11–10603. HIGGINS *v.* CONSOLIDATED RAIL CORPORATION ET AL., *ante*, p. 851;

No. 11–10611. IN RE GALLOWAY, *ante*, p. 812;

No. 11–10632. DELFIN *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS, *ante*, p. 852;

No. 11–10732. BRIDGMON *v.* OHIO, *ante*, p. 859;

No. 11–10737. MELROSE *v.* NEW YORK STATE DEPARTMENT OF HEALTH, OFFICE OF PROFESSIONAL MEDICAL CONDUCT, *ante*, p. 859;

No. 11–10790. BAMBIC *v.* WOOD, *ante*, p. 862;

No. 11–10814. IN RE SHELTON, *ante*, p. 812;

No. 11–10819. SELENSKY *v.* ALABAMA, *ante*, p. 864;

No. 11–10856. MARLOW *v.* SUPREME COURT OF TENNESSEE ET AL., *ante*, p. 865;

No. 11–10912. BAEZ *v.* UNITED STATES, *ante*, p. 868;

No. 11–10927. SINGLETON *v.* EAGLETON, WARDEN, *ante*, p. 869;

No. 11–10940. JAMES *v.* CALIFORNIA, *ante*, p. 870;

No. 11–11062. IN RE KIM, *ante*, p. 811;

No. 11–11080. DAVIS *v.* KIA MOTORS OF AMERICA ET AL., *ante*, p. 878;

No. 11–11086. KELLEY *v.* UNITED STATES, *ante*, p. 878;

No. 11–11097. ISMAY *v.* UNITED STATES, *ante*, p. 879;

No. 11–11152. WRIGHT *v.* MERIT SYSTEMS PROTECTION BOARD, *ante*, p. 882;

No. 12–20. COULTER *v.* KELLY, ATTORNEY GENERAL OF PENNSYLVANIA, ET AL., *ante*, p. 883;

No. 12–58. GONZALEZ *v.* DEPARTMENT OF HOMELAND SECURITY, *ante*, p. 885;

No. 12–75. WALTNER ET UX. *v.* UNITED STATES, *ante*, p. 886;

No. 12–91. VETA *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 886;

No. 12–92. J. C. *v.* BUTLER COUNTY CHILDREN AND YOUTH SERVICES ET AL., *ante*, p. 886;

No. 12–103. LESKINEN *v.* HALSEY ET AL., *ante*, p. 887;

No. 12–120. GEORGE *v.* DONAHOE, POSTMASTER GENERAL, ET AL., *ante*, p. 887;

No. 12–121. HARMAN *v.* BUNCH ET AL., *ante*, p. 887;

No. 12–196. CAREY *v.* RYAN, *ante*, p. 889;

No. 12–5056. KORDENBROCK *v.* BROWN ET AL., *ante*, p. 892;

No. 12–5114. HARVEY *v.* UNITED STATES, *ante*, p. 895;

No. 12–5148. NENG POR YANG *v.* NUTTER ET AL., *ante*, p. 897;

No. 12–5175. GORBEY *v.* WEST VIRGINIA ET AL., *ante*, p. 898;

No. 12–5180. HONESTO *v.* ADAMS, WARDEN, ET AL., *ante*, p. 899;

No. 12–5202. FALCON *v.* UNITED STATES, *ante*, p. 900;

No. 12–5212. WOODFIN *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, *ante*, p. 900;

No. 12–5233. WILLIAMS *v.* CITY UNIVERSITY OF NEW YORK, BROOKLYN COLLEGE, *ante*, p. 902;

No. 12–5245. SMART *v.* WILSON, ATTORNEY GENERAL OF SOUTH CAROLINA, ET AL., *ante*, p. 902;

No. 12–5277. MAURELLO *v.* UNITED STATES, *ante*, p. 904;

No. 12–5288. MUTHUKUMAR *v.* DESS ET AL., *ante*, p. 905;

No. 12–5328. HAND *v.* DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR, *ante*, p. 907;

No. 12–5343. DOWELL *v.* GARCIA, WARDEN, *ante*, p. 908;

No. 12–5391. BUTLER *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS, ET AL., *ante*, p. 910;

No. 12–5395. ARAFAT *v.* STATE FARM INSURANCE CO. ET AL., *ante*, p. 910;

No. 12–5502. DE LA ROSA *v.* NEW YORK CITY POLICE DEPARTMENT ET AL., *ante*, p. 915;

No. 12–5504. ZELEKE *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL., *ante*, p. 915;

No. 12–5505. ZELEKE *v.* NASA HEADQUARTERS, *ante*, p. 915;
No. 12–5509. SPIVEY *v.* FLORIDA, *ante*, p. 915;
No. 12–5512. ZELEKE *v.* ZENAWI, *ante*, p. 945;
No. 12–5548. WILLIAMS *v.* UNITED STATES, *ante*, p. 917;
No. 12–5586. GREGORY *v.* MERIT SYSTEMS PROTECTION BOARD, *ante*, p. 918;
No. 12–5613. ADKINS *v.* JOHNSON ET AL., *ante*, p. 948;
No. 12–5718. IN RE MUTHUKUMAR, *ante*, p. 940;
No. 12–5723. MARTINEZ *v.* UNITED STATES, *ante*, p. 922; and
No. 12–5791. BUCZEK *v.* UNITED STATES, *ante*, p. 924. Petitions for rehearing denied.

No. 11–10049. HONESTO *v.* FOGEL, JUDGE, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, ET AL., *ante*, p. 929. Petition for rehearing denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 12–5270. CARDONA *v.* UNITED STATES, *ante*, p. 904. Petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–5332. STEELE *v.* TURNER BROADCASTING SYSTEM, INC., ET AL.; STEELE *v.* VECTOR MANAGEMENT ET AL.; STEELE *v.* BONGIOVI ET AL.; and STEELE *v.* RICIGLIANO, *ante*, p. 933. Petition for rehearing denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition.

No. 12–5370. FRANKEL, AKA STEVENS, AKA KING *v.* UNITED STATES, *ante*, p. 933. Petition for rehearing denied. JUSTICE SOTOMAYOR and JUSTICE KAGAN took no part in the consideration or decision of this petition.

NOVEMBER 30, 2012

Certiorari Granted

No. 12–142. MUTUAL PHARMACEUTICAL CO., INC. *v.* BARTLETT. C. A. 1st Cir. Certiorari granted. Reported below: 678 F. 3d 30.

No. 12–398. ASSOCIATION FOR MOLECULAR PATHOLOGY ET AL. *v.* MYRIAD GENETICS, INC., ET AL. C. A. Fed. Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 689 F. 3d 1303.

DECEMBER 3, 2012

Certiorari Dismissed

No. 12–6568. WILLIAMS *v.* TALLADEGA COMMUNITY ACTION AGENCY ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 12–6582. FOX *v.* MICHIGAN DEPARTMENT OF CORRECTIONS ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 12M51. BELL *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS;

No. 12M52. PORTER *v.* JEWELL ET AL.;

No. 12M53. VONTRESS *v.* EIGHTH JUDICIAL DISTRICT COURT OF NEVADA, CLARK COUNTY, ET AL.; and

No. 12M54. MARTIN *v.* OBAMA, PRESIDENT OF THE UNITED STATES. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 11–1274. GABELLI ET AL. *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 2d Cir. [Certiorari granted, 567 U. S. 968.] Motion of Former SEC Commissioners and Officials for leave to file brief as *amici curiae* out of time granted.

No. 11–1545. CITY OF ARLINGTON, TEXAS, ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; and

No. 11–1547. CABLE, TELECOMMUNICATIONS, AND TECHNOLOGY COMMITTEE OF THE NEW ORLEANS CITY COUNCIL *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. 5th Cir. [Certiorari granted, *ante,* p. 936.] Motion of petitioners to dispense with printing joint appendix granted.

No. 11–10362. MILLBROOK *v.* UNITED STATES. C. A. 3d Cir. [Certiorari granted, 567 U. S. 968.] Jeffrey S. Bucholtz, Esq., of

Washington, D. C., is invited to brief and argue this case as *amicus curiae* in support of judgment below.

No. 12–5196. LAW *v.* SIEGEL, CHAPTER 7 TRUSTEE. C. A. 9th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 12–5896. QUARTERMAN *v.* CULLUM. Ct. App. Ga. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 807] denied.

No. 12–6522. EDWARDS ET UX. *v.* EDMONDSON, TRUSTEE OF THE JEWELL EDMONDSON TESTAMENTARY TRUST. C. A. 8th Cir.;
No. 12–6842. CLOKE *v.* ADAMS ET AL. C. A. 6th Cir.; and
No. 12–6972. BATISTA *v.* UNITED STATES. C. A. 2d Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until December 26, 2012, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

No. 12–7151. IN RE VARGAS-LOMBANA. Petition for writ of habeas corpus denied.

No. 12–7042. IN RE DOYLE; and
No. 12–7112. IN RE DANIELS. Motions of petitioners for leave to proceed *in forma pauperis* denied, and petitions for writs of habeas corpus dismissed. See this Court's Rule 39.8. As petitioners have repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioners unless the docketing fee required by Rule 38(a) is paid and the petitions are submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 12–5911. IN RE BRASURE;
No. 12–6483. IN RE SMITH;
No. 12–6506. IN RE BROWN; and
No. 12–6561. IN RE SHELTON. Petitions for writs of mandamus denied.

Certiorari Denied

No. 11–1324. VILLALON *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 956 N. E. 2d 697.

No. 11–1486. ALDEN LEEDS, INC. *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 476 Fed. Appx. 393.

No. 11–1528. NORTHROP CORPORATION EMPLOYEE INSURANCE BENEFIT PLANS MASTER TRUST *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 467 Fed. Appx. 886.

No. 11–10835. COOKE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 674 F. 3d 491.

No. 12–148. HITACHI HOME ELECTRONICS (AMERICA), INC. *v.* UNITED STATES ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 661 F. 3d 1343.

No. 12–266. WESTERN RADIO SERVICES CO. *v.* QWEST CORP. ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 678 F. 3d 970.

No. 12–313. CITIGROUP GLOBAL MARKETS INC., DBA SMITH BARNEY *v.* STONEMOR OPERATING LLC ET AL. Ct. App. Ind. Certiorari denied. Reported below: 953 N. E. 2d 554 and 959 N. E. 2d 309.

No. 12–393. MARTINEZ *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 291 Ga. 455, 729 S. E. 2d 390.

No. 12–396. BROWN *v.* NABOURS ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 397.

No. 12–406. FLORIMONTE *v.* BOROUGH OF DALTON, PENNSYLVANIA. Commw. Ct. Pa. Certiorari denied.

No. 12–516. EMBODY *v.* WARD. C. A. 6th Cir. Certiorari denied. Reported below: 695 F. 3d 577.

No. 12–520. VEY *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied.

No. 12–533. GALLION *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 679 F. 3d 355.

No. 12–534. ROSGA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 493 Fed. Appx. 361.

No. 12–5216. HOLLAND *v.* HOLT, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 461 Fed. Appx. 198.

No. 12–5334. AGUILLARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 8.

No. 12–5535. BRASURE *v.* CHAPELL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–5614. SHRADER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 675 F. 3d 300.

No. 12–5798. HARDINE *v.* OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION. C. A. 9th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 103.

No. 12–6082. K. F. *v.* UTAH. Ct. App. Utah. Certiorari denied. Reported below: 2012 UT App 10, 268 P. 3d 831.

No. 12–6090. HARTLEY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 91 So. 3d 848.

No. 12–6435. FORD *v.* BUCHANAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–6451. GUTIERREZ *v.* IN RE N. M. G., A CHILD. C. A. 5th Cir. Certiorari denied.

No. 12–6452. GATES *v.* WESTERENG. C. A. 8th Cir. Certiorari denied.

No. 12–6455. PIERCE *v.* LEE, WARDEN. C. A. 2d Cir. Certiorari denied.

No. 12–6456. HILL *v.* ARANAS ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–6459. RIOS RIVERA *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 12–6460. SANDERS *v.* TEXAS. Ct. App. Tex., 5th Dist. Certiorari denied.

No. 12–6461. RUFFIN *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–6464. LEE *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 12–6465. MARTINEZ *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–6466. GLEASON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 12–6468. BRAHMANA *v.* HENARD ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 513.

No. 12–6474. SPENCER *v.* WOODS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–6476. PARKER *v.* FISK ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 148.

No. 12–6481. FORD *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 12–6484. ROLLINS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2012–0488 (La. 8/22/2012), 97 So. 3d 378.

No. 12–6486. HIBBERT *v.* KELLY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 174.

No. 12–6487. FULMER *v.* BUXENBAUM. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 82 App. Div. 3d 1223, 919 N. Y. S. 2d 389.

No. 12–6491. WILLIAMS *v.* WOODS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–6493. FIGUEROA *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 12–6494. FERDINAND *v.* DORMIRE ET AL. C. A. 8th Cir. Certiorari denied.

No. 12–6496. HALL *v.* OREGON DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 12–6497. HARRIS *v.* GOODWIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 12–6503. SMITH *v.* LANIGAN, COMMISSIONER, NEW JERSEY DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 489 Fed. Appx. 544.

No. 12–6504. GRAY *v.* GIPSON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–6505. ANDERSON *v.* BROWN ET AL. Sup. Ct. Pa. Certiorari denied. Reported below: 615 Pa. 166, 41 A. 3d 1281.

No. 12–6507. HARRISON *v.* DAVIS. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 149.

No. 12–6508. HUGHES *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 314.

No. 12–6511. GARCIA RANGEL *v.* SCHMIDT ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 808.

No. 12–6517. HUGUELEY *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 12–6521. CAMPBELL *v.* STEIN. C. A. 9th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 611.

No. 12–6533. KORMONDY *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 688 F. 3d 1244.

No. 12–6534. MARTINEZ *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 230 Ariz. 208, 282 P. 3d 409.

No. 12–6536. MEDINA *v.* HARTLEY, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 171.

No. 12–6539. MITCHELL *v.* MEDINA, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 296.

No. 12–6540. MISHALL *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 954.

No. 12–6546. RHODES *v.* HILL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–6559. MCCREARY *v.* SANDOVAL ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–6577. GRIFFIN *v.* TERRY, WARDEN. Sup. Ct. Ga. Certiorari denied. Reported below: 291 Ga. 326, 729 S. E. 2d 334.

No. 12–6581. FREEMAN *v.* KADIEN, SUPERINTENDENT, GOWANDA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 684 F. 3d 30.

No. 12–6583. HOPKINS *v.* SPRINGFIELD HOUSING AUTHORITY. C. A. 7th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 137.

No. 12–6585. FINE *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 12–6586. BAUL *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–6591. HOUSTON *v.* PERRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–6593. DOBRIC *v.* PARK LANE NORTH OWNER, INC., ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 17 N. Y. 3d 921, 958 N. E. 2d 549.

No. 12–6599. OWENGA *v.* HOLDER, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 833.

No. 12–6611. RODRIGUEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 12–6622. DISHAROON ET AL. *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 291 Ga. 45, 727 S. E. 2d 465.

No. 12–6636. MANN *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–6675. SALCEDA *v.* SALAZAR, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–6681. GOROSPE *v.* TIBBALS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–6695. SANDS *v.* GEORGIA. Super. Ct. Troup County, Ga. Certiorari denied.

No. 12–6709. CHAMBERLAIN *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–6713. ELLIS *v.* BREWER. C. A. 5th Cir. Certiorari denied.

No. 12–6714. BIRDETTE ET AL. *v.* PUBLISHERS CLEARING HOUSE. C. A. 11th Cir. Certiorari denied.

No. 12–6727. KOHLMEYER *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 959 N. E. 2d 935.

No. 12–6749. LINDER *v.* DONAT, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 825.

No. 12–6761. WOODARD *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–6782. FORD *v.* SWARTHOUT, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 683 F. 3d 1230.

No. 12–6805. BAILEY *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 12–6808. SANTIAGO *v.* ANDERSON ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 496 Fed. Appx. 630.

No. 12–6824. WOODS *v.* OHIO ET AL. C. A. 6th Cir. Certiorari denied.

No. 12–6835. CIACCI *v.* HAWAII. C. A. 9th Cir. Certiorari denied.

No. 12–6884. QUIROZ *v.* MCDONALD, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 372.

No. 12–6923. COWAN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 91 So. 3d 131.

No. 12–6924. MAJEED *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 182.

No. 12–6927. LANCASTER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 496 Fed. Appx. 877.

No. 12–6928. EDER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 186.

No. 12–6929. REPLOGLE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 678 F. 3d 940.

No. 12–6930. THOMPSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 686 F. 3d 575.

No. 12–6932. WILLIAMS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 899.

No. 12–6934. MOORE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 495.

No. 12–6942. JOHNSON *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 12–6946. LARSON *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 12–6948. LIMON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 522.

No. 12–6949. LAROSE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–6951. SMITH *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–6952. SAINT-JEAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 194.

No. 12–6953. DEMBRY *v.* OLIVER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 12–6954. CROOKER *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 688 F. 3d 1.

No. 12–6955. DILLARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 869.

No. 12–6957. DICKSON *v.* SUBIA, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–6961. LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 829.

No. 12–6968. WINKELMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 494 Fed. Appx. 217.

No. 12–6971. AILEMEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 754.

No. 12–6975. ALEJANDRO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–6976. OBAEI *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 679 F. 3d 544.

No. 12–6982. DAVIS *v.* FARLEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–6985. ELLIOTT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 363.

No. 12–6989. YEPIZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 3d 840 and 485 Fed. Appx. 207.

No. 12–6990. HEYWARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 354.

No. 12–6992. HIENG *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 3d 1131.

No. 12–6997. MORENO-MENDOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 250.

No. 12–7002. BERRONES-ZAVALA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 286.

No. 12–7003. CORONA-PORRAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 918.

No. 12–7007. ANDREWS *v.* JARVIS, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 747.

No. 12–7009. HYDE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 688 F. 3d 416.

No. 12–7010. HOLLOWAY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 489 Fed. Appx. 591.

No. 12–7011. FLANAGAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 973.

No. 12–7013. GUTIERREZ-PEREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 190.

No. 12–7020. EPPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 291.

No. 12–7024. MIRANDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 937.

No. 12–7027. ZEBROWSKI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 935.

No. 12–7028. VAKSMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 447.

No. 12–7039. SHARP *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 689 F. 3d 616.

No. 11–10974. HODGE *v.* KENTUCKY. Sup. Ct. Ky. Certiorari denied.

JUSTICE SOTOMAYOR, dissenting.

Petitioner Benny Lee Hodge was convicted of murder. Then, after his trial counsel failed to present any mitigation evidence during the penalty phase of his trial, he was sentenced to death. In fact, counsel had not even investigated any possible grounds for mitigation. If counsel had made any effort, he would have found that Hodge, as a child, suffered what the Kentucky Supreme Court called a "most severe and unimaginable level of physical and mental abuse." No. 2009–SC–000791–MR (Aug. 25, 2011), App. to Pet. for Cert. 11. The Commonwealth conceded that counsel's performance was constitutionally deficient as a result. Yet the court below concluded that Hodge would have been sentenced to death anyway because even if this evidence had been presented, it would not have "explained" his actions, and thus the jury would have arrived at the same result. *Ibid.* This was error. Mitigation evidence need not, and rarely could, "explai[n]" a heinous crime; rather, mitigation evidence allows a jury to make a reasoned moral decision whether the individual defendant deserves to be executed, or to be shown mercy instead. The Kentucky Supreme Court's error of law could well have led to an error in result. I would grant the petition for certiorari, summarily vacate, and remand to allow the Kentucky Supreme Court to reconsider its decision under the proper standard.

I

Hodge and two others posed as Federal Bureau of Investigation agents to gain entry to the home of a doctor. Once inside, they strangled the doctor into unconsciousness, stabbed his college-

aged daughter to death, and stole around $2 million in cash, as well as jewelry and guns, from a safe. A jury convicted Hodge and a codefendant of murder and related charges. *Epperson* v. *Commonwealth*, 809 S. W. 2d 835, 837 (Ky. 1990). In advance of the penalty phase of his trial, Hodge's counsel conducted no investigation into potential mitigation evidence and presented no evidence to the jury. The Commonwealth did not put on evidence of aggravating circumstances either, beyond the facts of the crime. Instead, the parties agreed that the jury should be read this stipulation: "'Benny Lee Hodge has a loving and supportive family—a wife and three children. He has a public job work record and he lives and resides permanently in Tennessee.'" App. to Pet. for Cert. 5. After hearing argument from counsel on both sides, the jury recommended a sentence of death, which the trial court imposed.

On postconviction review in Kentucky state court, Hodge alleged that his counsel had been ineffective during the penalty phase for failing to investigate, discover, and present readily available mitigation evidence concerning his childhood, which was marked by extreme abuse. Hodge was granted an evidentiary hearing, during which he presented extensive mitigation evidence and the testimony of expert psychologists. The Commonwealth did not contest Hodge's evidence, although it did not concede that all the evidence would have been available or admissible at the time of trial. The Kentucky Supreme Court credited the evidence and found it would have been available at the time of trial. The evidence established the following:

The beatings began *in utero*. Hodge's father battered his mother while she carried Hodge in her womb, and continued to beat her once Hodge was born, even while she held the infant in her arms. When Hodge was a few years older, he escaped his mother's next husband, a drunkard, by staying with his stepfather's parents, bootleggers who ran a brothel. His mother next married Billy Joe. Family members described Billy Joe as a "'monster.'" *Id.*, at 7. Billy Joe controlled what little money the family had, leaving them to live in abject poverty. He beat Hodge's mother relentlessly, once so severely that she had a miscarriage. He raped her regularly. And he threatened to kill her while pointing a gun at her. All of this abuse occurred while Hodge and his sisters could see or hear. And following many beatings, Hodge and his sisters thought their mother was dead.

Billy Joe also targeted Hodge's sisters, molesting at least one of them. But according to neighbors and family members, as the only male in the house, Hodge bore the brunt of Billy Joe's anger, especially when he tried to defend his mother and sisters from attack. Billy Joe often beat Hodge with a belt, sometimes leaving imprints from his belt buckle on Hodge's body. Hodge was kicked, thrown against walls, and punched. Billy Joe once made Hodge watch while he brutally killed Hodge's dog. On another occasion, Billy Joe rubbed Hodge's nose in his own feces.

The abuse took its toll on Hodge. He had been an average student in school, but he began to change when Billy Joe entered his life. He started stealing around age 12, and wound up in juvenile detention for his crimes. There, Hodge was beaten routinely and subjected to frequent verbal and emotional abuse. After assaulting Billy Joe at age 16, Hodge returned to juvenile detention, where the abuse continued. Hodge remained there until he was 18. Over the 16 years between his release from juvenile detention and the murder, Hodge committed various theft crimes that landed him in prison for about 13 of those years. He twice escaped, but each time, he was recaptured.

Psychologists who testified at Hodge's evidentiary hearing, and were credited by the court below, explained that the degree of domestic violence Hodge suffered was extremely damaging to his development. The environment caused "'hypervigilance'"—a state of constant anxiety that left Hodge always "'waiting for the next shoe to fall.'" Pet. for Cert. 7. It taught him "'that the world was a hostile place and that he was not going to be able to count on anybody else to protect him'"—not his family and not society. *Id.*, at 8. Being taken to a juvenile facility only to be beaten more likely hit Hodge as a "'double betrayal.'" *Id.*, at 9. The result was that Hodge had posttraumatic stress disorder. Unable to control his behavior and his emotions because of PTSD, he turned to drugs and alcohol to numb his feelings. This condition could have been diagnosed at the time of his trial.

The Commonwealth conceded that counsel was deficient for failing to gather and present this evidence at the penalty phase of Hodge's trial. But it contended that Hodge would have been sentenced to death even if the evidence had been presented. Examining the evidence, the Kentucky Supreme Court had "no doubt that Hodge, as a child, suffered a most severe and unimaginable level of physical and mental abuse." App. to Pet. for Cert. 11.

Yet it felt "compelled to reach the conclusion that there exists no reasonable probability that the jury would not have sentenced Hodge to death" anyway. *Ibid.*

The Court based its conclusion in part on the aggravating circumstances against which the jury would have had to weigh the mitigation evidence. The murder itself was "calculated and exceedingly cold-hearted." *Id.*, at 9. Hodge stabbed the daughter "at least ten times," and he "coolly" told his codefendant that he knew the daughter "was dead because the knife had gone 'all the way through her to the floor.' " *Id.*, at 10. Hodge's conduct after the murder was shocking as well: He and the two other robbers "brazenly spent the stolen money on a lavish lifestyle and luxury goods, including a Corvette," and Hodge told a cellmate he had "sprea[d] all the money out on a bed and ha[d] sex with his girlfriend on top of it." *Ibid.* Moreover, had Hodge put on evidence in mitigation, the Commonwealth may have sought to introduce evidence of Hodge's "long and increasingly violent criminal history, his numerous escapes from custody, and the obvious failure of several rehabilitative efforts." *Id.*, at 9.

The court's conclusion was also based, however, on what effect the mitigation evidence might have had:

> "Perhaps this information may have offered insight for the jury, providing some explanation for the career criminal he later became. If it had been admitted, the PTSD diagnosis offered in mitigation might have explained Hodge's substance abuse, or perhaps even a crime committed in a fit of rage as a compulsive reaction. But it offers virtually no rationale for the premeditated, cold-blooded murder and attempted murder of two innocent victims who were complete strangers to Hodge. Many, if not most, malefactors committing terribly violent and cruel murders are the subjects of terrible childhoods. Even if the sentencing jury had this mitigation evidence before it, we do not believe, in light of the particularly depraved and brutal nature of these crimes, that it would have spared Hodge the death penalty." *Id.*, at 11.

Accordingly, the court denied Hodge relief.

II

The Sixth Amendment guarantees capital defendants the effective assistance of counsel during the penalty phase of trial. This

right includes counsel's "obligation to conduct a thorough investigation of the defendant's background," *Williams* v. *Taylor*, 529 U. S. 362, 396 (2000), so as "to uncover and present . . . mitigating evidence" to the jury at sentencing, *Wiggins* v. *Smith*, 539 U. S. 510, 522 (2003). It is uncontested that trial counsel failed to discharge that duty here. But to establish a Sixth Amendment violation, Hodge must also demonstrate that counsel's failures prejudiced his defense. In *Strickland* v. *Washington*, 466 U. S. 668 (1984), we explained that a "defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.*, at 694. In the capital sentencing context, to assess prejudice, "we reweigh the evidence in aggravation against the totality of available mitigating evidence." *Wiggins*, 539 U. S., at 534; see also *Sears* v. *Upton*, 561 U. S. 945, 955–956 (2010) (*per curiam*); *Porter* v. *McCollum*, 558 U. S. 30, 41 (2009) (*per curiam*); *Rompilla* v. *Beard*, 545 U. S. 374, 393 (2005). The critical question is whether "there is a reasonable probability that at least one juror would have struck a different balance" in weighing the evidence for and against sentencing the defendant to death. *Wiggins*, 539 U. S., at 537.*

In applying this standard, the Kentucky Supreme Court properly took account of the possible evidence in aggravation. But in discounting the countervailing effect of Hodge's proposed mitigation, the court misunderstood the purpose of mitigation evidence. The court reasoned that Hodge's mitigation evidence might have altered the jury's recommendation only if it "explained" or provided some "rationale" for his conduct. App. to Pet. for Cert. 11. We have made clear for over 30 years, however, that mitigation does not play so limited a role. In *Lockett* v. *Ohio*, 438 U. S. 586 (1978), we held that the sentencer in a capital case must be given a full opportunity to consider, as a mitigating factor, "*any* aspect of a defendant's character or record," in addition to "any of the circumstances of the offense that the defendant proffers as a basis

*At the time Hodge was sentenced, Kentucky required jury unanimity to recommend a sentence of death. Cf. *Carson* v. *Commonwealth*, 382 S. W. 2d 85, 95 (Ky. App. 1964); Ky. Rev. Stat. Ann. § 532.025 (Michie 1985). The trial court was responsible for the ultimate sentencing determination, but the jury's recommendation was to "carr[y] great weight" in that decision. *Gall* v. *Commonwealth*, 607 S. W. 2d 97, 104 (Ky. 1980). See also *Porter*, 558 U. S., at 40, 42 (applying *Wiggins* to an "advisory jury").

for a sentence less than death." *Id.*, at 604 (plurality opinion) (emphasis added). We emphasized the "need for treating each defendant in a capital case with that degree of respect due the uniqueness of the individual." *Id.*, at 605. This rule "recognizes that 'justice . . . requires . . . that there be taken into account the circumstances of the offense together with the character and propensities of the offender,'" as part of deciding whether the defendant is to live or die. *Eddings* v. *Oklahoma*, 455 U. S. 104, 112 (1982) (quoting *Pennsylvania ex rel. Sullivan* v. *Ashe*, 302 U. S. 51, 55 (1937)). And it ensures that "'the sentence imposed at the penalty stage . . . reflect[s] a reasoned *moral* response to the defendant's background, character, and crime.'" *Abdul-Kabir* v. *Quarterman*, 550 U. S. 233, 252 (2007) (quoting *California* v. *Brown*, 479 U. S. 538, 545 (1987) (O'Connor, J., concurring)).

Thus we have consistently rejected States' attempts to limit as irrelevant evidence of a defendant's background or character that he wishes to offer in mitigation. In *Skipper* v. *South Carolina*, 476 U. S. 1 (1986), for example, we held that the exclusion of evidence regarding the defendant's good behavior in jail while awaiting trial deprived him of "his right to place before the sentencer relevant evidence in mitigation of punishment." *Id.*, at 4. We explained that the jury "could have drawn favorable inferences . . . regarding [the defendant's] character and his probable future conduct." *Ibid.* Although "any such inferences would not relate specifically to [the defendant's] culpability for the crime he committed, . . . such inferences would be 'mitigating' in the sense that they might serve 'as a basis for a sentence less than death.'" *Id.*, at 4–5 (quoting *Lockett*, 438 U. S., at 604 (plurality opinion)).

Particularly instructive is *Smith* v. *Texas*, 543 U. S. 37 (2004) (*per curiam*). In *Smith*, the Texas courts withheld a mitigation instruction concerning the defendant's background, on the ground that he had offered "no evidence of any link or nexus between his troubled childhood or his limited mental abilities and this capital murder." *Ex parte Smith*, 132 S. W. 3d 407, 414 (Tex. Crim. App. 2004). We rejected this "nexus" requirement as one we had "never countenanced," and we reiterated that the only relevant question is whether the proposed mitigation evidence would give a jury "a reason to impose a sentence more lenient than death." 543 U. S., at 44–45.

The Kentucky Supreme Court's opinion is plainly contrary to these precedents. The evidence of Hodge's brutal upbringing

need not have offered any "rationale" for the murder he committed in order for the jury to have considered it as weighty mitigation. It would be enough if there were a "reasonable probability" that, because of Hodge's tragic past, the jury's "reasoned moral response" would instead have been to spare his life and sentence him to life imprisonment instead.

More fundamentally, the Kentucky Supreme Court appears to believe that in cases involving "violent and cruel murders," it does not matter that the "malefacto[r]" had a "terrible childhoo[d]"; the jury would return a death sentence regardless. App. to Pet. for Cert. 11. That view is contrary to our cases applying *Strickland*'s prejudice prong. In *Rompilla*, for example, we considered counsel's failure "to present significant mitigating evidence about Rompilla's childhood," which was as horrific as Hodge's, as well as his "mental capacity and health, and alcoholism." 545 U. S., at 378; see *id.*, at 391–392 (describing the abuse in Rompilla's household while he was young). We concluded that "the undiscovered mitigating evidence, taken as a whole, might well have influenced the jury's appraisal of Rompilla's culpability, and the likelihood of a different result if the evidence had gone in is sufficient to undermine confidence in the outcome actually reached at sentencing." *Id.*, at 393 (internal quotation marks, citations, and brackets omitted). We reached this conclusion notwithstanding that Rompilla had been convicted of stabbing a man repeatedly and setting him on fire. *Id.*, at 377. Similarly, we found prejudice in *Wiggins* even though the defendant had drowned a 77-year-old woman in her bathtub. 539 U. S., at 514. The evidence of "severe physical and sexual abuse" Wiggins suffered as a child was sufficiently "powerful" that "[h]ad the jury been able to place [Wiggins'] excruciating life history on the mitigating side of the scale, there [was] a reasonable probability that at least one juror would have struck a different balance." *Id.*, at 516, 534, 537.

The Kentucky Supreme Court's brief discussion of the weight and impact of Hodge's mitigation evidence reasonably suggests that its prejudice determination flowed from its legal errors. Perhaps if the court had afforded proper consideration to the mitigation evidence, it still would have reached the same result; it might have found no "reasonable probability" that the jury would have weighed Hodge's difficult past more heavily in its moral calculation than the callous nature of the crime and Hodge's

history of imprisonment and escape. But, giving full effect to the mitigation evidence, the court may well have concluded that the story of Hodge's childhood was so extraordinary, "there is a reasonable probability that at least one juror would have struck a different balance" had the jury known. *Id.*, at 537; see also *Porter*, 558 U. S., at 42. A "reasonable probability" is only "a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U. S., at 694. Absent its errors, the Kentucky Supreme Court may have found that minimal threshold met on these facts.

We are a reviewing court, so I would leave it to the Kentucky Supreme Court to reweigh the evidence under the proper standards in the first instance. But this is a capital case, and clear errors of law such as those here should be redressed. I respectfully dissent from our failure to grant the petition for certiorari, vacate the judgment below, and remand for further consideration.

No. 12–152. De La Rosa *v.* Holder, Attorney General. C. A. 11th Cir. Certiorari denied. Justice Kagan took no part in the consideration or decision of this petition.

No. 12–256. State Street Bank & Trust Co. *v.* Pfeil et al. C. A. 6th Cir. Motion of American Benefits Council for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 671 F. 3d 585.

Rehearing Denied

No. 11–1352. CCA Associates *v.* United States, *ante*, p. 940;

No. 11–9951. Reynolds *v.* Queens County Board of Elections et al., *ante*, p. 829;

No. 11–9985. McKay *v.* United States, *ante*, p. 830;

No. 11–10051. Hooker *v.* California, *ante*, p. 831;

No. 11–10250. Collier *v.* Blagojevich et al., *ante*, p. 837;

No. 11–10391. Foulke *v.* Astrue, Commissioner of Social Security, *ante*, p. 842;

No. 11–10446. Ross *v.* New York State Board of Parole, *ante*, p. 844;

No. 11–10465. Allen *v.* Indiana, *ante*, p. 845;

No. 11–10468. Roeder *v.* Kansas, *ante*, p. 845;

No. 11–10494. DeSue *v.* Florida, *ante*, p. 846;

No. 11–10577. Inman *v.* Clark, Warden, *ante*, p. 850;

No. 11–10605. McCarthy *v.* Sosnick et al., *ante*, p. 851;

No. 11–10725. Xiang Li *v.* United States, *ante*, p. 858;

No. 11–10736. Velasco-Hernandez *v.* Miller-Stout, Superintendent, Airway Heights Correctional Center, *ante*, p. 859;

No. 11–10821. Vasquez Arroyo *v.* Gross et al., *ante*, p. 864;

No. 11–10881. Maldonado *v.* Cartledge, Warden, *ante*, p. 867;

No. 11–11001. Ruffin *v.* Houston Independent School District, *ante*, p. 873;

No. 11–11119. Shao *v.* California, *ante*, p. 880;

No. 12–204. In re Vadde, *ante*, p. 811;

No. 12–213. Clair *v.* Maynard, Secretary, Maryland Department of Public Safety and Correctional Services, et al., *ante*, p. 963;

No. 12–249. Pruett et al. *v.* Harris County Bail Bond Board, *ante*, p. 944;

No. 12–5035. Sullivan *v.* DeRamcy et al., *ante*, p. 891;

No. 12–5043. Lee *v.* United States District Court for the District of New Jersey, *ante*, p. 891;

No. 12–5094. McCarthy *v.* Scofield et al., *ante*, p. 894;

No. 12–5156. Sturm *v.* United States, *ante*, p. 897;

No. 12–5237. Shulick *v.* Michigan Department of Corrections et al., *ante*, p. 902;

No. 12–5280. Lewis *v.* Sinclair, Superintendent, Washington State Penitentiary, *ante*, p. 904;

No. 12–5429. Woolman *v.* Nebraska et al., *ante*, p. 912;

No. 12–5515. Christian *v.* United States District Court for the District of Hawaii, *ante*, p. 945;

No. 12–5609. Birdette *v.* Associated Recovery Systems et al., *ante*, p. 947;

No. 12–5659. Morris *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division, et al., *ante*, p. 949;

No. 12–5669. Wise *v.* Hill, Warden, *ante*, p. 949;

No. 12–5670. Zakat *v.* Bureau of Administrative Adjudication, *ante*, p. 949;

No. 12–5677. Teague *v.* North Carolina Department of Transportation, *ante*, p. 949;

No. 12–5811. ZAJRAEL *v.* HARMON, WARDEN, ET AL., *ante*, p. 966;

No. 12–5910. ROWE *v.* MISSOURI, *ante*, p. 952; and

No. 12–6202. SOLER-NORONA *v.* UNITED STATES, *ante*, p. 968. Petitions for rehearing denied.

No. 12–5765. WILLIAMS *v.* UNITED STATES, *ante*, p. 935. Petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

DECEMBER 4, 2012

Miscellaneous Order

No. 12–7527 (12A550). IN RE STOKLEY. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Petition for writ of habeas corpus denied.

Certiorari Denied

No. 12–7517 (12A545). STOKLEY *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Application for stay of execution of sentence of death, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. Certiorari denied. Reported below: 705 F. 3d 401.

No. 12–7540 (12A558). OCHOA *v.* TRAMMELL, WARDEN. C. A. 10th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SOTOMAYOR, and by her referred to the Court, denied. Certiorari denied. Reported below: 504 Fed. Appx. 705.

DECEMBER 7, 2012

Certiorari Granted

No. 12–52. DAN'S CITY USED CARS, INC., DBA DAN'S CITY AUTO BODY *v.* PELKEY. Sup. Ct. N. H. Certiorari granted. Reported below: 163 N. H. 483, 44 A. 3d 480.

No. 12–135. OXFORD HEALTH PLANS LLC *v.* SUTTER. C. A. 3d Cir. Motions of Chamber of Commerce of the United States of America and DRI–The Voice of the Defense Bar for leave to file briefs as *amici curiae* granted. Certiorari granted. Reported below: 675 F. 3d 215.

No. 12–144. HOLLINGSWORTH ET AL. *v.* PERRY ET AL. C. A. 9th Cir. Certiorari granted. In addition to the question presented by the petition, the parties are directed to brief and argue the following question: "Whether petitioners have standing under Article III, § 2, of the Constitution in this case." Reported below: 671 F. 3d 1052.

No. 12–307. UNITED STATES *v.* WINDSOR, EXECUTOR OF THE ESTATE OF SPYER, ET AL. C. A. 2d Cir. Certiorari granted. In addition to the question presented by the petition, the parties are directed to brief and argue the following questions: "Whether the Executive Branch's agreement with the court below that DOMA [Defense of Marriage Act] is unconstitutional deprives this Court of jurisdiction to decide this case; and whether the Bipartisan Legal Advisory Group of the United States House of Representatives has Article III standing in this case." Reported below: 699 F. 3d 169.

No. 12–416. FEDERAL TRADE COMMISSION *v.* WATSON PHARMACEUTICALS, INC., ET AL. C. A. 11th Cir. Certiorari granted. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 677 F. 3d 1298.

DECEMBER 10, 2012

Certiorari Dismissed

No. 12–7122. TOTARO *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH DAKOTA. 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*).

Miscellaneous Orders

No. D–2700. IN RE DISCIPLINE OF KIM. Martha Veager Kim, 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

her to show cause why she should not be disbarred from the practice of law in this Court.

No. D–2701. IN RE DISCIPLINE OF PAPPAS. George Z. Pappas, of Urbana, 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–2702. IN RE DISCIPLINE OF LAURIE. Charles R. Laurie, Jr., of Brecksville, 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. 12M55. DOE *v.* UNITED STATES. Motion of petitioner for leave to file petition for writ of certiorari with appendix under seal granted.

No. 12M56. COMEAUX *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION;

No. 12M57. ALDAPE *v.* SCRIBNER, WARDEN; and

No. 12M58. APOLLO *v.* DICKINSON, WARDEN. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 12–17. MCBURNEY ET AL. *v.* YOUNG, DEPUTY COMMISSIONER AND DIRECTOR, VIRGINIA DIVISION OF CHILD SUPPORT ENFORCEMENT, ET AL. C. A. 4th Cir. [Certiorari granted, *ante,* p. 936.] Motion of petitioners to dispense with printing joint appendix granted.

No. 12–6169. MAEHR *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 10th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante,* p. 976] denied.

No. 12–6640. MIZUKAMI *v.* EDWARDS ET AL. C. A. 9th Cir.;

No. 12–7066. HOPKINS *v.* UNITED STATES. C. A. 4th Cir.; and

No. 12–7118. CASEY *v.* UNITED STATES. C. A. 2d Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until January 2, 2013, 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. 12–7217. IN RE BOURGEOIS. Petition for writ of habeas corpus denied.

No. 12–7315. IN RE ARMANT. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 11–10831. IN RE PARKER. Petition for writ of prohibition denied.

Certiorari Denied

No. 11–10990. CURRY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 42.

No. 11–11079. LINEAR *v.* VICKERSON ET AL. Ct. App. Mich. Certiorari denied.

No. 12–173. DJADJOU *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 662 F. 3d 265.

No. 12–182. MONTGOMERY ET AL. *v.* KAPPOS, UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR, PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 677 F. 3d 1375.

No. 12–227. BAUER *v.* MERCHANT. C. A. 4th Cir. Certiorari denied. Reported below: 677 F. 3d 656.

No. 12–284. RAEDLE *v.* CREDIT AGRICOLE INDOSUEZ ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 670 F. 3d 411.

No. 12–422. JIHUI ZHANG *v.* FEDERATION OF STATE MEDICAL BOARDS ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 193.

No. 12–427. CRYSTAL DUNES OWNERS' ASSN., INC., ET AL. *v.* CITY OF DESTIN, FLORIDA, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 180.

No. 12–433. TOFFOLONI, AS ADMINISTRATOR AND PERSONAL REPRESENTATIVE OF THE ESTATE OF BENOIT *v.* LFP PUBLISHING GROUP, LLC, DBA HUSTLER MAGAZINE. C. A. 11th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 561.

No. 12–448. COULTER *v.* DOERR. C. A. 3d Cir. Certiorari denied. Reported below: 486 Fed. Appx. 227.

No. 12–452. MURRAY *v.* DEPARTMENT OF THE TREASURY ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 681 F. 3d 744.

No. 12–459. HARRISON *v.* CAPITAL GROUP COS., INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 765.

No. 12–511. MARTIN ET AL. *v.* SPRING BREAK '83 PRODUCTIONS, L. L. C., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 688 F. 3d 247.

No. 12–551. KENNEY *v.* LUC ET AL. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 12–559. MARCELLO *v.* UNITED STATES; and
No. 12–7116. CALABRESE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 679 F. 3d 521.

No. 12–584. KOZINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 9.

No. 12–5075. HIGGS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 663 F. 3d 726.

No. 12–5700. FUIAVA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 53 Cal. 4th 622, 269 P. 3d 568.

No. 12–6119. SHERE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 91 So. 3d 133.

No. 12–6157. PONTICELLI *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 90 So. 3d 823.

No. 12–6160. JASPER *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 429.

No. 12–6163. CARUTHERS *v.* NORMAN, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 12–6588. DICKINSON *v.* OCWEN LOAN SERVICING, LLC, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 567.

No. 12–6596. ONTIVEROS *v.* CATE, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–6600. PLOTT *v.* MONTANA. Sup. Ct. Mont. Certiorari denied.

No. 12–6601. LIVERMORE *v.* SANDOR, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 342.

No. 12–6602. ALMENDAREZ *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 12–6604. RHETT *v.* HUDSON COUNTY CHILD SUPPORT UNIT ET AL. C. A. 8th Cir. Certiorari denied.

No. 12–6610. SHIELDS *v.* FRONTIER TECHNOLOGY LLC, DBA MICROAGE LLC, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–6612. SMITH *v.* BALDWIN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 205.

No. 12–6614. SNYDER *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 91 App. Div. 3d 1206, 937 N. Y. S. 2d 429.

No. 12–6620. RIVERA CORTES *v.* FRANKE, SUPERINTENDENT, TWO RIVERS CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 12–6625. JOST *v.* HARRIS, ATTORNEY GENERAL OF CALIFORNIA, ET AL. (two judgments). C. A. 9th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 686 (first judgment).

No. 12–6628. PYBURN *v.* OUBRE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–6629. ABEBE *v.* SCOTT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 752.

No. 12–6634. SAMUEL *v.* TERRELL, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 12–6644. PACKER *v.* JONES, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 12–6703. Bisong *v.* Holder, Attorney General. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 247.

No. 12–6712. Choi *v.* United States. C. A. Fed. Cir. Certiorari denied.

No. 12–6740. Kates *v.* King et al. C. A. 3d Cir. Certiorari denied. Reported below: 487 Fed. Appx. 704.

No. 12–6741. Peterson *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 94 So. 3d 514.

No. 12–6772. Schrubb *v.* Cate, Secretary, California Department of Corrections and Rehabilitation. C. A. 9th Cir. Certiorari denied.

No. 12–6785. Holmes *v.* King, Superintendent, South Mississippi Correctional Institution. C. A. 5th Cir. Certiorari denied.

No. 12–6793. Totten *v.* Holloway, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 168.

No. 12–6795. Llorente *v.* Holder, Attorney General. C. A. 2d Cir. Certiorari denied.

No. 12–6801. Kourouma *v.* Holder, Attorney General. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 379.

No. 12–6802. Poslof *v.* Yates, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 462 Fed. Appx. 710.

No. 12–6819. Santiago *v.* Fields et al. C. A. 3d Cir. Certiorari denied. Reported below: 490 Fed. Appx. 479.

No. 12–6834. Ariegwe *v.* Kirkegard, Warden, et al. C. A. 9th Cir. Certiorari denied.

No. 12–6847. McKinney, fka Villalva *v.* Villalva. Sup. Ct. Colo. Certiorari denied.

No. 12–6859. Watson *v.* Coakley, Attorney General of Massachusetts. C. A. 1st Cir. Certiorari denied.

No. 12–6878. Silvar Lopez *v.* Clark, Warden. C. A. 9th Cir. Certiorari denied.

No. 12–6885. SLEDGE *v.* OSBORNE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–6886. DEANS *v.* SOUTH CAROLINA DEPARTMENT OF CORRECTIONS. Sup. Ct. S. C. Certiorari denied.

No. 12–6898. BURKE *v.* VERMONT. Sup. Ct. Vt. Certiorari denied. Reported below: 2012 VT 50, 192 Vt. 99, 54 A. 3d 500.

No. 12–6913. THOMAS *v.* INGWERSON ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–6973. BROWN *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 815 N. W. 2d 609.

No. 12–6974. BURGOS *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 462 Mass. 53, 965 N. E. 2d 854.

No. 12–6987. WILLIAMS *v.* SANTA CRUZ ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 581.

No. 12–7030. SCHWEINER *v.* FOSTER, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 493 Fed. Appx. 750.

No. 12–7032. SANCHEZ-RAMIREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 792.

No. 12–7033. SHAFFER *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 469 Fed. Appx. 917.

No. 12–7048. MOORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 980.

No. 12–7051. WASHAM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 568.

No. 12–7052. WOODFIELD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 148.

No. 12–7055. CANTILLO BURGOS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 12–7057. NAJERA-GORDILLO, AKA GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 668.

No. 12–7060. HASAN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 686 F. 3d 1159.

No. 12–7064. FUENTES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–7067. FRANKLIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 973.

No. 12–7070. SHOUPE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 269.

No. 12–7077. FIGUEROA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 12–7078. GUTIERREZ-PINEDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 660.

No. 12–7079. FULTON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 469 Fed. Appx. 322.

No. 12–7080. HILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 974.

No. 12–7082. FINLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 260.

No. 12–7083. HOPKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 210.

No. 12–7084. RILEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 684 F. 3d 758.

No. 12–7086. JENSEN *v.* TEXAS. Ct. App. Tex., 2d Dist. Certiorari denied.

No. 12–7087. JONES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 761.

No. 12–7088. ANAYA, AKA ANAYA-GRANILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–7089. CHAVEZ-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 694.

No. 12–7090. MONTEJO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 486 Fed. Appx. 473.

No. 12–7092. WALKER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 688 F. 3d 416.

No. 12–7095. POWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 857.

No. 12–7097. EASTWOOD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–7100. BORRERO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–7102. SIMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 683 F. 3d 815.

No. 12–7108. BARRINGTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 138.

No. 12–7113. AROS *v.* HOLLINGSWORTH, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 12–7114. BLANKS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 500 Fed. Appx. 395.

No. 12–7115. ELEANYA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–7120. IBARRA MUNOZ *v.* MAYE, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 699.

No. 12–7121. RASUL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 792.

No. 12–7123. MASTER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 491 Fed. Appx. 593.

No. 12–7125. BRUMFIELD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 686 F. 3d 960.

No. 12–7127. WAGGONER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 12–7132. RUTH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 489 Fed. Appx. 941.

No. 12–7133. SCHLOTZHAUER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 12–7134. VARGAS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 689 F. 3d 867.

No. 12–7137. RICHARDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 461 Fed. Appx. 308.

No. 12–7138. COVINGTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 681 F. 3d 908.

No. 12–7139. RIOS *v.* UNITED STATES (Reported below: 477 Fed. Appx. 209); and ALVARADO *v.* UNITED STATES (691 F. 3d 592). C. A. 5th Cir. Certiorari denied.

No. 12–7141. DALY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 12–7142. PEGRAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 347.

No. 12–7152. WEBB *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–7157. BALTHAZOR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 491 Fed. Appx. 811.

No. 12–7164. FLORES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 351.

No. 12–7165. SHI CHANG HUANG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 491 Fed. Appx. 382.

No. 12–7167. GONZALEZ-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 798.

No. 12–7168. GODAT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 688 F. 3d 399.

No. 12–7171. MURPHY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 491 Fed. Appx. 370.

No. 12–7178. STEWART *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 684 F. 3d 703.

No. 12–7194. MASSENGILL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–7195. RAMIREZ CABALLERIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 492 Fed. Appx. 726.

No. 12–7204. AVITIA-RUIZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–7205. BREHM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 691 F. 3d 547.

No. 12–431. SUNBEAM PRODUCTS, INC., DBA JARDEN CONSUMER SOLUTIONS *v.* CHICAGO AMERICAN MANUFACTURING, LLC. C. A. 7th Cir. Motion of International Trademark Association for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 686 F. 3d 372.

No. 12–567. MYRIE *v.* UNITED STATES. C. A. 11th Cir. Motion of petitioner to defer consideration of petition for writ of certiorari denied. Certiorari denied. Reported below: 479 Fed. Appx. 898.

No. 12–586. INSTITUTO COSTARRICENSE DE ELECTRICIDAD *v.* UNITED STATES ET AL. C. A. 11th Cir. Certiorari denied. THE CHIEF JUSTICE took no part in the consideration or decision of this petition. Reported below: 688 F. 3d 1301.

No. 12–6623. CHEN *v.* SIEMENS ENERGY INC. C. A. 11th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 467 Fed. Appx. 852.

No. 12–7065. HENRY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 12–7068. HORNE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 458 Fed. Appx. 270.

No. 12–7073. RUDAJ *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. 12–7081. FLORES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–7091. BRIDESON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the con-

sideration or decision of this petition. Reported below: 481 Fed. Appx. 16.

No. 12–7147. CARDONA *v.* BLEDSOE, WARDEN. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 681 F. 3d 533.

Rehearing Denied

No. 11–1358. WILLIAMS *v.* BOOKER, WARDEN, *ante*, p. 817;
No. 11–1502. LOAN PHOUNG *v.* TRAN, *ante*, p. 824;
No. 11–10216. NESBITT *v.* WILLIAMS, *ante*, p. 836;
No. 11–10403. FELS *v.* ILLINOIS, *ante*, p. 842;
No. 11–10433. WILLIAMS *v.* GRAHAM, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY, *ante*, p. 843;
No. 11–10483. JONES *v.* THOMAS ET AL., *ante*, p. 845;
No. 11–10546. YELLOWBEAR *v.* WYOMING, *ante*, p. 848;
No. 11–10780. ACHOUATTE *v.* NEW YORK, *ante*, p. 861;
No. 11–10785. TAYLOR *v.* LOUISIANA, *ante*, p. 862;
No. 11–10862. CRAWFORD *v.* UNITED STATES, *ante*, p. 866;
No. 12–115. MAGGIORE *v.* CONNECTICUT, *ante*, p. 942;
No. 12–149. MURRAY *v.* ANDERSON, *ante*, p. 888;
No. 12–160. ZAGA *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL., *ante*, p. 943;
No. 12–220. BHAT *v.* ACCENTURE LLP, *ante*, p. 963;
No. 12–5191. WILLIAMS *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 899;
No. 12–5224. BEN-MORKA *v.* UNITED STATES, *ante*, p. 901;
No. 12–5446. VENTA *v.* UNITED STATES, *ante*, p. 913;
No. 12–5552. POWELL *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 946;
No. 12–5576. BARLASS *v.* CITY OF JANESVILLE, WISCONSIN, ET AL., *ante*, p. 946;
No. 12–5603. LAWRENCE *v.* WHITE, SECRETARY OF STATE OF ILLINOIS, ET AL., *ante*, p. 947;
No. 12–5734. LEE *v.* MISSISSIPPI STATE OIL AND GAS BOARD, *ante*, p. 964;
No. 12–5760. LIBERT *v.* PARKERSBURG CITY POLICE ET AL., *ante*, p. 964; and
No. 12–5775. AMR *v.* CROWLEY ET AL., *ante*, p. 965. Petitions for rehearing denied.

No. 10–1193. MARTIN-MATERA ET VIR *v.* TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES ET AL., 563 U. S. 989. Motion for leave to file petition for rehearing denied.

No. 11–10619. HAQUE *v.* UNITED STATES, *ante*, p. 930. Petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

DECEMBER 11, 2012

Dismissal Under Rule 46

No. 12–6979. ADAMS *v.* EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL. C. A. D. C. Cir. Certiorari dismissed under this Court's Rule 46.

Miscellaneous Order

No. 12–307. UNITED STATES *v.* WINDSOR, EXECUTOR OF THE ESTATE OF SPYER, ET AL. C. A. 2d Cir. [Certiorari granted, *ante*, p. 1066.] Vicki C. Jackson, Esq., of Cambridge, Mass., is invited to brief and argue this case as *amicus curiae* in support of the positions that the Executive Branch's agreement with the court below that DOMA [Defense of Marriage Act] is unconstitutional deprives this Court of jurisdiction to decide this case, and that the Bipartisan Legal Advisory Group of the United States House of Representatives lacks Article III standing in this case.

Certiorari Denied

No. 12–7628 (12A579). PARDO *v.* FLORIDA. Sup. Ct. Fla. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. Reported below: 108 So. 3d 558.

No. 12–7698 (12A590). PARDO *v.* PALMER, WARDEN, ET AL. C. A. 11th Cir. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied. Reported below: 500 Fed. Appx. 901.

DECEMBER 14, 2012

Miscellaneous Order

No. 12–307. UNITED STATES *v.* WINDSOR, EXECUTOR OF THE ESTATE OF SPYER, ET AL. C. A. 2d Cir. [Certiorari granted,

ante, p. 1066.] Upon consideration of the letter of December 13, 2012, from the Solicitor General on behalf of the litigants and the *amicus curiae* invited to brief and argue this case, the following briefing schedule is adopted.

On the merits, brief for Bipartisan Legal Advisory Group of the United States House of Representatives, not to exceed 15,000 words, is to be filed on or before Tuesday, January 22, 2013. Brief for the Solicitor General, not to exceed 15,000 words, is to be filed on or before Friday, February 22, 2013. Brief for Edith Windsor, not to exceed 15,000 words, is to be filed on or before Tuesday, February 26, 2013. Reply brief for Bipartisan Legal Advisory Group of the United States House of Representatives, not to exceed 6,000 words, is to be filed in accordance with this Court's Rule 25.3.

On the jurisdictional questions, brief for Court-appointed *amicus curiae*, not to exceed 10,000 words, is to be filed on or before January 22, 2013. Briefs for the Solicitor General, Bipartisan Legal Advisory Group of the United States House of Representatives, and Edith Windsor, not to exceed 10,000 words each, are to be filed on or before Wednesday, February 20, 2013. Reply briefs for litigants and Court-appointed *amicus curiae*, not to exceed 4,000 words, are to be filed in accordance with this Court's Rule 25.3.

Other *amici curiae* briefs shall be filed within the time allowed under this Court's Rule 37.3(a), except that *amici curiae* briefs on the merits in support of the positions of the Solicitor General and/or Edith Windsor shall be filed within seven days after the brief for the Solicitor General on the merits is filed. Litigants, Court-appointed *amicus curiae*, and other *amici curiae* shall indicate on the cover of each brief filed which issue or issues are addressed in that particular brief in addition to the information required by this Court's Rule 37.3.

January 2, 2013

Dismissals Under Rule 46

No. 12–518. WEC Carolina Energy Solutions LLC *v.* Miller et al. C. A. 4th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 687 F. 3d 199.

No. 12–7348. STORK *v.* UNITED STATES. C. A. 7th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 487 Fed. Appx. 295.

JANUARY 3, 2013

Dismissal Under Rule 46

No. 12–7293. ALMLY *v.* UNITED STATES. C. A. 11th Cir. Certiorari dismissed under this Court's Rule 46. Reported below: 485 Fed. Appx. 384.

JANUARY 4, 2013

Miscellaneous Orders

No. 11–1425. MISSOURI *v.* MCNEELY. Sup. Ct. Mo. [Certiorari granted, 567 U. S. 968.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 11–1447. KOONTZ *v.* ST. JOHNS RIVER WATER MANAGEMENT DISTRICT. Sup. Ct. Fla. [Certiorari granted, *ante*, p. 936.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 11–1545. CITY OF ARLINGTON, TEXAS, ET AL. *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL.; and

No. 11–1547. CABLE, TELECOMMUNICATIONS, AND TECHNOLOGY COMMITTEE OF THE NEW ORLEANS CITY COUNCIL *v.* FEDERAL COMMUNICATIONS COMMISSION ET AL. C. A. 5th Cir. [Certiorari granted, *ante*, p. 936.] Motion of respondent Cellco Partnership, dba Verizon Wireless, for divided argument denied. Motion of petitioner Cable, Telecommunications, and Technology Committee of the New Orleans City Council for divided argument denied.

No. 12–98. DELIA, SECRETARY, NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES *v.* E. M. A., A MINOR, BY AND THROUGH HER GUARDIAN AD LITEM JOHNSON, ET AL. C. A. 4th Cir. [Certiorari granted, 567 U. S. 968.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

Certiorari Granted

No. 12–167. UNITED STATES *v.* DAVILA. C. A. 11th Cir. Certiorari granted. Reported below: 664 F. 3d 1355.

No. 11–889. TARRANT REGIONAL WATER DISTRICT *v.* HERRMANN ET AL. C. A. 10th Cir. Motion of City of Irving, Texas, et al. for leave to file brief as *amici curiae* granted. Certiorari granted. Reported below: 656 F. 3d 1222.

No. 12–399. ADOPTIVE COUPLE *v.* BABY GIRL, A MINOR CHILD UNDER THE AGE OF 14 YEARS, ET AL. Sup. Ct. S. C. Motion of petitioners for leave to file appendix B under seal granted. Motion of Professors Joan Heifetz Hollinger et al. for leave to file brief as *amici curiae* granted. Certiorari granted. Reported below: 398 S. C. 625, 731 S. E. 2d 550.

JANUARY 7, 2013

Certiorari Granted—Vacated and Remanded

No. 12–5832. BLACKWELL *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Miller* v. *Alabama*, 567 U. S. 460 (2012). Reported below: 202 Cal. App. 4th 144, 134 Cal. Rptr. 3d 608.

Certiorari Dismissed

No. 12–6720. MCCARTHY *v.* SOSNICK ET AL. 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. 12–7098. ORSELLO *v.* GAFFNEY ET AL. Ct. App. Minn. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 12–7338. SHAHIN *v.* BHATT, SECRETARY, DELAWARE DEPARTMENT OF TRANSPORTATION. 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*).

Miscellaneous Orders

No. 12A433. MITRANO *v.* JPMORGAN CHASE BANK, N. A., ET AL. D. C. E. D. Va. Application for stay, addressed to JUSTICE ALITO and referred to the Court, denied.

No. 12A509. MEZA *v.* HOLDER, ATTORNEY GENERAL. C. A. 5th Cir. Application for stay, addressed to THE CHIEF JUSTICE and referred to the Court, denied.

No. D–2703. IN RE DISCIPLINE OF HUNTLEY. Donald W. Huntley, of Wilmington, Del., 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–2704. IN RE DISCIPLINE OF GOLDEN. Bruce P. Golden, 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. 12M59. ELBEY *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OKLAHOMA;

No. 12M60. TAUSERE *v.* HOLDER, ATTORNEY GENERAL;

No. 12M61. JAHANIAN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION;

No. 12M62. DAVIS *v.* ORTIZ, WARDEN;

No. 12M64. BLACK *v.* URIBE, WARDEN;

No. 12M65. TAYLOR *v.* PATE, WARDEN;

No. 12M66. MILTON ET VIR *v.* ROBINSON ET AL.;

No. 12M68. TAYLOR *v.* WINNECOUR;

No. 12M69. TAYLOR *v.* MESSMER ET AL.; and

No. 12M70. DE MASI *v.* COUNTRYWIDE HOME LOANS ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 12M63. UNITED STATES EX REL. PRITSKER *v.* SODEXHO, INC., ET AL. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal granted.

No. 12M67. STRAUSBAUGH *v.* GOVERNMENT PRINTING OFFICE. Motion for leave to proceed as a veteran granted.

No. 11–9137. JOHNSON *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 11th Cir. Motion of petitioner to defer consideration of motion for reconsideration of order denying leave to proceed *in forma pauperis* denied. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 809] denied.

No. 11–10975. GRIFFIN *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 809] denied.

No. 12–315. AIR WISCONSIN AIRLINES CORP. *v.* HOEPER. Sup. Ct. Colo.;

No. 12–379. MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS, UNEMPLOYMENT INSURANCE AGENCY, TRA SPECIAL PROGRAMS UNIT *v.* GERSTENSCHLAGER. 52d Dist. Ct. Huron County, Mich.; and

No. 12–515. MICHIGAN *v.* BAY MILLS INDIAN COMMUNITY. C. A. 6th Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 12–6243. CUTAIA *v.* BONDI, ATTORNEY GENERAL OF FLORIDA, ET AL. C. A. 11th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 975] denied.

No. 12–6254. MCCARTHY *v.* SERVITTO ET AL. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 996] denied.

No. 12–6679. WILLIS *v.* COURT OF APPEALS OF TEXAS, SECOND DISTRICT. Sup. Ct. Tex. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until January 28, 2013, 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. 12–6768. BRYANT *v.* LUFKIN INDEPENDENT SCHOOL DISTRICT. C. A. 5th Cir.;

No. 12–6797. ABRAHAM *v.* UAW INTERNATIONAL UNION ET AL. C. A. 6th Cir.;

No. 12–6853. TUCKER ET VIR *v.* TIFT COUNTY HOSPITAL AUTHORITY ET AL. Ct. App. Ga.;

No. 12–6879. KISKILA ET UX. *v.* UNITED STATES. C. A. 9th Cir.;

No. 12–6920. ROBERTSON *v.* CREE, INC. C. A. 4th Cir.; and

No. 12–7201. CHALASANI *v.* DAINES ET AL. C. A. 2d Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until January 28, 2013, 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. 12–7482. IN RE BALZAROTTI;

No. 12–7604. IN RE MILLIS; and

No. 12–7608. IN RE PATTERSON. Petitions for writs of habeas corpus denied.

No. 12–7391. IN RE WEST. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 12–7621. IN RE COCHRAN. Petition for writ of habeas corpus denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–572. IN RE DEL RIO;

No. 12–593. IN RE LAW OFFICES OF JENNIFER S. GORMLEY, P. C., ET AL.;

No. 12–6555. IN RE CALLOWAY;

No. 12–6726. IN RE ENTLER;

No. 12–7017. IN RE CHAPMAN;

No. 12–7018. IN RE CURRIE;

No. 12–7223. IN RE HILL; and

No. 12–7372. IN RE VAKSMAN. Petitions for writs of mandamus denied.

No. 12–6684. IN RE SHOVE; and

No. 12–6733. IN RE DUNBAR. Motions of petitioners for leave to proceed *in forma pauperis* denied, and petitions for writs of mandamus dismissed. See this Court's Rule 39.8.

Certiorari Denied

No. 11–1154. RETRACTABLE TECHNOLOGIES, INC., ET AL. *v.* BECTON, DICKINSON & CO.; and

No. 11–1278. Becton, Dickinson & Co. *v.* Retractable Technologies, Inc., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 653 F. 3d 1296.

No. 11–11084. Tormenia *v.* Contursi et al. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 88 So. 3d 947.

No. 11–11120. Starr *v.* Knierman et al. C. A. 1st Cir. Certiorari denied. Reported below: 474 Fed. Appx. 785.

No. 12–48. Three-Dimensional Media Group, Ltd. *v.* Kappos, Director, Patent and Trademark Office. C. A. Fed. Cir. Certiorari denied. Reported below: 441 Fed. Appx. 770.

No. 12–117. Olvera Jimenez *v.* Texas. Ct. Crim. App. Tex. Certiorari denied. Reported below: 364 S. W. 3d 866.

No. 12–184. Congrejo Investments, LLC *v.* Mann, Chapter 7 Trustee. C. A. 9th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 445.

No. 12–190. Andersen *v.* Rochester City School District. C. A. 2d Cir. Certiorari denied. Reported below: 481 Fed. Appx. 628.

No. 12–209. Stacy *v.* Rouse. C. A. 6th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 945.

No. 12–218. Brooks *v.* United States;
No. 12–5812. Phillips *v.* United States; and
No. 12–5847. Walton *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 681 F. 3d 678.

No. 12–219. Sanchez *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 674 F. 3d 696.

No. 12–262. Hall et al. *v.* Sebelius, Secretary of Health and Human Services, et al. C. A. D. C. Cir. Certiorari denied. Reported below: 667 F. 3d 1293.

No. 12–271. Khan et ux. *v.* Normand, Sheriff, Jefferson Parish, Louisiana, et al. C. A. 5th Cir. Certiorari denied. Reported below: 683 F. 3d 192.

No. 12–275. Nordyke et al. *v.* King et al. C. A. 9th Cir. Certiorari denied. Reported below: 681 F. 3d 1041.

No. 12–276. New Mexico *v.* Herring. Sup. Ct. N. M. Certiorari denied.

No. 12–296. Veterans for Common Sense et al. *v.* Shinseki, Secretary of Veterans Affairs, et al. C. A. 9th Cir. Certiorari denied. Reported below: 678 F. 3d 1013.

No. 12–309. Huffman *v.* Union Pacific Railroad. C. A. 5th Cir. Certiorari denied. Reported below: 675 F. 3d 412.

No. 12–328. Psihos *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 683 F. 3d 777.

No. 12–330. Prescott, Executor of the Estate of Duby *v.* Department of Agriculture. C. A. 1st Cir. Certiorari denied.

No. 12–356. Almy, Chapter 7 Trustee for the Bankruptcy Estate of BioniCare Medical Technologies, Inc. *v.* Sebelius, Secretary of Health and Human Services. C. A. 4th Cir. Certiorari denied. Reported below: 679 F. 3d 297.

No. 12–370. Coppola *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 671 F. 3d 220.

No. 12–372. Contour Spa at the Hard Rock, Inc. *v.* Seminole Tribe of Florida et al. C. A. 11th Cir. Certiorari denied. Reported below: 692 F. 3d 1200.

No. 12–389. Byron *v.* Shinseki, Secretary of Veterans Affairs. C. A. Fed. Cir. Certiorari denied. Reported below: 670 F. 3d 1202.

No. 12–424. Bandi et al. *v.* Becnel. C. A. 5th Cir. Certiorari denied. Reported below: 683 F. 3d 671.

No. 12–434. Lee *v.* Louisiana Attorney Disciplinary Board. Sup. Ct. La. Certiorari denied. Reported below: 2011–2530 (La. 4/13/12), 85 So. 3d 74.

No. 12–435. Chiles *v.* Jones, Director, Oklahoma Department of Corrections, et al. C. A. 10th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 801.

No. 12–436. Wabno *v.* City of Derby, Connecticut. App. Ct. Conn. Certiorari denied. Reported below: 133 Conn. App. 232, 34 A. 3d 471.

No. 12–437. Torres et al. *v.* Telemundo de Puerto Rico, Inc., et al. Sup. Ct. P. R. Certiorari denied.

No. 12–438. Leavey *v.* City of Detroit, Michigan, et al. C. A. 6th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 420.

No. 12–441. Johnson, fka Zimmer *v.* Zimmer et al. C. A. 4th Cir. Certiorari denied. Reported below: 686 F. 3d 224.

No. 12–442. Williams *v.* County of Los Angeles, California, et al. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–444. Shandong Linglong Rubber Co., Ltd., nka Linglong Group Co., Ltd., et al. *v.* Tire Engineering & Distribution, LLC, dba Alpha Tyre Systems et al., et al. C. A. 4th Cir. Certiorari denied. Reported below: 682 F. 3d 292.

No. 12–446. Curtis Circulation Co. et al. *v.* Anderson News, L. L. C., et al. C. A. 2d Cir. Certiorari denied. Reported below: 680 F. 3d 162.

No. 12–453. Hale *v.* North Dakota et al. Sup. Ct. N. D. Certiorari denied. Reported below: 2012 ND 148, 818 N. W. 2d 684.

No. 12–454. Sherley et al. *v.* Sebelius, Secretary of Health and Human Services, et al. C. A. D. C. Cir. Certiorari denied. Reported below: 689 F. 3d 776.

No. 12–463. Kapetanakis *v.* First National Insurance Company of America. C. A. 5th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 217.

No. 12–467. Sibley *v.* District of Columbia Board of Elections and Ethics. Ct. App. D. C. Certiorari denied.

No. 12–469. Angellino *v.* Royal Family Al-Saud et al. C. A. D. C. Cir. Certiorari denied. Reported below: 688 F. 3d 771.

No. 12–471. Morgan *v.* Harry et al. Sup. Ct. Va. Certiorari denied.

No. 12–473. DS Waters of America, Inc. *v.* Twin City Fire Insurance Co. C. A. 11th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 854.

No. 12–481. PETTY *v.* RUDEK, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 713.

No. 12–486. GEORGIACARRY.ORG, INC., ET AL. *v.* GEORGIA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 687 F. 3d 1244.

No. 12–491. HUDDLESTON ET UX. *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 744.

No. 12–494. PENA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 684 F. 3d 1137.

No. 12–495. OMAN ET AL. *v.* PORTLAND PUBLIC SCHOOLS ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 3d 1162.

No. 12–497. DEYERBERG *v.* HOLDER, ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 455 Fed. Appx. 1.

No. 12–498. KOTZEVA *v.* HORNE, ATTORNEY GENERAL OF ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–499. TOWNSEND *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 468 Fed. Appx. 962.

No. 12–500. DOE *v.* WILLITS CHARTER SCHOOL ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 775.

No. 12–501. CULLEN *v.* VILLAGE OF PELHAM MANOR, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 12–502. WEINSTEIN ET AL. *v.* BERGER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 465 Fed. Appx. 174.

No. 12–505. STAIR *v.* CLERK, CIRCUIT COURT OF MICHIGAN, 13TH CIRCUIT, ET AL. Ct. App. Mich. Certiorari denied.

No. 12–506. HETTINGA ET AL. *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 677 F. 3d 471.

No. 12–507. FALDAS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 12–508. ESCALERA *v.* SCRIBNER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–509. Buckland et ux. *v.* Buckland et al. C. A. 10th Cir. Certiorari denied. Reported below: 486 Fed. Appx. 704.

No. 12–512. Mayer *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–513. Jallali *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 578.

No. 12–519. Wootten *v.* Fisher Investments, Inc., et al. C. A. 8th Cir. Certiorari denied. Reported below: 688 F. 3d 487.

No. 12–523. Luckert, Personal Representative of the Estate of Sampson, Deceased *v.* Dodge County, Nebraska, et al. C. A. 8th Cir. Certiorari denied. Reported below: 684 F. 3d 808.

No. 12–524. Calabrese *v.* New Jersey Department of Taxation. C. A. 3d Cir. Certiorari denied. Reported below: 689 F. 3d 312.

No. 12–530. Walls et al. *v.* Mabus, Secretary of the Navy, et al. C. A. D. C. Cir. Certiorari denied.

No. 12–532. Brown et al. *v.* Henley. C. A. 8th Cir. Certiorari denied. Reported below: 686 F. 3d 634.

No. 12–540. RSM Production Corp. *v.* Freshfields Bruckhaus Deringer U. S. LLP et al. C. A. D. C. Cir. Certiorari denied. Reported below: 682 F. 3d 1043.

No. 12–541. Schottel *v.* Young. C. A. 8th Cir. Certiorari denied. Reported below: 687 F. 3d 370.

No. 12–543. Vary *v.* Booker, Warden. C. A. 6th Cir. Certiorari denied.

No. 12–549. Cineas *v.* Alabama. Ct. Crim. App. Ala. Certiorari denied. Reported below: 144 So. 3d 528.

No. 12–563. Loesel et al. *v.* City of Frankenmuth, Michigan; and

No. 12–712. City of Frankenmuth, Michigan *v.* Loesel et al. C. A. 6th Cir. Certiorari denied. Reported below: 692 F. 3d 452.

No. 12–564. RENOBATO *v.* COMPASS BANK CORP. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 764.

No. 12–566. MCCLEARY, AS ADMINISTRATOR OF THE ESTATE OF EMAS *v.* RELIASTAR LIFE INSURANCE CO. C. A. 8th Cir. Certiorari denied. Reported below: 682 F. 3d 1116.

No. 12–575. TRANS VIDEO ELECTRONICS, LTD. *v.* SONY ELECTRONICS, INC., ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 475 Fed. Appx. 334.

No. 12–585. HAYES *v.* QUESTAR CAPITAL CORP. C. A. 8th Cir. Certiorari denied. Reported below: 457 Fed. Appx. 602.

No. 12–595. CONRAD *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 673 F. 3d 728.

No. 12–599. CARTER *v.* THOMPSON, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 690 F. 3d 837.

No. 12–601. STEVENS ET UX. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 691 F. 3d 620.

No. 12–603. MORRIS *v.* NATIONAL FOOTBALL LEAGUE RETIREMENT BOARD. C. A. 11th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 440.

No. 12–612. EPPERSON *v.* SOUTHBANK. Sup. Ct. Miss. Certiorari denied. Reported below: 93 So. 3d 10.

No. 12–615. KATARE *v.* KATARE. Sup. Ct. Wash. Certiorari denied. Reported below: 175 Wash. 2d 23, 283 P. 3d 546.

No. 12–617. LEADER TECHNOLOGIES, INC. *v.* FACEBOOK, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 678 F. 3d 1300.

No. 12–619. RAHMAN *v.* FOSTER TOWNSHIP, PENNSYLVANIA. Commw. Ct. Pa. Certiorari denied. Reported below: 38 A. 3d 1092.

No. 12–620. ARAR, INC. *v.* FRONTERA EASTERN GEORGIA, LTD. C. A. 5th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 896.

No. 12–637. WEATHERBY *v.* FEDERAL EXPRESS CORP. C. A. 6th Cir. Certiorari denied. Reported below: 454 Fed. Appx. 480.

No. 12–676. HYDE *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 8th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 537.

No. 12–677. BOSWORTH *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 763.

No. 12–679. DIMURO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–5406. ENRIQUEZ *v.* UNITED STATES;
No. 12–5408. PEREA *v.* UNITED STATES;
No. 12–5432. HERRERA *v.* UNITED STATES;
No. 12–5510. ALVAREZ *v.* UNITED STATES; and
No. 12–5513. CARDOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 409.

No. 12–5464. NORIEGA-PEREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 670 F. 3d 1033.

No. 12–5604. HANIBLE *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 612 Pa. 183, 30 A. 3d 426.

No. 12–5632. KING *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 734.

No. 12–5637. JONES *v.* FEDERAL BUREAU OF PRISONS ET AL. C. A. 6th Cir. Certiorari denied.

No. 12–5661. MOORE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 839.

No. 12–5688. GILLISPIE *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 12–5708. CELIO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 755.

No. 12–5817. COOPER *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 468 Fed. Appx. 977.

No. 12–5820. CHAMPNEY *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 469 Fed. Appx. 113.

No. 12–5824. S. J. *v.* MENTAL HEALTH BOARD OF THE FOURTH JUDICIAL DISTRICT. Sup. Ct. Neb. Certiorari denied. Reported below: 283 Neb. 507, 810 N. W. 2d 720.

No. 12–5842. GARCIA-RAMIREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 331.

No. 12–5945. DAVIDSON *v.* TENNESSEE;
No. 12–5963. THOMAS *v.* TENNESSEE; and
No. 12–6685. COBBINS *v.* TENNESSEE. Sup. Ct. Tenn. Certiorari denied.

No. 12–5948. CARTHEN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 681 F. 3d 94.

No. 12–5959. COOK *v.* REINKE, DIRECTOR, IDAHO DEPARTMENT OF CORRECTION. C. A. 9th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 110.

No. 12–5982. CRAWFORD *v.* EVERHOME MORTGAGE CO. Sup. Ct. Fla. Certiorari denied. Reported below: 97 So. 3d 822.

No. 12–6006. SCOTT *v.* U. S. BANK N. A. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 269.

No. 12–6024. JOHNSON *v.* ARIZONA. Super. Ct. Ariz., County of Maricopa. Certiorari denied.

No. 12–6028. CASTILLO-GAMEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 859.

No. 12–6053. DECASTRO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 682 F. 3d 160.

No. 12–6084. HILL *v.* MISSOURI. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 365 S. W. 3d 603.

No. 12–6092. CLAWSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 12–6205. POST *v.* PINEDA, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–6222. HACKWORTH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 972.

No. 12–6223. HERNANDEZ-OCHOA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 332.

No. 12–6265. MUDLOCK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 823.

No. 12–6278. PAGAN *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 12–6327. PARR *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 872.

No. 12–6342. MARTINEZ-FLORES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 566.

No. 12–6348. ROMERO *v.* CALIFORNIA. Ct. App. Cal., 3d App. Dist. Certiorari denied. Reported below: 204 Cal. App. 4th 704, 139 Cal. Rptr. 3d 167.

No. 12–6350. JINWRIGHT ET VIR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 683 F. 3d 471.

No. 12–6386. YOUNG *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 12–6440. MCCOSKEY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 143.

No. 12–6531. LIVINGSTON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 53 Cal. 4th 1145, 274 P. 3d 1132.

No. 12–6532. NEAL *v.* BRIDGE, INC., ET AL. Ct. Civ. App. Ala. Certiorari denied. Reported below: 143 So. 3d 875.

No. 12–6570. ELLERBEE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 87 So. 3d 730.

No. 12–6575. GUESS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 832.

No. 12–6584. GRANDISON *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 425 Md. 34, 38 A. 3d 352.

No. 12–6635. LEWIS *v.* BROWARD COUNTY SCHOOL BOARD ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 489 Fed. Appx. 297.

No. 12–6647. ROBINSON *v.* NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 486 Fed. Appx. 905.

No. 12–6649. REFINE *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 2012 IL App (4th) 100516–U.

No. 12–6654. BELANUS *v.* CHANDLER ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–6657. VALLADOLID *v.* SHERRY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–6658. WEBB *v.* WEBB. Ct. App. Tenn. Certiorari denied.

No. 12–6660. VANWINKLE *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 230 Ariz. 387, 285 P. 3d 308.

No. 12–6663. ROSS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–6664. MCCARTHY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 898.

No. 12–6665. MOORE *v.* WOODS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–6670. ASHMORE *v.* ASHMORE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 485 Fed. Appx. 597.

No. 12–6671. BURROWS *v.* CURTIN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–6672. BUFORD *v.* HOREL ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–6677. WASHINGTON *v.* VIRGA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–6678. NAILS *v.* FOLEY. C. A. 11th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 870.

No. 12–6680. BONILLAS *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 12–6683. WILLIAMS *v.* ALABAMA ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–6688. BEN-SHOLOM *v.* AYERS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 674 F. 3d 1095.

No. 12–6691. NOURN *v.* LATTIMORE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–6693. MENCHACA *v.* URIBE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–6696. WARREN *v.* QUADA ET AL. C. A. 5th Cir. Certiorari denied.

No. 12–6697. TOWBRIDGE *v.* TACKER ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 402.

No. 12–6704. BRENT *v.* WAYNE COUNTY DEPARTMENT OF HUMAN SERVICES ET AL. Ct. App. Mich. Certiorari denied.

No. 12–6708. WILLIAMS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 12–6715. BIRDETTE *v.* CAPITOL ONE BANK, N. A., ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–6716. BIRDETTE *v.* CBE GROUP, VERIZON WIRELESS. C. A. 11th Cir. Certiorari denied.

No. 12–6717. BIRDETTE ET UX. *v.* BANK OF AMERICA. C. A. 11th Cir. Certiorari denied.

No. 12–6719. WEAVER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 53 Cal. 4th 1056, 273 P. 3d 546.

No. 12–6721. RALEIGH *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 95 So. 3d 211.

No. 12–6722. BLACK *v.* TERRELL, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 12–6724. MOHAMMED *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 12–6731. SEBASTIAN *v.* MACLAREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–6732. CRAIG *v.* GROUNDS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–6746. WOODALL *v.* NEOTTI, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–6756. CALLOWAY *v.* SANDOR, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 833.

No. 12–6757. MAXWELL *v.* CAPOZZA, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT PITTSBURGH, ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–6758. BOURG *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2011–2766 (La. 7/27/12), 93 So. 3d 599.

No. 12–6762. TERRY *v.* WARREN, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–6765. WILDER *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 12–6766. ANDERSON *v.* OLDHAM, SHERIFF, SHELBY COUNTY, TENNESSEE. C. A. 6th Cir. Certiorari denied.

No. 12–6767. ARMSTRONG *v.* BENITO. C. A. 9th Cir. Certiorari denied.

No. 12–6769. ALLEN *v.* ZAVARAS ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 411.

No. 12–6770. BOWMAN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 12–6771. PRINCE, AKA BURNIE *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 86 App. Div. 3d 579, 927 N. Y. S. 2d 599.

No. 12–6773. FRASER ET UX. *v.* GMAC MORTGAGE ET AL. Sup. Ct. N. J. Certiorari denied.

No. 12–6776. GALLUZZO *v.* COOK, FKA GALLUZZO. Ct. App. Ohio, Champaign County. Certiorari denied. Reported below: 2012-Ohio-502.

No. 12–6777. GARRETT *v.* MICHIGAN DEPARTMENT OF CORRECTIONS. C. A. 6th Cir. Certiorari denied.

No. 12–6778. HUGHES *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 815 N. W. 2d 602.

No. 12–6790. HOFFMAN *v.* LEE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 158.

No. 12–6791. MICHAU *v.* WARDEN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 335.

No. 12–6796. NOEL *v.* GUERRERO ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 666.

No. 12–6798. GERRARA *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 88 App. Div. 3d 811, 930 N. Y. S. 2d 646.

No. 12–6799. FORD *v.* MCKESSON (three judgments). C. A. 5th Cir. Certiorari denied.

No. 12–6804. PORTER *v.* SAUVE ET AL. C. A. 2d Cir. Certiorari denied.

No. 12–6806. BRAYBOY *v.* NAPEL, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–6809. REED *v.* HENSE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–6811. SHULICK *v.* MICHIGAN ET AL. C. A. 6th Cir. Certiorari denied.

No. 12–6813. BABAYEVA *v.* NEW YORK CITY HEALTH AND HOSPITALS CORPORATION. C. A. 2d Cir. Certiorari denied.

No. 12–6815. SCOTT *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2011 IL App (1st) 093277–U.

No. 12–6817. RICO SIERRA *v.* COLORADO. Ct. App. Colo. Certiorari denied.

No. 12–6818. SPENCER *v.* CHRONES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–6822. MARSHALL *v.* RUDEK, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 486 Fed. Appx. 717.

No. 12–6823. TANKESLY *v.* MILLS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 491 Fed. Appx. 649.

No. 12–6830. JUNIOUS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 12–6832. RIGGLEMAN *v.* UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 394.

No. 12–6839. MANSFIELD *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 679 F. 3d 1301.

No. 12–6840. ECKLIN *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 12–6841. CROSBY *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 9th Cir. Certiorari denied. Reported below: 489 Fed. Appx. 166.

No. 12–6843. PATTERSON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 37 A. 3d 1240.

No. 12–6844. PACE-WHITE *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 12–6846. PUGH *v.* OLDE PINK HOUSE RESTAURANT. Ct. App. Ga. Certiorari denied.

No. 12–6850. SANDERS *v.* TILTON, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 118.

No. 12–6851. HAMILTON *v.* CHICAGO INSURANCE CO. C. A. 10th Cir. Certiorari denied.

No. 12–6852. THOMAS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 54 Cal. 4th 908, 281 P. 3d 361.

No. 12–6854. RHODES *v.* VARANO, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT COAL TOWNSHIP, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 472 Fed. Appx. 146.

No. 12–6857. BURTON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 12–6858. TOWBRIDGE *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 12–6861. SEXTON *v.* COZNER, SUPERINTENDENT, MACLAREN YOUTH CORRECTIONAL FACILITY. C. A. 9th Cir. Certiorari denied. Reported below: 679 F. 3d 1150.

No. 12–6864. NAKAMURA *v.* COUNTY OF LOS ANGELES, CALIFORNIA, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–6866. PLANCARTE *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–6870. TOLIVER *v.* DUWEL ET AL. Ct. App. Ohio, Montgomery County. Certiorari denied. Reported below: 2012-Ohio-846.

No. 12–6874. PEEDE *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 94 So. 3d 500.

No. 12–6875. SANFORD *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 202.

No. 12–6882. THREET *v.* HOWES, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–6888. MILLER *v.* GRAHAM, SUPERINTENDENT, AUBURN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 12–6889. ARCENEAUX *v.* TEXAS. Ct. App. Tex., 10th Dist. Certiorari denied.

No. 12–6890. LEWIS *v.* SHERIFF'S DEPARTMENT, BOSSIER PARISH, LOUISIANA, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 809.

No. 12–6899. ARDILA-CALDERON *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 97 So. 3d 229.

No. 12–6902. JOHNSON *v.* BRITISH PETROLEUM OF AMERICA. C. A. 9th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 206.

No. 12–6904. LYONS *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 96 So. 3d 901.

No. 12–6907. POLITE *v.* MILLER, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 985.

No. 12–6912. BRUEDERLE *v.* METROPOLITAN GOVERNMENT OF LOUISVILLE AND JEFFERSON COUNTY, KENTUCKY, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 687 F. 3d 771.

No. 12–6919. LIGGINS *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–6922. CODY *v.* BUTERA ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–6926. JENNINGS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 91 So. 3d 132.

No. 12–6931. WILLIAMS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 684 F. 3d 597.

No. 12–6933. MIDDLETON *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 313 Ga. App. 193, 721 S. E. 2d 111.

No. 12–6936. AVILA ET AL. *v.* UNITED STATES;
No. 12–7153. BELL *v.* UNITED STATES;
No. 12–7154. HARDEN *v.* UNITED STATES;
No. 12–7155. BASKIN *v.* UNITED STATES;
No. 12–7156. BATTISTE *v.* UNITED STATES;
No. 12–7172. DOWNS *v.* UNITED STATES;
No. 12–7173. DENMARK *v.* UNITED STATES;
No. 12–7174. DANIELS *v.* UNITED STATES;
No. 12–7177. CRUMBLY *v.* UNITED STATES;
No. 12–7182. LAMAR *v.* UNITED STATES;
No. 12–7184. JOHNSON *v.* UNITED STATES;
No. 12–7185. LLOYD *v.* UNITED STATES;

No. 12–7186. JENKINS *v.* UNITED STATES;
No. 12–7187. SCOTT *v.* UNITED STATES;
No. 12–7188. SULLIVAN *v.* UNITED STATES;
No. 12–7189. SMITH *v.* UNITED STATES;
No. 12–7190. STILLING, AKA STILLINGS *v.* UNITED STATES;
No. 12–7191. SMITH *v.* UNITED STATES;
No. 12–7192. KNIGHT *v.* UNITED STATES;
No. 12–7193. JELKS *v.* UNITED STATES;
No. 12–7196. MILLS *v.* UNITED STATES;
No. 12–7199. MCGRAW *v.* UNITED STATES;
No. 12–7200. MURPHY *v.* UNITED STATES;
No. 12–7202. BELL *v.* UNITED STATES;
No. 12–7220. MOORE *v.* UNITED STATES;
No. 12–7244. BELLOTT *v.* UNITED STATES;
No. 12–7285. MANN *v.* UNITED STATES; and
No. 12–7286. SINGLETARY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 486 Fed. Appx. 756.

No. 12–6938. AL-QAISI *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 474 Fed. Appx. 776.

No. 12–6939. MINH DUNG NGUYEN *v.* LEVITAS. Sup. Ct. S. D. Certiorari denied. Reported below: 821 N. W. 2d 244.

No. 12–6940. SHERRATT *v.* UTAH BOARD OF PARDONS AND PAROLE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 534.

No. 12–6943. KNOX *v.* MORGAN ET AL. Sup. Ct. Okla. Certiorari denied.

No. 12–6944. DAVIS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 94 So. 3d 500.

No. 12–6947. JONES *v.* LOUISIANA BOARD OF PAROLE ET AL. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 2011–0756 (La. App. 1 Cir. 11/9/11), 90 So. 3d 550.

No. 12–6950. STARKS *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–6958. MUHAMMAD *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 12–6959. MIXON *v.* CHARLOTTE MECKLENBURG SCHOOLS. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 271.

No. 12–6960. MITCHELL *v.* KENWORTHY, ADMINISTRATOR, TABOR CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 308.

No. 12–6962. JONES *v.* UNIVERSITY OF ROCHESTER. C. A. 2d Cir. Certiorari denied.

No. 12–6963. KNOX *v.* WALKER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–6964. JONES *v.* MISSOURI. Sup. Ct. Mo. Certiorari denied.

No. 12–6965. JOHNSON *v.* MERCER, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 12–6966. TAWADROUS *v.* DEPARTMENT OF THE TREASURY. C. A. Fed. Cir. Certiorari denied. Reported below: 477 Fed. Appx. 735.

No. 12–6967. WARREN *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–6970. BAYENE *v.* FARMLAND FOODS, INC. C. A. 8th Cir. Certiorari denied.

No. 12–6977. POTTS *v.* WALKER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–6978. BROWN *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 12–6980. BUTTS *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 50.

No. 12–6981. BECK *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 715.

No. 12–6983. DESMOND *v.* DELAWARE. Sup. Ct. Del. Certiorari denied. Reported below: 49 A. 3d 1192.

No. 12–6984. CASTRO *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 43 A. 3d 528.

No. 12–6986. BIRDETTE *v.* CHASE RECEIVABLES ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–6991. HODGES *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 94 So. 3d 498.

No. 12–6993. MANLEY *v.* WOLVEN. C. A. 6th Cir. Certiorari denied.

No. 12–6994. JIVIDEN *v.* APPLEGATE ET AL. C. A. 6th Cir. Certiorari denied.

No. 12–6995. PERRY *v.* REYNOLDS, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 916.

No. 12–6996. BIRDETTE ET VIR *v.* AMERICAN HOME SHIELD ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–6998. WILSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 686 F. 3d 868.

No. 12–7000. BARTHOLOMEW *v.* PASADENA TOURNAMENT OF ROSES ASSN., INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 453 Fed. Appx. 745.

No. 12–7004. HOFFMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 793.

No. 12–7005. BROWN *v.* SOUTH CAROLINA. Ct. App. S. C. Certiorari denied.

No. 12–7015. GLADDEN *v.* SOLIS, SECRETARY OF LABOR. C. A. 3d Cir. Certiorari denied. Reported below: 490 Fed. Appx. 411.

No. 12–7021. SHEPARD *v.* BAKER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 811.

No. 12–7022. GERBER *v.* ISABELLA GERIATRIC CENTER, INC. C. A. 2d Cir. Certiorari denied.

No. 12–7023. MITCHELL *v.* NEVEN, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 205.

No. 12–7025. MOBLEY *v.* GEORGIA. Super. Ct. Clayton County, Ga. Certiorari denied.

No. 12–7026. PARRISH *v.* YATES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 314.

No. 12–7029. WASHINGTON *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–7031. MOYA-FELICIANO *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–7035. LUCAS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 682 F. 3d 1342.

No. 12–7037. EFFIOM *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 322.

No. 12–7038. CANNON *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 12–7041. COLEMAN *v.* HARDY, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 690 F. 3d 811.

No. 12–7047. REED *v.* BROWN, WARDEN. Super. Ct. Richmond County, Ga. Certiorari denied.

No. 12–7056. GONZALES *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 54 Cal. 4th 1234, 281 P. 3d 834.

No. 12–7062. FREDERICK *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 472.

No. 12–7069. RAYNER *v.* MILLS, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 685 F. 3d 631.

No. 12–7072. RANDOLPH *v.* TEXACO INC. ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 416.

No. 12–7074. GARRAWAY *v.* SAMUELS, DIRECTOR, FEDERAL BUREAU OF PRISONS, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 490 Fed. Appx. 440.

No. 12–7094. CAGNO *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 211 N. J. 488, 49 A. 3d 388.

No. 12–7109. BENSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 686 F. 3d 498.

No. 12–7111. ECHOLS *v.* WARREN, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 492 Fed. Appx. 301.

No. 12–7126. TOBAR *v.* MCEWEN, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–7130. ALLEN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 100 So. 3d 1146.

No. 12–7135. THACKER *v.* WORKMAN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 678 F. 3d 820.

No. 12–7136. TURNER *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 91 So. 3d 784.

No. 12–7143. MEADOR *v.* BRANSON. C. A. 8th Cir. Certiorari denied. Reported below: 688 F. 3d 433.

No. 12–7169. FLOURNOY *v.* SMALL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 681 F. 3d 1000.

No. 12–7179. ROBERSON *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 314.

No. 12–7181. STALLNACKER *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 12–7206. BELLAMY, AKA EVANS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 492 Fed. Appx. 418.

No. 12–7214. HOBBS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–7216. FLINT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 876.

No. 12–7218. PICKENS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 676 F. 3d 1264.

No. 12–7219. PHILLIPS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 500 Fed. Appx. 721.

No. 12–7224. MURRAY *v.* ALMAGER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–7225. GARNER *v.* MEDINA, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 177.

No. 12–7230. CHAO LIN FENG *v.* BARTKOWSKI ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–7231. GRIFFIN *v.* UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA. C. A. 11th Cir. Certiorari denied.

No. 12–7232. PRESTON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 685 F. 3d 685.

No. 12–7233. MORRIS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 486 Fed. Appx. 853.

No. 12–7234. NOVAK *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–7235. WOODS *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 492 Fed. Appx. 112.

No. 12–7236. VILLABONA-ALVARADO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 12–7239. MOBLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 687 F. 3d 625.

No. 12–7241. VASQUEZ-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 896.

No. 12–7245. BERMUDEZ *v.* UNEMPLOYMENT COMPENSATION BOARD OF REVIEW. Commw. Ct. Pa. Certiorari denied.

No. 12–7246. BALLARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 491 Fed. Appx. 374.

No. 12–7248. JOHNSON *v.* HORTON. C. A. 5th Cir. Certiorari denied.

No. 12–7249. KENEMORE *v.* ROY, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 690 F. 3d 639.

No. 12–7251. DAVIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 690 F. 3d 127.

No. 12–7257. BROWN *v.* GRAY, COMMANDANT, UNITED STATES DISCIPLINARY BARRACKS, FORT LEAVENWORTH. C. A. 10th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 502.

No. 12–7265. SANCHEZ-MONTES *v.* BENOV, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–7269. WASHINGTON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 12–7271. LEGRAND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 771.

No. 12–7272. LOVE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–7273. MORRIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 574.

No. 12–7279. CASTANEDA-JIMENEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 189.

No. 12–7282. PIERRE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 486 Fed. Appx. 59.

No. 12–7291. BELL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 843.

No. 12–7295. CARAWAY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 473 Fed. Appx. 88.

No. 12–7298. NAMER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–7300. MAI *v.* MCGRATH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 491 Fed. Appx. 818.

No. 12–7301. JENKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 492 Fed. Appx. 363.

No. 12–7303. MALONE *v.* MERIT SYSTEMS PROTECTION BOARD. C. A. Fed. Cir. Certiorari denied. Reported below: 494 Fed. Appx. 58.

No. 12–7304. MANGUAL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 937.

No. 12–7305. WINES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 691 F. 3d 599.

No. 12–7306. VASQUEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 486 Fed. Appx. 830.

No. 12–7307. WIDI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–7308. WIDI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 684 F. 3d 216.

No. 12–7311. BRYANT *v.* SHEAHAN, SUPERINTENDENT, FIVE POINTS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 12–7312. BASKERVILLE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 492 Fed. Appx. 254.

No. 12–7314. VEGA PADRON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 17.

No. 12–7319. ELKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 495 Fed. Appx. 330.

No. 12–7322. JEFFERSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 589.

No. 12–7324. SUMRALL *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 690 F. 3d 42.

No. 12–7326. CARDENAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 334.

No. 12–7329. PAWLOWSKI *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 682 F. 3d 205.

No. 12–7333. BRIGGS *v.* GROUNDS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 682 F. 3d 1165.

No. 12–7335. BERNEGGER *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF MISSISSIPPI. C. A. 5th Cir. Certiorari denied.

No. 12–7342. PORTILLO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 195.

No. 12–7343. PIZZINO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 501 Fed. Appx. 535.

No. 12–7344. JONES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 689 F. 3d 696.

No. 12–7346. SAUNDERS *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 32 A. 3d 826.

No. 12–7366. CHANEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 493 Fed. Appx. 448.

No. 12–7367. SAPONG *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–7368. RUIZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–7370. WHITFIELD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 12–7371. ZIMMERMAN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 199.

No. 12–7375. TEXIDORE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 339.

No. 12–7377. RODRIGUEZ-HERNANDEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 337.

No. 12–7378. STEPHEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 486 Fed. Appx. 804.

No. 12–7383. ALLARD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 486 Fed. Appx. 474.

No. 12–7384. ARCHIBALD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 685 F. 3d 553.

No. 12–7387. MCCOY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 495 Fed. Appx. 774.

No. 12–7393. VALDES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–7399. ROEMMELE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 395 Fed. Appx. 652.

No. 12–7400. FRAZIER *v.* FARMON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–7401. GRAJEDA-GONZALEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 960.

No. 12–7404. FLEMING *v.* WOLFE. C. A. 8th Cir. Certiorari denied.

No. 12–7405. GAMBILL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 492 Fed. Appx. 427.

No. 12–7407. FLETCHER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 499 Fed. Appx. 228.

No. 12–7408. FLEMING *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 687 F. 3d 207.

No. 12–7411. FAULK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 464.

No. 12–7414. ASTACIO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–7415. URIBE-QUINTERO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 150.

No. 12–7416. MARSHALL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 895.

No. 12–7419. SINGLETARY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 336.

No. 12–7425. BOLAR *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 876.

No. 12–7427. FURLOW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 358.

No. 12–7428. FOGG *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 12–7431. SHIPPLEY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 690 F. 3d 1192.

No. 12–7440. POWELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 693 F. 3d 398.

No. 12–7443. BARADJI *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 301.

No. 12–7446. CAMPBELL *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 480 Fed. Appx. 610.

No. 12–7447. CRUZ-GREGORIO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 369.

No. 12–7452. YOUNG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 689 F. 3d 941.

No. 12–7453. ORTIZ VASQUEZ *v.* KNIPP, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–7456. KOSCHUK *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 480 Fed. Appx. 616.

No. 12–7462. NWANKWOALA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 781.

No. 12–7463. BUCKUSE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 495 Fed. Appx. 246.

No. 12–7466. RODRIGUEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–7472. BARRON-GALVAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 795.

No. 12–7474. ALVAREZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 20.

No. 12–7475. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 454.

No. 12–7481. BATTLE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 404.

No. 12–7485. YOUNG *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 496 Fed. Appx. 570.

No. 12–7488. CHATMAN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 487 Fed. Appx. 769.

No. 12–7489. RAMOS *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 695 F. 3d 1035.

No. 12–7490. VALENZUELA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 492 Fed. Appx. 765.

No. 12–7492. POWDRILL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–7493. LOMAX *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 493 Fed. Appx. 437.

No. 12–7496. LOCKE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 643 F. 3d 235.

No. 12–7501. CARTER ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 695 F. 3d 690.

No. 12–7502. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–7505. STOKES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–7507. STARKS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–7519. SYLVESTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–7520. WELCH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 683 F. 3d 1304.

No. 12–7522. PARISEAU *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 685 F. 3d 1129.

No. 12–7523. JOHNSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 19.

No. 12–7528. CHRISTIE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 475 Fed. Appx. 385.

No. 12–7529. ASLAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 649.

No. 12–7532. HILL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 518.

No. 12–7533. HARRISON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 699 F. 3d 158.

No. 12–7534. GRUMMER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 667.

No. 12–7539. ADAME-WILSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 205.

No. 12–7541. JOSEPH *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 12–7544. PEOPLES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 698 F. 3d 185.

No. 12–7550. SHEPHARD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 495 Fed. Appx. 553.

No. 12–7551. SEIVER *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 692 F. 3d 774.

No. 12–7554. JACQUES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 684 F. 3d 324.

No. 12–7555. JONES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 696 F. 3d 695.

No. 12–7560. MILLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 12–7562. WIGENTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 557.

No. 12–7564. THOMPSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 838.

No. 12–7565. TURNQUEST *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 497 Fed. Appx. 155.

No. 12–7566. VALENCIA DIAZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 492 Fed. Appx. 726.

No. 12–7567. COSMO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 497 Fed. Appx. 100.

No. 12–7569. BARNES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 693 F. 3d 261.

No. 12–7570. ARENAS-LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 171.

No. 12–311. REAL TRUTH ABOUT ABORTION, INC., FKA REAL TRUTH ABOUT OBAMA, INC. *v.* FEDERAL ELECTION COMMISSION ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 681 F. 3d 544.

No. 12–445. ESSO STANDARD OIL CO. *v.* TRILLA PINERO ET AL. Sup. Ct. P. R. Motion of Puerto Rico Manufacturers Association for leave to file brief as *amicus curiae* granted. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this motion and this petition.

No. 12–465. WALKER *v.* FEDERAL EXPRESS CORP. ET AL. C. A. 6th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 492 Fed. Appx. 559.

No. 12–554. HARR *v.* BRODHEAD ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition. Reported below: 475 Fed. Appx. 15.

No. 12–636. PNC BANK, N. A. *v.* BAPTISTA. Dist. Ct. App. Fla., 5th Dist. Motion of Fifth Third Bank for leave to file brief as *amicus curiae* granted. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this motion and this petition. Reported below: 91 So. 3d 230.

No. 12–5436. HALL *v.* CAIN, WARDEN. C. A. 5th Cir. Motion of Ethics Bureau at Yale for leave to file brief as *amicus curiae* granted. Certiorari denied.

No. 12–6076. HUGHES *v.* CHEVRON PHILLIPS CHEMICAL CO. LP ET AL. C. A. 5th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 478 Fed. Appx. 167.

No. 12–6615. TRINIDAD Y GARCIA *v.* THOMAS, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 683 F. 3d 952.

No. 12–6910. BROWN *v.* FLORIDA DEPARTMENT OF CORRECTIONS ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–6999. BIRDETTE *v.* FIRSTSOURCE ADVANTAGE, LLC, ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 12–7146. JOHNSON *v.* UNITED STATES;
No. 12–7175. DANIELS *v.* UNITED STATES;
No. 12–7176. WILSON *v.* UNITED STATES;
No. 12–7183. LEE *v.* UNITED STATES;
No. 12–7198. MONROE *v.* UNITED STATES; and
No. 12–7410. HOLMES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of these petitions. Reported below: 486 Fed. Appx. 756.

No. 12–7380. MUNOZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–7429. SALIM *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR and JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 690 F. 3d 115.

No. 12–7464. BROWN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–7500. MILLER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–7556. LEONARD *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

Rehearing Denied

No. 11–1464. WHITE *v.* MERCADO ET AL., *ante*, p. 822;
No. 11–1495. WHITE *v.* CITY OF WAUKEGAN, ILLINOIS, ET AL., *ante*, p. 824;

No. 11–10082. WADDLETON *v.* TEXAS, *ante*, p. 832;

No. 11–10112. MURRAY *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 833;

No. 11–10278. PERRY *v.* TEXAS, *ante*, p. 838;

No. 11–10368. BOULDS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 841;

No. 11–10401. FLEMING *v.* FLORIDA, *ante*, p. 842;

No. 11–10429. MOSLEY *v.* BOWDEN ET AL., *ante*, p. 843;

No. 11–10576. HARDING *v.* OSBORN, JUDGE, CIRCUIT COURT OF VIRGINIA, 10TH JUDICIAL CIRCUIT, *ante*, p. 849;

No. 11–10692. LAWN *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 962;

No. 11–10727. NEAL *v.* FLORIDA, *ante*, p. 858;

No. 11–10746. GRAUBERGER *v.* DOOLEY, WARDEN, *ante*, p. 860;

No. 11–10750. REED *v.* FLORIDA PAROLE COMMISSION, *ante*, p. 860;

No. 11–10755. STRICKLAND *v.* RRR BOWIE, LLC, *ante*, p. 860;

No. 11–10805. WHITMORE *v.* HILL ET AL., *ante*, p. 863;

No. 11–10889. IN RE SCOTT, *ante*, p. 811;

No. 11–10946. DUNN *v.* EDMONDS ET AL., *ante*, p. 870;

No. 11–10995. IN RE HICKINGBOTTOM, *ante*, p. 811;

No. 11–11030. GARZA *v.* KANSAS, *ante*, p. 875;

No. 11–11085. DODD *v.* BOARD OF EDUCATION, BRUNSWICK COUNTY SCHOOLS, *ante*, p. 878;

No. 11–11137. HAMPTON *v.* CAIN, WARDEN, *ante*, p. 1026;

No. 12–180. JEWUSIAK *v.* SANDY KAYE CONDOMINIUM ASSN., INC., *ante*, p. 978;

No. 12–237. TRANCOS, INC. *v.* BALSAM, *ante*, p. 979;

No. 12–252. KULESA *v.* REX, *ante*, p. 979;

No. 12–253. IN RE FESSLER, *ante*, p. 977;

No. 12–395. SPEAR *v.* MONTANA ET AL., *ante*, p. 999;

No. 12–5057. LADEAIROUS *v.* SUPREME COURT OF VIRGINIA, *ante*, p. 892;

No. 12–5108. VETETO *v.* SUPREME COURT OF ALABAMA ET AL., *ante*, p. 895;

No. 12–5276. JUDY *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL., *ante*, p. 904;

No. 12–5310. LACHIRA *v.* SUTTON LAND LLC ET AL., *ante*, p. 906;

No. 12–5392. BOWEN *v.* BOWEN, *ante*, p. 910;

No. 12–5534. SCHAD *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, *ante*, p. 945;

No. 12–5588. COKE *v.* NEW YORK, *ante*, p. 947;

No. 12–5687. GERHARTZ *v.* PUGH, WARDEN, *ante*, p. 921;

No. 12–5783. LOMAX *v.* DAVIS, WARDEN, ET AL., *ante*, p. 965;

No. 12–5784. VONDAL *v.* FRINK, WARDEN, ET AL., *ante*, p. 965;

No. 12–5807. CHERER *v.* FRAZIER ET AL., *ante*, p. 966;

No. 12–5809. KENDRICK *v.* CAVANAUGH ET AL., *ante*, p. 966;

No. 12–5828. JOHNSON *v.* CALIFORNIA (two judgments), *ante*, p. 966;

No. 12–5886. FROST *v.* F & R REALTY TRUST ET AL., *ante*, p. 983;

No. 12–5900. PHILLIPS *v.* UNITED STATES ET AL., *ante*, p. 952;

No. 12–5931. BARGO *v.* UNITED STATES, *ante*, p. 926;

No. 12–6011. CASWELL *v.* LAVALLEY, SUPERINTENDENT, CLINTON CORRECTIONAL FACILITY, *ante*, p. 985;

No. 12–6068. DAVIS *v.* UNITED STATES POSTAL SERVICE ET AL., *ante*, p. 987;

No. 12–6072. REYES *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION, *ante*, p. 1000;

No. 12–6091. BIRDETTE *v.* SUPERIOR COURT OF GEORGIA, DOUGLAS COUNTY, *ante*, p. 987;

No. 12–6113. HIMMELREICH *v.* FEDERAL BUREAU OF PRISONS ET AL., *ante*, p. 987;

No. 12–6164. STURMAN *v.* UNITED STATES, *ante*, p. 957;

No. 12–6166. D. M. *v.* NEW JERSEY DIVISION OF YOUTH AND FAMILY SERVICES, *ante*, p. 988;

No. 12–6221. HITCHCOCK *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 988;

No. 12–6231. PARKER *v.* UNITED STATES, *ante*, p. 969;

No. 12–6247. DANIELS *v.* JONES, WARDEN, *ante*, p. 1001;

No. 12–6256. VANN *v.* GILBERT ET AL., *ante*, p. 988;

No. 12–6290. SIMS *v.* PRESKA, CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, *ante*, p. 988;

No. 12–6301. LUELLEN *v.* UNITED STATES, *ante*, p. 989;
No. 12–6330. IN RE ROSA, *ante*, p. 977;
No. 12–6457. STATON *v.* REYNOLDS, WARDEN, *ante*, p. 1002;
No. 12–6518. BAEZ *v.* UNITED STATES, *ante*, p. 994; and
No. 12–6633. IN RE SINGLETON, *ante*, p. 997. Petitions for rehearing denied.

No. 12–159. WILLIAMS ET UX. *v.* JPMORGAN CHASE BANK ET AL., *ante*, p. 959. Petition for rehearing denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 12–5101. ROLLNESS *v.* UNITED STATES, *ante*, p. 932;
No. 12–5938. PEER *v.* UNITED STATES, *ante*, p. 935; and
No. 12–5944. CESAL *v.* CROSS, WARDEN, *ante*, p. 935. Petitions for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of these petitions.

No. 12–5606. CREAMER *v.* ESIS CLAIMS UNIT ET AL., *ante*, p. 934; and
No. 12–5833. CREAMER *v.* SMITH COUNTY SHERIFF'S DEPARTMENT, *ante*, p. 966. Motions for leave to file petitions for rehearing denied.

JANUARY 8, 2013

Miscellaneous Order

No. 11–338. DECKER, OREGON STATE FORESTER, ET AL. *v.* NORTHWEST ENVIRONMENTAL DEFENSE CENTER; and
No. 11–347. GEORGIA-PACIFIC WEST, INC., ET AL. *v.* NORTHWEST ENVIRONMENTAL DEFENSE CENTER. C. A. 9th Cir. [Certiorari granted, 567 U. S. 933.] Motion of petitioners in No. 11–338 for leave to file supplemental brief after argument granted. Other parties to these cases and the Solicitor General may file supplemental briefs, not to exceed 3,000 words each, addressing the effect of the Environmental Protection Agency's amendment to its stormwater-discharge rule on or before Tuesday, January 22, 2013. JUSTICE BREYER took no part in the consideration or decision of this motion.

JANUARY 11, 2013

Certiorari Granted

No. 11–1221. HILLMAN *v.* MARETTA. Sup. Ct. Va. Certiorari granted. Reported below: 283 Va. 34, 722 S. E. 2d 32.

No. 12–246. SALINAS *v.* TEXAS. Ct. Crim. App. Tex. Certiorari granted. Reported below: 369 S. W. 3d 176.

No. 12–357. SEKHAR *v.* UNITED STATES. C. A. 2d Cir. Certiorari granted. Reported below: 683 F. 3d 436.

No. 11–798. AMERICAN TRUCKING ASSNS., INC. *v.* CITY OF LOS ANGELES, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari granted limited to Questions 1 and 3 presented by the petition. Reported below: 660 F. 3d 384.

No. 12–10. AGENCY FOR INTERNATIONAL DEVELOPMENT ET AL. *v.* ALLIANCE FOR OPEN SOCIETY INTERNATIONAL, INC., ET AL. C. A. 2d Cir. Certiorari granted. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 651 F. 3d 218.

No. 12–418. UNITED STATES *v.* KEBODEAUX. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 687 F. 3d 232.

JANUARY 14, 2013

Certiorari Dismissed

No. 12–7059. CANNON *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 12–7103. SHAHIN *v.* DELAWARE DEPARTMENT OF TRANSPORTATION. 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. 12–7104. SHAHIN *v.* WILMINGTON TRUST. 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. 12–7105. SHAHIN *v.* VISALLI 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. 12–7106. SHAHIN *v.* E. I. DU PONT DE NEMOURS & CO. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. JUSTICE ALITO took no part in the consideration or decision of this motion and this petition.

No. 12–7107. SHAHIN *v.* DELAWARE DEPARTMENT OF TRANSPORTATION. 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. 12–7110. BACON *v.* GEISSINGER ET AL. Sup. Ct. Nev. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 128 Nev. 881, 381 P. 3d 591.

No. 12–7228. FAISON *v.* KAISER ALUMINUM CORP. ET AL. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 12–7337. SHAHIN *v.* GLEN. 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. 12–7339. SHAHIN *v.* E. I. DU PONT DE NEMOURS & CO. C. A. 3d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. JUSTICE ALITO took no part in the consideration or decision of this motion and this petition.

Miscellaneous Orders

No 12M71. MARQUIS *v.* U. S. BANK N. A.;

No. 12M72. CHRISTIAN *v.* FRANK;

No. 12M74. CHANDLER *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, ET AL.;

No. 12M75. COUGHLIN *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.; and

No. 12M77. WALKER *v.* CAIN, WARDEN. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 12M73. C. B. *v.* WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES ET AL. Motion for leave to file petition for writ of certiorari with supplemental appendix under seal granted.

No. 12–71. ARIZONA ET AL. *v.* INTER TRIBAL COUNCIL OF ARIZONA, INC., ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 962.] Motion of Jesus M. Gonzalez et al. to correct case caption denied.

No. 12–99. UNITE HERE LOCAL 355 *v.* MULHALL ET AL.; and
No. 12–312. MULHALL ET AL. *v.* UNITE HERE LOCAL 355. C. A. 11th Cir.; and
No. 12–300. PFIZER INC. *v.* LAW OFFICES OF PETER G. ANGELOS. C. A. 2d Cir. The Solicitor General is invited to file briefs in these cases expressing the views of the United States.

No. 12–736. SIBLEY *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Motion of petitioner to expedite consideration of petition for writ of certiorari denied.

No. 12–6292. SANDERS *v.* DETROIT POLICE DEPARTMENT ET AL. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1022] denied.

No. 12–6972. BATISTA *v.* UNITED STATES. C. A. 2d Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1047] denied.

No. 12–7144. MUTHUKUMAR *v.* UNIVERSITY OF TEXAS AT DALLAS. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until February 4, 2013, 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. 12–7827. IN RE LICON; and
No. 12–7846. IN RE HERNANDEZ. Petitions for writs of habeas corpus denied.

No. 12–7876. IN RE SCHMIDT. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 12–557. In re Smith et ux.;
No. 12–7260. In re O'Leary;
No. 12–7294. In re Hien Anh Dao;
No. 12–7457. In re Johnson;
No. 12–7625. In re Denham; and
No. 12–7724. In re Adetiloye. Petitions for writs of mandamus denied.

No. 12–7222. In re Gregory. Petition for writ of mandamus and/or prohibition denied.

Certiorari Denied

No. 12–119. Miller *v.* California. Ct. App. Cal., 5th App. Dist. Certiorari denied. Reported below: 202 Cal. App. 4th 1450, 136 Cal. Rptr. 3d 529.

No. 12–210. Easton *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 71 M. J. 168.

No. 12–222. Oravec *v.* Cole, Individually and as Personal Representative of the Estate of Bearcrane, et al. C. A. 9th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 687.

No. 12–223. Chafee, Governor of Rhode Island *v.* United States et al.; and
No. 12–230. Pleau *v.* United States et al. C. A. 1st Cir. Certiorari denied. Reported below: 680 F. 3d 1.

No. 12–235. Thomsen *v.* Stantec, Inc. C. A. 2d Cir. Certiorari denied. Reported below: 483 Fed. Appx. 620.

No. 12–402. Rates Technology, Inc. *v.* Speakeasy, Inc., et al. C. A. 2d Cir. Certiorari denied. Reported below: 685 F. 3d 163.

No. 12–407. Bass Pro Outdoor World, LLC *v.* Kelly. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 368 S. W. 3d 244.

No. 12–410. Cluck *v.* Union Pacific Railroad Co. Sup. Ct. Mo. Certiorari denied. Reported below: 367 S. W. 3d 25.

No. 12–421. Wood *v.* Whealen, Individually and as Personal Representative of the Estate of Wood, Deceased.

Ct. App. Wash. Certiorari denied. Reported below: 164 Wash. App. 1031.

No. 12–470. Alexander, Secretary, Pennsylvania Department of Public Welfare, et al. *v.* Lewis et al. C. A. 3d Cir. Certiorari denied. Reported below: 685 F. 3d 325.

No. 12–477. Duke Energy International, Inc., et al. *v.* Williams et al. C. A. 6th Cir. Certiorari denied. Reported below: 681 F. 3d 788.

No. 12–514. Mylan Pharmaceuticals Inc. et al. *v.* Eurand, Inc., nka Aptalis Pharmatech, Inc., et al. C. A. Fed. Cir. Certiorari denied. Reported below: 676 F. 3d 1063.

No. 12–537. McKay *v.* Chicago Transit Authority. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2011 IL App (1st) 101561–U.

No. 12–538. Jordan *v.* Supreme Court of Louisiana. Sup. Ct. La. Certiorari denied. Reported below: 2012–0551 (La. 4/9/12), 85 So. 3d 683.

No. 12–548. Robb et vir *v.* Rahi Real Estate Holdings LLC et al. C. A. 11th Cir. Certiorari denied.

No. 12–555. Morgan *v.* Union Pacific Railroad Co. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 368 S. W. 3d 219.

No. 12–556. Santiago Perez *v.* Rozum, Superintendent, State Correctional Institution at Somerset, et al. C. A. 3d Cir. Certiorari denied. Reported below: 488 Fed. Appx. 656.

No. 12–568. Pierson *v.* Orlando Health, fka Orlando Regional Healthcare Systems, Inc., et al. C. A. 11th Cir. Certiorari denied. Reported below: 451 Fed. Appx. 862.

No. 12–569. Stora Enso North America *v.* Parliament Paper, Inc., et al. C. A. 2d Cir. Certiorari denied. Reported below: 690 F. 3d 51.

No. 12–571. Apotex, Inc., et al. *v.* Otsuka Pharmaceutical Co., Ltd. C. A. Fed. Cir. Certiorari denied. Reported below: 678 F. 3d 1280.

No. 12–576. JOHNSON *v.* BRYANT ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 105.

No. 12–578. JURIS *v.* INAMED CORP. ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 685 F. 3d 1294.

No. 12–581. ALLEN *v.* CLP CORP., DBA MCDONALD'S. C. A. 11th Cir. Certiorari denied. Reported below: 460 Fed. Appx. 845.

No. 12–582. KERR *v.* JOHNS HOPKINS UNIVERSITY. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 246.

No. 12–583. DANENBERG *v.* GEORGIA. Sup. Ct. Ga. Certiorari denied. Reported below: 291 Ga. 439, 729 S. E. 2d 315.

No. 12–587. GRYNBERG ET AL. *v.* IVANHOE ENERGY, INC., ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 86.

No. 12–590. EMERICK *v.* PRELESNIK, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 491 Fed. Appx. 639.

No. 12–591. KOLOSKY *v.* DAVIS, CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA. C. A. 8th Cir. Certiorari denied.

No. 12–592. MARCAVAGE *v.* BOROUGH OF LANSDOWNE, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 493 Fed. Appx. 301.

No. 12–596. MITRANO *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 12–597. AMERICAN TIMBER & STEEL CO. *v.* IVEY ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 102 So. 3d 347.

No. 12–598. LFP, INC. *v.* BALSLEY, AKA BOSLEY, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 691 F. 3d 747.

No. 12–602. MICHAEL MOTORS CO. INC. *v.* DEALER COMPUTER SERVICES, INC. C. A. 5th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 724.

No. 12–608. KEENAN *v.* FIRST CALIFORNIA BANK. C. A. 9th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 190.

No. 12–610. BALLARD *v.* LEVENS ET UX. Sup. Ct. Mont. Certiorari denied. Reported below: 366 Mont. 544.

No. 12–624. ASKEW *v.* TRUSTEES OF THE GENERAL ASSEMBLY OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH INC. ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 684 F. 3d 413.

No. 12–626. PRINCE *v.* SOLIS, SECRETARY OF LABOR, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 773.

No. 12–645. JONES *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 691 F. 3d 730.

No. 12–647. CASTILLO *v.* TEXAS. Ct. App. Tex., 4th Dist. Certiorari denied.

No. 12–655. SMITH *v.* NEW YORK. C. A. 2d Cir. Certiorari denied. Reported below: 494 Fed. Appx. 138.

No. 12–674. TRANSACTION HOLDINGS, LTD., ET AL. *v.* KAPPOS, DIRECTOR, PATENT AND TRADEMARK OFFICE, ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 484 Fed. Appx. 469.

No. 12–675. CARPENTER *v.* GAGE ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 686 F. 3d 644.

No. 12–687. WORTHINGTON CYLINDER CORP. *v.* ROMIG. Ct. App. Ohio, Tuscarawas County. Certiorari denied. Reported below: 2012-Ohio-321.

No. 12–693. MORRISON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 686 F. 3d 94.

No. 12–702. HEAP *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–703. ANDERSON *v.* ASTRAZENECA, L. P. C. A. 8th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 427.

No. 12–709. FERGUSON *v.* REPUBLIC OF TRINIDAD AND TOBAGO ET AL. Cir. Ct. Miami-Dade County, Fla. Certiorari denied.

No. 12–733. MCTIERNAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 695 F. 3d 882.

No. 12–5107. Rodriguez Velazquez *v.* Weinman et al. C. A. 11th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 806.

No. 12–5319. Histon *v.* Chappell, Warden. C. A. 9th Cir. Certiorari denied.

No. 12–5435. Milovanovic et al. *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 678 F. 3d 713.

No. 12–5656. Romero *v.* Apker, Warden. C. A. 9th Cir. Certiorari denied.

No. 12–5699. McKelvey *v.* Rivera, Warden. C. A. 4th Cir. Certiorari denied. Reported below: 406 Fed. Appx. 709.

No. 12–5768. Youree *v.* Tamez, Warden. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 387.

No. 12–6067. Clark *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 802.

No. 12–6306. Chavarria *v.* Hamlet, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 749.

No. 12–6382. Peak *v.* Webb, Warden. C. A. 6th Cir. Certiorari denied. Reported below: 673 F. 3d 465.

No. 12–6641. Yacaman Meza *v.* Holder, Attorney General, et al. C. A. 11th Cir. Certiorari denied. Reported below: 693 F. 3d 1350.

No. 12–6754. Cobb *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied. Reported below: 682 F. 3d 364.

No. 12–7019. Edwards *v.* Scutt, Warden. C. A. 6th Cir. Certiorari denied.

No. 12–7034. Cox *v.* Biscoe et al. C. A. 5th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 225.

No. 12–7036. Koon *v.* South Carolina. Sup. Ct. S. C. Certiorari denied.

No. 12–7040. Carrillo *v.* Crews, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 546.

No. 12–7044. Johnson *v.* Ohio. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 2012-Ohio-1344.

No. 12–7045. Janoe *v.* State Bar of California. Sup. Ct. Cal. Certiorari denied.

No. 12–7046. Forney *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 86 So. 3d 1113.

No. 12–7053. Adeleke *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 12–7054. Boother *v.* Florida Department of Corrections et al. C. A. 11th Cir. Certiorari denied.

No. 12–7058. McCormick *v.* Brzezinski et al. C. A. 6th Cir. Certiorari denied.

No. 12–7061. Hardy *v.* Arizona. Sup. Ct. Ariz. Certiorari denied. Reported below: 230 Ariz. 281, 283 P. 3d 12.

No. 12–7063. Falkinberg *v.* Falkinberg. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–7071. Shipp *v.* Illinois. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 12–7075. Howard *v.* Howard et al. C. A. 9th Cir. Certiorari denied.

No. 12–7076. Haddix *v.* Texas et al. C. A. 5th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 551.

No. 12–7085. Joseph *v.* Arizona. Sup. Ct. Ariz. Certiorari denied. Reported below: 230 Ariz. 296, 283 P. 3d 27.

No. 12–7093. Payton *v.* Perry. C. A. 6th Cir. Certiorari denied.

No. 12–7096. Potter *v.* Toei Animation Inc. et al. C. A. D. C. Cir. Certiorari denied.

No. 12–7101. BANKS *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 12–7117. REYES CAMPOS *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 816 N. W. 2d 480.

No. 12–7128. YOUNG *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–7129. ARMSTRONG *v.* REDDING PAROLE DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–7131. MCHENRY *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY, ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–7140. CAMPBELL ET AL. *v.* COUNTY OF MERCED, CALIFORNIA, ET AL. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 12–7145. YBARRA-JOHNSON ET AL. *v.* ARIZONA ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–7149. ANTONIO ANGEL *v.* BRAZELTON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–7150. BURE *v.* FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 515.

No. 12–7160. WILKINSON *v.* HOLLAND, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–7161. THOMAS *v.* DIAZ, ACTING WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–7180. QAMAR *v.* CENTRAL INTELLIGENCE AGENCY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 489 Fed. Appx. 393.

No. 12–7207. HURST *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–7208. HASSAN *v.* MARICOPA COUNTY SHERIFF'S OFFICE ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–7209. GARCIA, AKA AMOS *v.* DIAZ, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–7210. FELTON *v.* HALL. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 306.

No. 12–7212. GORBEY *v.* WEST VIRGINIA ET AL. Sup. Ct. App. W. Va. Certiorari denied.

No. 12–7213. GARRETT *v.* TEXAS. Ct. App. Tex., 6th Dist. Certiorari denied. Reported below: 998 S. W. 3d 307.

No. 12–7215. HOLT *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 166.

No. 12–7221. GIBSON *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 95 So. 3d 235.

No. 12–7226. GREER *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 12–7227. WIGGIN *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 165 Wash. App. 1022.

No. 12–7229. FANTAUZZI *v.* GLUNT, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE, ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–7240. MCPHERRON *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 43 A. 3d 523.

No. 12–7242. WILLIAMS *v.* THOMAS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 492 Fed. Appx. 732.

No. 12–7243. MARTINEZ *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 12–7252. ENTWISTLE *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 463 Mass. 205, 973 N. E. 2d 115.

No. 12–7253. CLARK *v.* PARKER ET AL. C. A. 6th Cir. Certiorari denied.

No. 12–7254. DAVIS *v.* SCRIBNER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–7255. SMITH *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–7256. MORSE *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–7259. MUHAMMAD *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 979.

No. 12–7261. MYCOFF *v.* FLORIDA ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–7262. PIZZOFERRATO *v.* TIBERI ET AL. C. A. 1st Cir. Certiorari denied.

No. 12–7263. MOORE *v.* FEDERAL BUREAU OF PRISONS. C. A. 5th Cir. Certiorari denied.

No. 12–7264. SANCHEZ *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2011 IL App (1st) 101113–U.

No. 12–7266. SIMMONS *v.* STEELE, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 12–7267. VALENTINE *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 12–7268. WHITERS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 144 So. 3d 524.

No. 12–7275. MCCALLISTER *v.* MCCALLISTER. Ct. Sp. App. Md. Certiorari denied. Reported below: 203 Md. App. 756.

No. 12–7276. DEAN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 12–7277. COLLYER *v.* FARRIS ET AL. Sup. Jud. Ct. Me. Certiorari denied.

No. 12–7278. CARTER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 12–7280. ORANGE *v.* LEBLANC, SECRETARY, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS. Ct. App.

La., 1st Cir. Certiorari denied. Reported below: 2011–1084 (La. App. 1 Cir. 12/21/11).

No. 12–7281. JOHNSON *v.* MAES ET AL. C. A. 5th Cir. Certiorari denied.

No. 12–7283. PLUMMER *v.* MICHIGAN. Ct. App. Mich. Certiorari denied. Reported below: 229 Mich. App. 293, 581 N. W. 2d 753.

No. 12–7284. PALECEK *v.* JONES, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 866.

No. 12–7287. ROBERTS *v.* THOMAS, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 677 F. 3d 1086.

No. 12–7288. BIRDETTE *v.* DISH NETWORK ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–7289. ALEXANDER *v.* GIPSON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–7290. BOYD *v.* LEE, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 12–7292. BEST *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied. Reported below: 92 App. Div. 3d 1162, 939 N. Y. S. 2d 159.

No. 12–7297. KY TAN LE *v.* SOCIAL SECURITY ADMINISTRATION. C. A. 4th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 466.

No. 12–7299. TABOR *v.* TERRELL, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 12–7302. LAMBERT *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 12–7309. WILSON *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 96 App. Div. 3d 34, 942 N. Y. S. 2d 93.

No. 12–7310. JIMENEZ *v.* ROWE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 181.

No. 12–7320. TRUJILLO *v.* FLORIDA. C. A. 11th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 598.

No. 12–7323. VASQUEZ ESCALANTE *v.* WATSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 694.

No. 12–7327. MENDOZA *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 128 Nev. 918, 381 P. 3d 641.

No. 12–7332. ALANIZ-DIAZ *v.* UNITED STATES (Reported below: 475 Fed. Appx. 990); and RODRIGUEZ-RAGA *v.* UNITED STATES (486 Fed. Appx. 476). C. A. 5th Cir. Certiorari denied.

No. 12–7341. MILLER *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 97 So. 3d 844.

No. 12–7358. TUCKER *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES. C. A. 3d Cir. Certiorari denied. Reported below: 487 Fed. Appx. 52.

No. 12–7359. PEREZ *v.* UNITED STATES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 203.

No. 12–7382. WILSON ET AL. *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 96 App. Div. 3d 34, 942 N. Y. S. 2d 93.

No. 12–7403. HAUGEN *v.* OREGON. Sup. Ct. Ore. Certiorari denied.

No. 12–7420. MOON, AKA LEWIS *v.* LEWIS. Sup. Ct. Okla. Certiorari denied.

No. 12–7421. HODGES *v.* PARKER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 493 Fed. Appx. 704.

No. 12–7423. GERMAN *v.* HOREL, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 810.

No. 12–7433. STANTON *v.* FRINK, WARDEN, ET AL. Sup. Ct. Mont. Certiorari denied. Reported below: 366 Mont. 545, 293 P. 3d 182.

No. 12–7451. QUOCHUY TRAN *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 12–7455. Lowery *v.* North Carolina. Ct. App. N. C. Certiorari denied. Reported below: 219 N. C. App. 151, 723 S. E. 2d 358.

No. 12–7465. Ruine *v.* New York. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied.

No. 12–7468. Lewis *v.* Uttecht, Superintendent, Coyote Ridge Corrections Center. C. A. 9th Cir. Certiorari denied.

No. 12–7477. Thirtle *v.* Gage, Warden. C. A. 8th Cir. Certiorari denied.

No. 12–7499. Parikh *v.* United Parcel Service et al. C. A. 3d Cir. Certiorari denied. Reported below: 491 Fed. Appx. 303.

No. 12–7506. Sierra *v.* Florida. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 94 So. 3d 609.

No. 12–7510. Rouse *v.* Romero, Warden. C. A. 10th Cir. Certiorari denied.

No. 12–7536. Ewell *v.* Scribner, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 891.

No. 12–7573. Lott *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 481 Fed. Appx. 711.

No. 12–7575. Marak *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 719.

No. 12–7578. Young *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 12–7584. Lentz *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 458 Fed. Appx. 272.

No. 12–7589. Brown *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 692 F. 3d 550.

No. 12–7590. Agu *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 491 Fed. Appx. 466.

No. 12–7591. Anglinmatumona *v.* Micron Corp. C. A. 4th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 633.

No. 12–7593. Daiga *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 797.

No. 12–7594. NORIEGA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 463.

No. 12–7601. WILKINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–7602. KLEIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 491 Fed. Appx. 493.

No. 12–7603. JONASSEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 12–7609. DIEHL-ARMSTRONG *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 504 Fed. Appx. 152.

No. 12–7613. GASTELLUM-CHAVEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 175.

No. 12–7616. FLORES-MEJIA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 687 F. 3d 1213.

No. 12–7618. HASTINGS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 685 F. 3d 724.

No. 12–7619. HARVEY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 53 A. 3d 1105.

No. 12–7624. EPPS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 467 Fed. Appx. 184.

No. 12–7635. BELL *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 12–7636. COMSTOCK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–7638. COMPTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 493 Fed. Appx. 435.

No. 12–7639. ESQUIVEL-PADILLA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–7643. CARRILLO-TORRES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 974.

No. 12–7646. ERWIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–7650. CREWS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 494 Fed. Appx. 240.

No. 12–7652. ALCANTARA-GARCIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 798.

No. 12–7653. ABDELBARY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 496 Fed. Appx. 273.

No. 12–7655. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 319.

No. 12–7658. ARREDONDO-MARTINEZ, AKA ARREDONDO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 492 Fed. Appx. 823.

No. 12–7664. MURPHY *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 491 Fed. Appx. 964.

No. 12–7665. REIBEL *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 3d 868.

No. 12–7673. BAKER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 497 Fed. Appx. 874.

No. 12–7674. ALAMILLO-SERNA, AKA ALAMILLO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 929.

No. 12–7675. RODRIGUEZ-RIOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 224.

No. 12–7678. SMOOT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 690 F. 3d 215.

No. 12–7679. RIGGINS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 12–7681. RUIZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–7684. BURGESS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 10.

No. 12–7686. WIGGINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 501 Fed. Appx. 408.

No. 12–7687. BELL *v.* HOLDER, ATTORNEY GENERAL, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 822.

No. 12–7689. KLINE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 323.

No. 12–7691. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 555.

No. 12–7694. PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 841.

No. 12–7696. EGBUFOR, AKA BUNIN, AKA MURPHY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 12–7697. BARNETT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 505 Fed. Appx. 400.

No. 12–7701. ABED *v.* THOMAS, WARDEN. C. A. 3d Cir. Certiorari denied. Reported below: 473 Fed. Appx. 106.

No. 12–7703. LEONARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 831.

No. 12–7707. MCCULLEN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 12–7710. CHAPPELL *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 691 F. 3d 388.

No. 12–7711. PARKER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 684.

No. 12–7713. PRUITT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–7715. WOODS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 28.

No. 12–7717. TOVAR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 691 F. 3d 954.

No. 12–7721. BUTLER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 496 Fed. Appx. 158.

No. 12–7722. ADESOYE, AKA OKUWA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–7725. NESBITT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 12–7726. DALE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 317.

No. 12–7730. JEAN-PHILLIPE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–7732. VALENCIA MENDOZA *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 691 F. 3d 954.

No. 12–7734. REID *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 461 Fed. Appx. 239.

No. 12–7744. VELASQUEZ-PENUELAS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 311.

No. 12–7749. GREENWELL *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 305.

No. 12–7752. EKANEM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–7754. CONTRERAS *v.* HOLLAND, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 287.

No. 12–7758. MARIN-CASTANO *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 3d 899.

No. 12–7759. KAMINSKY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 345.

No. 12–7760. PASSMORE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 503 Fed. Appx. 340.

No. 12–7765. GILBERT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 12–7767. SANCHEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 530.

No. 11–1078. GLAXOSMITHKLINE *v.* CLASSEN IMMUNOTHERAPIES, INC. C. A. Fed. Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 659 F. 3d 1057.

No. 12–278. MARCEAU ET AL. *v.* BLACKFEET HOUSING AUTHORITY ET AL. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 473 Fed. Appx. 764.

No. 12–373. REPUBLICAN NATIONAL COMMITTEE ET AL. *v.* DEMOCRATIC NATIONAL COMMITTEE ET AL. C. A. 3d Cir. Motion of Colorado Republican Committee for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 673 F. 3d 192.

No. 12–401. KIMBERLY-CLARK CORP. ET AL. *v.* ALABAMA DEPARTMENT OF REVENUE. Ct. Civ. App. Ala. Motions of Tax Executives Institute, Inc., and Council on State Taxation et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 95 So. 3d 820.

No. 12–458. W. L. GORE & ASSOCIATES, INC. *v.* C. R. BARD, INC., ET AL. C. A. Fed. Cir. Motions of Ananda M. Chakrabarty and E. I. du Pont de Nemours & Co. et al. for leave to file briefs as *amici curiae* granted. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of these motions and this petition. Reported below: 682 F. 3d 1003 and 476 Fed. Appx. 747.

No. 12–633. BIGIO ET AL. *v.* COCA-COLA CO. ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 675 F. 3d 163.

No. 12–5508. ROBINSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 669 F. 3d 767.

No. 12–7459. JEFFUS *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–7487. PELULLO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–7582. MUNGIN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consid-

eration or decision of this petition. Reported below: 470 Fed. Appx. 49.

No. 12–7586. MACKEY *v.* GRABER, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–7615. GIESWEIN *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 495 Fed. Appx. 944.

No. 12–7641. CANDIA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–7661. ROBINSON, AKA PITTS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 474 Fed. Appx. 934.

Rehearing Denied

No. 11–10646. L. F. *v.* CUYAHOGA COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, *ante*, p. 853;

No. 11–11155. COX *v.* HOWERTON, WARDEN, *ante*, p. 1010;

No. 12–405. STARR *v.* UNITED STATES, *ante*, p. 999;

No. 12–406. FLORIMONTE *v.* BOROUGH OF DALTON, PENNSYLVANIA, *ante*, p. 1048;

No. 12–5117. HONARMAND *v.* J. C. PENNEY, *ante*, p. 896;

No. 12–5584. SMITH *v.* MONROE ET AL., *ante*, p. 947;

No. 12–5739. MIZUKAMI *v.* EDWARDS ET AL., *ante*, p. 1042;

No. 12–5860. SWISHER *v.* LEVENHAGEN, SUPERINTENDENT, WESTVILLE CORRECTIONAL FACILITY, *ante*, p. 982;

No. 12–5930. MCKINNEY *v.* SHEETS, WARDEN, *ante*, p. 984;

No. 12–6118. GATHER *v.* OKLAHOMA ARMY NATIONAL GUARD ET AL., *ante*, p. 1013;

No. 12–6137. BENSON *v.* LUTTRELL, SHERIFF, SHELBY COUNTY, TENNESSEE, ET AL., *ante*, p. 1013;

No. 12–6191. DAVENPORT *v.* MCLAUGHLIN, WARDEN, *ante*, p. 1014;

No. 12–6224. TRAMMELL *v.* SMART ET AL., *ante*, p. 1014;

No. 12–6244. SADLOWSKI *v.* TOWN OF MIDDLEFIELD, *ante*, p. 1015;

No. 12–6279. JOHNSON *v.* HENDRICK AUTOMOTIVE GROUP ET AL., *ante,* p. 1001;

No. 12–6338. MORRIS *v.* CROSS ET AL., *ante,* p. 1015;

No. 12–6361. BOLES *v.* NEWTH ET AL., *ante,* p. 1002;

No. 12–6419. WILLIAMS *v.* DANFORTH, WARDEN, *ante,* p. 1034;

No. 12–6426. ADETILOYE *v.* UNITED STATES, *ante,* p. 992;

No. 12–6430. ASHFORD *v.* WENEROWICZ, WARDEN, ET AL., *ante,* p. 1034;

No. 12–6516. IN RE SWISHER, *ante,* p. 976; and

No. 12–6588. DICKINSON *v.* OCWEN LOAN SERVICING, LLC, ET AL., *ante,* p. 1069. Petitions for rehearing denied.

No. 11–11102. GAREY *v.* UNITED STATES, *ante,* p. 1041. Petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

JANUARY 16, 2013

Miscellaneous Order

No. 12A706. GLEASON *v.* PEARSON, WARDEN. Application for stay of execution of sentence of death, presented to THE CHIEF JUSTICE, and by him referred to the Court, denied.

JANUARY 18, 2013

Certiorari Granted

No. 12–158. BOND *v.* UNITED STATES. C. A. 3d Cir. Certiorari granted. Reported below: 681 F. 3d 149.

No. 12–484. UNIVERSITY OF TEXAS SOUTHWESTERN MEDICAL CENTER *v.* NASSAR. C. A. 5th Cir. Certiorari granted. Reported below: 674 F. 3d 448.

No. 12–547. METRISH, WARDEN *v.* LANCASTER. C. A. 6th Cir. Certiorari granted. Reported below: 683 F. 3d 740.

No. 12–79. CHADBOURNE & PARKE LLP *v.* TROICE ET AL.;

No. 12–86. WILLIS OF COLORADO INC. ET AL. *v.* TROICE ET AL.; and

No. 12–88. PROSKAUER ROSE LLP *v.* TROICE ET AL. C. A. 5th Cir. Motions of Breazeale, Sachse & Wilson, LLP, and DRI–The Voice of the Defense Bar for leave to file briefs as *amici curiae* granted. Certiorari in No. 12–79 granted limited to Ques-

tion 1 presented by the petition. Certiorari in No. 12–86 granted. Certiorari in No. 12–88 granted limited to Question 1 presented by the petition. Cases consolidated, and a total of one hour is allotted for oral argument. Reported below: 675 F. 3d 503.

JANUARY 22, 2013

Certiorari Granted—Vacated and Remanded

No. 12–130. LEMELLE *v.* ST. CHARLES GAMING CO., INC. Ct. App. La., 3d Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Lozman* v. *Riviera Beach*, *ante*, p. 115. Reported below: 2011–255 (La. App. 3 Cir. 1/4/12), 118 So. 3d 1.

Certiorari Dismissed

No. 12–7476. WATTLETON *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 12–7548. BACON *v.* EIGHTH JUDICIAL DISTRICT COURT OF NEVADA, CLARK COUNTY, ET AL. Sup. Ct. Nev. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. Reported below: 128 Nev. 881, 381 P. 3d 591.

No. 12–7610. DAVIS *v.* CLARK ET AL. C. A. 10th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 12–7623. CADOGAN *v.* WARREN, WARDEN. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. D–2693. IN RE DISBARMENT OF KIRSHENBAUM. Disbarment entered. [For earlier order herein, see *ante*, p. 938.]

No. D–2694. In re Disbarment of Barker. Disbarment entered. [For earlier order herein, see *ante*, p. 938.]

No. D–2695. In re Disbarment of Payne. Disbarment entered. [For earlier order herein, see *ante*, p. 938.]

No. D–2696. In re Disbarment of Nnaka. Disbarment entered. [For earlier order herein, see *ante*, p. 938.]

No. D–2697. In re Disbarment of Prem. Disbarment entered. [For earlier order herein, see *ante*, p. 939.]

No. 12M78. Rocco *v.* Bickell, Superintendent, State Correctional Institution at Huntingdon, et al.; and

No. 12M79. Haynes *v.* Donahoe, Postmaster General. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 11–1545. City of Arlington, Texas, et al. *v.* Federal Communications Commission et al.; and

No. 11–1547. Cable, Telecommunications, and Technology Committee of the New Orleans City Council *v.* Federal Communications Commission et al. C. A. 5th Cir. [Certiorari granted, *ante*, p. 936.] Motion of EMR Policy Institute for leave to file reply brief on the merits denied.

No. 12–6842. Cloke *v.* Adams et al. C. A. 6th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1047] denied.

No. 12–7913. In re James. Petition for writ of habeas corpus denied.

No. 12–628. In re Tabb;

No. 12–742. In re Lewis; and

No. 12–6269. In re Muthukumar. Petitions for writs of mandamus denied.

Certiorari Denied

No. 11–1155. Blue Cross & Blue Shield of Montana, Inc. *v.* Fossen et al. C. A. 9th Cir. Certiorari denied. Reported below: 660 F. 3d 1102.

No. 11–1535. Mendez *v.* Anadarko Petroleum Corp. et al. C. A. 5th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 316.

No. 11–10604. NESTOR *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 674 F. 3d 192.

No. 12–250. PECORE ET AL. *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 664 F. 3d 1125.

No. 12–264. MCFATRIDGE *v.* WHITLOCK ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 682 F. 3d 567.

No. 12–268. BRUSH *v.* SEARS HOLDING CORP., DBA SEARS, ROEBUCK & CO. C. A. 11th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 781.

No. 12–270. MAYE *v.* HAYNES, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 458 Fed. Appx. 878.

No. 12–381. BERRIOS *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 676 F. 3d 118.

No. 12–409. CHIROPRACTIC & SPORTS INJURY CENTER OF CREVE COEUR, P. C. *v.* ALL AMERICAN PAINTING, L. L. C. Ct. App. Mo., Eastern Dist. Certiorari denied. Reported below: 368 S. W. 3d 244.

No. 12–447. BROOKS ET AL. *v.* ARTHUR. C. A. 4th Cir. Certiorari denied. Reported below: 685 F. 3d 367.

No. 12–482. BAGDIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 488 Fed. Appx. 593.

No. 12–489. VAN STRAATEN *v.* SHELL OIL PRODUCTS CO., LLC, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 678 F. 3d 486.

No. 12–510. ASARCO LLC *v.* ENVIRONMENTAL PROTECTION AGENCY ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 686 F. 3d 803.

No. 12–525. CHINA TERMINAL & ELECTRIC CORP. ET AL. *v.* WILLEMSEN, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF WILLEMSEN, ET AL. Sup. Ct. Ore. Certiorari denied. Reported below: 352 Ore. 191, 282 P. 3d 867.

No. 12–605. KIM *v.* RITTER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 493 Fed. Appx. 787.

No. 12–606. MALCOLM *v.* HONEOYE FALLS-LIMA CENTRAL SCHOOL DISTRICT. C. A. 2d Cir. Certiorari denied. Reported below: 483 Fed. Appx. 660.

No. 12–611. REILLY *v.* TXU BUSINESS SERVICES CO. C. A. 5th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 731.

No. 12–614. MCLEAN ET AL. *v.* RAY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 677.

No. 12–616. JAR CHEN WANG *v.* PLASMART, INC. C. A. Fed. Cir. Certiorari denied. Reported below: 482 Fed. Appx. 568.

No. 12–621. SHERMAN *v.* ILLINOIS ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 682 F. 3d 643.

No. 12–630. PIGEE *v.* QUIGLEY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–634. ALEX SOLOMON FAMILY LIMITED PARTNERSHIP ET AL. *v.* BAYVIEW LOAN SERVICING, LLC. Ct. App. Ohio, Cuyahoga County. Certiorari denied. Reported below: 2011-Ohio-6168.

No. 12–640. BENDER *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied.

No. 12–670. HARARI ET AL. *v.* HOLLMER ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 681 F. 3d 1351.

No. 12–734. MEZU *v.* MORGAN STATE UNIVERSITY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 495 Fed. Appx. 286.

No. 12–738. DOOL ET AL. *v.* BURKE ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 497 Fed. Appx. 782.

No. 12–740. SMITH *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–5140. MONTGOMERY *v.* CALIFORNIA WORKERS' COMPENSATION APPEALS BOARD ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–5306. MOORE *v.* FEDERAL BUREAU OF PRISONS. C. A. 5th Cir. Certiorari denied.

No. 12–5941. MORGAN *v.* BERKEBILE, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 205.

No. 12–6095. PARKS *v.* STATE OF GEORGIA SEXUAL OFFENDER REGISTRATION REVIEW BOARD. Super. Ct. Fulton County, Ga. Certiorari denied.

No. 12–6129. MCKINNON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 681 F. 3d 203.

No. 12–6230. DEYTON ET AL. *v.* KELLER, SECRETARY, NORTH CAROLINA DEPARTMENT OF CORRECTION, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 682 F. 3d 340.

No. 12–6349. BIGESBY *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 685 F. 3d 1060.

No. 12–6522. EDWARDS ET UX. *v.* EDMONDSON, TRUSTEE OF THE JEWELL EDMONDSON TESTAMENTARY TRUST. C. A. 8th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 405.

No. 12–6529. DIRE ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 680 F. 3d 446.

No. 12–6576. SAID ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 680 F. 3d 374.

No. 12–6605. LEAL-VEGA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 680 F. 3d 1160.

No. 12–6825. ANORVE-VERDUZCO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 119.

No. 12–6880. JACKSON *v.* ROBINSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 681 F. 3d 753.

No. 12–6988. WOMACK *v.* UNITED STATES; and
No. 12–7547. WOMACK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 925.

No. 12–7014. HOWARD *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 12–7296. NORDSTROM *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 230 Ariz. 110, 280 P. 3d 1244.

No. 12–7334. BRAUNSTEIN *v.* COX, DIRECTOR, NEVADA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–7340. LINDENSMITH *v.* JEROME ET AL. C. A. 6th Cir. Certiorari denied.

No. 12–7345. LANCASTER *v.* CITY OF RENO, NEVADA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 774.

No. 12–7347. RICHMOND *v.* COLALASURE ET AL. C. A. 7th Cir. Certiorari denied.

No. 12–7360. MOORE *v.* CURTIN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–7361. PATTERSON *v.* ARIZONA. Sup. Ct. Ariz. Certiorari denied. Reported below: 230 Ariz. 270, 283 P. 3d 1.

No. 12–7363. JOHNSON *v.* ORANGE COUNTY, VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 769.

No. 12–7365. AYALA *v.* LEE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 12–7369. TUCKER *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 12–7373. MORGAN *v.* MARSHALL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–7381. MUHAMMAD *v.* STAPLETON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 849.

No. 12–7385. COOK *v.* HUMPHREY, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 677 F. 3d 1133.

No. 12–7386. BROWN *v.* NEBRASKA. C. A. 8th Cir. Certiorari denied.

No. 12–7389. THOMPSON *v.* CONNECTICUT. Sup. Ct. Conn. Certiorari denied. Reported below: 305 Conn. 412, 45 A. 3d 605.

No. 12–7392. AITKEN *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 12–7426. HUEBLER *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 128 Nev. 192, 275 P. 3d 91.

No. 12–7442. BOWER *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 12–7445. CATALANO *v.* COLSON, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 493 Fed. Appx. 696.

No. 12–7450. HUY TROUNG BUI *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 12–7454. TONG XIONG *v.* FELKER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 681 F. 3d 1067.

No. 12–7458. JAMES *v.* UNITED STATES SECRET SERVICE ET AL. C. A. D. C. Cir. Certiorari denied.

No. 12–7484. TAYLOR *v.* REILLY ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 685 F. 3d 1110.

No. 12–7494. WILLACY *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 90 So. 3d 822.

No. 12–7531. FOXWORTH *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 96 So. 3d 17.

No. 12–7558. NEAL *v.* BOOKER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 497 Fed. Appx. 445.

No. 12–7561. MCBRIDE *v.* GLUNT, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HOUTZDALE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 687 F. 3d 92.

No. 12–7572. AVILEZ *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 82 Mass. App. 1104, 969 N. E. 2d 749.

No. 12–7587. CONCEPCION *v.* GROUNDS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–7606. WERTH *v.* BRAZELTON, ACTING WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 493 Fed. Appx. 900.

No. 12–7617. GRAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 692 F. 3d 514.

No. 12–7629. WILLIAMS *v.* UNITED STATES; and
No. 12–7783. ANDERSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 557.

No. 12–7640. DANIEL *v.* RAPELJE, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–7660. DEER *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 175 Wash. 2d 725, 287 P. 3d 539.

No. 12–7676. MONTGOMERY *v.* MCQUIGGIN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–7695. LEWIS *v.* DISTRICT OF COLUMBIA ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 476 Fed. Appx. 461.

No. 12–7750. HARRIS *v.* ATCHISON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 12–7755. MCCOY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 493 Fed. Appx. 767.

No. 12–7762. PATTERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 684 F. 3d 794.

No. 12–7770. BAKER *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 496 Fed. Appx. 201.

No. 12–7780. STONE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–7782. RIGGS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 493 Fed. Appx. 401.

No. 12–7784. AMBROSE ET AL. *v.* BOOKER, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 684 F. 3d 638.

No. 12–7787. LOZANO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 555.

No. 12–7790. ESTRADA ROSAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 493 Fed. Appx. 857.

No. 12–7791. DORTCH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 696 F. 3d 1104.

No. 12–7792. CARTER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 449.

No. 12–7793. COLLINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 493 Fed. Appx. 418.

No. 12–7799. PINEDA-MORENO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 688 F. 3d 1087.

No. 12–7813. MASSIE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 940.

No. 12–7815. MARTINEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–7820. METCALF *v.* SEXTON, WARDEN. Ct. Crim. App. Tenn. Certiorari denied.

No. 12–7821. PRATT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 845.

No. 12–7828. ROMO-CHAVEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 681 F. 3d 955.

No. 12–7829. CORTES-SALAZAR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 682 F. 3d 953.

No. 12–7859. KIEFFER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 681 F. 3d 1143.

No. 12–7865. HENRY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 688 F. 3d 637.

No. 12–7866. GLOVER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–7875. QUILLER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 308.

No. 12–7879. DENSON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 689 F. 3d 21.

No. 12–7884. ISRAEL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–7891. QUINONES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–215. CITY OF NEW YORK, NEW YORK, ET AL. *v.* SOUTHERLAND ET AL. C. A. 2d Cir. Motion of National Association of Social Workers et al. for leave to file brief as *amici curiae* granted. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this motion and this petition. Reported below: 680 F. 3d 127.

No. 12–618. ZAMIARA ET AL. *v.* KING. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 680 F. 3d 686.

No. 12–625. MACENTEE *v.* IBM (INTERNATIONAL BUSINESS MACHINES). C. A. 2d Cir. Certiorari denied. JUSTICE BREYER and JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 471 Fed. Appx. 49.

No. 12–753. DEDAJ *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. 12–7808. RICHARDS ET AL. *v.* UNITED STATES; and
No. 12–7861. HARRIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of these petitions. Reported below: 488 Fed. Appx. 216.

No. 12–7814. JACKSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

Rehearing Denied

No. 11–10718. MARTIN *v.* TEXAS, *ante*, p. 1026;
No. 12–316. IN RE LIPIN, *ante*, p. 1025;
No. 12–450. MULERO *v.* THOMPSON, WARDEN, *ante*, p. 1029;
No. 12–5412. HARRIS *v.* QCA HEALTH PLAN, INC., *ante*, p. 1030;
No. 12–6240. DAVIS *v.* MCLAUGHLIN, WARDEN, *ante*, p. 1015;
No. 12–6537. MCCLAIN *v.* UNITED STATES, *ante*, p. 1003; and
No. 12–6604. RHETT *v.* HUDSON COUNTY CHILD SUPPORT UNIT ET AL., *ante*, p. 1070. Petitions for rehearing denied.

No. 12–6323. LINDSAY *v.* BOEING NORTH AMERICA, INC., ET AL., *ante*, p. 1020. Petition for rehearing denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

No. 12–6894. DEGLACE *v.* JARVIS, WARDEN, *ante*, p. 1042. Petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

JANUARY 25, 2013

Dismissal Under Rule 46

No. 12–642. GUREGHIAN ET AL. *v.* PHILADELPHIA NEWSPAPERS, LLC, ET AL. C. A. 3d Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 690 F. 3d 161.

FEBRUARY 6, 2013

Miscellaneous Order

No. 12A769. HEALTHBRIDGE MANAGEMENT, LLC, ET AL. *v.* KREISBERG, REGIONAL DIRECTOR OF REGION 34 OF THE NATIONAL LABOR RELATIONS BOARD, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD. D. C. Conn. Application for stay, presented to JUSTICE SCALIA, and by him referred to the Court, denied. JUSTICE ALITO took no part in the consideration or decision of this application.

FEBRUARY 15, 2013

Miscellaneous Orders

No. 11–796. BOWMAN *v.* MONSANTO CO. ET AL. C. A. Fed. Cir. [Certiorari granted, *ante*, p. 936.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted, and the time is divided as follows: 30 minutes for petitioner, 10 minutes for the Solicitor General, and 30 minutes for respondents.

No. 11–10362. MILLBROOK *v.* UNITED STATES. C. A. 3d Cir. [Certiorari granted, 567 U. S. 968.] Motion of the Solicitor General for divided argument granted.

No. 12–96. SHELBY COUNTY, ALABAMA *v.* HOLDER, ATTORNEY GENERAL, ET AL. C. A. D. C. Cir. [Certiorari granted, *ante*,

p. 1006.] Motion of respondents Bobby Pierson et al. for divided argument granted.

No. 12–133. American Express Co. et al. *v.* Italian Colors Restaurant et al. C. A. 2d Cir. [Certiorari granted, *ante*, p. 1006.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Justice Sotomayor took no part in the consideration or decision of this motion.

No. 12–207. Maryland *v.* King. Ct. App. Md. [Certiorari granted, *ante*, p. 1006.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

February 19, 2013

Certiorari Dismissed

No. 12–7483. Birdette *v.* CIGPF I Corp. 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. 12–7607. Dumont *v.* Bassett Medical Center et al. C. A. 2d Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 12–7680. Reviere *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. 12–7756. McCarthy *v.* Davis et al. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

No. 12–7825. Birdette et ux. *v.* Lithia Christian Academy. 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. 12–7934. McBroom *v.* Safford et al. Ct. App. Ohio, Franklin County. 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: 2012-Ohio-1919.

No. 12–7990. Williams *v.* United States. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 12A568 (12–42). Germalic *v.* New York State Board of Elections Commissioners, *ante*, p. 884. Application for leave to file petition for rehearing in excess of word limits, addressed to Justice Alito and referred to the Court, denied.

No. 12A578. Jiau *v.* United States. Application for bail, addressed to Justice Sotomayor and referred to the Court, denied.

No. 12A585. Pavlock *v.* United States. C. A. 4th Cir. Application for stay, addressed to Justice Sotomayor and referred to the Court, denied.

No. 12A600. Hedges et al. *v.* Obama, President of the United States, et al. Application to vacate stay, addressed to Justice Scalia and referred to the Court, denied.

No. 12A606. Noonan et al. *v.* Bowen, Secretary of State of California. Sup. Ct. Cal. Application for stay, addressed to The Chief Justice and referred to the Court, denied.

No. 12A712. Kwasnik *v.* Federal National Mortgage Association. Sup. Jud. Ct. Me. Application for stay, addressed to The Chief Justice and referred to the Court, denied.

No. D–2648. In re Disbarment of Goldblatt. Disbarment entered. [For earlier order herein, see 566 U. S. 933.]

No. D–2692. In re Roth. Clifford R. Roth, of Otisville, 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 October 9, 2012 [*ante,* p. 938], is discharged.

No. D–2698. IN RE DISBARMENT OF OSMOND. Disbarment entered. [For earlier order herein, see *ante,* p. 1023.]

No. D–2699. IN RE DISBARMENT OF TEITELBAUM. Disbarment entered. [For earlier order herein, see *ante,* p. 1023.]

No. D–2705. IN RE DISCIPLINE OF ERICKSON. Theresa Marie Erickson, of Poway, Cal., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring her to show cause why she should not be disbarred from the practice of law in this Court.

No. D–2706. IN RE DISCIPLINE OF ALLEN. Paul Shearman Allen, of Washington, D. C., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2707. IN RE DISCIPLINE OF WEIGEL. Joseph W. Weigel, of Milwaukee, Wis., 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. 12M80. SANTAMARIA *v.* KNOWLIN, WARDEN;

No. 12M81. HARDIN *v.* MONROE COUNTY, FLORIDA, ET AL.;

No. 12M82. CHEVALIER *v.* NEW YORK ET AL.;

No. 12M83. GLENN *v.* KANE ET AL.;

No. 12M84. LAROCHE *v.* FISHER ET AL.;

No. 12M85. FRENGLER *v.* GENERAL MOTORS ET AL.;

No. 12M86. LEPESKA *v.* FLORIDA DEPARTMENT OF CORRECTIONS ET AL.;

No. 12M87. INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION NUMBER 164, AFL–CIO *v.* U. S. INFORMATION SYSTEMS, INC.;

No. 12M89. MAYARD *v.* SIEGFRIED;

No. 12M90. FRANKLIN, ADMINISTRATRIX OF THE ESTATE OF FRANKLIN *v.* GARDEN STATE LIFE INSURANCE ET AL.; and

No. 12M91. BIERI *v.* CORDONNIER, JUDGE, CIRCUIT COURT OF MISSOURI, GREENE COUNTY. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 12M88. POLYPORE INTERNATIONAL, INC. *v.* FEDERAL TRADE COMMISSION. Motion for leave to file petition for writ of certiorari with appendix under seal with redacted copies for the public record granted.

No. 12M92. PHILLIPS *v.* MISSOURI DEPARTMENT OF CORRECTIONS ET AL. Motion for leave to proceed as a veteran denied.

No. 11–1518. BULLOCK *v.* BANKCHAMPAIGN, N. A. C. A. 11th Cir. [Certiorari granted, *ante*, p. 977.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 12–62. PEUGH *v.* UNITED STATES. C. A. 7th Cir. [Certiorari granted, *ante*, p. 1006.] Motion of petitioner for leave to file volume II of the joint appendix under seal granted.

No. 12–71. ARIZONA ET AL. *v.* INTER TRIBAL COUNCIL OF ARIZONA, INC., ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 962.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 12–416. FEDERAL TRADE COMMISSION *v.* ACTAVIS, INC., ET AL. C. A. 11th Cir. [Certiorari granted *sub nom. Federal Trade Commission* v. *Watson Pharmaceuticals, Inc., et al.*, *ante*, p. 1066.] Motion of the Solicitor General for leave to file volume 2 of the joint appendix under seal granted. JUSTICE ALITO took no part in the consideration or decision of this motion.

No. 12–604. MADISON COUNTY, NEW YORK, ET AL. *v.* ONEIDA INDIAN NATION OF NEW YORK ET AL. C. A. 2d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 12–6733. IN RE DUNBAR. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1084] denied.

No. 12–7390. ROSS *v.* ATTORNEY GRIEVANCE COMMISSION. Ct. App. Md.;

No. 12–7424. AMR *v.* MOORE ET AL. C. A. 4th Cir.;

No. 12–7546. J. O. *v.* C. L. S. Ct. App. Colo.;

No. 12–7581. IN RE NABAYA; and

No. 12–7817. MISSUD *v.* SUPERIOR COURT OF CALIFORNIA, SAN FRANCISCO COUNTY, ET AL. C. A. 9th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 12, 2013, 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. 12–7930. IN RE ROBINSON;
No. 12–7991. IN RE THOMPSON;
No. 12–7998. IN RE WOODLAND;
No. 12–8004. IN RE DIGGS;
No. 12–8126. IN RE RCOM;
No. 12–8240. IN RE BYRD; and
No. 12–8417. IN RE SIDENER. Petitions for writs of habeas corpus denied.

No. 12–8091. IN RE STAPLES. Petition for writ of habeas corpus denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–8238. IN RE KWASNIK. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 12–7563. IN RE WISE;
No. 12–7685. IN RE BACA;
No. 12–7741. IN RE WILLIAMS;
No. 12–7789. IN RE COBBLE; and
No. 12–8083. IN RE RUHBAYAN. Petitions for writs of mandamus denied.

No. 12–7856. IN RE JIAYANG HUA. Petition for writ of mandamus and/or prohibition denied.

Probable Jurisdiction Noted

No. 12–536. MCCUTCHEON ET AL. *v.* FEDERAL ELECTION COMMISSION. Appeal from D. C. D. C. Probable jurisdiction noted. Reported below: 893 F. Supp. 2d 133.

Certiorari Granted

No. 12–417. SANDIFER ET AL. *v.* UNITED STATES STEEL CORP. C. A. 7th Cir. Certiorari granted limited to Question 1 presented by the petition. Reported below: 678 F. 3d 590.

Certiorari Denied

No. 11–10865. MERCER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 11–10983. HILL *v.* WALSH, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT DALLAS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–162. MILLER *v.* LOUISIANA. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 10–718 (La. App. 5 Cir. 12/28/11), 83 So. 3d 178.

No. 12–281. HARBATKIN *v.* NEW YORK CITY DEPARTMENT OF RECORDS AND INFORMATION SERVICES ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 19 N. Y. 3d 373, 971 N. E. 2d 350.

No. 12–301. OWENS CORNING *v.* WRIGHT ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 679 F. 3d 101.

No. 12–306. CATALDO ET AL. *v.* UNITED STATES STEEL CORP. ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 676 F. 3d 542.

No. 12–461. NATIONAL ASSOCIATION OF OPTOMETRISTS AND OPTICIANS ET AL. *v.* HARRIS, ATTORNEY GENERAL OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 682 F. 3d 1144.

No. 12–526. FIRST UNUM LIFE INSURANCE CO. *v.* BILYEU ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 683 F. 3d 1083.

No. 12–529. LYONS ET UX. *v.* LANCER INSURANCE CO. C. A. 2d Cir. Certiorari denied. Reported below: 681 F. 3d 50.

No. 12–542. TEXAS ALLIANCE FOR HOME CARE SERVICES *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 681 F. 3d 402.

No. 12–545. SUEVER ET AL. *v.* CHIANG ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 187.

No. 12–577. JIA JEWELRY IMPORTERS OF AMERICA, INC. *v.* PANDORA JEWELRY, LLC. C. A. Fed. Cir. Certiorari denied. Reported below: 473 Fed. Appx. 900.

No. 12–580. BEINEKE *v.* KAPPOS, DIRECTOR, PATENT AND TRADEMARK OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 690 F. 3d 1344.

No. 12–629. ROMERO *v.* WILKS ET AL. Sup. Ct. Ala. Certiorari denied. Reported below: 154 So. 3d 1099.

No. 12–643. RICHARDSON *v.* SCHAFER ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 689 F. 3d 601.

No. 12–648. CUNNINGHAM ET AL. *v.* WHALEN ET AL. Sup. Ct. Ky. Certiorari denied. Reported below: 373 S. W. 3d 438.

No. 12–649. REED *v.* GROUNDS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–654. PULLMAN GROUP, LLC, ET AL. *v.* GOLD FOREVER MUSIC, INC., ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–659. RADER *v.* ING BANK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 497 Fed. Appx. 171.

No. 12–660. UHR *v.* RESPONSIBLE HOSPITALITY INSTITUTE, INC., ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 517.

No. 12–661. ROMERO *v.* J&M ASSOCIATES, INC. C. A. 11th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 373.

No. 12–662. KUDLIS, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF M. K., ET AL. *v.* CITY AND COUNTY OF DENVER, COLORADO, ET AL. Ct. App. Colo. Certiorari denied.

No. 12–664. SILGAN CONTAINERS MANUFACTURING CORP. *v.* SHEET METAL WORKERS LOCAL NO. 2. C. A. 8th Cir. Certiorari denied. Reported below: 690 F. 3d 963.

No. 12–666. PICKENS *v.* HOUSEHOLD FINANCE CORP., III, ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 100 So. 3d 1149.

No. 12–669. BERMAN *v.* EVERY ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 97 So. 3d 822.

No. 12–671. FRANK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 931.

No. 12–672. HILL *v.* SUPERIOR COURT OF CALIFORNIA, LOS ANGELES COUNTY. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–678. JOHNSON ET AL. *v.* PAYNESVILLE FARMERS UNION COOPERATIVE OIL CO. Sup. Ct. Minn. Certiorari denied. Reported below: 817 N. W. 2d 693.

No. 12–681. RASHAW ET AL. *v.* UNITED CONSUMERS CREDIT UNION ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 685 F. 3d 739.

No. 12–686. LEWIS *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 279.

No. 12–688. AUTOTEL *v.* NEVADA BELL TELEPHONE CO., DBA AT&T OF NEVADA. C. A. 9th Cir. Certiorari denied. Reported below: 697 F. 3d 846.

No. 12–695. BENCH BILLBOARD CO. *v.* CITY OF TOLEDO, OHIO. C. A. 6th Cir. Certiorari denied. Reported below: 499 Fed. Appx. 538.

No. 12–700. MCCORKLE ET AL. *v.* BANK OF AMERICA CORP. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 688 F. 3d 164.

No. 12–701. PARSONS ET AL. *v.* SISTERS OF CHARITY OF LEAVENWORTH HEALTH SYSTEM, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 867.

No. 12–704. BONE *v.* G4S YOUTH SERVICES, LLC, ET AL. (Reported below: 686 F. 3d 948); and TWIGGS *v.* SELIG ET AL. (679 F. 3d 990). C. A. 8th Cir. Certiorari denied.

No. 12–706. CARANDANG LIBROJO *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied.

No. 12–711. ELWELL *v.* OKLAHOMA EX REL. BOARD OF REGENTS OF THE UNIVERSITY OF OKLAHOMA. C. A. 10th Cir. Certiorari denied. Reported below: 693 F. 3d 1303.

No. 12–713. BELL *v.* WASHINGTON HOSPITAL CENTER. Ct. App. D. C. Certiorari denied. Reported below: 47 A. 3d 974.

No. 12–714. RFT MANAGEMENT CO., LLC *v.* TINSLEY & ADAMS, LLP, ET AL. Sup. Ct. S. C. Certiorari denied. Reported below: 399 S. C. 322, 732 S. E. 2d 166.

No. 12–718. ATKINS *v.* BERT BELL/PETE ROZELLE NFL PLAYER RETIREMENT PLAN ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 694 F. 3d 557.

No. 12–720. HYLIND *v.* XEROX CORP. C. A. 4th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 819.

No. 12–721. GREENWOOD *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 2012 UT 48, 297 P. 3d 556.

No. 12–724. MOGHADDAM-TRIMBLE *v.* SOUTH FLORIDA WATER MANAGEMENT DISTRICT. C. A. 11th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 311.

No. 12–725. VURIMINDI *v.* LINK ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 457.

No. 12–727. BASQUEZ *v.* JANDA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–728. CHRISTOFF, ADOPTIVE FATHER, GUARDIAN, AND NEXT FRIEND OF K. C., A MINOR, ET AL. *v.* OHIO NORTHERN UNIVERSITY EMPLOYEE BENEFIT PLAN. C. A. 6th Cir. Certiorari denied. Reported below: 495 Fed. Appx. 710.

No. 12–730. HERRON *v.* WILLIAMS (Reported below: 687 F. 3d 971); and HERRON *v.* CRUTCHER-SANCHEZ (687 F. 3d 979). C. A. 8th Cir. Certiorari denied.

No. 12–731. KIM *v.* MARINA DISTRICT DEVELOPMENT CO., LLC, DBA BORGATA HOTEL CASINO & SPA. C. A. 3d Cir. Certiorari denied. Reported below: 488 Fed. Appx. 545.

No. 12–732. RAMON OCHOA *v.* RUBIN, AKA RUBIN OCHOA. Super. Ct. Pa. Certiorari denied. Reported below: 43 A. 3d 527.

No. 12–735. YOUNG *v.* ADDISON, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 960.

No. 12–736. SIBLEY *v.* OBAMA, PRESIDENT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 12–737. CIARLONE ET AL. *v.* CITY OF READING, PENNSYLVANIA, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 489 Fed. Appx. 567.

No. 12–739. JOHN CRANE, INC. *v.* HARDICK, EXECUTOR OF THE ESTATE OF HARDICK, DECEASED, ET AL. Sup. Ct. Va. Certiorari denied. Reported below: 284 Va. 329, 732 S. E. 2d 1.

No. 12–741. WILES ET AL. *v.* FORD MOTOR CO. Ct. App. Tex., 5th Dist. Certiorari denied. Reported below: 353 S. W. 3d 198.

No. 12–743. CORONA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 493 Fed. Appx. 645.

No. 12–745. K. C., FATHER *v.* IOWA ET AL. Ct. App. Iowa. Certiorari denied. Reported below: 821 N. W. 2d 779.

No. 12–748. B. J. G., INDIVIDUALLY AND AS HEIR OF THE ESTATE OF GRAVES, DECEASED, ET AL. *v.* COURT OF CIVIL APPEALS OF OKLAHOMA, DIVISION IV. C. A. 10th Cir. Certiorari denied. Reported below: 497 Fed. Appx. 807.

No. 12–750. HESS *v.* ILLINOIS ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION. Sup. Ct. Ill. Certiorari denied.

No. 12–752. HYMAN *v.* CORNELL UNIVERSITY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 485 Fed. Appx. 465.

No. 12–754. DINH TRAN *v.* COTY INC. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 96.

No. 12–764. HOLLIDAY *v.* COMMONWEALTH BRANDS, INC. C. A. 5th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 917.

No. 12–767. PROGRESSIVE FOODS, LLC, ET AL. *v.* DUNKIN' DONUTS, INC., ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 491 Fed. Appx. 709.

No. 12–768. PENNINGTON ET AL. *v.* HSBC BANK USA, N. A., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 493 Fed. Appx. 548.

No. 12–776. LYONS *v.* CRESTVIEW CONDOMINIUM TRUST. C. A. 1st Cir. Certiorari denied.

No. 12–778. LAVERGNE *v.* BLANK, ACTING SECRETARY OF COMMERCE, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 497 Fed. Appx. 219.

No. 12–779. RYAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 3d 845.

No. 12–781. CARVER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 555.

No. 12–787. MINOR *v.* UNITED STATES; and
No. 12–7995. TEEL *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 691 F. 3d 578.

No. 12–788. HEKYONG PAK *v.* RIDGELL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 750.

No. 12–790. PFLUGER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 685 F. 3d 481.

No. 12–791. CLANTON *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 6th Cir. Certiorari denied. Reported below: 491 Fed. Appx. 610.

No. 12–796. TAYLOR *v.* HARBOUR POINTE HOMEOWNERS ASSN. ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 690 F. 3d 44.

No. 12–810. BRENNAN *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2012 IL App (3d) 110338–U.

No. 12–817. SCRUGGS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 691 F. 3d 660.

No. 12–819. JIMENEZ *v.* SUN LIFE ASSURANCE COMPANY OF CANADA. C. A. 5th Cir. Certiorari denied. Reported below: 486 Fed. Appx. 398.

No. 12–825. STRAUSBAUGH *v.* GOVERNMENT PRINTING OFFICE. C. A. Fed. Cir. Certiorari denied. Reported below: 493 Fed. Appx. 61.

No. 12–827. HODGE-BANNERMAN *v.* AMERICAN BAR ASSN. Ct. App. D. C. Certiorari denied. Reported below: 53 A. 3d 331.

No. 12–833. COMPUTER PACKAGES, INC. *v.* WHITSERVE, LLC, ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 694 F. 3d 10.

No. 12–834. CHUANG *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 96 App. Div. 3d 590, 947 N. Y. S. 2d 37.

No. 12–838. RIVES *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied. Reported below: 284 Va. 1, 726 S. E. 2d 248.

No. 12–839. JENNINGS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 696 F. 3d 759.

No. 12–857. DEPROSPERO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 472 Fed. Appx. 42.

No. 12–877. CHOW *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 9th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 406.

No. 12–5163. MCELVEEN *v.* LOUISIANA; and
No. 12–5199. MCELVEEN *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 2010–0172 (La. App. 4 Cir. 9/28/11), 73 So. 3d 1033.

No. 12–5201. JOHN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 356.

No. 12–5271. DELGADO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 717.

No. 12–5496. MOTTA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 465 Fed. Appx. 690.

No. 12–5895. STEWART *v.* LOUISIANA. Ct. App. La., 4th Cir. Certiorari denied. Reported below: 2010–0298 (La. App. 4 Cir. 6/29/11), 66 So. 3d 89.

No. 12–5970. RIVERS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 848.

No. 12–6177. WIWO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 478.

No. 12–6398. CONTI *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 12–6463. KELLY *v.* WILLIAMS, WARDEN. Sup. Ct. Ga. Certiorari denied. Reported below: 291 Ga. 285, 728 S. E. 2d 666.

No. 12–6469. BUTLER *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied. Reported below: 416 S. W. 3d 863.

No. 12–6519. HALL *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 1st Jud. Dept. Certiorari denied. Reported below: 86 App. Div. 3d 450, 926 N. Y. S. 2d 514.

No. 12–6554. EMERSON ET VIR *v.* ALY ET AL. Sup. Ct. Iowa. Certiorari denied.

No. 12–6556. DANIELS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 685 F. 3d 1237.

No. 12–6640. MIZUKAMI *v.* EDWARDS ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–6689. BENAVIDES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 782.

No. 12–6745. VALENTIN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–6768. BRYANT *v.* LUFKIN INDEPENDENT SCHOOL DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 142.

No. 12–6800. LILLARD *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 685 F. 3d 773.

No. 12–6879. KISKILA ET UX. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 815.

No. 12–7148. BUDHA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 495 Fed. Appx. 452.

No. 12–7159. JACKSON *v.* HOUK, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 687 F. 3d 723.

No. 12–7170. HAYNES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 835.

No. 12–7250. CHATMAN *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 93 So. 3d 1015.

No. 12–7258. BROWN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 684 F. 3d 482.

No. 12–7331. DUNLAP *v.* CLEMENTS, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 162.

No. 12–7379. SHIELDS *v.* VIRGA, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 275.

No. 12–7395. JACKSON *v.* FELKER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–7396. JONES-EL *v.* WEBSTER ET AL. C. A. 8th Cir. Certiorari denied.

No. 12–7397. JAMES *v.* TEXAS. Sup. Ct. Tex. Certiorari denied.

No. 12–7412. ROBINSON *v.* BLOOMBERG, MAYOR OF THE CITY OF NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 12–7413. WILLIAMS *v.* CENTER STATE BANK. Dist. Ct. App. Fla., 5th Dist. Certiorari denied. Reported below: 99 So. 3d 963.

No. 12–7417. LEWIS *v.* WALTERS, SECRETARY, FLORIDA DEPARTMENT OF JUVENILE JUSTICE, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–7432. JOHNSON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 12–7434. RANDOLPH *v.* GANSLER, ATTORNEY GENERAL OF MARYLAND, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 625.

No. 12–7436. WEST *v.* SCHOFIELD, COMMISSIONER, TENNESSEE DEPARTMENT OF CORRECTION, ET AL. Ct. App. Tenn. Certiorari denied. Reported below: 380 S. W. 3d 105.

No. 12–7437. JONES *v.* MURPHY, WARDEN. C. A. 2d Cir. Certiorari denied. Reported below: 694 F. 3d 225.

No. 12–7439. LAFLEUR *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied.

No. 12–7441. MCCOY *v.* PACE ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 493 Fed. Appx. 494.

No. 12–7444. SKLYARSKY *v.* ABM JANITORIAL SERVICES-NORTH CENTRAL, INC. C. A. 7th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 619.

No. 12–7448. DUMAS *v.* BEARD, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Certiorari denied.

No. 12–7460. PERRY *v.* YELICH, SUPERINTENDENT, BARE HILL CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 12–7461. MEIROVITZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 688 F. 3d 369.

No. 12–7467. JOSLIN *v.* HULETT, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 12–7469. MARSHALL *v.* KEFFER, WARDEN. C. A. 2d Cir. Certiorari denied.

No. 12–7470. BECKER *v.* KNIPP, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 823.

No. 12–7471. FOULK *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–7478. YATES *v.* KELLY, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–7479. WASHINGTON *v.* SHOWALTER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 494 Fed. Appx. 268.

No. 12–7480. AMENUVOR *v.* MAZURKIEWICZ, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GREENSBURG. C. A. 3d Cir. Certiorari denied. Reported below: 494 Fed. Appx. 198.

No. 12–7491. PETERKA *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 12–7495. TATE *v.* HARTLEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–7497. JOHNSON *v.* WASHINGTON. Ct. App. Wash. Certiorari denied.

No. 12–7503. WILLIAMS *v.* MCCANN ET AL. C. A. 7th Cir. Certiorari denied.

No. 12–7508. SEARCY *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 992.

No. 12–7509. DIAZ *v.* FELKER, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–7511. ALI *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 103 So. 3d 138.

No. 12–7512. AGUILAR *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2012 IL App (2d) 100797–U.

No. 12–7513. ARCHBISHOP GREGORY OF DENVER, COLORADO *v.* SOCIETY OF THE HOLY TRANSFIGURATION MONASTERY, INC. C. A. 1st Cir. Certiorari denied. Reported below: 689 F. 3d 29.

No. 12–7514. BAKER *v.* WALKER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–7521. ROMERO *v.* GOODRICH, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 489.

No. 12–7524. JACK *v.* NAVY FEDERAL CREDIT UNION. Sup. Ct. App. W. Va. Certiorari denied.

No. 12–7526. RIKER *v.* BENEDETTI, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–7530. KNOX *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 12–7535. GARZA *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 907.

No. 12–7538. MAKDESSI *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 12–7542. T. M. *v.* FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES ET AL. Sup. Ct. Fla. Certiorari denied. Reported below: 81 So. 3d 416.

No. 12–7543. JONES *v.* PENNSYLVANIA BOARD OF PROBATION AND PAROLE ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 492 Fed. Appx. 242.

No. 12–7549. ARIAS *v.* GROUNDS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–7552. STRAND ET AL. *v.* GOLDEN MEADOWS PROPERTIES, LC, AKA GOLDEN MEADOWS PROPERTIES, LLC. Ct. App. Utah. Certiorari denied. Reported below: 2011 UT App 421, 268 P. 3d 849.

No. 12–7557. JONES *v.* KNOWLES, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–7571. BABINO *v.* LUDWICK, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 12–7574. MORGAN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 12–7576. VANCE *v.* WALLACE, WARDEN. Sup. Ct. Mo. Certiorari denied.

No. 12–7577. WHITMORE *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 12–7579. WHITE *v.* HOYLE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 899.

No. 12–7580. SILLAH *v.* HOLDER, ATTORNEY GENERAL. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 268.

No. 12–7583. LATHAM *v.* MUNICIPALITY OF ANCHORAGE, ALASKA, ET AL. Ct. App. Alaska. Certiorari denied.

No. 12–7585. JOHNSON *v.* WHITE ET AL. C. A. 5th Cir. Certiorari denied.

No. 12–7588. BACH *v.* MILWAUKEE COUNTY, WISCONSIN, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 806.

No. 12–7592. BUZZARD *v.* GLEBE, SUPERINTENDENT, STAFFORD CREEK CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 12–7595. BYNUM *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 12–7596. TODD *v.* BIGELOW ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 497 Fed. Appx. 839.

No. 12–7597. VOLK *v.* GLEBE, SUPERINTENDENT, STAFFORD CREEK CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 12–7598. WILKINSON *v.* COMMISSION FOR LAWYER DISCIPLINE OF THE STATE BAR OF TEXAS. Sup. Ct. Tex. Certiorari denied.

No. 12–7599. TAYLOR *v.* PRICE, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–7600. VALLERY *v.* MCDONALD, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–7605. NEWBALL *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied.

No. 12–7614. HAMILTON *v.* JUNIOUS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 805.

No. 12–7622. CARMONA *v.* MARTEL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–7626. WALLACE *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–7627. MAESTRI *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2012–1149 (La. 10/8/12), 98 So. 3d 850.

No. 12–7630. WEEKLEY *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–7631. THOMAS *v.* JONES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 924.

No. 12–7632. ROBINSON *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2012 Ark. 356.

No. 12–7633. WILLIAMS *v.* CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–7637. DAVID *v.* BYARS, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 727.

No. 12–7642. DAVIS *v.* CASTELLOE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 179.

No. 12–7644. ZOSA CALVANO *v.* HEDGEPATH, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 747.

No. 12–7647. DRIGGERS *v.* SIMPSON, JUDGE, FIRST JUDICIAL DISTRICT OF IDAHO, KOOTENAI COUNTY, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–7649. CUBAS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 128.

No. 12–7654. S. W. *v.* FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES. Sup. Ct. Fla. Certiorari denied.

No. 12–7659. MILLS *v.* FISCHER ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 497 Fed. Appx. 114.

No. 12–7677. MOSS *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 12–7682. BRADLEY *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied. Reported below: 98 So. 3d 1073.

No. 12–7683. BUCHANAN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 12–7688. MEJIA ET AL. *v.* HOLDER, ATTORNEY GENERAL. C. A. 9th Cir. Certiorari denied. Reported below: 492 Fed. Appx. 780.

No. 12–7692. NELLON *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 12–7693. LAMB *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–7699. JIMENEZ *v.* CLARK. C. A. 5th Cir. Certiorari denied.

No. 12–7700. BROWN *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 95 So. 3d 234.

No. 12–7702. JEANLOUIS *v.* CAIN, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 12–7704. RUFFIN *v.* HOUSTON INDEPENDENT SCHOOL DISTRICT ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 818.

No. 12–7705. NORINGTON *v.* LEVENHAGEN, SUPERINTENDENT, WESTVILLE CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 12–7709. DOBBS *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–7712. ARENCIO MAURICIO *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 12–7714. WILKINSON *v.* MCLAUGHLIN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 12–7718. WOODS *v.* STEVENSON, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 401.

No. 12–7719. WILLIAMS *v.* THURMER, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 489 Fed. Appx. 130.

No. 12–7727. VOTH *v.* STANTON, SHERIFF, MULTNOMAH COUNTY, OREGON. Ct. App. Ore. Certiorari denied. Reported below: 251 Ore. App. 93, 285 P. 3d 765.

No. 12–7728. WRIGHT *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 12–7729. WILLIAMS *v.* WENEROWICZ, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–7731. COOPER *v.* SEXTON, WARDEN. Ct. Crim. App. Tenn. Certiorari denied.

No. 12–7733. MCMILLAN *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 94 So. 3d 572.

No. 12–7735. SEALE *v.* HOLDER, ATTORNEY GENERAL. C. A. 5th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 952.

No. 12–7736. Sosa *v.* Louisiana. Sup. Ct. La. Certiorari denied. Reported below: 2012–0936 (La. 9/14/12), 97 So. 3d 383.

No. 12–7737. Smith *v.* Delaware. Sup. Ct. Del. Certiorari denied. Reported below: 58 A. 3d 983.

No. 12–7738. Swoboda *v.* Judicial Clerkship of the Supreme Court of Missouri et al. C. A. 8th Cir. Certiorari denied.

No. 12–7739. Whitmore *v.* Jones, Director, Oklahoma Department of Corrections. C. A. 10th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 122.

No. 12–7740. Versatile *v.* Johnson et al. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 385.

No. 12–7743. Young *v.* Hobbs, Director, Arkansas Department of Correction. C. A. 8th Cir. Certiorari denied.

No. 12–7745. Michuda *v.* Minnesota Board of Public Defense et al. Ct. App. Minn. Certiorari denied.

No. 12–7746. Cervantes *v.* California. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 12–7747. Gillespie *v.* Thirteenth Judicial Circuit of Florida et al. (two judgments). C. A. 11th Cir. Certiorari denied.

No. 12–7751. Hibbler *v.* Benedetti, Warden, et al. C. A. 9th Cir. Certiorari denied. Reported below: 693 F. 3d 1140 and 496 Fed. Appx. 706.

No. 12–7753. Calimlim *v.* Office of Personnel Management. C. A. Fed. Cir. Certiorari denied. Reported below: 489 Fed. Appx. 458.

No. 12–7757. Kriston *v.* Peroulis et al. C. A. 9th Cir. Certiorari denied.

No. 12–7761. Wade *v.* Bank of America, N. A., et al. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 312.

No. 12–7766. Lepre *v.* Pennsylvania Public Utility Commission. Commw. Ct. Pa. Certiorari denied.

No. 12–7768. SCHMIDT *v.* MEULER. Ct. App. Wis. Certiorari denied.

No. 12–7771. VANG *v.* VIRGA, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–7772. MCNEIL *v.* TEXAS. Ct. App. Tex., 1st Dist. Certiorari denied. Reported below: 398 S. W. 3d 747.

No. 12–7774. LEE *v.* CITY OF ST. LOUIS, MISSOURI, ET AL. C. A. 8th Cir. Certiorari denied.

No. 12–7775. MARRERO *v.* IVES, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 682 F. 3d 1190.

No. 12–7776. JOHNSON *v.* VARGA, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 12–7777. ORRIS *v.* BUCHANAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–7778. MCKINNEY *v.* CARTLEDGE, WARDEN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 39.

No. 12–7781. SHATAT *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–7786. LARA *v.* RAYTHEON TECHNICAL SERVICES CO., LLC. C. A. 11th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 218.

No. 12–7788. JULES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–7794. MUHAMMAD *v.* COCHRANE ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 537.

No. 12–7795. MELENDEZ *v.* WILSON ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 477 Fed. Appx. 801.

No. 12–7796. NICKERSON *v.* DELAROSA ET AL. C. A. 5th Cir. Certiorari denied.

No. 12–7798. MEJORADO *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 12–7800. JOHNSON *v.* PARKER, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–7801. LOPEZ *v.* RUDEK, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 308.

No. 12–7803. JOHNSON *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 96 So. 3d 901.

No. 12–7804. JEAN-LOUIS *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 78 Mass. App. 1119, 939 N. E. 2d 803.

No. 12–7806. REVIS *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 101 So. 3d 247.

No. 12–7807. RILEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–7809. SCOTT *v.* CALIFORNIA. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 12–7811. RAMIREZ-FERNANDEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–7812. STEPHENS *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–7816. JONES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 926.

No. 12–7818. A. P. *v.* J. M. M. Super. Ct. N. J., App. Div. Certiorari denied.

No. 12–7819. PEYTON *v.* HOLLOWAY, WARDEN. Sup. Ct. Va. Certiorari denied.

No. 12–7823. BIRDETTE *v.* AT&T MOBILITY ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–7824. BIRDETTE *v.* PENN FOSTER SCHOOL. C. A. 11th Cir. Certiorari denied.

No. 12–7826. ANDREWS *v.* PAXSON. C. A. 4th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 781.

No. 12–7830. COBBLE *v.* MCLAUGHLIN, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 12–7835. HILLIARD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 495 Fed. Appx. 304.

No. 12–7837. TIMBERS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 493 Fed. Appx. 361.

No. 12–7838. WILEY *v.* GEITHNER, SECRETARY OF THE TREASURY. C. A. 2d Cir. Certiorari denied.

No. 12–7839. FELICE *v.* STALLONE, SUPERINTENDENT, CAYUGA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 12–7845. GOMEZ *v.* SINCLAIR, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 12–7847. HUNTER *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied.

No. 12–7848. TULLY *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 54 Cal. 4th 952, 282 P. 3d 173.

No. 12–7851. HENDERSON *v.* MCDONALD, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–7855. GUPTA *v.* WALT DISNEY WORLD CO. C. A. 11th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 458.

No. 12–7862. MARSHALL *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 128 Nev. 915, 381 P. 3d 637.

No. 12–7864. ADAMS *v.* WESLEY. C. A. 11th Cir. Certiorari denied.

No. 12–7867. HENDERSON *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 12–7868. HAMILTON *v.* BITER, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 224.

No. 12–7872. ABRAHEM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 678 F. 3d 370.

No. 12–7877. SMITH *v.* WALKER ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 417.

No. 12–7880. SMITH *v.* NORTH CAROLINA. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 895.

No. 12–7883. GILLILAND *v.* KANSAS. Sup. Ct. Kan. Certiorari denied. Reported below: 294 Kan. 519, 276 P. 3d 165.

No. 12–7885. MORROW *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 472 Fed. Appx. 35.

No. 12–7887. PETEFISH *v.* OHIO. Ct. App. Ohio, Mahoning County. Certiorari denied. Reported below: 2012-Ohio-2723.

No. 12–7889. MARTINEZ-PRADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 879.

No. 12–7890. MOONEY *v.* CALIFORNIA. Ct. App. Cal., 1st App. Dist. Certiorari denied.

No. 12–7895. ANDERSON *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 95 So. 3d 216.

No. 12–7897. MCNELTON *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 128 Nev. 917, 381 P. 3d 640.

No. 12–7898. MESSICK *v.* MCDANIEL, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–7901. ANDERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 686 F. 3d 585.

No. 12–7902. AVALOS-MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 700 F. 3d 148.

No. 12–7903. JACKSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 54 A. 3d 708.

No. 12–7904. CLAVERIA-MARTINEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 796.

No. 12–7908. DENNY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 694 F. 3d 1185.

No. 12–7909. CHAVEZ-IBARRA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 416.

No. 12–7911. De Oleo *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 697 F. 3d 338.

No. 12–7912. Hammoud, aka Abousaleh, aka Albousaleh *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 865.

No. 12–7915. John *v.* Holder, Attorney General. C. A. 5th Cir. Certiorari denied.

No. 12–7916. Jones *v.* Clawson et al. C. A. 4th Cir. Certiorari denied. Reported below: 486 Fed. Appx. 342.

No. 12–7918. Ruffin *v.* Cox, Director, Nevada Department of Corrections. C. A. 9th Cir. Certiorari denied.

No. 12–7919. Rivera *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 225.

No. 12–7920. Roszkowski *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 700 F. 3d 50.

No. 12–7922. Comfort *v.* Lee, Superintendent, Green Haven Correctional Facility. C. A. 2d Cir. Certiorari denied.

No. 12–7923. Dinkins et al. *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 691 F. 3d 358.

No. 12–7924. Croom *v.* Illinois. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 2012 IL App (4th) 100932, 975 N. E. 2d 1107.

No. 12–7926. Duboc *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 694 F. 3d 1223.

No. 12–7928. Jones *v.* United States. C. A. 1st Cir. Certiorari denied. Reported below: 689 F. 3d 12.

No. 12–7931. Snow *v.* Ryan, Director, Arizona Department of Corrections, et al. C. A. 9th Cir. Certiorari denied.

No. 12–7932. Sneed *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 902.

No. 12–7933. Johnson *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 474.

No. 12–7937. PARHAM *v.* KERESTES, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT MAHANOY, ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 496 Fed. Appx. 181.

No. 12–7938. PAGE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 493 Fed. Appx. 524.

No. 12–7939. CURTIS *v.* BAUMAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–7941. WARE *v.* FORCE. Ct. App. Ore. Certiorari denied. Reported below: 249 Ore. App. 529, 286 P. 3d 300.

No. 12–7943. THOMAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 690 F. 3d 358.

No. 12–7944. PUGH *v.* HUMPHREY, WARDEN, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–7945. MORROW *v.* BHARARA. C. A. 2d Cir. Certiorari denied.

No. 12–7946. MORALES-AGUILAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 372.

No. 12–7948. MERCER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 501 Fed. Appx. 408.

No. 12–7956. COTTON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–7957. DAVIS *v.* UNITED STATES; and
No. 12–8103. CLARK *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 690 F. 3d 330.

No. 12–7959. MICHAEL S. *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–7961. SHULMAN *v.* ZSAK ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 485 Fed. Appx. 528.

No. 12–7964. OLIVEIRA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 493 Fed. Appx. 145.

No. 12–7966. MONZON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 12–7967. PATE *v.* ILLINOIS. App. Ct. Ill., 5th Dist. Certiorari denied. Reported below: 2012 IL App (5th) 110130–U.

No. 12–7968. PITTMON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–7974. EVANS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 53 A. 3d 331.

No. 12–7975. TORRES-DUENAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 231.

No. 12–7983. SEIDEMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 190.

No. 12–7985. PAGE *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–7986. MORROW *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 497 Fed. Appx. 583.

No. 12–7988. THOMAS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 12–7989. WHITE *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 289.

No. 12–7992. VONEIDA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 12–7993. WORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 645.

No. 12–7994. TISTHAMMER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 198.

No. 12–8000. WESTBERG *v.* PALMER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 489 Fed. Appx. 883.

No. 12–8005. DAWKINS *v.* GONYEA, SUPERINTENDENT, MOHAWK CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 12–8006. CHAPARRO *v.* SCHROEDER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 313.

No. 12–8007. CORBY *v.* MARTUSCELLO, SUPERINTENDENT, COXSACKIE CORRECTIONAL FACILITY, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 699 F. 3d 159.

No. 12–8008. CANADY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–8012. ARREDONDO-DE LA O *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 654.

No. 12–8014. ALLEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 377.

No. 12–8015. SMITH *v.* UNITED STATES. C. A. Fed. Cir. Certiorari denied. Reported below: 495 Fed. Appx. 44.

No. 12–8016. DORSEY *v.* OHIO. Ct. App. Ohio, Licking County. Certiorari denied. Reported below: 2012-Ohio-611.

No. 12–8017. WHITE *v.* HEYNS, DIRECTOR, MICHIGAN DEPARTMENT OF CORRECTIONS. C. A. 6th Cir. Certiorari denied.

No. 12–8020. VITITOE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–8021. LOUIS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 500 Fed. Appx. 194.

No. 12–8022. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 491 Fed. Appx. 160.

No. 12–8023. JACKSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–8024. PECK *v.* THOMAS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 697 F. 3d 767.

No. 12–8028. CASTILLO *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–8031. MESZAROS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 12–8033. SOTO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–8034. ANAYA-SANTIAGO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 788.

No. 12–8039. BROWN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–8041. BULMER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–8042. AGURCIA-BARDALES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 942.

No. 12–8046. HORNICK *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 491 Fed. Appx. 277.

No. 12–8047. FURESZ *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 498 Fed. Appx. 178.

No. 12–8050. SWEENEY *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 485 Fed. Appx. 468.

No. 12–8052. BOLNER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 111.

No. 12–8054. GREEN *v.* NEVEN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 769.

No. 12–8055. FAVOR *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 54 Cal. 4th 868, 279 P. 3d 1131.

No. 12–8061. BOYD *v.* UNITED STATES; and
No. 12–8072. BOYD *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 914.

No. 12–8062. MONCIVAIS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–8066. PRESTON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 499 Fed. Appx. 70.

No. 12–8067. HUGHES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 766.

No. 12–8068. FIELDS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 507 Fed. Appx. 144.

No. 12–8070. HOLT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 493 Fed. Appx. 515.

No. 12–8071. FOXWORTH *v.* MISSISSIPPI. Ct. App. Miss. Certiorari denied. Reported below: 94 So. 3d 1178.

No. 12–8073. BAPTISTE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 490.

No. 12–8074. BALDWIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 391.

No. 12–8075. ANDERSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 688 F. 3d 339.

No. 12–8076. BELTRAN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–8077. BURGIE *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 12–8088. RANGEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 697 F. 3d 795.

No. 12–8089. SANDOVAL *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 696 F. 3d 1011.

No. 12–8094. RIOS-ROLON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–8095. SOTOMAYOR-TEIJEIRA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 499 Fed. Appx. 151.

No. 12–8096. RENDON-MARTINEZ *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 497 Fed. Appx. 848.

No. 12–8097. RENDELMAN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 495 Fed. Appx. 727.

No. 12–8098. JONASSEN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 12–8099. LOYA-COSTILLO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 498 Fed. Appx. 799.

No. 12–8100. MILLER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 698 F. 3d 699.

No. 12–8102. CRAWFORD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 317 Fed. Appx. 303.

No. 12–8105. DAVIS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 689 F. 3d 179 and 491 Fed. Appx. 219.

No. 12–8107. THURMAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 828.

No. 12–8109. JACKSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–8112. PORTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 799.

No. 12–8113. BOSTIC *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 491 Fed. Appx. 731.

No. 12–8121. BELL *v.* JONES ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–8124. SINCLAIR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 354.

No. 12–8129. CARTER *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 12–8131. TREFRY *v.* MASSACHUSETTS DEPARTMENT OF CHILDREN AND FAMILIES. App. Ct. Mass. Certiorari denied.

No. 12–8132. ACOSTA-SIERRA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 690 F. 3d 1111.

No. 12–8140. BERNADEL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 22.

No. 12–8141. BARRON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–8146. LADSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 491 Fed. Appx. 100.

No. 12–8148. JARRETT *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 615.

No. 12–8152. COMBS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–8154. CARTER *v.* OLIVER, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 12–8156. RIVERA-HERNANDEZ, AKA HERNANDEZ-PAVON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 489 Fed. Appx. 755.

No. 12–8165. EMANUEL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–8166. CRUZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 12–8169. CIOTA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 486 Fed. Appx. 605.

No. 12–8181. COMPTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 489 Fed. Appx. 706.

No. 12–8186. OWENS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–8187. ORR *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 692 F. 3d 1079.

No. 12–8188. SHIFU LIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 508 Fed. Appx. 398.

No. 12–8189. SALINAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 486 Fed. Appx. 491.

No. 12–8194. SAKYI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 492 Fed. Appx. 412.

No. 12–8196. CREWS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 496 Fed. Appx. 896.

No. 12–8197. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 489 Fed. Appx. 813.

No. 12–8207. BUNDY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 12.

No. 12–8209. TUCKER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 502 Fed. Appx. 720.

No. 12–8210. JONES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 848.

No. 12–8211. KOLEHMAINEN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 819.

No. 12–8216. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 495 Fed. Appx. 300.

No. 12–8221. PANTOLIANO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 12–8223. RUFFIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 306.

No. 12–8225. ROSAS-HERRERA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 499 Fed. Appx. 249.

No. 12–8230. WADMAN *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 487 Fed. Appx. 667.

No. 12–8231. LEAL-PENA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 489 Fed. Appx. 794.

No. 12–8232. MCPHERSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 506 Fed. Appx. 89.

No. 12–8233. KEELS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–8237. BERRY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–8242. GUTIERREZ-RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 620.

No. 12–8247. MEZA-ROJAS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 784.

No. 12–8248. MILLSAPS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 489 Fed. Appx. 765.

No. 12–8249. NOEL *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 928.

No. 12–8250. LAGUNA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 693 F. 3d 727.

No. 12–8254. EMERICK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–8256. GARVEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 688 F. 3d 881.

No. 12–8264. FURLOW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–8271. HOSKINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 489 Fed. Appx. 990.

No. 12–8272. HOLIDAY *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 501 Fed. Appx. 699.

No. 12–8279. MOUNTS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–8291. RIVERA-MORENO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 617 F. 3d 581.

No. 12–8294. CASTANEDA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 484.

No. 11–10630. DURONIO *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 11–10768. DURONIO *v.* WERLINGER, WARDEN. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 454 Fed. Appx. 71.

No. 12–371. CHAPPELL, WARDEN *v.* THOMAS. C. A. 9th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 678 F. 3d 1086.

No. 12–527. MCCRAY ET AL. *v.* FIDELITY NATIONAL TITLE INSURANCE CO. ET AL. C. A. 3d Cir. Motion of Public Citizen, Inc., for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 682 F. 3d 229.

No. 12–644. MARIANI *v.* RANSMEIER ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 486 Fed. Appx. 890.

No. 12–653. MCLEOD ET AL. *v.* PB INVESTMENT CORP. ET AL. C. A. 4th Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 492 Fed. Appx. 379.

No. 12–6446. BASHAM *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–6682. TURPIN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–7435. RUTLEDGE *v.* MCDONALD, WARDEN. C. A. 9th Cir. Certiorari denied. JUSTICE BREYER took no part in the consideration or decision of this petition.

No. 12–7785. ACUNA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–7797. PULIDO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–7805. LOPEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–7831. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 474 Fed. Appx. 989.

No. 12–7942. WILLIAMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 494 Fed. Appx. 352.

No. 12–7969. STRONG *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–8040. BELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–8048 (12A795). HILL *v.* HUMPHREY, WARDEN. Super. Ct. Butts County, Ga. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Certiorari denied.

No. 12–8090. SANCHEZ-OXIO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–8128. DANIELS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 493 Fed. Appx. 442.

No. 12–8195. WEATHERSPOON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 696 Fed. Appx. 416.

No. 12–8219. STANLEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 500 Fed. Appx. 407.

Rehearing Denied

No. 12–310. LALLIER *v.* SUPREME JUDICIAL COURT OF MASSACHUSETTS ET AL., *ante*, p. 1027;

No. 12–426. PAYNE *v.* WHOLE FOODS MARKET GROUP, INC., *ante*, p. 1029;

No. 12–677. BOSWORTH *v.* UNITED STATES, *ante*, p. 1091;

No. 12–5614. SHRADER *v.* UNITED STATES, *ante*, p. 1049;

No. 12–6131. BURKE *v.* MCCOLLUM, WARDEN, *ante*, p. 1013;

No. 12–6181. SONACHANSINGH *v.* LEE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, *ante*, p. 1000;

No. 12–6214. ASHFORD *v.* WENEROWICZ, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT GRATERFORD, ET AL., *ante*, p. 1014;

No. 12–6215. ANDERSON *v.* CITY OF RIVERSIDE, CALIFORNIA, ET AL., *ante*, p. 1014;

No. 12–6264. JOHNSON *v.* OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P. C., ET AL., *ante*, p. 1001;

No. 12–6297. ALLEN *v.* CLEMENTS, EXECUTIVE DIRECTOR, COLORADO DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 1031;

No. 12–6365. HOLLAND *v.* MONROE COUNTY CHILDREN AND YOUTH SERVICES ET AL., *ante*, p. 1032;

No. 12–6372. THOMPSON *v.* GONZALEZ, WARDEN, *ante*, p. 1033;

No. 12–6376. RUSS *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 1033;

No. 12–6452. GATES *v.* WESTERENG, *ante*, p. 1049;
No. 12–6506. IN RE BROWN, *ante*, p. 1047;
No. 12–6517. HUGUELEY *v.* TENNESSEE, *ante*, p. 1051;
No. 12–6593. DOBRIC *v.* PARK LANE NORTH OWNER, INC., ET AL., *ante*, p. 1052;
No. 12–6761. WOODARD *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL., *ante*, p. 1053;
No. 12–6887. MOORE *v.* HOLLINGSWORTH, WARDEN, *ante*, p. 1038;
No. 12–6903. IN RE JOYNER, *ante*, p. 1025;
No. 12–6921. RANDLEMAN *v.* UNITED STATES, *ante*, p. 1038;
No. 12–6942. JOHNSON *v.* FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 1054;
No. 12–6975. ALEJANDRO *v.* UNITED STATES, *ante*, p. 1055;
No. 12–7028. VAKSMAN *v.* UNITED STATES, *ante*, p. 1056;
No. 12–7143. MEADOR *v.* BRANSON, *ante*, p. 1105;
No. 12–7217. IN RE BOURGEOIS, *ante*, p. 1068; and
No. 12–7294. IN RE HIEN ANH DAO, *ante*, p. 1122. Petitions for rehearing denied.

No. 12–7020. EPPS *v.* UNITED STATES, *ante*, p. 1055. Petition for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

FEBRUARY 20, 2013

Rehearing Denied

No. 12–7385 (12A799). COOK *v.* HUMPHREY, WARDEN, *ante*, p. 1146. Application for stay of execution of sentence of death, presented to JUSTICE THOMAS, and by him referred to the Court, denied. Petition for rehearing denied.

FEBRUARY 21, 2013

Miscellaneous Order

No. 12A809. HUMPHREY *v.* HILL. Application to vacate stay of execution of sentence of death entered by the United States Court of Appeals for the Eleventh Circuit on February 19, 2013, presented to JUSTICE THOMAS, and by him referred to the Court, denied.

Certiorari Denied

No. 12–8803 (12A820). BLUE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITU-

TIONS DIVISION. C. A. 5th Cir. Application for stay of execution of sentence of death, presented to JUSTICE SCALIA, and by him referred to the Court, denied. Certiorari denied. Reported below: 514 Fed. Appx. 441.

No. 12–8832 (12A824). COOK *v.* HUMPHREY, 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.

FEBRUARY 25, 2013

Certiorari Granted—Vacated and Remanded

No. 11–42. CHILDERS *v.* FLOYD, WARDEN. C. A. 11th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Johnson* v. *Williams*, *ante,* p. 289. Reported below: 642 F. 3d 953.

No. 11–1497. BYRNE *v.* WOOD, HERRON & EVANS, LLP, ET AL. C. A. Fed. Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Gunn* v. *Minton*, *ante,* p. 251. Reported below: 450 Fed. Appx. 956.

No. 11–8384. PETERSON *v.* SEAMAN. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Chafin* v. *Chafin*, *ante,* p. 165.

No. 11–9422. DAVIS *v.* UNITED STATES. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* granted. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Henderson* v. *United States*, *ante*, p. 266. Reported below: 454 Fed. Appx. 383.

Certiorari Dismissed

No. 12–7840. GREEN *v.* JUSTICES OF THE COURT OF CRIMINAL APPEALS OF TEXAS ET AL. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Mar-*

tin v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). Reported below: 471 Fed. Appx. 415.

No. 12–7917. MARTIN *v.* SKORY ET AL. C. A. 6th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin* v. *District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). JUSTICE ALITO took no part in the consideration or decision of this motion and this petition.

Miscellaneous Orders

No. 12M93. JACKSON *v.* HARTLEY, WARDEN; and

No. 12M94. NATKUNANATHAN *v.* COMMISSIONER OF INTERNAL REVENUE. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 12–7907. DELGADO *v.* ILLINOIS. App. Ct. Ill., 1st Dist.;

No. 12–8217. J. C. B. *v.* PENNSYLVANIA STATE POLICE. Super. Ct. Pa.; and

No. 12–8321. BOUCHAT *v.* MARYLAND. Ct. App. Md. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until March 18, 2013, 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. 12–8456. IN RE ROLAND;

No. 12–8475. IN RE GORDON; and

No. 12–8539. IN RE BURKS. Petitions for writs of habeas corpus denied.

No. 12–8540. IN RE JOHNSON. 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.

Certiorari Granted

No. 12–414. BURT, WARDEN *v.* TITLOW. C. A. 6th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted. Reported below: 680 F. 3d 577.

No. 12–609. KANSAS *v.* CHEEVER. Sup. Ct. Kan. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari granted limited to Question 1 presented by the petition. Reported below: 295 Kan. 229, 284 P. 3d 1007.

Certiorari Denied

No. 11–807. BROWN *v.* BOBBY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 656 F. 3d 325.

No. 11–1381. POBLETE *v.* ARIZONA. Ct. App. Ariz. Certiorari denied. Reported below: 227 Ariz. 537, 260 P. 3d 1102.

No. 11–1414. DIAZ-PALMERIN *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 11–1473. THO MINH CHAU *v.* MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 81 Mass. App. 1103, 958 N. E. 2d 535.

No. 11–7376. NOLING *v.* BOBBY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 651 F. 3d 573.

No. 11–8643. THAI HONG DOAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 438 Fed. Appx. 240.

No. 11–9261. SMITH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 448 Fed. Appx. 936.

No. 11–9642. SHAHLY *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 75 So. 3d 274.

No. 11–10826. ALSHAIF *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 219 N. C. App. 162, 724 S. E. 2d 597.

No. 11–10846. GAITAN *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 209 N. J. 339, 37 A. 3d 1089.

No. 12–304. LARBIE *v.* LARBIE. C. A. 5th Cir. Certiorari denied. Reported below: 690 F. 3d 295.

No. 12–332. CHAIDY *v.* HOLDER, ATTORNEY GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 458 Fed. Appx. 506.

No. 12–348. BUTT *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 2012 UT 34, 284 P. 3d 605.

No. 12–391. MENDOZA *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 690 F. 3d 157.

No. 12–439. MATHUR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 685 F. 3d 396.

No. 12–485. GRIFFIN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 489 Fed. Appx. 679.

No. 12–488. VANDEBRAKE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 679 F. 3d 1030.

No. 12–493. PASICOV *v.* HOLDER, ATTORNEY GENERAL, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 693.

No. 12–517. TEAMSTERS LOCAL UNION NO. 523 *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 280.

No. 12–570. REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL. *v.* CALDERA PHARMACEUTICALS, INC. Ct. App. Cal., 1st App. Dist. Certiorari denied. Reported below: 205 Cal. App. 4th 338, 140 Cal. Rptr. 3d 543.

No. 12–579. DANIELCZYK ET AL. *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 683 F. 3d 611.

No. 12–588. GUERRERO-CASTRO *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 300.

No. 12–632. BEECH, INDIVIDUALLY AND AS TUTRIX AND GUARDIAN OF HER MINOR CHILD BEECH *v.* HERCULES DRILLING CO., L. L. C. C. A. 5th Cir. Certiorari denied. Reported below: 691 F. 3d 566.

No. 12–638. ZAHL *v.* KOSOVSKY ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 471 Fed. Appx. 34.

No. 12–639. HUANG *v.* NAPOLITANO, SECRETARY OF HOMELAND SECURITY, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 468 Fed. Appx. 932.

No. 12–657. CASH ADVANCE NETWORK, INC. *v.* FELTS. Sup. Ct. N. M. Certiorari denied.

No. 12–756. HAYS *v.* TOWN OF GAULEY BRIDGE, WEST VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 930.

No. 12–757. ELLIOTT ET AL. *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 497 Fed. Appx. 108.

No. 12–762. MARSH *v.* AKERS ET AL. Sup. Ct. Tenn. Certiorari denied. Reported below: 387 S. W. 3d 495.

No. 12–766. PUBLIC LANDS FOR THE PEOPLE, INC., ET AL. *v.* DEPARTMENT OF AGRICULTURE ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 697 F. 3d 1192.

No. 12–806. UNITEDHEALTHCARE INSURANCE CO. *v.* ACCESS MEDIQUIP L. L. C. C. A. 5th Cir. Certiorari denied. Reported below: 698 F. 3d 229.

No. 12–814. BALL *v.* NEW HAMPSHIRE. Sup. Ct. N. H. Certiorari denied. Reported below: 164 N. H. 204, 53 A. 3d 603.

No. 12–816. STONER *v.* YOUNG CONCERT ARTISTS, INC. C. A. 2d Cir. Certiorari denied.

No. 12–821. MARQUEZ ET AL. *v.* CITY OF PHOENIX, ARIZONA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 693 F. 3d 1167.

No. 12–823. BLACK *v.* COLUMBUS PUBLIC SCHOOLS. C. A. 6th Cir. Certiorari denied.

No. 12–826. BUTLER *v.* BOARD OF APPEAL ON MOTOR VEHICLE LIABILITY POLICIES AND BONDS. App. Ct. Mass. Certiorari denied. Reported below: 81 Mass. App. 1129, 965 N. E. 2d 226.

No. 12–830. FORD *v.* DONLEY, SECRETARY OF THE AIR FORCE. C. A. 10th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 305.

No. 12–832. CATSIFF *v.* MCCARTY ET AL. Ct. App. Wash. Certiorari denied. Reported below: 167 Wash. App. 698, 274 P. 3d 1063.

No. 12–841. CAMPBELL *v.* CADMAN, SUCCESSOR TRUSTEE, ET AL. Ct. App. Cal., 4th App. Dist., Div. 1. Certiorari denied.

No. 12–848. Black Farmers Assn., Inc. *v.* Vilsack, Secretary of Agriculture, et al. C. A. D. C. Cir. Certiorari denied.

No. 12–849. Smith *v.* Tennessee National Guard. Ct. App. Tenn. Certiorari denied. Reported below: 387 S. W. 3d 570.

No. 12–858. Aster *v.* Anthem Blue Cross Life. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 12–878. Government of the Lao People's Democratic Republic *v.* Thai-Lao Lignite (Thailand) Co. Ltd. et al. C. A. 2d Cir. Certiorari denied. Reported below: 492 Fed. Appx. 150.

No. 12–886. Taylor *v.* King et al., Administrators of the Estate of King. C. A. 6th Cir. Certiorari denied. Reported below: 694 F. 3d 650.

No. 12–892. New *v.* United States. C. A. Armed Forces. Certiorari denied. Reported below: 71 M. J. 395.

No. 12–908. Thoms et ux. *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 684 F. 3d 893.

No. 12–936. Namer *v.* Federal Trade Commission. C. A. 5th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 958.

No. 12–5240. Carbajal *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 449 Fed. Appx. 551.

No. 12–5338. Davis *v.* Florida. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 108 So. 3d 1088.

No. 12–5491. Martinez-Porta *v.* United States. C. A. 11th Cir. Certiorari denied.

No. 12–5691. San Nicolas *v.* Dexter, Warden. C. A. 9th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 638.

No. 12–5915. Isais Esparza, aka Esparza Isais, aka Isais *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 678 F. 3d 389.

No. 12–6421. Artuso et al. *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 398.

No. 12–6485. SRIVASTAV *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 487 Fed. Appx. 3.

No. 12–6553. ENRIQUEZ *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–6747. MARSHALL ET UX. *v.* COLLIER COUNTY, FLORIDA, ET AL. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 90 So. 3d 287.

No. 12–6797. ABRAHAM *v.* UAW INTERNATIONAL UNION ET AL. C. A. 6th Cir. Certiorari denied.

No. 12–6838. RODRIGUEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 955.

No. 12–6920. ROBERTSON *v.* CREE, INC. C. A. 4th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 463.

No. 12–6972. BATISTA *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 684 F. 3d 333.

No. 12–7008. ROZIER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 352.

No. 12–7043. AYALA-LOPEZ *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 493 Fed. Appx. 120.

No. 12–7099. BURWELL *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 690 F. 3d 500.

No. 12–7330. MCCUISTION *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied. Reported below: 174 Wash. 2d 369, 275 P. 3d 1092.

No. 12–7374. WHITFIELD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 695 F. 3d 288.

No. 12–7418. MCCULLOUGH *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 983.

No. 12–7473. AMOS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 496 Fed. Appx. 517.

No. 12–7486. TSCHACHER *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 687 F. 3d 923.

No. 12–7810. SHEHATA *v.* COLE. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–7832. WILLIAMS *v.* CITY OF NATCHITOCHES, LOUISIANA, ET AL. Ct. App. La., 3d Cir. Certiorari denied.

No. 12–7833. THOMPSON *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–7834. THOMAS *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 12–7836. YAUTENTZI-CIPRIANO *v.* NOOTH, SUPERINTENDENT, SNAKE RIVER CORRECTIONAL INSTITUTION. C. A. 9th Cir. Certiorari denied.

No. 12–7842. FRASER *v.* GMAC MORTGAGE, LLC. Sup. Ct. N. J. Certiorari denied.

No. 12–7843. HILL *v.* NATIONWIDE MUTUAL INSURANCE CO. ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 391.

No. 12–7844. GLICA *v.* MCDONALD, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–7850. FUNES *v.* LOUISIANA. Ct. App. La., 5th Cir. Certiorari denied. Reported below: 11–595 (La. App. 5 Cir. 1/24/12), 87 So. 3d 134.

No. 12–7852. HUDGINS *v.* CARTLEDGE, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 418.

No. 12–7853. FRANKLIN *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2011 IL App (1st) 092026–U.

No. 12–7854. GLAIR *v.* CITY OF LOS ANGELES, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 437 Fed. Appx. 581.

No. 12–7857. HIRAMANEK *v.* SUPERIOR COURT OF CALIFORNIA, SANTA CLARA COUNTY, ET AL.; and HIRAMANEK *v.* HIRAMANEK. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 12–7858. GUY ET AL. *v.* CITY OF INGLEWOOD, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 653.

No. 12–7863. BROWN *v.* LOUISIANA. Ct. App. La., 1st Cir. Certiorari denied. Reported below: 2011–1463 (La. App. 1 Cir. 3/23/12).

No. 12–7870. HENDERSON *v.* MISSISSIPPI. Sup. Ct. Miss. Certiorari denied.

No. 12–7871. GRAVELY *v.* CITY OF CHARLESTON, WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 12–7873. ZARR *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 104 So. 3d 1089.

No. 12–7878. CRAFT *v.* AHUJA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 649.

No. 12–7881. STONE *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 12–7882. ROBINSON *v.* EVANS, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–7888. PARKS *v.* MOHAVE COUNTY SHERIFF'S DEPARTMENT ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–7899. MOON *v.* VASQUEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–7905. GARCIA SANDOVAL *v.* BEARD, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–7906. STANCLE *v.* CLAY, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 692 F. 3d 948.

No. 12–7914. KIMBRELL *v.* BUTTS, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 12–7921. MINK *v.* ARIZONA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 202.

No. 12–7925. JORDAN *v.* HEDGPETH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–7927. SAMUEL *v.* BLOOMBERG, MAYOR OF THE CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied.

No. 12–7929. RODRIGUEZ *v.* ARKANSAS. Sup. Ct. Ark. Certiorari denied. Reported below: 2012 Ark. 393.

No. 12–7935. MORA *v.* JACQUEZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 754.

No. 12–7940. YOUNG *v.* FRAKER, SUPERINTENDENT, CLALLAM BAY CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 12–7953. KOROMA *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 11th Cir. Certiorari denied.

No. 12–7972. PINGEL *v.* ARIZONA ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–7982. NICKELS *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. C. A. 8th Cir. Certiorari denied.

No. 12–7996. VANOVER *v.* BRUNSMAN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 502 Fed. Appx. 548.

No. 12–8018. WILSON *v.* UNITED STATES AIR FORCE. C. A. 6th Cir. Certiorari denied. Reported below: 491 Fed. Appx. 681.

No. 12–8030. MOSBY *v.* HOLMES, CHIEF JUDGE, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS, ET AL. C. A. 8th Cir. Certiorari denied.

No. 12–8032. KRIDER *v.* CONOVER, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 497 Fed. Appx. 818.

No. 12–8036. PORTILLO *v.* ADAMS, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–8037. LLOYD *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 5th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 994.

No. 12–8044. BALL *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 760.

No. 12–8058. JIMENEZ *v.* LEE, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 12–8063. MURRAY *v.* JOHN D. DINGLE VETERANS HOSPITAL MEDICAL CENTER ET AL. C. A. 6th Cir. Certiorari denied.

No. 12–8065. MELLERSON *v.* UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK. C. A. 2d Cir. Certiorari denied.

No. 12–8069. GONZALEZ-AGUILERA *v.* PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 12–8085. WILLIAMS *v.* HEATH, SUPERINTENDENT, SING SING CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 12–8086. WILSON *v.* ARKANSAS. C. A. 8th Cir. Certiorari denied.

No. 12–8087. WHITE *v.* EPPS, COMMISSIONER, MISSISSIPPI DEPARTMENT OF CORRECTIONS, ET AL. C. A. 5th Cir. Certiorari denied.

No. 12–8116. LE *v.* LONG, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–8138. LANCASTER *v.* HOUSTON. Sup. Ct. Nev. Certiorari denied. Reported below: 128 Nev. 912, 381 P. 3d 632.

No. 12–8151. ELMER *v.* FLORIDA. Dist. Ct. App. Fla., 1st Dist. Certiorari denied. Reported below: 96 So. 3d 886.

No. 12–8159. DOMBOS *v.* JANECKA, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 491 Fed. Appx. 918.

No. 12–8168. ESTEY *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–8172. BUSH *v.* UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 889.

No. 12–8175. BRIDGES *v.* NORTH CAROLINA. Gen. Ct. Justice, Super. Ct. Div., Rutherford County, N. C. Certiorari denied.

No. 12–8234. GAYLE *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 694 F. 3d 514.

No. 12–8241. NICHOLS *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 100 So. 3d 1149.

No. 12–8252. CRISSWALLE *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 46 A. 3d 824.

No. 12–8263. BONANNO *v.* UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE. C. A. 6th Cir. Certiorari denied.

No. 12–8280. MCCARVILL *v.* PREMO, SUPERINTENDENT, OREGON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied. Reported below: 486 Fed. Appx. 677.

No. 12–8281. NESBITT *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 284 Neb. xxi.

No. 12–8284. ALEXANDER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 483.

No. 12–8287. SMITH, AKA WALLS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 463 Fed. Appx. 564.

No. 12–8288. WOODLAND *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 375.

No. 12–8289. WALKER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 22.

No. 12–8290. WEBB *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 499 Fed. Appx. 210.

No. 12–8296. GREEN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 497 Fed. Appx. 894.

No. 12–8301. LEWIS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 689 F. 3d 941.

No. 12–8302. GLAVE *v.* GLEBE, SUPERINTENDENT, STAFFORD CREEK CORRECTIONS CENTER, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–8304. HENDERSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 499.

No. 12–8309. HALES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–8310. FOX *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 495 Fed. Appx. 290.

No. 12–8311. LARA *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 412.

No. 12–8315. DYNES *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 637.

No. 12–8319. PEPPERS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 697 F. 3d 1217.

No. 12–8320. MACK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 495 Fed. Appx. 359.

No. 12–8326. RODRIGUEZ-PORTILLO *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 889.

No. 12–8330. JACKSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 510 Fed. Appx. 149.

No. 12–8331. TRINIDAD-COTTO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–8335. REEDOM *v.* VILSACK, SECRETARY OF AGRICULTURE. C. A. 8th Cir. Certiorari denied.

No. 12–8339. MURELLO-GOMEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 621.

No. 12–8342. PLAZA-ANDRADES *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 507 Fed. Appx. 22.

No. 12–8344. CARRAZCO-GALVAN *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 704.

No. 12–8345. DOMINGUEZ-DEVALLE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 492 Fed. Appx. 952.

No. 12–8347. MOTHERSHED *v.* OKLAHOMA EX REL. OKLAHOMA BAR ASSN. ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–8349. Chi Mak *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 683 F. 3d 1126.

No. 12–8350. Urquia Lagos *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 11.

No. 12–8351. Jackson *v.* United States. C. A. 11th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 522.

No. 12–8352. Ercole *v.* LaHood, Secretary of Transportation. C. A. 2d Cir. Certiorari denied. Reported below: 472 Fed. Appx. 47.

No. 12–8353. Anderson *v.* United States. C. A. 3d Cir. Certiorari denied. Reported below: 502 Fed. Appx. 191.

No. 12–8356. McGruder *v.* United States. C. A. 8th Cir. Certiorari denied.

No. 12–8359. Arellano-Garcia *v.* United States; and
No. 12–8408. Orozco-Rios *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 503 Fed. Appx. 300.

No. 12–8360. Adoh *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 496 Fed. Appx. 731.

No. 12–8361. Adams *v.* United States. C. A. D. C. Cir. Certiorari denied.

No. 12–8365. Fazio *v.* United States. C. A. 3d Cir. Certiorari denied.

No. 12–8369. Ousley *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 698 F. 3d 972.

No. 12–8370. Robinson *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 702 F. 3d 22.

No. 12–8371. Moran-Elias *v.* United States. C. A. 9th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 381.

No. 12–8375. Rodriguez, aka Doe, aka Fernandez *v.* United States. C. A. 2d Cir. Certiorari denied. Reported below: 501 Fed. Appx. 86.

No. 12–8382. Bartel *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 698 F. 3d 658.

No. 12–8383. ADAMS *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 698 F. 3d 965.

No. 12–8392. COLLINS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 525.

No. 12–8394. BARNETT *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 54 A. 3d 708.

No. 12–8398. NESBITT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 464 Fed. Appx. 89.

No. 12–8399. SADDLER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 498 Fed. Appx. 524.

No. 12–8402. VARGAS-SOTO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 700 F. 3d 180.

No. 12–8404. SELLERS *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 501 Fed. Appx. 194.

No. 12–8406. SAINT-SURIN, AKA ST. SURIN *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 683.

No. 12–8407. MASON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 495 Fed. Appx. 373.

No. 12–8409. MORENO-HERNANDEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 645.

No. 12–8410. PEREZ-PINON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 498 Fed. Appx. 456.

No. 12–8416. DOBBINS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 40 A. 3d 887.

No. 12–8426. BIRD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 594.

No. 12–8427. BAHENA-ARANDA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 699.

No. 12–8433. MCINTOSH *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 702 F. 3d 381.

No. 12–8434. CENTENO NUNEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 671.

No. 12–8438. PFEIFFER-EL *v.* UNITED STATES ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 904.

No. 12–8441. PAXSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–8442. DORMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 832.

No. 12–8443. DEW *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 245.

No. 12–8447. WRIGHT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–8450. JUAREZ-OLVERA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 665.

No. 12–8461. GREEN *v.* LOCKETT, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 12–8474. GEHRINGER *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 751.

No. 12–164. FIGUEREO-SANCHEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 678 F. 3d 1203.

No. 12–239. MINNESOTA *v.* SAHR. Sup. Ct. Minn. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 812 N. W. 2d 83.

No. 12–492. PEARSON, WARDEN *v.* WINSTON. C. A. 4th Cir. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied. Reported below: 683 F. 3d 489.

No. 12–646. NELSON ET AL. *v.* CITY OF ROCHESTER, NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Motions of New York State Coalition of Property Owners and Businesses, Cato Institute et al., and Institute for Justice for leave to file briefs as *amici curiae* granted. Certiorari denied. Reported below: 90 App. Div. 3d 1485, 938 N. Y. S. 2d 825.

No. 12–812. ANAYA-AGUILAR *v.* HOLDER, ATTORNEY GENERAL. C. A. 7th Cir. Certiorari denied. JUSTICE KAGAN took

no part in the consideration or decision of this petition. Reported below: 683 F. 3d 369.

No. 12–6142. CALHOUN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 193.

Statement of JUSTICE SOTOMAYOR, with whom JUSTICE BREYER joins, respecting the denial of the petition for writ of certiorari.

I write to dispel any doubt whether the Court's denial of certiorari should be understood to signal our tolerance of a federal prosecutor's racially charged remark. It should not.

Petitioner Bongani Charles Calhoun stood trial in a federal court in Texas for participating in a drug conspiracy. The primary issue was whether Calhoun knew that the friend he had accompanied on a road trip, along with the friend's associates, were about to engage in a drug transaction, or whether instead Calhoun was merely present during the group's drive home, when the others attempted to purchase cocaine from undercover Drug Enforcement Administration (DEA) agents. Two alleged coconspirators who had pleaded guilty testified to Calhoun's knowledge. Law enforcement officers also testified that they discussed the drugs with Calhoun immediately before they broke cover to arrest the group, and that Calhoun had a gun when he was arrested. In his defense, Calhoun testified that he was not part of and had no knowledge of his friend's plan to purchase drugs, that he did not understand the DEA agents when they spoke to him in Spanish only, and that he always carried a concealed firearm, as he was licensed to do. It was up to the jurors to decide whom they believed.

The issue of Calhoun's intent came to a head when the prosecutor cross-examined him. Calhoun related that the night before the arrest, he had detached himself from the group when his friend arrived at their hotel room with a bag of money. He stated that he "didn't know" what was happening, and that it "made me think . . . [t]hat I didn't want to be there." Tr. 125–126 (Mar. 8, 2011). (Calhoun had previously testified that he rejoined the group the next morning because he thought they were finally returning home. *Id.*, at 109.) The prosecutor pressed Calhoun repeatedly to explain why he did not want to be in the hotel room. Eventually, the District Judge told the prosecutor to move on. That is when the prosecutor asked, "You've got African-

Americans, you've got Hispanics, you've got a bag full of money. Does that tell you—a light bulb doesn't go off in your head and say, This is a drug deal?" *Id.*, at 127.

Calhoun, who is African-American, claims that the prosecutor's racially charged question violated his constitutional rights. Inexplicably, however, Calhoun's counsel did not object to the question at trial. So Calhoun's challenge comes to us on plain-error review, under which he would ordinarily have to "demonstrate that [the error] 'affected the outcome of the district court proceedings.'" *Puckett* v. *United States*, 556 U. S. 129, 135 (2009) (quoting *United States* v. *Olano*, 507 U. S. 725, 734 (1993)). Yet in his petition for writ of certiorari, Calhoun does not attempt to make that showing. Instead, Calhoun contends that the comment should lead to automatic reversal because it constitutes either structural error or plain error regardless of whether it prejudiced the outcome. Those arguments, however, were forfeited when Calhoun failed to press them on appeal to the Fifth Circuit. Given this posture, and the unusual way in which this case has been litigated, I do not disagree with the Court's decision to deny the petition.*

There is no doubt, however, that the prosecutor's question never should have been posed. "The Constitution prohibits racially biased prosecutorial arguments." *McCleskey* v. *Kemp*, 481 U. S. 279, 309, n. 30 (1987). Such argumentation is an affront to the Constitution's guarantee of equal protection of the laws. And by threatening to cultivate bias in the jury, it equally offends the defendant's right to an impartial jury. Judge Frank put the point well: "If government counsel in a criminal suit is allowed to inflame the jurors by irrelevantly arousing their deepest prejudices, the jury may become in his hands a lethal weapon directed against

*The prosecutor's comment was not an isolated one, but Calhoun similarly failed to challenge the reprise. During defense counsel's closing argument, counsel belatedly criticized the prosecutor's question. On rebuttal, the prosecutor responded: "I got accused by [defense counsel] of, I guess, racially, ethnically profiling people when I asked the question of Mr. Calhoun, Okay, you got African-American[s] and Hispanics, do you think it's a drug deal? But there's one element that's missing. The money. So what are they doing in this room with a bag full of money? What does your common sense tell you that these people are doing in a hotel room with a bag full of money, cash? None of these people are Bill Gates or computer [magnates]? None of them are real estate investors." Tr. 167–168 (Mar. 8, 2011).

defendants who may be innocent. He should not be permitted to summon that thirteenth juror, prejudice." *United States* v. *Antonelli Fireworks Co.*, 155 F. 2d 631, 659 (CA2 1946) (dissenting opinion) (footnote omitted). Thus it is a settled professional standard that a "prosecutor should not make arguments calculated to appeal to the prejudices of the jury." ABA Standards for Criminal Justice, Prosecution Function and Defense Function, Standard 3–5.8(c), p. 106 (3d ed. 1993).

By suggesting that race should play a role in establishing a defendant's criminal intent, the prosecutor here tapped a deep and sorry vein of racial prejudice that has run through the history of criminal justice in our Nation. There was a time when appeals to race were not uncommon, when a prosecutor might direct a jury to "'consider the fact that Mary Sue Rowe is a young white woman and that this defendant is a black man for the purpose and only for the purpose of determining his intent at the time he entered Mrs. Rowe's home,'" *Holland* v. *State*, 247 Ala. 53, 22 So. 2d 519, 520 (1945), or assure a jury that "'I am well enough acquainted with this class of niggers to know that they have got it in for the [white] race in their heart,'" *Taylor* v. *State*, 50 Tex. Crim. 560, 561, 100 S. W. 393 (1907). The prosecutor's comment here was surely less extreme. But it too was pernicious in its attempt to substitute racial stereotype for evidence, and racial prejudice for reason.

It is deeply disappointing to see a representative of the United States resort to this base tactic more than a decade into the 21st century. Such conduct diminishes the dignity of our criminal justice system and undermines respect for the rule of law. We expect the Government to seek justice, not to fan the flames of fear and prejudice. In discharging the duties of his office in this case, the Assistant United States Attorney for the Western District of Texas missed the mark.

Also troubling are the Government's actions on appeal. Before the Fifth Circuit, the Government failed to recognize the wrongfulness of the prosecutor's question, instead calling it only "impolitic" and arguing that "even assuming the question crossed the line," it did not prejudice the outcome. Brief for United States in No. 11–50605, pp. 19, 20. This prompted Judge Haynes to "clear up any confusion—the question crossed the line." 478 Fed. Appx. 193, 196 (CA5 2012) (concurring opinion). In this Court, the Solicitor General has more appropriately conceded that the

"prosecutor's racial remark was unquestionably improper." Brief in Opposition 7–8. Yet this belated acknowledgment came only after the Solicitor General waived the Government's response to the petition at first, leaving the Court to direct a response.

I hope never to see a case like this again.

No. 12–7869. BONIECKI *v.* STEWART ET AL. C. A. 6th Cir. Certiorari before judgment denied.

No. 12–8257. AMAWI *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 695 F. 3d 457.

No. 12–8307. FASANO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–8424. SESSOMS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 488 Fed. Appx. 737.

Rehearing Denied

No. 12–499. TOWNSEND *v.* UNITED STATES, *ante*, p. 1088;

No. 12–501. CULLEN *v.* VILLAGE OF PELHAM MANOR, NEW YORK, ET AL., *ante*, p. 1088;

No. 12–506. HETTINGA ET AL. *v.* UNITED STATES, *ante*, p. 1088;

No. 12–509. BUCKLAND ET UX. *v.* BUCKLAND ET AL., *ante*, p. 1089;

No. 12–537. MCKAY *v.* CHICAGO TRANSIT AUTHORITY, *ante*, p. 1123;

No. 12–5656. ROMERO *v.* APKER, WARDEN, *ante*, p. 1126;

No. 12–6480. HATCHES, AKA SMITH, AKA DOVE, AKA FARVEY *v.* UNITED STATES, *ante*, p. 993;

No. 12–6511. GARCIA RANGEL *v.* SCHMIDT ET AL., *ante*, p. 1051;

No. 12–6697. TOWBRIDGE *v.* TACKER ET AL., *ante*, p. 1095;

No. 12–6706. BOOKER *v.* GODINEZ, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS, *ante*, p. 1036;

No. 12–6795. LLORENTE *v.* HOLDER, ATTORNEY GENERAL, *ante*, p. 1071;

No. 12–6811. SHULICK *v.* MICHIGAN ET AL., *ante*, p. 1097;

No. 12–6904. LYONS *v.* FLORIDA, *ante*, p. 1100;

No. 12–6922. CODY *v.* BUTERA ET AL., *ante*, p. 1100;

No. 12–7022. GERBER *v.* ISABELLA GERIATRIC CENTER, INC., *ante*, p. 1103; and

No. 12–7096. POTTER *v.* TOEI ANIMATION INC. ET AL., *ante*, p. 1127. Petitions for rehearing denied.

No. 12–358. SNYDER ET AL. *v.* NEW YORK STATE EDUCATION DEPARTMENT ET AL., *ante*, p. 1041; and

No. 12–7065. HENRY *v.* UNITED STATES, *ante*, p. 1076. Petitions for rehearing denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of these petitions.

FEBRUARY 26, 2013

Miscellaneous Order

No. 12A835. CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS *v.* HOWELL. Application to vacate stay of execution of sentence of death entered by the United States Court of Appeals for the Eleventh Circuit on February 25, 2013, presented to JUSTICE THOMAS, and by him referred to the Court, denied.

MARCH 1, 2013

Dismissal Under Rule 46

No. 12–854. RICHTER *v.* ADVANCE AUTO PARTS, INC. C. A. 8th Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 686 F. 3d 847.

MARCH 4, 2013

Certiorari Dismissed

No. 12–8513. RICH *v.* TAMEZ, WARDEN. C. A. 5th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. 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: 489 Fed. Appx. 754.

Miscellaneous Orders

No. 12M95. JAFFE *v.* PREGERSON, JUDGE, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, ET AL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 12–142. MUTUAL PHARMACEUTICAL CO., INC. *v.* BARTLETT. C. A. 1st Cir. [Certiorari granted, *ante,* p. 1045.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 12–307. UNITED STATES *v.* WINDSOR, EXECUTOR OF THE ESTATE OF SPYER, ET AL. C. A. 2d Cir. [Certiorari granted, *ante,* p. 1066.] Joint motion for enlargement of time and divided argument granted, and the time is to be divided as follows: On the jurisdiction issues, the Court-appointed *amicus curiae* is allotted 20 minutes, the Solicitor General is allotted 15 minutes, and respondent Bipartisan Legal Advisory Group of the United States House of Representatives is allotted 15 minutes. On the merits, respondent Bipartisan Legal Advisory Group of the United States House of Representatives is allotted 30 minutes, the Solicitor General is allotted 15 minutes, and respondent Edith Windsor is allotted 15 minutes.

No. 12–418. UNITED STATES *v.* KEBODEAUX. C. A. 5th Cir. [Certiorari granted, *ante,* p. 1119.] Motion of the Solicitor General to dispense with printing joint appendix granted.

No. 12–8191. MISSUD *v.* SECURITIES AND EXCHANGE COMMISSION ET AL. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until March 25, 2013, 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. 12–8538. IN RE AGENT. Petition for writ of mandamus denied.

Certiorari Granted

No. 12–574. WALDEN *v.* FIORE ET AL. C. A. 9th Cir. Certiorari granted. Reported below: 688 F. 3d 558.

Certiorari Denied

No. 11–9137. JOHNSON *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 11th Cir. Certiorari denied. Reported below: 436 Fed. Appx. 939.

No. 11–9843. LYONS *v.* MITCHELL, SUPERINTENDENT, OLD COLONY CORRECTIONAL CENTER. C. A. 1st Cir. Certiorari denied. Reported below: 666 F. 3d 51.

No. 12–429. LEBOWITZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 676 F. 3d 1000.

No. 12–457. CALIFORNIA PHYSICIANS' SERVICE, DBA BLUE SHIELD OF CALIFORNIA *v.* HARLICK. C. A. 9th Cir. Certiorari denied. Reported below: 686 F. 3d 699.

No. 12–535. JASPER *v.* SECURITIES AND EXCHANGE COMMISSION. C. A. 9th Cir. Certiorari denied. Reported below: 678 F. 3d 1116.

No. 12–560. MARCAVAGE ET AL. *v.* CITY OF NEW YORK, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 689 F. 3d 98.

No. 12–658. PRICE *v.* THOMAS, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 679 F. 3d 1315.

No. 12–667. WALTERS ET AL. *v.* MCMAHEN ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 684 F. 3d 435.

No. 12–680. SCIBILIA *v.* VERIZON COMMUNICATIONS, INC., ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 493 Fed. Appx. 225.

No. 12–698. CRAWLEY *v.* MINNESOTA. Sup. Ct. Minn. Certiorari denied. Reported below: 819 N. W. 2d 94.

No. 12–770. ROGERS *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied.

No. 12–771. REASONOVER ET AL. *v.* HODGES ET AL. Sup. Ct. La. Certiorari denied. Reported below: 2012–0043 (La. 7/2/12), 103 So. 3d 1069.

No. 12–774. MERISIER *v.* BANK OF AMERICA, N. A. C. A. 11th Cir. Certiorari denied. Reported below: 688 F. 3d 1203.

No. 12–775. KENNEY *v.* JAPAN ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–792. DIBBS *v.* MAZZARELLI ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 470 Fed. Appx. 34.

No. 12–795. WILLIAM JEFFERSON & CO., INC. *v.* ORANGE COUNTY ASSESSMENT APPEALS BOARD NO. 3. C. A. 9th Cir. Certiorari denied. Reported below: 695 F. 3d 960 and 482 Fed. Appx. 273.

No. 12–844. SLEDGE *v.* BELLWOOD SCHOOL DISTRICT 88. C. A. 7th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 313.

No. 12–856. CORNISH *v.* KAPPOS, UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR, PATENT AND TRADEMARK OFFICE, ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 474 Fed. Appx. 779.

No. 12–866. DOE ET AL. *v.* DELNOR COMMUNITY HEALTH SYSTEMS ET AL. App. Ct. Ill., 2d Dist. Certiorari denied. Reported below: 2011 IL App (2d) 100880–U.

No. 12–867. POTUGARI *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 152 So. 3d 459.

No. 12–868. ONYIAH *v.* ST. CLOUD STATE UNIVERSITY ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 684 F. 3d 711.

No. 12–888. TOWN OF OYSTER BAY, NEW YORK *v.* KIRKLAND, COMMISSIONER, NEW YORK STATE DIVISION OF HUMAN RIGHTS, ET AL. Ct. App. N. Y. Certiorari denied. Reported below: 19 N. Y. 3d 1035, 978 N. E. 2d 1237.

No. 12–890. FERMIN *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 491 Fed. Appx. 472.

No. 12–896. NEGER *v.* MARYLAND. Ct. App. Md. Certiorari denied. Reported below: 427 Md. 582, 50 A. 3d 591.

No. 12–909. BOURDON ET AL. *v.* MABUS, SECRETARY OF THE NAVY, ET AL. C. A. D. C. Cir. Certiorari denied.

No. 12–913. ABRAHAM *v.* PENNSYLVANIA. Sup. Ct. Pa. Certiorari denied. Reported below: 619 Pa. 293, 62 A. 3d 343.

No. 12–914. BACH *v.* RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS. C. A. 9th Cir. Certiorari denied.

No. 12–922. MARICOPA COUNTY, ARIZONA, ET AL. *v.* WAGNER, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF VOGEL. C. A. 9th Cir. Certiorari denied. Reported below: 747 F. 3d 1048.

No. 12–925. LEWIS *v.* SUTHERS, ATTORNEY GENERAL OF COLORADO, ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 415.

No. 12–943. SUBRAMANIAN *v.* QAD, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 826.

No. 12–947. CRONIN ET AL. *v.* SPOKANE POLICE DEPARTMENT ET AL. Ct. App. Wash. Certiorari denied. Reported below: 168 Wash. App. 1047.

No. 12–948. RUMBURG *v.* MCHUGH, SECRETARY OF THE ARMY. C. A. 6th Cir. Certiorari denied.

No. 12–959. CASTILLA-LUGO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 699 F. 3d 454.

No. 12–6578. GONZALEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 683 F. 3d 1221.

No. 12–7049. OWENS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 445 Fed. Appx. 209.

No. 12–7119. MENDOZA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 765.

No. 12–7504. WILLIAMS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 690 F. 3d 1056.

No. 12–7936. MCCASKEY *v.* HENRY ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 470.

No. 12–7947. PATTERSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 12–7950. WHITE *v.* OHIO. Sup. Ct. Ohio. Certiorari denied. Reported below: 132 Ohio St. 3d 344, 2012-Ohio-2583, 972 N. E. 2d 534.

No. 12–7951. SOMERVILLE *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 12–7952. K. W. *v.* NEW JERSEY DIVISION OF YOUTH AND FAMILY SERVICES. Super. Ct. N. J., App. Div. Certiorari denied.

No. 12–7955. DELOSSANTOS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 498 Fed. Appx. 92.

No. 12–7960. ROWLS *v.* MICHIGAN. Ct. App. Mich. Certiorari denied.

No. 12–7962. SPRINGS *v.* ALLY FINANCIAL INC., FKA GMAC INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 900.

No. 12–7963. MOROZOVA *v.* CALLOW. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–7965. PUGH *v.* HUGGINS. Ct. App. Ga. Certiorari denied.

No. 12–7976. TAGLIAFERRI ET AL. *v.* WINTER PARK HOUSING AUTHORITY ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 486 Fed. Appx. 771.

No. 12–7977. PERNA *v.* LATTIMORE, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–7978. MOLYNEAUX *v.* FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 12–7979. PICKENS *v.* CHRONES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–7980. ON *v.* HOUSTON, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 12–7981. ODOMS *v.* SKOLNIK ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 602.

No. 12–7984. MISSOURI *v.* BIRKETT, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–7987. WATSON *v.* WRIGHT ET AL. C. A. 2d Cir. Certiorari denied.

No. 12–8009. CAREY *v.* ALABAMA. Ct. Crim. App. Ala. Certiorari denied. Reported below: 144 So. 3d 526.

No. 12–8011. BUSH *v.* OKLAHOMA. Ct. Crim. App. Okla. Certiorari denied. Reported below: 2012 OK CR 9, 280 P. 3d 337.

No. 12–8025. O'HALLORAN *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 3d Jud. Dept. Certiorari denied.

No. 12–8027. EDMISTON *v.* WELLS FARGO BANK. C. A. 5th Cir. Certiorari denied.

No. 12–8045. BRAMMER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 12–8051. RICHARDSON *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 490 Fed. Appx. 423.

No. 12–8078. GREER *v.* MICHIGAN. Cir. Ct. Wayne County, Mich. Certiorari denied.

No. 12–8079. CARR *v.* TRAFFIC COURT OF TYLER, TEXAS. C. A. 5th Cir. Certiorari denied.

No. 12–8084. ROUSE *v.* WASHINGTON. Sup. Ct. Wash. Certiorari denied.

No. 12–8092. WARD *v.* MEDINA, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 502 Fed. Appx. 780.

No. 12–8104. EPPS *v.* SHEAHAN, SUPERINTENDENT, FIVE POINTS CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied. Reported below: 687 F. 3d 46.

No. 12–8108. SOUZA *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 54 Cal. 4th 90, 277 P. 3d 118.

No. 12–8118. JONES *v.* WASHINGTON. Ct. App. Wash. Certiorari denied. Reported below: 167 Wash. App. 1004.

No. 12–8120. BYARS *v.* MICHIGAN. Cir. Ct. Washtenow County, Mich. Certiorari denied.

No. 12–8147. LAUDERMILL *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–8157. SHANNON S. *v.* NEW YORK. Ct. App. N. Y. Certiorari denied. Reported below: 20 N. Y. 3d 99, 956 N. E. 2d 462.

No. 12–8170. CORTEZ-MELO *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 12–8176. THOMAS *v.* TEXAS. Ct. App. Tex., 9th Dist. Certiorari denied. Reported below: 365 S. W. 3d 537.

No. 12–8213. HERNANDEZ LOPEZ *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 55 Cal. 4th 569, 286 P. 3d 469.

No. 12–8222. PEARSON *v.* SMITH, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–8227. THOMAS *v.* ROMANOWSKI, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–8228. BLACKMON *v.* BOOKER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 696 F. 3d 536.

No. 12–8243. ROBERTS *v.* TAYLOR, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 12–8260. PERDOMO *v.* HEDGPETH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–8277. THOMPSON *v.* LEWIS, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–8297. GIOGLIO *v.* MICHIGAN. Ct. App. Mich. Certiorari denied. Reported below: 296 Mich. App. 12, 815 N. W. 2d 589.

No. 12–8299. ESTRADA-LOPEZ *v.* OHIO. Ct. App. Ohio, Butler County. Certiorari denied. Reported below: 186 Ohio App. 3d 328, 2010-Ohio-732, 927 N. E. 2d 1147.

No. 12–8316. DYER *v.* MORROW, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 499 Fed. Appx. 505.

No. 12–8354. BUEHNER *v.* LAROSE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 277.

No. 12–8363. BROWN *v.* BAUMAN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–8377. SMITH, AKA JOHNSON *v.* NEW JERSEY. Sup. Ct. N. J. Certiorari denied. Reported below: 212 N. J. 365, 54 A. 3d 772.

No. 12–8389. WOODS *v.* MARYLAND (two judgments). Ct. Sp. App. Md. Certiorari denied. Reported below: 206 Md. App. 771 (both judgments).

No. 12–8390. WHITMAN *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–8391. WILSON *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–8401. YOKELY *v.* HEDGPETH, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–8429. BENNETT *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 698 F. 3d 194.

No. 12–8430. ANDERSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–8431. ABPIKAR *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 12–8449. WORTHY *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 12–8452. BRANDAU *v.* PASTRANA, WARDEN. C. A. 11th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 367.

No. 12–8453. SESSIONS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–8466. HAMMONDS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 495 Fed. Appx. 369.

No. 12–8467. ANDRADE-TORRES, AKA ESTRADA-MEDINA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 12–8468. BRIS-SOTELO *v.* UNITED STATES; and MENDOZA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–8469. CRENSHAW *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 486 Fed. Appx. 379.

No. 12–8471. FLINT *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–8482. CARTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 16.

No. 12–8484. ZHOU CHEN *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 508 Fed. Appx. 398.

No. 12–8493. RAMIREZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 491 Fed. Appx. 65.

No. 12–8495. RICHARDSON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 504 Fed. Appx. 176.

No. 12–8496. SNARD *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 497 Fed. Appx. 228.

No. 12–8502. VAUGHT *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–8506. WHITE *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 495 Fed. Appx. 549.

No. 12–8509. GREEN *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 698 F. 3d 48.

No. 12–8512. GOROSAVE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 472 Fed. Appx. 692.

No. 12–8515. SIMMONS *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 47 A. 3d 973.

No. 12–8516. SHAKUR *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 691 F. 3d 979.

No. 12–8517. HARRIS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 705 F. 3d 929.

No. 12–8518. HATCHER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 416.

No. 12–8520. PRINGLE *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 53 A. 3d 1105.

No. 12–8523. REEVES *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 500 Fed. Appx. 795.

No. 12–8526. RUSSELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 12–8529. SYKES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 72.

No. 12–8532. COTA-BECERRA *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 12–8533. CIRESI *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 697 F. 3d 19.

No. 12–8535. MARMOLEJO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–8541. LEWIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 496 Fed. Appx. 425.

No. 12–8546. NATSON *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 3.

No. 12–8550. LEWIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–8553. BROWN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 486 Fed. Appx. 378.

No. 12–8557. BARREN, AKA JONES, AKA HUTCHINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 767.

No. 12–8558. PETTIGREW *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 181.

No. 12–8559. PEGESE *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 505 Fed. Appx. 18.

No. 12–8560. MURPHY *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 501 Fed. Appx. 740.

No. 12–8562. DOWNS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 286.

No. 12–8563. JACKSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied.

No. 12–8566. MATIAS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 707 F. 3d 1.

No. 12–8570. WASHINGTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 793.

No. 12–8575. HENRIQUES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 698 F. 3d 673.

No. 12–8576. WATKINS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–8589. MCKINLEY *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–8596. PINEDA-SANCHEZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–8602. GREEN *v.* FLORIDA. Dist. Ct. App. Fla., 4th Dist. Certiorari denied. Reported below: 93 So. 3d 1042.

No. 12–8606. HARMER *v.* BRANDON, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–782. MCMASTER ET AL. *v.* SMALL. C. A. 5th Cir. Motion of respondent for leave to proceed *in forma pauperis* denied. Certiorari denied. Reported below: 486 Fed. Appx. 436.

No. 12–8035. MILLER *v.* MCCABE, WARDEN. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 475 Fed. Appx. 921.

No. 12–8473. GILES *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–8501. WILSON *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 497 Fed. Appx. 850.

Rehearing Denied

No. 10–11255. EASLEY *v.* UNITED STATES, 565 U. S. 875;

No. 11–10412. HARDY *v.* WEST ET AL., *ante*, p. 842;

No. 11–10740. HOLSTON *v.* TUCKER, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 859;

No. 12–568. PIERSON *v.* ORLANDO HEALTH, FKA ORLANDO REGIONAL HEALTHCARE SYSTEMS, INC., ET AL., *ante*, p. 1123;

No. 12–5306. MOORE *v.* FEDERAL BUREAU OF PRISONS, *ante*, p. 1144;

No. 12–5319. HISTON *v.* CHAPPELL, WARDEN, *ante,* p. 1126;
No. 12–5436. HALL *v.* CAIN, WARDEN, *ante,* p. 1114;
No. 12–6380. SOLIS *v.* CALIFORNIA, *ante,* p. 1033;
No. 12–6677. WASHINGTON *v.* VIRGA, WARDEN, *ante,* p. 1094;
No. 12–6691. NOURN *v.* LATTIMORE, WARDEN, *ante,* p. 1095;
No. 12–6846. PUGH *v.* OLDE PINK HOUSE RESTAURANT, *ante,* p. 1098;
No. 12–6851. HAMILTON *v.* CHICAGO INSURANCE CO., *ante,* p. 1098;
No. 12–6902. JOHNSON *v.* BRITISH PETROLEUM OF AMERICA, *ante,* p. 1100;
No. 12–6962. JONES *v.* UNIVERSITY OF ROCHESTER, *ante,* p. 1102;
No. 12–7034. COX *v.* BISCOE ET AL., *ante,* p. 1126;
No. 12–7044. JOHNSON *v.* OHIO, *ante,* p. 1127;
No. 12–7075. HOWARD *v.* HOWARD ET AL., *ante,* p. 1127;
No. 12–7137. RICHARDSON *v.* UNITED STATES, *ante,* p. 1075;
No. 12–7160. WILKINSON *v.* HOLLAND, ACTING WARDEN, *ante,* p. 1128;
No. 12–7245. BERMUDEZ *v.* UNEMPLOYMENT COMPENSATION BOARD OF REVIEW, *ante,* p. 1106;
No. 12–7275. MCCALLISTER *v.* MCCALLISTER, *ante,* p. 1130;
No. 12–7290. BOYD *v.* LEE, WARDEN, *ante,* p. 1131;
No. 12–7342. PORTILLO *v.* UNITED STATES, *ante,* p. 1109;
No. 12–7482. IN RE BALZAROTTI, *ante,* p. 1084;
No. 12–7492. POWDRILL *v.* UNITED STATES, *ante,* p. 1112;
No. 12–7499. PARIKH *v.* UNITED PARCEL SERVICE ET AL., *ante,* p. 1133; and
No. 12–7638. COMPTON *v.* UNITED STATES, *ante,* p. 1134. Petitions for rehearing denied.

No. 12–7586. MACKEY *v.* GRABER, WARDEN, *ante,* p. 1139; and
No. 12–7621. IN RE COCHRAN, *ante,* p. 1084. Petitions for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of these petitions.

MARCH 5, 2013

Miscellaneous Order

No. 12A857. RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS *v.* SCHAD. Application to vacate stay of execution

of sentence of death entered by the United States Court of Appeals for the Ninth Circuit on March 1, 2013, presented to JUSTICE KENNEDY, and by him referred to the Court, denied. JUSTICE SCALIA and JUSTICE ALITO would grant the application to vacate the stay of execution.

MARCH 11, 2013

Dismissals Under Rule 46

No. 12–800. EPIC SYSTEMS CORP. *v.* MCKESSON TECHNOLOGIES, INC. C. A. Fed. Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 692 F. 3d 1301.

No. 12–970. MCKESSON TECHNOLOGIES, INC. *v.* EPIC SYSTEMS CORP. C. A. Fed. Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 692 F. 3d 1301.

MARCH 15, 2013

Dismissal Under Rule 46

No. 12–6574. KEARNEY *v.* UNITED STATES. C. A. 1st Cir. Certiorari dismissed under this Court's Rule 46.1. Reported below: 672 F. 3d 81.

Miscellaneous Orders

No. 12–52. DAN'S CITY USED CARS, INC., DBA DAN'S CITY AUTO BODY *v.* PELKEY. Sup. Ct. N. H. [Certiorari granted, *ante*, p. 1065.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted. Motions of International Municipal Lawyers Association et al. and Massachusetts Jobs With Justice for leave to file briefs as *amici curiae* granted.

No. 12–144. HOLLINGSWORTH ET AL. *v.* PERRY ET AL. C. A. 9th Cir. [Certiorari granted, *ante*, p. 1066.] Motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument granted.

No. 12–307. UNITED STATES *v.* WINDSOR, EXECUTOR OF THE ESTATE OF SPYER, ET AL. C. A. 2d Cir. [Certiorari granted, *ante*, p. 1066.] Motion of former Attorneys General Edwin Meese III and John Ashcroft for leave to file brief as *amici curiae* out of time granted.

No. 12–399. ADOPTIVE COUPLE *v.* BABY GIRL, A MINOR CHILD UNDER THE AGE OF 14 YEARS, ET AL. Sup. Ct. S. C. [Certiorari granted, *ante*, p. 1081.] Motion of petitioners for leave to file joint appendix under seal denied without prejudice to filing a renewed motion together with either a redacted joint appendix or an explanation as to why the joint appendix may not be redacted within 14 days.

No. 12–416. FEDERAL TRADE COMMISSION *v.* ACTAVIS, INC., ET AL. C. A. 11th Cir. [Certiorari granted *sub nom. Federal Trade Commission* v. *Watson Pharmaceuticals, Inc., et al.*, *ante*, p. 1066.] Motion of Enavail, LLC, for leave to participate in oral argument as *amicus curiae* and for divided argument denied. JUSTICE ALITO took no part in the consideration or decision of this petition.

MARCH 18, 2013

Certiorari Granted—Vacated and Remanded

No. 12–11. RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS *v.* JAMES. C. A. 9th Cir. Certiorari granted, judgment vacated, and case remanded for further consideration in light of *Johnson* v. *Williams*, *ante*, p. 289. Reported below: 679 F. 3d 780.

Certiorari Dismissed

No. 12–8119. ASPELMEIER *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 12–8200. BIRDETTE *v.* VECTOR MARKETING, INC., ET AL. C. A. 11th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 12–8201. BIRDETTE ET AL. *v.* DOUGLAS COUNTY BOARD OF EDUCATION ET AL. 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.

No. 12–8202. BIRDETTE *v.* AXCESS STAFFING SERVICES. 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. 12–8199. BIRDETTE ET UX. *v.* SAXON MORTGAGE ET AL. 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. JUSTICE ALITO took no part in the consideration or decision of this motion and this petition. Reported below: 502 Fed. Appx. 839.

No. 12–8203. BIRDETTE ET UX. *v.* CITIBANK, N. A., ET AL. 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. JUSTICE ALITO took no part in the consideration or decision of this motion and this petition.

No. 12–8204. BIRDETTE *v.* SIMOS. 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. 12–8206. NENG POR YANG *v.* DISTRICT COURT OF MINNESOTA, HENNEPIN COUNTY. 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. 12–8214. BIRDETTE *v.* ASSET ACCEPTANCE, LLC, 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. 12–8215. BIRDETTE *v.* CREDIT FIRST N. A. 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. 12–8278. JAMESON *v.* BEARD, SECRETARY, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION. C. A. 9th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8. 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. 12–8486. NADDI *v.* CALIFORNIA. Sup. Ct. Cal. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. D–2708. IN RE DISCIPLINE OF FRIEDMAN. David Alan Friedman, of Louisville, Ky., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2709. IN RE DISCIPLINE OF WANNINGER. Albert M. Wanninger, 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–2710. IN RE DISCIPLINE OF FITZGERALD. Henry St. John FitzGerald, of Arlington, Va., is suspended from the practice of law in this Court, and a rule will issue, returnable within 40 days, requiring him to show cause why he should not be disbarred from the practice of law in this Court.

No. D–2711. IN RE DISCIPLINE OF DONOFRIO. Anthony C. Donofrio, of Massapequa, 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–2712. IN RE DISCIPLINE OF BOYD. Joan M. Boyd, of Gillett, Wis., 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. 12M96. ANDERSON *v.* INTER-CON SECURITY SYSTEMS, INC.;

No. 12M97. WASHINGTON *v.* EAST BATON ROUGE PARISH ET AL.;

No. 12M99. CARTER *v.* MAXIMOV ET AL.; and

No. 12M101. SHRINER *v.* WILD JACK'S CASINO ET AL. Motions to direct the Clerk to file petitions for writs of certiorari out of time denied.

No. 12M98. HOWARD *v.* JOSEPH ET AL. Motion for leave to proceed as a veteran denied.

No. 12M100. CRAIG *v.* UNITED STATES. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

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

No. 12–820. LOZANO *v.* MONTOYA ALVAREZ. C. A. 2d Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 12–7610. DAVIS *v.* CLARK ET AL. C. A. 10th Cir. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* [*ante*, p. 1141] denied. JUSTICE KAGAN took no part in the consideration or decision of this motion.

No. 12–8253. DAUGHERTY *v.* THE HEIGHTS ET AL. C. A. 8th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied. Petitioner is allowed until April 8, 2013, 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. 12–8714. IN RE LAN THI TRAN NGUYEN;
No. 12–8718. IN RE WHITE; and
No. 12–8834. IN RE MCCOY. Petitions for writs of habeas corpus denied.

No. 12–8724. IN RE COX. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8. 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. 12–8905. IN RE ROBINSON. Motion of petitioner for leave to proceed *in forma pauperis* denied, and petition for writ of habeas corpus dismissed. See this Court's Rule 39.8.

No. 12–953. IN RE DEL RIO. Petition for writ of mandamus denied.

Certiorari Granted

No. 12–464. KALEY ET VIR *v.* UNITED STATES. C. A. 11th Cir. Certiorari granted. Reported below: 677 F. 3d 1316.

No. 12–872. MADIGAN ET AL. *v.* LEVIN. C. A. 7th Cir. Certiorari granted. Reported below: 692 F. 3d 607.

No. 12–623. UNITED STATES FOREST SERVICE ET AL. *v.* PACIFIC RIVERS COUNCIL ET AL. C. A. 9th Cir. Motion of Public Lands Council et al. for leave to file brief as *amici curiae* granted. Certiorari granted. Reported below: 689 F. 3d 1012.

Certiorari Denied

No. 12–289. NEW 49'ERS, INC., ET AL. *v.* KARUK TRIBE OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 681 F. 3d 1006.

No. 12–408. EDWARDS *v.* DEWALT, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 681 F. 3d 780.

No. 12–420. WOLFENBARGER, WARDEN *v.* FOSTER. C. A. 6th Cir. Certiorari denied. Reported below: 687 F. 3d 702.

No. 12–503. SAN GERONIMO CARIBE PROJECT, INC. *v.* ACEVEDO-VILA ET AL. C. A. 1st Cir. Certiorari denied. Reported below: 687 F. 3d 465.

No. 12–528. GOLDMAN, SACHS & CO. ET AL. *v.* NECA–IBEW HEALTH & WELFARE FUND. C. A. 2d Cir. Certiorari denied. Reported below: 693 F. 3d 145.

No. 12–546. WASSON *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 679 F. 3d 938.

No. 12–553. GLENN ET AL. *v.* HOLDER, ATTORNEY GENERAL. C. A. 6th Cir. Certiorari denied. Reported below: 690 F. 3d 417.

No. 12–594. BLAND *v.* LEMKE, WARDEN. C. A. 7th Cir. Certiorari denied. Reported below: 672 F. 3d 445.

No. 12–600. ANTICO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 692 F. 3d 79.

No. 12–607. KIEHLE *v.* COUNTY OF CORTLAND, NEW YORK, ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 486 Fed. Appx. 222.

No. 12–613. AMERICAN ATHEISTS, INC., ET AL. *v.* KENTUCKY OFFICE OF HOMELAND SECURITY ET AL. Ct. App. Ky. Certiorari denied. Reported below: 371 S. W. 3d 754.

No. 12–631. Islamic Republic of Iran *v.* McKesson Corp. et al. C. A. D. C. Cir. Certiorari denied. Reported below: 672 F. 3d 1066.

No. 12–663. Ebonie S., by Her Mother and Next Friend, Mary S. *v.* Pueblo School District 60 et al. C. A. 10th Cir. Certiorari denied. Reported below: 695 F. 3d 1051.

No. 12–685. Downing *v.* Life Time Fitness, Inc. C. A. 6th Cir. Certiorari denied. Reported below: 483 Fed. Appx. 12.

No. 12–697. Egilman *v.* Conagra Foods Inc. et al. C. A. 9th Cir. Certiorari denied. Reported below: 493 Fed. Appx. 862.

No. 12–705. Doe *v.* United States. C. A. 6th Cir. Certiorari denied.

No. 12–710. Semper *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 694 F. 3d 90.

No. 12–715. Thomas-Rasset *v.* Capitol Records, Inc., et al. C. A. 8th Cir. Certiorari denied. Reported below: 692 F. 3d 899.

No. 12–746. D. R. Horton, Inc., et al. *v.* Lyndoe et al. Ct. App. N. M. Certiorari denied. Reported below: 2012–NMCA–103, 287 P. 3d 357.

No. 12–784. Jaimes *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 489 Fed. Appx. 751.

No. 12–799. Wiseman *v.* Minnesota. Ct. App. Minn. Certiorari denied. Reported below: 816 N. W. 2d 689.

No. 12–803. Baisden *v.* I'm Ready Productions, Inc., et al. C. A. 5th Cir. Certiorari denied. Reported below: 693 F. 3d 491.

No. 12–808. Bouchard Transportation *v.* Messier. C. A. 2d Cir. Certiorari denied. Reported below: 688 F. 3d 78.

No. 12–809. Amidax Trading Group *v.* S. W. I. F. T. SCRL et al. C. A. 2d Cir. Certiorari denied. Reported below: 671 F. 3d 140.

No. 12–811. Airservices Australia *v.* Conklin, Judge, Circuit Court of Missouri, Greene County, et al. Sup. Ct. Mo. Certiorari denied.

No. 12–822. KELLER *v.* CROWN CORK & SEAL USA, INC. C. A. 10th Cir. Certiorari denied. Reported below: 491 Fed. Appx. 908.

No. 12–824. UNITED STATES EX REL. PRITSKER *v.* SODEXHO, INC., ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 493 Fed. Appx. 309.

No. 12–828. HEBERT *v.* MILYARD, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 497 Fed. Appx. 855.

No. 12–835. POWELL *v.* FF ACQUISITION, L. L. C. C. A. 4th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 909.

No. 12–836. LIBERTARIAN PARTY ET AL. *v.* DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 682 F. 3d 72.

No. 12–837. K. C. *v.* INDIANA. Ct. App. Ind. Certiorari denied. Reported below: 973 N. E. 2d 107.

No. 12–840. WERTH *v.* CURTIN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 692 F. 3d 486.

No. 12–850. SCHIAFFINO *v.* PENNSYLVANIA. Super. Ct. Pa. Certiorari denied. Reported below: 48 A. 3d 469.

No. 12–860. ALLEN *v.* HARRY, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 497 Fed. Appx. 473.

No. 12–861. CONTINENTAL MOTORS, INC. *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–863. JOVANI FASHION, LTD. *v.* FIESTA FASHIONS ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 500 Fed. Appx. 42.

No. 12–864. BORMUTH *v.* DAHLEM CONSERVANCY ET AL. C. A. 6th Cir. Certiorari denied.

No. 12–870. COOK, INDIVIDUALLY AND AS ADMINISTRATOR FOR THE ESTATE OF COOK, ET AL. *v.* HOWARD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 805.

No. 12–874. ASHBAUGH *v.* CORPORATION OF BOLIVAR, WEST VIRGINIA, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 481 Fed. Appx. 840.

No. 12–875. HOVEM ET AL. *v.* KLEIN INDEPENDENT SCHOOL DISTRICT. C. A. 5th Cir. Certiorari denied. Reported below: 690 F. 3d 390.

No. 12–876. ATLANTIC STATES CAST IRON PIPE CO. ET AL. *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 695 Fed. Appx. 227.

No. 12–881. HARRIS *v.* HALL. Ct. App. Tenn. Certiorari denied.

No. 12–898. WESTERN RADIO SERVICES CO., INC. *v.* CENTURY-TEL OF EASTERN OREGON, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 497 Fed. Appx. 700.

No. 12–903. ABHYANKAR *v.* BRAZELTON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–906. IQBAL *v.* HOLDER, ATTORNEY GENERAL, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 693 F. 3d 1189.

No. 12–920. SILVA *v.* MAINE. Sup. Jud. Ct. Me. Certiorari denied. Reported below: 2012 ME 120, 56 A. 3d 1230.

No. 12–931. ARTZ *v.* STATE BAR OF CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 12–933. WALDMAN ET AL. *v.* STONE. C. A. 6th Cir. Certiorari denied. Reported below: 698 F. 3d 910.

No. 12–946. BRITT *v.* GENERAL STAR INDEMNITY CO. C. A. 2d Cir. Certiorari denied. Reported below: 494 Fed. Appx. 151.

No. 12–951. LANEY *v.* AVIS RENT A CAR SYSTEM, INC. C. A. 5th Cir. Certiorari denied.

No. 12–958. SEBBA *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 12–961. BAYOU STEEL CORP. ET AL. *v.* NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PENNSYLVANIA. C. A. 5th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 933.

No. 12–963. MOE *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 463 Mass. 370, 974 N. E. 2d 619.

No. 12–974. Andrews Arts & Sciences Law, LLC, et al. *v.* SnoWizard, Inc. Ct. App. Cal., 5th App. Dist. Certiorari denied.

No. 12–979. Weaver, dba Guns & Ammo *v.* Harris. C. A. 5th Cir. Certiorari denied. Reported below: 486 Fed. Appx. 503.

No. 12–991. Habyarimana, Individually and on Behalf of the Estate of the Deceased President of Rwanda, Habyarimana, et al. *v.* Kagame, President of the Republic of Rwanda. C. A. 10th Cir. Certiorari denied. Reported below: 696 F. 3d 1029.

No. 12–1017. Patel *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 702.

No. 12–6075. F. H. et ux. *v.* Shimko et al. Ct. App. Ohio, Stark County. Certiorari denied. Reported below: 2011-Ohio-5586.

No. 12–6169. Maehr *v.* Commissioner of Internal Revenue. C. A. 10th Cir. Certiorari denied. Reported below: 480 Fed. Appx. 921.

No. 12–6273. Bedzhanyan *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 340.

No. 12–6621. Alonzo *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 12–6826. Yuan *v.* California. Ct. App. Cal., 6th App. Dist. Certiorari denied.

No. 12–6877. Stroud *v.* United States. C. A. 8th Cir. Certiorari denied. Reported below: 673 F. 3d 854.

No. 12–7162. Williams *v.* Tamez, Warden. C. A. 5th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 524.

No. 12–7203. Baltimore *v.* United States. C. A. 6th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 977.

No. 12–7328. Polidore *v.* United States. C. A. 5th Cir. Certiorari denied. Reported below: 690 F. 3d 705.

No. 12–7553. Low *v.* California. Ct. App. Cal., 4th App. Dist., Div. 2. Certiorari denied.

No. 12–7656. POPE *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 680 F. 3d 1271.

No. 12–7706. MIXON *v.* CORRECTIONS MEDICAL SERVICE ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–7708. CUNNINGHAM *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 679 F. 3d 355.

No. 12–7748. FELDMAN *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 695 F. 3d 372.

No. 12–7997. WILLIAMS *v.* CLARKE, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 249.

No. 12–7999. TORRES *v.* MCKEWAN, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–8001. THOMAS *v.* MACLAREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–8002. WASHINGTON *v.* HIRSCH. C. A. 2d Cir. Certiorari denied. Reported below: 472 Fed. Appx. 55.

No. 12–8003. ELLIOTT *v.* NEVEN, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–8010. BACH *v.* MILWAUKEE COUNTY, WISCONSIN, ET AL. Sup. Ct. Wis. Certiorari denied. Reported below: 2012 WI 106, 343 Wis. 2d 557, 820 N. W. 2d 431.

No. 12–8019. WOOD *v.* BITER, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–8026. PHILLIPS *v.* UNITED PARCEL SERVICE. C. A. 5th Cir. Certiorari denied. Reported below: 485 Fed. Appx. 676.

No. 12–8029. DANIELS *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–8049. REXUS *v.* GLEBE, SUPERINTENDENT, STAFFORD CREEK CORRECTIONS CENTER. C. A. 9th Cir. Certiorari denied.

No. 12–8053. RICHTER *v.* ILLINOIS. App. Ct. Ill., 4th Dist. Certiorari denied. Reported below: 2012 IL App (4th) 110856–U.

No. 12–8056. FULLER *v.* ROPER, SUPERINTENDENT, POTOSI CORRECTIONAL CENTER, ET AL. C. A. 8th Cir. Certiorari denied.

No. 12–8057. HOUSTON *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied. Reported below: 54 Cal. 4th 1186, 281 P. 3d 799.

No. 12–8059. BROWN *v.* ILLINOIS. App. Ct. Ill., 2d Dist. Certiorari denied.

No. 12–8060. BRAMMER *v.* CALIFORNIA. Sup. Ct. Cal. Certiorari denied.

No. 12–8064. MOFFIT *v.* MACLAREN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–8080. CONNER *v.* WARREN, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 502 Fed. Appx. 445.

No. 12–8082. BRELAND *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2012–1083 (La. 9/28/12), 98 So. 3d 831.

No. 12–8101. CHRISTIAN *v.* COUNTY OF LOS ANGELES, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–8106. DIAZ *v.* MCEWEN, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–8111. PRUITT *v.* ILLINOIS. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2012 IL App (3d) 100406–U.

No. 12–8114. DUNCAN *v.* TEXAS. Ct. App. Tex., 14th Dist. Certiorari denied.

No. 12–8117. JONES *v.* MCDANIEL ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 763.

No. 12–8122. BIBBS *v.* TEXAS. Ct. App. Tex., 7th Dist. Certiorari denied. Reported below: 371 S. W. 3d 564.

No. 12–8123. BROOKS *v.* MEDINA, WARDEN, ET AL. C. A. 10th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 285.

No. 12–8125. STEWART *v.* SINCLAIR, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 12–8127. Camarena *v.* Beard, Secretary, California Department of Corrections and Rehabilitation. C. A. 9th Cir. Certiorari denied.

No. 12–8130. Duncan *v.* California. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–8133. Beverly *v.* Illinois. App. Ct. Ill., 3d Dist. Certiorari denied. Reported below: 2012 IL App (3d) 100745–U.

No. 12–8134. Adams *v.* Virginia Employment Commission et al. Sup. Ct. Va. Certiorari denied.

No. 12–8135. Wyatt *v.* Oregon (two judgments). Sup. Ct. Ore. Certiorari denied.

No. 12–8136. Jiggetts *v.* New York City Human Resources Administration et al. C. A. 2d Cir. Certiorari denied.

No. 12–8137. Kriston *v.* Peroulis et al. C. A. 10th Cir. Certiorari denied. Reported below: 500 Fed. Appx. 744.

No. 12–8139. Black *v.* Wilkinson, Warden. C. A. 10th Cir. Certiorari denied. Reported below: 497 Fed. Appx. 780.

No. 12–8143. Baez *v.* Thaler, Director, Texas Department of Criminal Justice, Correctional Institutions Division. C. A. 5th Cir. Certiorari denied.

No. 12–8145. Coleman *v.* Arnone, Commissioner, Connecticut Department of Correction. Sup. Ct. Conn. Certiorari denied. Reported below: 303 Conn. 800, 38 A. 3d 84.

No. 12–8153. DeJesus *v.* Crews, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 12–8155. Nelson *v.* Crews, Secretary, Florida Department of Corrections. C. A. 11th Cir. Certiorari denied.

No. 12–8158. Shlikas *v.* Arrow Financial Services et al. C. A. 4th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 68.

No. 12–8160. Eato *v.* Florida. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 100 So. 3d 702.

No. 12–8161. D'ANTUONO *v.* NEW YORK. App. Div., Sup. Ct. N. Y., 4th Jud. Dept. Certiorari denied. Reported below: 87 App. Div. 3d 1412, 930 N. Y. S. 2d 172.

No. 12–8163. ERVIN *v.* RAPELJE, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 12–8164. CROSS *v.* KEITH, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 12–8167. CONTRERAS *v.* KNOWLES, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–8171. CHILTON *v.* KELLY, WARDEN. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 318.

No. 12–8173. SANANTONIO *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–8174. BOOKER *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 684 F. 3d 1121.

No. 12–8178. RUBENS *v.* LOUISIANA. Sup. Ct. La. Certiorari denied. Reported below: 2012–0399 (La. 10/12/12), 99 So. 3d 37.

No. 12–8179. SIMMONS *v.* PRUDENTI ET AL. C. A. 2d Cir. Certiorari denied.

No. 12–8182. COLEMAN *v.* FLORIDA. Dist. Ct. App. Fla., 5th Dist. Certiorari denied.

No. 12–8183. RIVERA *v.* CITY OF CHELSEA, MASSACHUSETTS. App. Ct. Mass. Certiorari denied. Reported below: 81 Mass. App. 1125, 964 N. E. 2d 370.

No. 12–8190. NAVE *v.* NEBRASKA. Sup. Ct. Neb. Certiorari denied. Reported below: 284 Neb. 477, 821 N. W. 2d 723.

No. 12–8192. SHAHIDEH *v.* MCKEE, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 963.

No. 12–8193. JACKSON *v.* GEORGIA. Ct. App. Ga. Certiorari denied. Reported below: 313 Ga. App. 483, 722 S. E. 2d 80.

No. 12–8198. JACKSON *v.* DOORY. C. A. 4th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 506.

No. 12–8205. TETERS *v.* BORST AUTOMOTIVE INC. ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–8208. TREPAL *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied. Reported below: 684 F. 3d 1088.

No. 12–8212. PIERRE *v.* ROGERS, WARDEN. C. A. 5th Cir. Certiorari denied. Reported below: 495 Fed. Appx. 403.

No. 12–8218. ALBRECHT *v.* BUTTS, SUPERINTENDENT, PENDLETON CORRECTIONAL FACILITY. C. A. 7th Cir. Certiorari denied.

No. 12–8220. RODRIGUEZ *v.* CHAPPIUS, SUPERINTENDENT, ELMIRA CORRECTIONAL FACILITY. C. A. 2d Cir. Certiorari denied.

No. 12–8224. WATSON-EL *v.* UNITED STATES ET AL. C. A. 7th Cir. Certiorari denied.

No. 12–8226. VIET *v.* KNIPP, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–8229. WINFORD *v.* PELLA WINDOW & DOOR CO. Sup. Ct. Fla. Certiorari denied. Reported below: 107 So. 3d 407.

No. 12–8235. BARROS *v.* WETZEL, SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–8239. WRIGHT, AKA WRIGHT EL *v.* JACKSON, CORRECTIONAL ADMINISTRATOR, NASH CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 502 Fed. Appx. 339.

No. 12–8244. STINSON *v.* BICKELL, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–8245. SURGICK *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 12–8246. RILES *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied.

No. 12–8259. RAISER *v.* UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 12–8261. PEREZ *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied.

No. 12–8262. LOVE *v.* RIVARD, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–8268. LOYD *v.* VIRGINIA ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 309.

No. 12–8285. CRAIG *v.* CRAIG. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 117 So. 3d 420.

No. 12–8295. HUEZO *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–8314. CHAE CHANG *v.* CALIFORNIA. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–8322. ARMSTRONG *v.* NEVADA. Sup. Ct. Nev. Certiorari denied. Reported below: 128 Nev. 879, 381 P. 3d 590.

No. 12–8343. CHANDLER *v.* DEPARTMENT OF VETERANS AFFAIRS. C. A. 8th Cir. Certiorari denied.

No. 12–8367. NETTLES *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–8376. ROGERS *v.* NORTH CAROLINA. Ct. App. N. C. Certiorari denied. Reported below: 219 N. C. App. 296, 725 S. E. 2d 342.

No. 12–8400. STEPHENS *v.* HOBBS, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION. Sup. Ct. Ark. Certiorari denied. Reported below: 2012 Ark. 332.

No. 12–8415. CHARLES *v.* MASSACHUSETTS. Sup. Jud. Ct. Mass. Certiorari denied. Reported below: 463 Mass. 1008, 977 N. E. 2d 551.

No. 12–8420. PACETTI *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 504 Fed. Appx. 217.

No. 12–8510. GRUENBERG *v.* GEMPELER ET AL. C. A. 7th Cir. Certiorari denied. Reported below: 697 F. 3d 573.

No. 12–8525. SANTOS *v.* FLORIDA. Sup. Ct. Fla. Certiorari denied. Reported below: 104 So. 3d 1087.

No. 12–8531. TRIPLETT *v.* DONAHOE, POSTMASTER GENERAL. C. A. 6th Cir. Certiorari denied.

No. 12–8543. REEVES *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 695 F. 3d 637.

No. 12–8548. RAMSEY *v.* RUNION, DIRECTOR, VIRGINIA CENTER FOR BEHAVIORAL REHABILITATION. C. A. 4th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 759.

No. 12–8551. STINSON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 473 Fed. Appx. 62.

No. 12–8552. SCHWARTZ *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 503 Fed. Appx. 443.

No. 12–8567. LEACH *v.* BICKELL, SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT HUNTINGDON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–8577. NORRIS *v.* SCHOTTEN, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–8579. MORIARTY *v.* PENNSYLVANIA ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–8580. SHERMAN *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied.

No. 12–8594. RABBIA *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 699 F. 3d 85.

No. 12–8598. GRAY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 470 Fed. Appx. 468.

No. 12–8599. FUNES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–8600. GARCIA-HERNANDEZ *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 682 F. 3d 767.

No. 12–8604. GUY *v.* MORROW, WARDEN, ET AL. C. A. 6th Cir. Certiorari denied.

No. 12–8608. GIBBS *v.* THOMAS, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 466 Fed. Appx. 646.

No. 12–8610. GREGORY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 381.

No. 12–8612. HERNANDEZ-PEREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 584.

No. 12–8613. RICKERT *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 685 F. 3d 760.

No. 12–8614. FIELDS *v.* UNITED STATES. C. A. D. C. Cir. Certiorari denied. Reported below: 699 F. 3d 518.

No. 12–8621. BURROWES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–8626. RICHARDSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 884.

No. 12–8627. RICE *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–8629. WEIR *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 703 F. 3d 976.

No. 12–8636. STEVENS *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 12–8638. DIVER *v.* SMITH, ADMINISTRATOR, ALBEMARLE CORRECTIONAL INSTITUTION. C. A. 4th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 96.

No. 12–8640. CALVO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–8641. DELEO *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 690 F. 3d 977.

No. 12–8642. DOYLE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 693 F. 3d 769.

No. 12–8643. DAVISON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 492 Fed. Appx. 391.

No. 12–8644. CATHEY *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 633.

No. 12–8649. CHARLES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 993.

No. 12–8655. MENDOZA-PEREZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 496 Fed. Appx. 431.

No. 12–8656. LUMPKINS *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 687 F. 3d 1011.

No. 12–8657. JACKSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 491 Fed. Appx. 554.

No. 12–8662. LILLARD *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 12–8667. SALAZAR *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 625.

No. 12–8670. SALAZAR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 373.

No. 12–8672. JOHNSON *v.* CHAVEZ, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 488 Fed. Appx. 255.

No. 12–8675. VASQUE VALENZUELA ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 495 Fed. Appx. 817.

No. 12–8676. CHARLES *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 993.

No. 12–8677. PERRI *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 113.

No. 12–8678. ORR *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–8680. NICOLAS *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 300.

No. 12–8682. SHOBE *v.* UNITED STATES. C. A. 10th Cir. Certiorari denied. Reported below: 508 Fed. Appx. 845.

No. 12–8684. BLEDSOE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–8685. HIBLE *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 700 F. 3d 958.

No. 12–8686. HUERTA *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 505 Fed. Appx. 400.

No. 12–8687. IZQUIERDO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 702 F. 3d 206.

No. 12–8688. GARCIA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 496 Fed. Appx. 355.

No. 12–8689. GONZALEZ-ALVAREZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 372.

No. 12–8692. WASHINGTON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 503 Fed. Appx. 196.

No. 12–8693. HOLLINS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 505 Fed. Appx. 437.

No. 12–8697. HARRISON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 689 F. 3d 301.

No. 12–8698. SEEBECK *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied.

No. 12–8704. BROWNE *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 698 F. 3d 1042.

No. 12–8705. RODRIGUEZ CARDENAS *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 502 Fed. Appx. 686.

No. 12–8709. WILSON *v.* WISCONSIN. Ct. App. Wis. Certiorari denied. Reported below: 2012 WI App 106, 344 Wis. 2d 298, 821 N. W. 2d 413.

No. 12–8716. MEDLEY *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 54 A. 3d 709.

No. 12–8719. WORTH *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 240.

No. 12–8722. DUC HUU PHAM *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–8728. DUENAS ET AL. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 691 F. 3d 1070.

No. 12–8732. WASHINGTON *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. Reported below: 504 Fed. Appx. 10.

No. 12–8735. RODRIGUEZ, AKA LUIS, AKA RODRIGUEZ SECUNDINO, AKA RODRIGUEZ LUIS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 491 Fed. Appx. 499.

No. 12–8736. JOHNSON *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–8741. WORTHY *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 699 F. 3d 661.

No. 12–8742. JONES *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 700 F. 3d 615.

No. 12–8743. ANDERSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 493 Fed. Appx. 515.

No. 12–8751. SIMPSON, AKA PILLINGS, AKA FLOYD *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 245.

No. 12–8755. ALEXANDER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 623.

No. 12–8756. AYESH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 702 F. 3d 162.

No. 12–8761. SANTOS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–8763. JONES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 488 Fed. Appx. 651.

No. 12–8764. LOPEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 409.

No. 12–8765. DAVIS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 497 Fed. Appx. 285.

No. 12–8767. WALIZER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 374.

No. 12–8769. COFFEY *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 293.

No. 12–8770. LANDRON-CLASS *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 696 F. 3d 62.

No. 12–8788. SANDERS *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–8791. HARRINGTON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied. Reported below: 38 A. 3d 307.

No. 12–8799. ROBINS *v.* UNITED STATES. C. A. Armed Forces. Certiorari denied. Reported below: 71 M. J. 392.

No. 12–8811. BUDZIAK *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 697 F. 3d 1105.

No. 12–8813. BRIGHTWELL *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied.

No. 12–8817. TRINGHAM *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 486 Fed. Appx. 646.

No. 12–8835. MOORE *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 410.

No. 12–8844. DEARMAS-VALDES *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. C. A. 11th Cir. Certiorari denied.

No. 12–451. NEW YORK, NEW YORK LLC, DBA NEW YORK NEW YORK HOTEL & CASINO *v.* NATIONAL LABOR RELATIONS BOARD ET AL. C. A. D. C. Cir. Motion of American Hotel and Lodging Association et al. for leave to file brief as *amici curiae* granted. Motion of National Retail Federation for leave to file brief as *amicus curiae* out of time denied. Certiorari denied. Reported below: 676 F. 3d 193.

No. 12–589. MICHIGAN DEPARTMENT OF COMMUNITY HEALTH ET AL. *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. C. A. 6th Cir. Motion of Michigan Health & Hospital Association for leave to file brief as *amicus curiae* granted. Certiorari denied. Reported below: 496 Fed. Appx. 526.

No. 12–684. UNION CARBIDE CORPORATION AND SUBSIDIARIES *v.* COMMISSIONER OF INTERNAL REVENUE. C. A. 2d Cir. Motion of National Association of Manufacturers et al. for leave to file brief as *amici curiae* out of time denied. Certiorari denied. Reported below: 697 F. 3d 104.

No. 12–716. DALAL *v.* KRANTZ & BERMAN LLP. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition. Reported below: 472 Fed. Appx. 76.

No. 12–798. IVI, INC., ET AL. *v.* WPIX, INC., ET AL. C. A. 2d Cir. Certiorari denied. JUSTICE ALITO took no part in the consideration or decision of this petition. Reported below: 691 F. 3d 275.

No. 12–807. WALLISER *v.* MAY. Ct. App. Ariz. Motion of respondent for leave to proceed *in forma pauperis* granted. Certiorari denied.

No. 12–8622. ALISIC *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–8624. SCHMITZ *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition.

No. 12–8646. CASTRO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied. JUSTICE SOTOMAYOR took no part in the consideration or decision of this petition.

No. 12–8648. DYCHES *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 487 Fed. Appx. 74.

No. 12–8720. TAYLOR *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 499 Fed. Appx. 296.

No. 12–8726. BANNISTER *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 487 Fed. Appx. 811.

No. 12–8778. GIBSON *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 476 Fed. Appx. 752.

Rehearing Denied

No. 11–10200. HILL *v.* WHITE, WARDEN, ET AL., *ante*, p. 836;

No. 12–130. LEMELLE *v.* ST. CHARLES GAMING CO., INC., *ante*, p. 1141;

No. 12–581. ALLEN *v.* CLP CORP., DBA MCDONALD'S, *ante*, p. 1124;

No. 12–614. MCLEAN ET AL. *v.* RAY ET AL., *ante*, p. 1144;

No. 12–628. IN RE TABB, *ante*, p. 1142;

No. 12–6006. SCOTT *v.* U. S. BANK N. A. ET AL., *ante*, p. 1092;

No. 12–6496. HALL *v.* OREGON DEPARTMENT OF CORRECTIONS, *ante*, p. 1050;

No. 12–6635. LEWIS *v.* BROWARD COUNTY SCHOOL BOARD ET AL., *ante*, p. 1094;

No. 12–6791. MICHAU *v.* WARDEN ET AL., *ante*, p. 1097;

No. 12–6822. MARSHALL *v.* RUDEK, WARDEN, *ante*, p. 1098;

No. 12–6850. SANDERS *v.* TILTON, WARDEN, *ante*, p. 1098;

No. 12–6858. TOWBRIDGE *v.* FLORIDA DEPARTMENT OF CORRECTIONS, *ante*, p. 1099;

No. 12–6890. LEWIS *v.* SHERIFF'S DEPARTMENT BOSSIER PARISH ET AL., *ante*, p. 1099;

No. 12–6966. TAWADROUS *v.* DEPARTMENT OF THE TREASURY, *ante*, p. 1102;

No. 12–7000. BARTHOLOMEW *v.* PASADENA TOURNAMENT OF ROSES ASSN., INC., ET AL., *ante*, p. 1103;

No. 12–7019. EDWARDS *v.* SCUTT, WARDEN, *ante*, p. 1126;

No. 12–7054. BOOTHER *v.* FLORIDA DEPARTMENT OF CORRECTIONS ET AL., *ante*, p. 1127;

No. 12–7297. KY TAN LE *v.* SOCIAL SECURITY ADMINISTRATION, *ante*, p. 1131;

No. 12–7303. MALONE *v.* MERIT SYSTEMS PROTECTION BOARD, *ante*, p. 1107;

No. 12–7308. WIDI *v.* UNITED STATES, *ante*, p. 1108;

No. 12–7404. FLEMING *v.* WOLFE, *ante*, p. 1110;

No. 12–7591. ANGLINMATUMONA *v.* MICRON CORP., *ante*, p. 1133; and

No. 12–7827. IN RE LICON, *ante*, p. 1121. Petitions for rehearing denied.

No. 12–6076. HUGHES *v.* CHEVRON PHILLIPS CHEMICAL CO. LP ET AL., *ante*, p. 1114. Petition for rehearing denied. JUS-

TICE ALITO took no part in the consideration or decision of this petition.

No. 12–6483. IN RE SMITH, *ante*, p. 1047. Motion for leave to file petition for rehearing denied.

No. 12–7464. BROWN *v.* UNITED STATES, *ante*, p. 1115; and

No. 12–7487. PELULLO *v.* UNITED STATES, *ante*, p. 1138. Petitions for rehearing denied. JUSTICE KAGAN took no part in the consideration or decision of these petitions.

MARCH 22, 2013

Miscellaneous Order

No. 12–416. FEDERAL TRADE COMMISSION *v.* ACTAVIS, INC., ET AL. C. A. 11th Cir. [Certiorari granted *sub nom. Federal Trade Commission* v. *Watson Pharmaceuticals, Inc., et al.*, *ante*, p. 1066.] Motion of the Solicitor General to unseal volume II of the joint appendix granted. JUSTICE ALITO took no part in the consideration or decision of this motion.

MARCH 25, 2013

Certiorari Granted—Vacated and Remanded

No. 11–708. GANGHUA LIU *v.* PEARSON EDUCATION, INC., ET AL. C. A. 2d Cir.; and

No. 11–1343. KUMAR ET AL. *v.* PEARSON EDUCATION, INC., ET AL. C. A. 2d Cir. Reported below: 452 Fed. Appx. 11. Certiorari granted, judgments vacated, and cases remanded for further consideration in light of *Kirtsaeng* v. *John Wiley & Sons, Inc.*, *ante*, p. 519. JUSTICE BREYER took no part in the consideration or decision of these petitions.

Certiorari Dismissed

No. 12–8267. JAMES-BEY *v.* NORTH CAROLINA ET AL. C. A. 4th Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

No. 12–8286. DAVIS *v.* HUDSON REFINERY 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: 498 Fed. Appx. 779.

No. 12–8660. KRUG *v.* ROBERTS, CHIEF JUSTICE, SUPREME COURT OF THE UNITED STATES, ET AL. C. A. D. C. Cir. Motion of petitioner for leave to proceed *in forma pauperis* denied, and certiorari dismissed. See this Court's Rule 39.8.

Miscellaneous Orders

No. 12M102. MUTHUKUMAR *v.* KIEL. Motion to direct the Clerk to file petition for writ of certiorari out of time denied.

No. 12–751. FIFTH THIRD BANCORP. ET AL. *v.* DUDENHOEFFER ET AL. C. A. 6th Cir. The Solicitor General is invited to file a brief in this case expressing the views of the United States.

No. 12–761. POM WONDERFUL LLC *v.* COCA-COLA CO. C. A. 9th Cir. The 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. 12–8327. MCDOWELL *v.* NUCOR BUILDING SYSTEM. C. A. 4th Cir.; and

No. 12–8913. HERNANDEZ *v.* UNITED STATES. C. A. 11th Cir. Motions of petitioners for leave to proceed *in forma pauperis* denied. Petitioners are allowed until April 15, 2013, 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. 12–8986. IN RE HARPER;

No. 12–8998. IN RE MOSLEY;

No. 12–9020. IN RE MILES; and

No. 12–9030. IN RE CRISSUP. Petitions for writs of habeas corpus denied.

No. 12–8292. IN RE BHAT; and

No. 12–8869. IN RE BURRESS. Petitions for writs of mandamus denied.

Certiorari Granted

No. 12–562. UNITED STATES *v.* WOODS. C. A. 5th Cir. Certiorari granted. In addition to the question presented by the petition, the parties are directed to brief and argue the following question: "Whether the District Court had jurisdiction in this case under 26 U. S. C. § 6226 to consider the substantial valuation misstatement penalty." Reported below: 471 Fed. Appx. 320.

No. 12–682. SCHUETTE, ATTORNEY GENERAL OF MICHIGAN *v.* COALITION TO DEFEND AFFIRMATIVE ACTION, INTEGRATION AND IMMIGRANT RIGHTS AND FIGHT FOR EQUALITY BY ANY MEANS NECESSARY (BAMN) ET AL. C. A. 6th Cir. Motion of David Boyle for leave to file brief as *amicus curiae* granted. Certiorari granted. JUSTICE KAGAN took no part in the consideration or decision of this motion and this petition. Reported below: 701 F. 3d 466.

Certiorari Denied

No. 12–335. SANCHEZ, ON BEHALF OF MINOR CHILD D. R.-S., ET AL. *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 671 F. 3d 86.

No. 12–466. SMALLEY *v.* NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES. Sup. Ct. Neb. Certiorari denied. Reported below: 283 Neb. 544, 811 N. W. 2d 246.

No. 12–552. NINESTAR TECHNOLOGY CO., LTD., ET AL. *v.* INTERNATIONAL TRADE COMMISSION ET AL. C. A. Fed. Cir. Certiorari denied. Reported below: 667 F. 3d 1373.

No. 12–565. MCCORMICK, PERSONAL REPRESENTATIVE OF THE ESTATE OF PERRY *v.* IDAHO DEPARTMENT OF HEALTH AND WELFARE. Sup. Ct. Idaho. Certiorari denied. Reported below: 153 Idaho 468, 283 P. 3d 785.

No. 12–641. HOUSE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 684 F. 3d 1173.

No. 12–665. SANTA MARIA *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 12–749. FREDERICK *v.* SHINSEKI, SECRETARY OF VETERANS AFFAIRS. C. A. Fed. Cir. Certiorari denied. Reported below: 684 F. 3d 1263.

No. 12–763. ASGEIRSSON ET AL. *v.* ABBOTT, ATTORNEY GENERAL OF TEXAS, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 696 F. 3d 454.

No. 12–879. HEDGES *v.* RUBIN ET AL. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–880. DINH TAN HO *v.* THALER, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION. C. A. 5th Cir. Certiorari denied. Reported below: 495 Fed. Appx. 488.

No. 12–883. EJS PROPERTIES, LLC *v.* CITY OF TOLEDO, OHIO, ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 698 F. 3d 845.

No. 12–887. LYNN *v.* LYNN. Ct. App. Cal., 2d App. Dist. Certiorari denied.

No. 12–891. SCHAFLER *v.* FIELD ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 27.

No. 12–897. BENTON *v.* CORY ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 622.

No. 12–899. GIRALDO ET AL. *v.* DRUMMOND CO. INC. ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 493 Fed. Appx. 106.

No. 12–900. HAMPTON *v.* METHODIST HEALTHCARE SYSTEM OF SAN ANTONIO, LTD., L. L. P., ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 640.

No. 12–902. JALLALI *v.* NOVA SOUTHEASTERN UNIVERSITY, INC., ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 486 Fed. Appx. 765.

No. 12–904. SORIANO *v.* NESHOBA COUNTY GENERAL HOSPITAL BOARD OF TRUSTEES ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 486 Fed. Appx. 444.

No. 12–905. RINGGOLD ET AL. *v.* BROWN, GOVERNOR OF CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–938. CHRISTIDES *v.* ASTRUE, COMMISSIONER OF SOCIAL SECURITY. C. A. 11th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 581.

No. 12–942. MENASHA CORP. *v.* MOORE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 690 F. 3d 444.

No. 12–982. TREASURER, TRUSTEES OF DRURY INDUSTRIES, INC. HEALTH CARE PLAN AND TRUST *v.* GODING ET AL. C. A. 8th Cir. Certiorari denied. Reported below: 692 F. 3d 888.

No. 12–983. MyMail, Ltd. *v.* Commissioner of Internal Revenue. C. A. 5th Cir. Certiorari denied. Reported below: 498 Fed. Appx. 388.

No. 12–996. Ancient Coin Collectors Guild *v.* United States Customs and Border Protection Agency, Department of Homeland Security, et al. C. A. 4th Cir. Certiorari denied. Reported below: 698 F. 3d 171.

No. 12–999. Brizuela *v.* United States. C. A. Fed. Cir. Certiorari denied. Reported below: 492 Fed. Appx. 97.

No. 12–1018. Ou-Young *v.* Donahoe, Postmaster General. C. A. 9th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 77.

No. 12–1020. Lopez de Avilez et al. *v.* United States. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 420.

No. 12–1027. Quatkemeyer *v.* Kentucky Board of Medical Licensure et al. C. A. 6th Cir. Certiorari denied. Reported below: 506 Fed. Appx. 342.

No. 12–1048. Dellas *v.* United States. C. A. 9th Cir. Certiorari denied.

No. 12–6608. Thornton *v.* Ives, Warden. C. A. 6th Cir. Certiorari denied.

No. 12–6853. Tucker et vir *v.* Tift County Hospital Authority et al. Ct. App. Ga. Certiorari denied. Reported below: 311 Ga. App. XXIII.

No. 12–7144. Muthukumar *v.* University of Texas at Dallas. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 407.

No. 12–7394. Lombardo *v.* United States. C. A. 7th Cir. Certiorari denied. Reported below: 679 F. 3d 521.

No. 12–7690. Manning *v.* Epps, Commissioner, Mississippi Department of Corrections. C. A. 5th Cir. Certiorari denied. Reported below: 688 F. 3d 177.

No. 12–7779. Reynolds *v.* Florida. Sup. Ct. Fla. Certiorari denied. Reported below: 99 So. 3d 459.

No. 12–7860. JENKINS *v.* ALABAMA. Sup. Ct. Ala. Certiorari denied. Reported below: 105 So. 3d 1250.

No. 12–7886. MAESTAS *v.* UTAH. Sup. Ct. Utah. Certiorari denied. Reported below: 2012 UT 46, 299 P. 3d 892.

No. 12–8255. JAIMEZ REYES *v.* KANE, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–8258. ANGEL *v.* CALIFORNIA. C. A. 9th Cir. Certiorari denied.

No. 12–8265. FERDINAND *v.* MISSOURI. Ct. App. Mo., Western Dist. Certiorari denied. Reported below: 371 S. W. 3d 844.

No. 12–8266. HUNTER *v.* VIRGINIA. Sup. Ct. Va. Certiorari denied.

No. 12–8269. PATTEN *v.* LAKE COUNTY, CALIFORNIA, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 781.

No. 12–8274. BACON *v.* FLORIDA. Dist. Ct. App. Fla., 3d Dist. Certiorari denied. Reported below: 100 So. 3d 701.

No. 12–8275. JUSTICE *v.* GRANVILLE COUNTY BOARD OF EDUCATION ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 479 Fed. Appx. 451.

No. 12–8276. TOMPKINS *v.* HERRON ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 568.

No. 12–8282. NIVENS *v.* MARYLAND. Ct. Sp. App. Md. Certiorari denied. Reported below: 706 Md. App. 755.

No. 12–8283. NOBLE *v.* COOPER, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 12–8300. LINDENSMITH *v.* BERGHUIS, WARDEN. C. A. 6th Cir. Certiorari denied.

No. 12–8305. GREEN *v.* GAP, INC., ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 477 Fed. Appx. 27.

No. 12–8312. MCCLAMROCK *v.* ELI LILLY & CO. C. A. 2d Cir. Certiorari denied. Reported below: 504 Fed. Appx. 3.

No. 12–8313. LEUCHTMANN *v.* RUSSELL, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 12–8318. MITCHELL *v.* CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION ET AL. C. A. 9th Cir. Certiorari denied.

No. 12–8323. GILBERT *v.* NEW LINE PRODUCTIONS, INC., ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 34.

No. 12–8324. TUCKER *v.* ATCHISON, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 12–8328. PARKER *v.* WARREN, ADMINISTRATOR, NEW JERSEY STATE PRISON, ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–8329. SANDRES *v.* MV TECH AUTOWORKS. C. A. 5th Cir. Certiorari denied.

No. 12–8333. PARKER *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2012 IL App (1st) 100478–U.

No. 12–8334. ROY *v.* TENNESSEE ET AL. C. A. 6th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 281.

No. 12–8336. SMITH *v.* TEXAS. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 363 S. W. 3d 761.

No. 12–8337. SAMUEL *v.* TEXAS (two judgments). Ct. Crim. App. Tex. Certiorari denied.

No. 12–8338. SCHMITT *v.* MORGAN, WARDEN. C. A. 7th Cir. Certiorari denied.

No. 12–8340. MOROZOVA *v.* CALLOW. Ct. App. Wash. Certiorari denied.

No. 12–8341. MORTON *v.* GOVERNMENT OF THE VIRGIN ISLANDS. C. A. 3d Cir. Certiorari denied. Reported below: 491 Fed. Appx. 291.

No. 12–8355. MCNEELY *v.* CHAPPELL, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–8357. LOPEZ *v.* MCDONALD, WARDEN. C. A. 9th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 778.

No. 12–8358. LAWLOR *v.* HARTLEY, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–8362. BAGGETT *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2012 IL App (1st) 091575–U.

No. 12–8366. MAGEE *v.* WRIGHT, WARDEN. C. A. 5th Cir. Certiorari denied.

No. 12–8368. OWEN *v.* TEXAS. Ct. Crim. App. Tex. Certiorari denied.

No. 12–8372. PHILLIPS *v.* BITER, ACTING WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–8373. GONZALEZ *v.* JACQUEZ, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–8380. GEAR *v.* BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF NEW YORK ET AL. C. A. 2d Cir. Certiorari denied. Reported below: 472 Fed. Appx. 67.

No. 12–8381. BARRETT *v.* LUDWICK, WARDEN. C. A. 8th Cir. Certiorari denied.

No. 12–8384. ASHMORE *v.* ASHMORE. App. Div., Sup. Ct. N. Y., 2d Jud. Dept. Certiorari denied. Reported below: 92 App. Div. 3d 817, 939 N. Y. S. 2d 504.

No. 12–8386. BURGESS *v.* TENNESSEE. Ct. Crim. App. Tenn. Certiorari denied.

No. 12–8387. LEWIS *v.* SMITH. Dist. Ct. App. Fla., 4th Dist. Certiorari denied.

No. 12–8388. LEWIS *v.* CREWS, SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS. Sup. Ct. Fla. Certiorari denied. Reported below: 105 So. 3d 521.

No. 12–8397. GILCHRIST *v.* PARTH'S INC., DBA COMFORT INN, ET AL. C. A. 4th Cir. Certiorari denied. Reported below: 473 Fed. Appx. 188.

No. 12–8403. THOMPSON *v.* ILLINOIS. App. Ct. Ill., 1st Dist. Certiorari denied. Reported below: 2012 IL App (1st) 073296–U & 110863–U.

No. 12–8437. LAWRENCE *v.* FLORIDA. Dist. Ct. App. Fla., 2d Dist. Certiorari denied. Reported below: 100 So. 3d 694.

No. 12–8446. KEATING *v.* COATESVILLE VA MEDICAL CENTER ET AL. C. A. 3d Cir. Certiorari denied. Reported below: 498 Fed. Appx. 181.

No. 12–8448. WEST *v.* THOMAS, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied. Reported below: 685 Fed. Appx. 1259.

No. 12–8569. JONES *v.* JOHNSON, WARDEN. C. A. 9th Cir. Certiorari denied.

No. 12–8571. WARD *v.* LAFLER, WARDEN. C. A. 6th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 285.

No. 12–8581. EVANS *v.* FELKER, WARDEN, ET AL. C. A. 9th Cir. Certiorari denied. Reported below: 476 Fed. Appx. 445.

No. 12–8591. JERNARD *v.* OWENS, COMMISSIONER, GEORGIA DEPARTMENT OF CORRECTIONS, ET AL. C. A. 11th Cir. Certiorari denied.

No. 12–8632. DEROSA *v.* WORKMAN, WARDEN. C. A. 10th Cir. Certiorari denied. Reported below: 679 F. 3d 1196.

No. 12–8663. SAMUEL S. *v.* WEST VIRGINIA. Sup. Ct. App. W. Va. Certiorari denied.

No. 12–8696. PETTUS *v.* UNITED STATES ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–8702. ARMSTEAD *v.* SINCLAIR, SUPERINTENDENT, WASHINGTON STATE PENITENTIARY. C. A. 9th Cir. Certiorari denied.

No. 12–8740. SCALLY *v.* TEXAS STATE BOARD OF MEDICAL EXAMINERS. Ct. App. Tex., 3d Dist. Certiorari denied. Reported below: 351 S. W. 3d 434.

No. 12–8745. RAMIREZ-ALMAGUER *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 478 Fed. Appx. 457.

No. 12–8768. YOUNG *v.* ARIZONA. Ct. App. Ariz. Certiorari denied.

No. 12–8781. GALLARDO *v.* UNITED STATES ET AL. C. A. D. C. Cir. Certiorari denied. Reported below: 466 Fed. Appx. 5.

No. 12–8786. SCARNATI *v.* FEDERAL BUREAU OF INVESTIGATION ET AL. C. A. 3d Cir. Certiorari denied.

No. 12–8800. JOHNSON *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 688 F. 3d 444.

No. 12–8804. STRAIN *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 504 Fed. Appx. 174.

No. 12–8805. SPENCE *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 498 Fed. Appx. 926.

No. 12–8808. MENDOZA MARTINEZ *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 492 Fed. Appx. 481.

No. 12–8810. AHUMADA-RODRIGUEZ *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 283.

No. 12–8814. BRADLEY *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 500 Fed. Appx. 256.

No. 12–8820. VANHOOK *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 495 Fed. Appx. 308.

No. 12–8821. ZAPATERO *v.* UNITED STATES. C. A. 2d Cir. Certiorari denied.

No. 12–8825. RICHARDSON *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 499 Fed. Appx. 333.

No. 12–8826. RAMIREZ-MEDINA *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 490 Fed. Appx. 636.

No. 12–8827. SALGADO *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 491 Fed. Appx. 509.

No. 12–8841. H. O. S. *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 696 F. 3d 869.

No. 12–8849. WEATHERSPOON *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 505 Fed. Appx. 128.

No. 12–8851. RIVERA-MORENO *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–8853. STEWART *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 12–8857. DESADIER *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied. Reported below: 495 Fed. Appx. 501.

No. 12–8858. COVIELLO *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–8861. SYPHER *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 684 F. 3d 622.

No. 12–8865. JINGLES *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied. Reported below: 702 F. 3d 494.

No. 12–8867. BELL *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 500 Fed. Appx. 189.

No. 12–8868. BARAHONA *v.* UNITED STATES; and
No. 12–8961. PACHECO-LICONA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 494 Fed. Appx. 354.

No. 12–8870. ANDERSON *v.* UNITED STATES. Ct. App. D. C. Certiorari denied.

No. 12–8878. PRATT *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied.

No. 12–8880. GARCIA CISNEROS *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–8883. WETMORE *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied. Reported below: 700 F. 3d 570.

No. 12–8895. HERNANDEZ *v.* HOLDER, ATTORNEY GENERAL, ET AL. C. A. 5th Cir. Certiorari denied. Reported below: 471 Fed. Appx. 316.

No. 12–8897. FIGUEROA *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 474 Fed. Appx. 293.

No. 12–8901. JONES *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 498 Fed. Appx. 900.

No. 12–8903. STOCKMAN *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 691 F. 3d 979.

No. 12–8907. STEPHENS ET AL. *v.* UNITED STATES. C. A. 5th Cir. Certiorari denied.

No. 12–8908. SMITH *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 487 Fed. Appx. 801.

No. 12–8910. HODGELL *v.* UNITED STATES. C. A. 9th Cir. Certiorari denied.

No. 12–8912. RUIZ HENRIQUEZ *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 475 Fed. Appx. 871.

No. 12–8918. HODGES *v.* JARVIS, WARDEN. C. A. 11th Cir. Certiorari denied.

No. 12–8919. DUNEVANT *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied.

No. 12–8920. DESKINS *v.* UNITED STATES. C. A. 4th Cir. Certiorari denied. Reported below: 503 Fed. Appx. 197.

No. 12–8924. GAINER *v.* UNITED STATES. C. A. 11th Cir. Certiorari denied. Reported below: 498 Fed. Appx. 889.

No. 12–8931. PETERSON *v.* UNITED STATES. C. A. 1st Cir. Certiorari denied.

No. 12–8937. THORNBERG *v.* UNITED STATES. C. A. 8th Cir. Certiorari denied. Reported below: 676 F. 3d 703.

No. 12–8951. NOYES *v.* UNITED STATES. C. A. 3d Cir. Certiorari denied. Reported below: 501 Fed. Appx. 168.

No. 12–8952. HOWARD *v.* UNITED STATES. C. A. 6th Cir. Certiorari denied. Reported below: 482 Fed. Appx. 995.

No. 12–8960. MIRANDA *v.* UNITED STATES. C. A. 7th Cir. Certiorari denied. Reported below: 484 Fed. Appx. 70.

No. 12–112. ROE ET AL. *v.* UNITED STATES ET AL. C. A. 2d Cir. Motion of petitioner Richard Roe for leave to file supplemental brief under seal granted. Motion of respondent John Doe for leave to file brief in opposition under seal granted. Motion of the Solicitor General for leave to file brief in opposition under seal with redacted copies for the public record granted. Certiorari denied. Reported below: 428 Fed. Appx. 60.

No. 12–6925. JONES *v.* CASTILLO, WARDEN. C. A. 6th Cir. Certiorari denied. JUSTICE KAGAN took no part in the consideration or decision of this petition. Reported below: 489 Fed. Appx. 864.

No. 12–7546. J. O. *v.* C. L. S. Ct. App. Colo. Motion of petitioner for reconsideration of order denying leave to proceed *in forma pauperis* granted, and the order entered February 19, 2013, [*ante,* p. 1155,] is vacated. Certiorari denied.

No. 12–7559. McCorvey *v.* Young, Warden. C. A. 5th Cir. Certiorari denied. Justice Kagan took no part in the consideration or decision of this petition. Reported below: 487 Fed. Appx. 928.

No. 12–8777. Hernandez *v.* United States. C. A. 8th Cir. Certiorari denied. Justice Kagan took no part in the consideration or decision of this petition.

No. 12–8879. Hayes *v.* United States. C. A. 4th Cir. Certiorari denied. Justice Kagan took no part in the consideration or decision of this petition. Reported below: 473 Fed. Appx. 205.

Rehearing Denied

No. 12–6970. Bayene *v.* Farmland Foods, Inc., *ante,* p. 1102;

No. 12–7221. Gibson *v.* Florida, *ante,* p. 1129;

No. 12–7257. Brown *v.* Gray, Commandant, United States Disciplinary Barracks, Fort Leavenworth, *ante,* p. 1107;

No. 12–7442. Bower *v.* Hobbs, Director, Arkansas Department of Correction, *ante,* p. 1147; and

No. 12–8015. Smith *v.* United States, *ante,* p. 1180. Petitions for rehearing denied.

Reporter's Note

The next page is purposely numbered 1401. The numbers between 1259 and 1401 were intentionally omitted, in order to make it possible to publish in-chambers opinions with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

OPINION OF INDIVIDUAL JUSTICE IN CHAMBERS

HOBBY LOBBY STORES, INC., ET AL. *v.* SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES ET AL.

ON APPLICATION FOR INJUNCTION

No. 12A644. Decided December 26, 2012

Applicant corporations' request for an injunction pending appeal barring the enforcement of Health Resources Services Administration guidelines issued pursuant to § 1001(5) of the Patient Protection and Affordable Care Act is denied. They contend that requiring group health plans such as theirs to cover "approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity," 77 Fed. Reg. 8725, is contrary to their religious beliefs and thus violates both the First Amendment's Free Exercise Clause and the Religious Freedom Restoration Act of 1993. Because an injunction pending appeal "'does not simply suspend judicial alteration of the status quo but grants judicial intervention that has been withheld by lower courts,'" *Respect Maine PAC* v. *McKee*, 562 U. S. 996, it may be issued by a Circuit Justice only when it is "[n]ecessary or appropriate in aid of [this Court's] jurisdiction" and "the legal rights at issue are indisputably clear," *Wisconsin Right to Life, Inc.* v. *Federal Election Comm'n*, 542 U. S. 1305, 1306. Applicants have failed to satisfy that demanding standard here.

JUSTICE SOTOMAYOR, Circuit Justice.

This is an application for an injunction pending appellate review filed with me as Circuit Justice for the Tenth Circuit. The applicants are two closely held for-profit corporations, Hobby Lobby Stores, Inc. (Hobby Lobby) and Mardel, Inc. (Mardel), and five family members who indirectly own and control those corporations. Hobby Lobby is an arts and crafts retail chainstore, with more than 13,000 employees in

over 500 stores nationwide. Mardel is a chain of Christian-themed bookstores, with 372 full-time employees in 35 stores. Employees of the two corporations and their families receive health insurance from the corporations' self-insured group health plans.

Under § 1001(5) of the Patient Protection and Affordable Care Act, 124 Stat. 131, 42 U. S. C. § 300gg–13(a) (2006 ed., Supp. V), nongrandfathered group health plans must cover certain preventive health services without cost sharing, including various preventive services for women as provided in guidelines issued by the Health Resources Services Administration (HRSA), a component of the Department of Health and Human Services. As relevant here, HRSA's guidelines for women's preventive services require coverage for "all Food and Drug Administration . . . approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity as prescribed by a provider." 77 Fed. Reg. 8725 (2012) (internal quotation marks omitted).

The applicants filed an action in Federal District Court for declaratory and injunctive relief under the Free Exercise Clause of the First Amendment and the Religious Freedom Restoration Act of 1993 (RFRA), 42 U. S. C. § 2000bb *et seq.* They allege that under the HRSA guidelines, Hobby Lobby and Mardel will be required, contrary to the applicants' religious beliefs, to provide insurance coverage for certain drugs and devices that the applicants believe can cause abortions. The applicants simultaneously filed a motion for a preliminary injunction to prevent enforcement of the contraception-coverage requirement, which is scheduled to take effect with respect to the employee insurance plans of Hobby Lobby and Mardel on January 1, 2013. The District Court for the Western District of Oklahoma denied the motion for a preliminary injunction, and the Court of Appeals for the Tenth Circuit denied the applicants' motion for an injunction pending resolution of the appeal.

The only source of authority for this Court to issue an injunction is the All Writs Act, 28 U. S. C. § 1651(a). "We have consistently stated, and our own Rules so require, that such power is to be used sparingly." *Turner Broadcasting System, Inc.* v. *FCC*, 507 U. S. 1301, 1303 (1993) (Rehnquist, C. J., in chambers); see this Court's Rule 20.1 ("Issuance by the Court of an extraordinary writ authorized by 28 U. S. C. § 1651(a) is not a matter of right, but of discretion sparingly exercised"). Unlike a stay of an appeals court decision pursuant to 28 U. S. C. § 2101(f), a request for an injunction pending appeal "'does not simply suspend judicial alteration of the status quo but grants judicial intervention that has been withheld by lower courts.'" *Respect Maine PAC* v. *McKee*, 562 U. S. 996 (2010) (quoting *Ohio Citizens for Responsible Energy, Inc.* v. *NRC*, 479 U. S. 1312, 1313 (1986) (SCALIA, J., in chambers)). Accordingly, a Circuit Justice may issue an injunction only when it is "[n]ecessary or appropriate in aid of our jurisdiction" and "the legal rights at issue are indisputably clear." *Wisconsin Right to Life, Inc.* v. *Federal Election Comm'n*, 542 U. S. 1305, 1306 (2004) (Rehnquist, C. J., in chambers) (internal quotation marks omitted).

The applicants do not satisfy the demanding standard for the extraordinary relief they seek. First, whatever the ultimate merits of the applicants' claims, their entitlement to relief is not "indisputably clear." *Lux* v. *Rodrigues*, 561 U. S. 1036, 1037 (2010) (ROBERTS, C. J., in chambers) (internal quotation marks omitted). This Court has not previously addressed similar RFRA or free exercise claims brought by closely held for-profit corporations and their controlling shareholders alleging that the mandatory provision of certain employee benefits substantially burdens their exercise of religion. Cf. *United States* v. *Lee*, 455 U. S. 252 (1982) (rejecting free exercise claim brought by individual Amish employer who argued that paying Social Security taxes for his employees interfered with his exercise of religion). Moreover, the applicants correctly recognize

that lower courts have diverged on whether to grant temporary injunctive relief to similarly situated plaintiffs raising similar claims, Application for Injunction Pending Appellate Review 25–26, and no court has issued a final decision granting permanent relief with respect to such claims. Second, while the applicants allege they will face irreparable harm if they are forced to choose between complying with the contraception-coverage requirement and paying significant fines, they cannot show that an injunction is necessary or appropriate to aid our jurisdiction. Even without an injunction pending appeal, the applicants may continue their challenge to the regulations in the lower courts. Following a final judgment, they may, if necessary, file a petition for a writ of certiorari in this Court.

For the foregoing reasons, the application for an injunction pending appellate review is denied.

It is so ordered.

INDEX

ACQUISITIONS. See **Antitrust Acts.**

ADMINISTRATIVE LAW. See **Environmental Law; Statutes of Limitations.**

ADMIRALTY.

Jurisdiction—Floating home.—Petitioner's floating home is not a "vessel" under 1 U. S. C. § 3 for purposes of admiralty jurisdiction. Lozman v. Riviera Beach, p. 115.

AFFIRMATIVE DEFENSES. See **Criminal Law.**

ANTICOMPETITIVE ACQUISITIONS. See **Antitrust Acts.**

ANTIDISCRIMINATION LAWS. See **Civil Service Reform Act of 1978.**

ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996. See **Habeas Corpus.**

ANTITRUST ACTS.

Federal Trade Commission Act—Clayton Act—State-action immunity—State Hospital Authorities Law.—Respondent hospital authorities—which are substate governmental entities—are not immune from antitrust liability under state-action doctrine because Georgia law that created them and gave them general corporate powers, including power to acquire hospitals, does not clearly articulate and affirmatively express a state policy to permit acquisitions that substantially lessen competition. FTC v. Phoebe Putney Health System, Inc., p. 216.

ARBITRATION. See **Federal Arbitration Act.**

"ARISING UNDER" JURISDICTION. See **Jurisdiction.**

ARTICLE III STANDING. See **Standing.**

ATTORNEY'S FEES. See **Civil Rights Attorney's Fees Award Act of 1976; Federal Rules of Civil Procedure.**

BURDEN OF PROOF. See **Criminal Law.**

CHILD ABDUCTION. See **Mootness.**

CIVIL PENALTIES. See **Investment Advisers Act.**

CIVIL RIGHTS ATTORNEY'S FEES AWARD ACT OF 1976.

"Prevailing party"—Permanent injunction.—Plaintiff—who secured a permanent injunction barring police from sanctioning him for carrying certain signs during public demonstrations, but who received no monetary damages—was a "prevailing party" under Act, 42 U. S. C. § 1988(b). Lefemine v. Wideman, p. 1.

CIVIL SERVICE REFORM ACT OF 1978.

Agency action appealable to Merit Systems Protection Board—Violation of antidiscrimination statute—Judicial review.—A federal employee who claims that an agency action appealable to MSPB violates an antidiscrimination statute listed in 5 U. S. C. § 7702(a)(1)—such as Title VII of Civil Rights Act of 1964 or Age Discrimination in Employment Act of 1967—should seek judicial review in district court, not Federal Circuit, regardless of whether MSPB decided her case on procedural grounds or on merits. Kloeckner v. Solis, p. 41.

CLASS ACTION FAIRNESS ACT OF 2005.

Stipulation of class damages below Act's $5 million threshold—Federal jurisdiction.—Knowles' stipulation—that aggregate damages that his proposed class would seek would be below the $5 million threshold for federal jurisdiction under Act—does not defeat federal jurisdiction. Standard Fire Ins. Co. v. Knowles, p. 588.

CLASS ACTIONS. See **Class Action Fairness Act of 2005; Securities Law.**

CLAYTON ACT. See **Antitrust Acts.**

CLEAN WATER ACT. See also **Environmental Law.**

"Discharge of a pollutant"—Water flow from improved portion of navigable waterway to unimproved portion.—Flow of water from an improved portion of a navigable waterway into an unimproved portion of same waterway does not qualify as a "discharge of a pollutant" under Act. Los Angeles County Flood Control Dist. v. Natural Resources Defense Council, Inc., p. 78.

COLLATERAL PROCEEDINGS. See **Habeas Corpus,** 2.

CONSPIRACY. See **Criminal Law.**

CONSTITUTIONAL LAW.

I. Double Jeopardy.

Retrial after erroneous midtrial acquittal.—Double Jeopardy Clause bars petitioner's retrial after a midtrial acquittal that was in fact erroneous. Evans v. Michigan, p. 313.

CONSTITUTIONAL LAW—Continued.

II. Right to Counsel.

Ineffective assistance of counsel—Failure to advise non-citizen of guilty plea's deportation risks.— Sixth Amendment holding in *Padilla* v. *Kentucky*, 559 U. S. 356, that criminal defense attorneys inform non-citizen clients of deportation risks of guilty pleas does not have retroactive effect in cases already final on direct review. Chaidez v. United States, p. 342.

III. Searches and Seizures.

1. *Detention incident to execution of warrant—Detained beyond immediate vicinity of premises searched.*—Petitioner's detention beyond reasonably immediate vicinity of his apartment while it was being searched by police was not permissible detention incident to execution of a search warrant under *Michigan* v. *Summers*, 452 U. S. 692. Bailey v. United States, p. 186.

2. *Reliability of drug-detection dog—Probable cause to search.*—Evidence of drug-detection dog's training and testing presented in court supported dog's reliability, and respondent failed to undermine that showing; therefore, police officer had probable cause to search respondent's truck despite fact that officer did not keep full records of his dog's field performance. Florida v. Harris, p. 237.

IV. Taking of Property.

Government-induced temporary flooding.—Government-induced temporary flooding is not automatically exempt from inspection under Fifth Amendment's Takings Clause. Arkansas Game and Fish Comm'n v. United States, p. 23.

COPYRIGHT ACT.

"First sale" doctrine—Application to copyrighted work lawfully made abroad.—Act's "first sale" doctrine—which provides that "owner of a particular copy or phonorecord lawfully made under this title . . . is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord," 17 U. S. C. § 109(a)—applies to copies of a copyrighted work lawfully made abroad. Kirtsaeng v. John Wiley & Sons, Inc., p. 519.

COVENANTS NOT TO SUE. See **Trademarks.**

CRIMINAL LAW. See also **Constitutional Law,** I; II; III**; Federal Rules of Criminal Procedure; Habeas Corpus,** 1.

Conspiracy—Defense of withdrawal from conspiracy—Burden of proof.—Smith, who was charged with criminal conspiracy pursuant to 21 U. S. C. § 846 and 18 U. S. C. § 1962(d), bears burden of proving defense of withdrawal from conspiracy. Smith v. United States, p. 106.

CUSTODY RIGHTS. See **Mootness.**

DEMONSTRATIONS. See **Civil Rights Attorney's Fees Award Act of 1976.**

DEPORTATION. See **Constitutional Law,** II.

DISCHARGE OF POLLUTANTS. See **Clean Water Act; Environmental Law.**

DISTRICT COURT DISCRETION. See **Federal Rules of Civil Procedure.**

DOUBLE JEOPARDY. See **Constitutional Law,** I.

DRUG-DETECTION DOGS. See **Constitutional Law,** III, 2.

EFFECTIVE ASSISTANCE OF COUNSEL. See **Constitutional Law,** II.

ELECTRONIC SURVEILLANCE. See **Standing.**

EMPLOYERS AND EMPLOYEES. See **Civil Service Reform Act of 1978.**

EMPLOYMENT CONTRACTS. See **Federal Arbitration Act.**

ENVIRONMENTAL LAW. See also **Clean Water Act.**

EPA's "Industrial Stormwater Rule"—National Pollution Discharge Elimination System permit scheme—Discharges of channeled stormwater runoff from logging roads.—Preamendment version of EPA rule, 40 CFR § 122.26(b)(14), as permissibly construed by agency, exempts discharges of channeled logging road stormwater runoff from National Pollutant Discharge Elimination System permit scheme. Decker v. Northwest Environmental Defense Center, p. 597.

ENVIRONMENTAL PROTECTION AGENCY. See **Environmental Law.**

EXTENSIONS OF TIME. See **Statutes of Limitations.**

FAIR CREDIT REPORTING ACT. See **Immunity From Suit,** 2.

FAIR DEBT COLLECTION PRACTICES ACT. See **Federal Rules of Civil Procedure.**

FEDERAL ARBITRATION ACT.

Policy favoring arbitration—Noncompetition agreements in employment contracts.—Oklahoma Supreme Court failed to apply Act's policy favoring arbitration when it declared noncompetition agreements in two employment contracts null and void rather than leaving that determination to arbitrator in first instance. Nitro-Lift Technologies, L. L. C. v. Howard, p. 17.

FEDERAL EMPLOYER AND EMPLOYEES. See **Civil Service Reform Act of 1978.**

FEDERAL RULES OF CIVIL PROCEDURE. See also **Securities Law.**

Rule 54(d)(1)—Fair Debt Collection Practices Act suit—Prevailing defendant's costs and attorney's fees.—District Court properly exercised its Rule 54(d)(1) discretion when it awarded costs to respondent as prevailing defendant in FDCPA suit brought by petitioner; 15 U. S. C. § 1692k(a)(3), which permits a court to award attorney's fees and costs to defendants in cases brought in bad faith and for purpose of harassment, is not contrary to, and, thus, does not displace court's discretion under, Rule 54(d)(1). Marx v. General Revenue Corp., p. 371.

FEDERAL RULES OF CRIMINAL PROCEDURE.

Rule 52(b)—Plain error.—Regardless of whether a legal question was settled or unsettled at time of trial, an error is "plain" within the meaning of Rule 52(b)—which permits "[a] plain error that affects substantial rights [to] be considered even though it was not brought to the [trial] court's attention"—so long as error was plain at time of appellate review. Henderson v. United States, p. 266.

FEDERAL-STATE RELATIONS. See **Jurisdiction; Medicaid Act.**

FEDERAL TORT CLAIMS ACT. See **Immunity From Suit,** 1.

FEDERAL TRADE COMMISSION ACT. See **Antitrust Acts.**

FIFTH AMENDMENT. See **Constitutional Law,** I; IV.

FIRST AMENDMENT. See **Civil Rights Attorney's Fees Award Act of 1976.**

"FIRST SALE" DOCTRINE. See **Copyright Act.**

FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978. See **Standing.**

FOURTEENTH AMENDMENT. See **Constitutional Law,** I.

FOURTH AMENDMENT. See **Constitutional Law,** III; **Standing.**

FRAUD. See **Investment Advisers Act; Securities Law.**

GEORGIA. See **Antitrust Acts.**

GONZALEZ ACT. See **Immunity From Suit,** 1.

GOVERNMENT EMPLOYER AND EMPLOYEES. See **Civil Service Reform Act of 1978.**

GUILTY PLEAS. See **Constitutional Law,** II.

HABEAS CORPUS.

1. *Federal claim not expressly addressed by state court when other claims rejected—Presumption of adjudication on merits.*—For purposes of 28 U. S. C. § 2254(d)'s limitation on federal habeas relief for claims adjudicated on merits in state court, when a state court rules against a defendant in an opinion that rejects some claims but does not expressly address a federal claim, federal habeas court must presume, subject to rebuttal, that federal claim was adjudicated on merits. Johnson v. Williams, p. 289.

2. *Stay of proceedings—Mental incompetence.*—Neither 18 U. S. C. § 3599 nor § 4241 entitles a mentally incompetent state prisoner to stay indefinitely his federal habeas proceedings until such time that he is deemed competent. Ryan v. Valencia Gonzales, p. 57.

HAGUE CONVENTION ON CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION. See **Mootness.**

HOSPITALS. See **Antitrust Acts.**

IMMIGRATION LAW. See **Constitutional Law,** II.

IMMUNITY FROM SUIT.

1. *Gonzalez Act—Abrogation of Federal Tort Claims Act's intentional tort exception to waiver of sovereign immunity—Alleged medical battery.*—Gonzalez Act provision that intentional tort exception to FTCA's sovereign immunity waiver "shall not apply to any cause of action arising out of a negligent or wrongful act or omission in the performance of medical . . . functions," 10 U. S. C. § 1089(e), abrogates FTCA's intentional tort exception and thus permits petitioner's suit against United States alleging medical battery by a Navy doctor acting within scope of his employment. Levin v. United States, p. 503.

2. *Little Tucker Act—Damages actions against Federal Government for Fair Credit Reporting Act violations.*—Little Tucker Act does not waive Federal Government's sovereign immunity with respect to FCRA damages actions. United States v. Bormes, p. 6.

INDUSTRIAL STORMWATER RULE. See **Environmental Law.**

INTENTIONAL TORTS. See **Immunity From Suit,** 1.

INTERNATIONAL CHILD ABDUCTION REMEDIES ACT. See **Mootness.**

INVESTMENT ADVISERS ACT.

Civil penalties for investment fraud—Statute of limitations.—Where Securities and Exchange Commission has "five years from the date when the claim first accrued," 28 U. S. C. § 2462, to seek civil penalties for investment fraud under Act, five-year clock begins to tick when fraud occurs, not when it is discovered. Gabelli v. SEC, p. 442.

JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS. See **Civil Service Reform Act of 1978.**

JURISDICTION. See also **Class Action Fairness Act of 2005.**

State-court jurisdiction—Legal malpractice suit related to federal patent suit.—Where respondent's state-court legal malpractice suit related to a patent suit in federal court, 28 U. S. C. § 1338(a) did not deprive state courts of jurisdiction over malpractice claim because it did not "aris[e] under any Act of Congress relating to patents." Gunn v. Minton, p. 251.

LEGAL MALPRACTICE. See **Jurisdiction.**

LITTLE TUCKER ACT. See **Immunity From Suit,** 2.

MARITIME LAW. See **Admiralty.**

MATERIALITY. See **Securities Law.**

MEDICAID ACT.

Anti-lien provision—Pre-emption of North Carolina irrebuttable presumption attributing tort recovery to medical expenses.—Federal Medicaid statute's anti-lien provision, 42 U. S. C. § 1396p(a)(1), which pre-empts a State's effort to take any portion of a Medicaid beneficiary's tort judgment or settlement not "designated as payments for medical care," *Arkansas Dept. of Health and Human Servs.* v. *Ahlborn*, 547 U. S. 268, 284, pre-empts North Carolina's irrebuttable statutory presumption that one-third of a tort recovery is attributable to medical expenses. Wos v. E. M. A., p. 627.

MEDICAL BATTERY. See **Immunity From Suit,** 1.

MEDICARE REIMBURSEMENT DECISIONS. See **Statutes of Limitations.**

MENTAL COMPETENCY. See **Habeas Corpus,** 2.

MERIT SYSTEMS PROTECTION BOARD. See **Civil Service Reform Act of 1978.**

MIDTRIAL ACQUITTAL. See **Constitutional Law,** I.

MOOTNESS. See also **Trademarks.**

Hague Convention on Civil Aspects of International Child Abduction—Order for return of child to foreign country.—Return of a child to a foreign country pursuant to order under Hague Convention on Civil Aspects of International Child Abduction and International Child Abduction Remedies Act does not render an appeal of that order moot. Chafin v. Chafin, p. 165.

NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM. See **Environmental Law.**

NAVIGABLE WATERS. See **Clean Water Act.**

NONCOMPETITION AGREEMENTS. See **Federal Arbitration Act.**

NORTH CAROLINA. See **Medicaid Act.**

OKLAHOMA. See **Federal Arbitration Act.**

PARENTS AND CHILDREN. See **Mootness.**

PATENT INFRINGEMENT. See **Jurisdiction.**

"PLAIN ERROR" STANDARD OF REVIEW. See **Federal Rules of Criminal Procedure.**

PRE-EMPTION OF STATE LAW. See **Medicaid Act.**

PREVAILING PARTY. See **Civil Rights Attorney's Fees Award Act of 1976.**

PROBABLE CAUSE. See **Constitutional Law,** III, 2.

PROPERTY RIGHTS. See **Constitutional Law,** IV; **Copyright Act.**

RECORDINGS. See **Copyright Act.**

RETROACTIVE APPLICATION OF NEW RULES OF CRIMINAL PROCEDURE. See **Constitutional Law,** II.

RIGHT TO PRIVACY. See **Standing.**

RULES OF CONSTRUCTION ACT. See **Admiralty.**

SEARCH WARRANTS. See **Constitutional Law,** III, 2.

SECURITIES EXCHANGE ACT OF 1934. See **Securities Law.**

SECURITIES LAW. See also **Investment Advisers Act.**

Securities Exchange Act of 1934—Securities-fraud action—Class certification under Federal Rule of Civil Procedure 23(b)(3)—Proof of materiality.—Proof of materiality is not a prerequisite to Rule 23(b)(3) certification of a securities-fraud class action seeking money damages for alleged violations of § 10(b) and Rule 10b–5. Amgen Inc. v. Connecticut Retirement Plans and Trust Funds, p. 455.

SIXTH AMENDMENT. See **Constitutional Law,** II; **Habeas Corpus,** 1.

SOVEREIGN IMMUNITY. See **Immunity From Suit,** 1.

STANDING.

Foreign Intelligence Surveillance Act of 1978—Surveillance of United States persons outside United States.—Where § 702 of Foreign Intelligence Surveillance Act of 1978 permits Government to acquire foreign intelligence information through surveillance of individuals who are not "United States persons" and are reasonably believed to be located outside the United States, respondents, who are "United States persons," do not have Article III standing to challenge provision on ground that it will harm them by intercepting at least some of their private, foreign, telephone, or e-mail conversations. Clapper v. Amnesty International USA, p. 398.

STATE-ACTION IMMUNITY. See **Antitrust Acts.**

STATE PRISONERS. See **Habeas Corpus,** 2.

STATUTES OF LIMITATIONS. See also **Investment Advisers Act.**

Medicare reimbursement decisions—Providers' appeal to Provider Reimbursement Review Board—Extension of 180-day time limit.—Title 42 U. S. C. § 1395*oo*(a)(3)'s 180-day limit on time Medicare providers have to appeal reimbursement decisions to Provider Reimbursement Review Board is not "jurisdictional"; Secretary of HHS's regulation—which permits Board to extend that limit, for good cause, up to three years—is a permissible interpretation of § 1395*oo*(a)(3). Sebelius v. Auburn Regional Medical Center, p. 145.

STAYS. See **Habeas Corpus,** 2.

STORM WATER DISCHARGE. See **Clean Water Act.**

SUSPECT DETENTION. See **Constitutional Law,** II, 1.

TAKINGS CLAUSE. See **Constitutional Law,** IV.

TEMPORARY FLOODING. See **Constitutional Law,** IV.

TRADEMARKS.

Covenant not to enforce trademark—Action to have trademark declared invalid.—Nike's covenant not to enforce its Air Force 1 trademark against competitor Already or any affiliated entity based on Already's existing footwear designs or any future "colorable imitations" moots Already's action to have Air Force 1 trademark declared invalid. Already, LLC v. Nike, Inc., p. 85.

VESSELS. See **Admiralty.**

WATER POLLUTION. See **Clean Water Act.**

WITHDRAWAL FROM CONSPIRACY. See **Criminal Law.**

WORDS AND PHRASES.

"*Discharge of a pollutant.*" Clean Water Act, 33 U. S. C. § 1362(12). Los Angeles County Flood Control Dist. v. Natural Resources Defense Council, Inc., p. 78.

"*Prevailing party.*" Civil Rights Attorney's Fees Awards Act of 1976, 42 U. S. C. § 1988(b). Lefemine v. Wideman, p. 1.

"*Vessel.*" Rules of Construction Act, 1 U. S. C § 3. Lozman v. Riviera Beach, p. 115.

"*[L]awfully made under this title.*" Copyright Act, 17 U. S. C. § 109(a). Kirtsaeng v. John Wiley & Sons, Inc., p. 519.